

Department of Legislative Services  
 Maryland General Assembly  
 2017 Session

FISCAL AND POLICY NOTE  
 First Reader

House Bill 1592 (Delegate Jameson, *et al.*)

Rules and Executive Nominations

Local Jurisdictions - Zoning Authority - Generating Stations

This bill authorizes a local jurisdiction to adopt zoning regulations for the siting of certain generating stations, subject to specified requirements, including review and comment by the Public Service Commission (PSC). If a local jurisdiction has adopted such regulations, PSC is prohibited from issuing a certificate of public convenience and necessity (CPCN) or, if applicable, an exemption from a CPCN, for the construction of a generating station, unless it complies with the regulations. Generally, the owner of a proposed generating station must comply with the regulations; however, PSC may preempt the regulations if PSC determines that a proposed generating station is vital to grid integrity, and that there is not a viable alternative site authorized under the regulations. By December 31, 2017, the Power Plant Research Program (PPRP) in the Department of Natural Resources (DNR) must conduct a related study and submit its findings and recommendations to the Governor and the General Assembly.

Fiscal Summary

**State Effect:** Special fund expenditures for the Public Utility Regulation Fund (PURF) increase by \$141,400 in FY 2018 for PSC staff needed to review zoning regulations and generation facility siting. Future year expenditures reflect annualization and the elimination of one-time costs. Special fund revenues increase correspondingly from assessments imposed on public service companies. PPRP can handle the bill's requirements within existing budgeted resources, although some funding may be diverted from existing projects for a short time to complete the required study.

(in dollars)	FY 2018	FY 2019	FY 2020	FY 2021	FY 2022
SF Revenue	\$141,400	\$177,400	\$185,000	\$193,100	\$201,600
SF Expenditure	\$141,400	\$177,400	\$185,000	\$193,100	\$201,600
Net Effect	\$0	\$0	\$0	\$0	\$0

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

**Local Effect:** Local government expenditures may increase minimally to adopt zoning regulations for the siting of generating stations. Any increase cannot be reliably estimated at this time. Revenues are not affected.

**Small Business Effect:** None.

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## Analysis

### Bill Summary:

#### *Local Zoning Regulations for Generating Stations*

A local jurisdiction may adopt zoning regulations for the siting of certain generating stations, subject to the following conditions. PSC must review and comment on a local jurisdiction's proposed zoning regulations, including whether the zoning identifies viable generating station sites.

The affected generating stations are those required to obtain a CPCN or those with a generation capacity of at least two megawatts, or a group of geographically adjacent generating stations developed by the same person that would meet either requirement when taken together. The bill does not apply to transmission lines or gas or oil pipelines.

A local jurisdiction that adopts zoning regulations must:

- determine the types of energy generating technologies that the zoning regulations will include;
- consider (1) siting factors identified by PSC as necessary for a viable generating station based on the specific energy generation technology and (2) factors that are important to the goals and objectives of the local jurisdiction's comprehensive plan in light of the zoning regulations;
- identify viable generating station sites for each energy generation technology included in the zoning regulations;
- before proposing the regulations, provide notice of the energy generating technologies that the zoning regulations will include in accordance with specified notification procedures;
- within one month after the date of the notice, offer to meet with representatives of each energy generating technology that the zoning regulations will include to discuss the energy generating technology's siting needs and the local jurisdiction's land use needs; and

- comply with the above requirements when amending, repealing, or reclassifying zoning regulations adopted under the bill.

PPRP must identify and recommend representatives of each energy generating technology that the zoning regulations will include to meet with the local jurisdiction.

Generally, beginning on the date of the notice provided by a local jurisdiction of forthcoming regulations, a generating station that will use an energy generation technology that will be included in a local jurisdiction's zoning regulations may not be sited or constructed until the date of final adoption of the zoning regulations or one year from the date of the notice, whichever is earlier. However, this does not apply to a generating station that has an application for a CPCN submitted before the date of the notice.

Generally, notwithstanding any other provision of law, the owner of a proposed generating station must comply with zoning regulations adopted by a local jurisdiction in accordance with the bill. However, PSC may preempt a local jurisdiction's zoning regulations if PSC determines that a proposed generating station is vital to grid integrity, and there is not a viable alternative site authorized under the zoning regulations.

A local jurisdiction's zoning regulations in effect before January 1, 2017, must be deemed in compliance with the bill's requirements and binding on a proposed generating station if the local jurisdiction submits the zoning regulations to PSC for a determination that the zoning regulations:

- reflect the siting and comprehensive plan factors identified above; and
- identify viable generating station sites for each energy generation technology addressed in the zoning regulations.

#### *Certificate of Public Convenience and Necessity*

If a local jurisdiction has adopted zoning regulations, PSC is prohibited from issuing a CPCN or, if applicable, an exemption from a CPCN, for the construction of a generating station unless the construction complies with the zoning regulations.

#### *Power Plant Research Program Study*

PPRP must study and make recommendations on improving notice and communication processes between developers of generating stations, the State, and local jurisdictions. PPRP must consult with specified State, local, nonprofit, and industry stakeholders. By December 31, 2017, PPRP must submit its findings and recommendations to the Governor and the General Assembly.

## **Current Law/Background:**

### *Certificate of Public Convenience and Necessity Process*

The licensing of new electric power plants in the State is a comprehensive two-part process involving PSC and several other State agencies, for example, DNR and the Maryland Department of the Environment. PSC is the lead agency for licensing the siting, construction, and operation of power plants in the State, which typically involve a CPCN.

Generally, a person may not begin construction in the State of a generating station, overhead transmission line, or qualified generator lead line unless a CPCN is first obtained from PSC. PSC regulations define a “generating station” as property or facilities located in Maryland constituting an integral piece of equipment or unit for the production of electric energy, including any new production unit that would be added to an existing production plant. It does not include an integral piece of equipment or unit less than 2,000 kilowatts if it is installed with equipment that prevents the flow of electricity to the electric system during time periods when the electric system is out of service.

PSC must provide an opportunity for public comment and hold a public hearing on a CPCN application in each county and municipality in which any portion of the construction of a generating station, overhead transmission line, or qualified generator lead line is proposed to be located. PSC must hold the hearing jointly with the governing body of the county or municipality and must provide weekly notice during the four weeks prior to the hearing, both in a newspaper and online. PSC must also coordinate with each local government to identify additional options for providing notice of the hearing through other types of media.

PSC must take final action on an application for a CPCN only after due consideration of:

- the recommendation of the governing body of each county or municipality in which any portion of the construction of the generating station, overhead transmission line, or qualified generator lead line is proposed to be located; and
- the effect of the generating station, overhead transmission line, or qualified generator lead line on the stability and reliability of the electric system, economics, esthetics, historic sites, aviation safety, air and water pollution (when applicable), and the availability of means for the required timely disposal of wastes produced by any generating station.

### *Certificate of Public Convenience and Necessity Exemptions*

There are three general conditions under which a person constructing an electric generating station may apply to PSC for an exemption from the CPCN requirement:

- the facility is designed to provide on-site generated electricity, the capacity is up to 70 megawatts, and the excess electricity can be sold only on the wholesale market pursuant to an interconnection, operation, and maintenance agreement with the local electric company;
- at least 10% of the electricity generated is consumed on-site, the capacity is up to 25 megawatts, and the excess electricity is sold on the wholesale market pursuant to an interconnection, operation, and maintenance agreement with the local electric company; or
- the facility is wind-powered and land-based, the capacity is up to 70 megawatts, and the facility is no closer than a PSC-determined distance from the Patuxent River Naval Air Station, among other requirements.

However, PSC must require a person that is exempted from the CPCN requirement to obtain approval from the commission before the person may construct a generating station as described above. The application must contain specified information that PSC requires, including proof of compliance with all applicable requirements of the independent system operator.

#### *Local Government Comprehensive Land Use Plans*

The Maryland Department of Planning describes a comprehensive plan as “a document, officially adopted by the local governing body, which spells out the manner in which a municipality, county, or sub-area of a county must develop.” The local jurisdiction’s zoning, provision of water and sewer facilities, and other actions must be consistent with the plan’s recommendations. Under current law, to be “consistent with” a comprehensive plan means an action taken that will further, and not be contrary to, the following items in the plan: (1) policies; (2) timing of implementation of the plan; (3) timing of development; (4) timing of rezoning; (5) development patterns; (6) land uses; and (7) densities or intensities.

Local jurisdictions are required to enact, adopt, amend, and execute a comprehensive plan in accordance with State law. Certain elements must be included in a comprehensive plan, and additional permissive elements may be included. A comprehensive plan also must include or implement specified visions stated in the law. At least once every 10 years, the planning commission of a local jurisdiction must review the comprehensive plan and, if necessary, revise or amend the plan to include all required elements and the specified visions. A planning commission may prepare comprehensive plans for one or more geographic sections or divisions of the local jurisdiction if each plan is reviewed and, if necessary, revised or amended at least once every 10 years.

*Power Plan Research Program*

PPRP was created in 1971 to conduct research on the impacts of existing and proposed power plants in each county. PPRP is required to undertake a continuing research program for electric power plant site evaluation and related environmental and land use considerations.

**State Fiscal Effect:** The bill creates two new and ongoing responsibilities for PSC. First, PSC must evaluate zoning regulations from local governments. This includes reviewing and commenting on proposed regulations (including any future amendments or modifications) and also making determinations on currently existing regulations. Second, to preempt a local jurisdiction’s zoning regulations, PSC must determine that a proposed generating station is vital to grid security, and that there is not a viable alternative site authorized under the zoning regulations.

PSC does not have sufficient legal staff or staff with expertise in grid security to handle these requirements. Therefore, PURF special fund expenditures increase by \$141,429 in fiscal 2018, which accounts for the bill’s October 1, 2017 effective date. This estimate reflects the cost of hiring one half-time staff attorney and one full-time engineer to evaluate zoning regulations and make determinations related to generating station siting. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	1.5
Salaries and Fringe Benefits	\$126,445
Other Operating Expenses	<u>14,984</u>
<b>Total FY 2018 PSC Expenditures</b>	<b>\$141,429</b>

Future year expenditures reflect full salaries with annual increases and employee turnover and ongoing operating expenses. Special fund revenues increase correspondingly from assessments imposed on public service companies.

PPRP can handle the bill’s requirements within existing budgeted resources from the Environmental Trust Fund, although some funding may be diverted from existing projects for a short time to complete the required study. PPRP advises that this may delay the continued development of an online map-based screening tool to assist counties, municipalities, and developers in identifying promising areas for the location of new wind, solar, and combined heat and power projects.

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**Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 931 (Senators Astle and Hershey) - Finance and Education, Health, and Environmental Affairs.

**Information Source(s):** Public Service Commission; Office of People's Counsel; Department of Natural Resources; Baltimore City; Caroline and Montgomery counties; City of Bowie; Maryland Association of Counties; Department of Legislative Services

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