

HOUSE BILL 1014

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CF SB 578

By: **Delegates Szeliga, Arikan, Griffith, Impallaria, Johnson, McComas, and Reilly**
Introduced and read first time: February 5, 2020
Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Electricity – Considerations for Certificate of Public Convenience and Necessity**
3 **and Overhead Transmission Lines**

4 FOR the purpose of requiring the Public Service Commission to take final action on an
5 application for a certificate of public convenience and necessity for certain facilities
6 only after due consideration of infrastructure design; prohibiting the approval and
7 construction of an overhead transmission line that is aligned with and within a
8 certain distance of a conservation easement unless there is a certain showing;
9 providing for the application of this Act; and generally relating to electricity facilities
10 and certificates of public convenience and necessity.

11 BY repealing and reenacting, with amendments,
12 Article – Public Utilities
13 Section 7–207
14 Annotated Code of Maryland
15 (2010 Replacement Volume and 2019 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
17 That the Laws of Maryland read as follows:

18 **Article – Public Utilities**

19 7–207.

20 (a) (1) In this section the following words have the meanings indicated.

21 (2) “Brownfields site” means:

22 (i) a former industrial or commercial site identified by federal or
23 State laws or regulation as contaminated or polluted;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (ii) a closed landfill regulated by the Department of the
2 Environment; or

3 (iii) mined land.

4 (3) (i) "Construction" means:

5 1. any physical change at a site, including fabrication,
6 erection, installation, or demolition; or

7 2. the entry into a binding agreement or contractual
8 obligation to purchase equipment exclusively for use in construction in the State or to
9 undertake a program of actual construction in the State which cannot be canceled or
10 modified without substantial loss to the owner or operator of the proposed generating
11 station.

12 (ii) "Construction" does not include a change that is needed for the
13 temporary use of a site or route for nonutility purposes or for use in securing geological
14 data, including any boring that is necessary to ascertain foundation conditions.

15 (4) (i) "Mined land" means the surface or subsurface of an area in which
16 surface mining operations will be, are being, or have been conducted.

17 (ii) "Mined land" includes:

18 1. private ways and roads used for mining appurtenant to
19 any surface mining area;

20 2. land excavations;

21 3. workings; and

22 4. overburden.

23 (5) "Qualified generator lead line" means an overhead transmission line
24 that is designed to carry a voltage in excess of 69,000 volts and would allow an out-of-state
25 Tier 1 or Tier 2 renewable source to interconnect with a portion of the electric system in
26 Maryland that is owned by an electric company.

27 (b) (1) (i) Unless a certificate of public convenience and necessity for the
28 construction is first obtained from the Commission, a person may not begin construction in
29 the State of:

30 1. a generating station; or

31 2. a qualified generator lead line.

1 (ii) If a person obtains Commission approval for construction under
2 § 7-207.1 of this subtitle, the Commission shall exempt a person from the requirement to
3 obtain a certificate of public convenience and necessity under this section.

4 (iii) Notwithstanding subparagraph (i) of this paragraph, a person
5 may not apply to obtain a certificate of public convenience and necessity for construction of
6 a qualified generator lead line unless:

7 1. at least 90 days before the filing of an application for a
8 certificate of public convenience and necessity, the person had in good faith offered the
9 electric company that owns that portion of the electric grid in Maryland to which the
10 qualified generator lead line would interconnect a full and fair opportunity for the electric
11 company to construct the qualified generator lead line; and

12 2. at any time at least 10 days before the filing of an
13 application for a certificate of public convenience and necessity, the electric company:

14 A. did not accept from the person a proposal or a negotiated
15 version of the proposal under which the electric company would construct the qualified
16 generator lead line; or

17 B. stated in writing that the electric company did not intend
18 to construct the qualified generator lead line.

19 (2) Unless a certificate of public convenience and necessity for the
20 construction is first obtained from the Commission, and the Commission has found that the
21 capacity is necessary to ensure a sufficient supply of electricity to customers in the State, a
22 person may not exercise a right of condemnation in connection with the construction of a
23 generating station.

24 (3) (i) Except as provided in paragraph (4) of this subsection, unless a
25 certificate of public convenience and necessity for the construction is first obtained from the
26 Commission, a person may not begin construction of an overhead transmission line that is
27 designed to carry a voltage in excess of 69,000 volts or exercise a right of condemnation
28 with the construction.

29 (ii) For construction related to an existing overhead transmission
30 line, the Commission may waive the requirement in subparagraph (i) of this paragraph for
31 good cause.

32 (iii) Notwithstanding subparagraph (i) of this paragraph and subject
33 to subparagraph (iv) of this paragraph, the Commission may issue a certificate of public
34 convenience and necessity for the construction of an overhead transmission line only if the
35 applicant for the certificate of public convenience and necessity:

36 1. is an electric company; or

1 2. is or, on the start of commercial operation of the overhead
2 transmission line, will be subject to regulation as a public utility by an officer or an agency
3 of the United States.

4 (iv) The Commission may not issue a certificate of public convenience
5 and necessity for the construction of an overhead transmission line in the electric
6 distribution service territory of an electric company to an applicant other than an electric
7 company if:

8 1. the overhead transmission line is to be located solely
9 within the electric distribution service territory of that electric company; and

10 2. the cost of the overhead transmission line is to be paid
11 solely by that electric company and its ratepayers.

12 (v) 1. This subparagraph applies to the construction of an
13 overhead transmission line for which a certificate of public convenience and necessity is
14 required under this section.

15 2. On issuance of a certificate of public convenience and
16 necessity for the construction of an overhead transmission line, a person may acquire by
17 condemnation, in accordance with Title 12 of the Real Property Article, any property or
18 right necessary for the construction or maintenance of the transmission line.

19 (4) (i) Except as provided in subparagraph (ii) of this paragraph, for
20 construction related to an existing overhead transmission line designed to carry a voltage
21 in excess of 69,000 volts, the Commission shall waive the requirement to obtain a certificate
22 of public convenience and necessity if the Commission finds that the construction does not:

23 1. require the person to obtain new real property or
24 additional rights-of-way through eminent domain; or

25 2. require larger or higher structures to accommodate:

26 A. increased voltage; or

27 B. larger conductors.

28 (ii) 1. For construction related to an existing overhead
29 transmission line, including repairs, that is necessary to avoid an imminent safety hazard
30 or reliability risk, a person may undertake the necessary construction.

31 2. Within 30 days after construction is completed under
32 subsubparagraph 1 of this subparagraph, a person shall file a report with the Commission
33 describing the work that was completed.

34 (c) (1) On receipt of an application for a certificate of public convenience and

1 necessity under this section, the Commission shall provide notice immediately or require
2 the applicant to provide notice immediately of the application to:

3 (i) the Department of Planning;

4 (ii) the governing body, and if applicable the executive, of each
5 county or municipal corporation in which any portion of the generating station, overhead
6 transmission line, or qualified generator lead line is proposed to be constructed;

7 (iii) the governing body, and if applicable the executive, of each
8 county or municipal corporation within 1 mile of the proposed location of the generating
9 station, overhead transmission line, or qualified generator lead line;

10 (iv) each member of the General Assembly representing any part of
11 a county in which any portion of the generating station, overhead transmission line, or
12 qualified generator lead line is proposed to be constructed;

13 (v) each member of the General Assembly representing any part of
14 each county within 1 mile of the proposed location of the generating station, overhead
15 transmission line, or qualified generator lead line;

16 (vi) for a proposed overhead transmission line, each owner of land
17 and each owner of adjacent land; and

18 (vii) all other interested persons.

19 (2) The Commission, when sending the notice required under paragraph
20 (1) of this subsection, shall forward a copy of the application to:

21 (i) each appropriate State unit and unit of local government for
22 review, evaluation, and comment regarding the significance of the proposal to State,
23 area-wide, and local plans or programs; and

24 (ii) each member of the General Assembly included under paragraph
25 (1)(iv) and (v) of this subsection who requests a copy of the application.

26 (3) On receipt of an application for a certificate of public convenience and
27 necessity under this section, the Commission shall provide notice of the application on the
28 Commission's social media platforms and website.

29 (d) (1) The Commission shall provide an opportunity for public comment and
30 hold a public hearing on the application for a certificate of public convenience and necessity
31 in each county and municipal corporation in which any portion of the construction of a
32 generating station, an overhead transmission line designed to carry a voltage in excess of
33 69,000 volts, or a qualified generator lead line is proposed to be located.

34 (2) The Commission shall hold the public hearing jointly with the

1 governing body of the county or municipal corporation in which any portion of the
2 construction of the generating station, overhead transmission line, or qualified generator
3 lead line is proposed to be located, unless the governing body declines to participate in the
4 hearing.

5 (3) (i) Once in each of the 4 successive weeks immediately before the
6 hearing date, the Commission shall provide weekly notice of the public hearing and an
7 opportunity for public comment:

8 1. by advertisement in a newspaper of general circulation in
9 the county or municipal corporation affected by the application;

10 2. on two types of social media; and

11 3. on the Commission's website.

12 (ii) Before a public hearing, the Commission shall coordinate with
13 the governing body of the county or municipal corporation in which any portion of the
14 construction of the generating station, overhead transmission line, or qualified generator
15 lead line is proposed to be located to identify additional options for providing, in an efficient
16 and cost-effective manner, notice of the public hearing through other types of media that
17 are familiar to the residents of the county or municipal corporation.

18 (4) (i) On the day of a public hearing, an informational sign shall be
19 posted prominently at or near each public entrance of the building in which the public
20 hearing will be held.

21 (ii) The informational sign required under subparagraph (i) of this
22 paragraph shall:

23 1. state the time, room number, and subject of the public
24 hearing; and

25 2. be at least 17 by 22 inches in size.

26 (5) (i) The Commission shall ensure presentation and
27 recommendations from each interested State unit, and shall allow representatives of each
28 State unit to sit during hearing of all parties.

29 (ii) The Commission shall allow each State unit 15 days after the
30 conclusion of the hearing to modify the State unit's initial recommendations.

31 (e) The Commission shall take final action on an application for a certificate of
32 public convenience and necessity only after due consideration of:

33 (1) the recommendation of the governing body of each county or municipal
34 corporation in which any portion of the construction of the generating station, overhead

1 transmission line, or qualified generator lead line is proposed to be located;

2 (2) the effect of the generating station, overhead transmission line, or
3 qualified generator lead line on:

4 (i) the stability and reliability of the electric system;

5 (ii) economics;

6 (iii) esthetics;

7 (iv) historic sites;

8 (v) aviation safety as determined by the Maryland Aviation
9 Administration and the administrator of the Federal Aviation Administration;

10 (vi) when applicable, air quality and water pollution; and

11 (vii) the availability of means for the required timely disposal of
12 wastes produced by any generating station; [and]

13 (3) WHETHER THE APPLICANT'S DESIGN PRIORITIZES:

14 (I) THE USE OF EXISTING INFRASTRUCTURE; OR

15 (II) UPGRADING EXISTING INFRASTRUCTURE; AND

16 [(3)] (4) for a generating station:

17 (i) the consistency of the application with the comprehensive plan
18 and zoning of each county or municipal corporation where any portion of the generating
19 station is proposed to be located; and

20 (ii) the efforts to resolve any issues presented by a county or
21 municipal corporation where any portion of the generating station is proposed to be located.

22 (f) For the construction of an overhead transmission line, in addition to the
23 considerations listed in subsection (e) of this section, the Commission shall:

24 (1) take final action on an application for a certificate of public convenience
25 and necessity only after due consideration of:

26 (i) the need to meet existing and future demand for electric service;
27 and

28 (ii) for construction related to a new overhead transmission line, the

1 alternative routes that the applicant considered, including the estimated capital and
 2 operating costs of each alternative route and a statement of the reason why the alternative
 3 route was rejected;

4 (2) require as an ongoing condition of the certificate of public convenience
 5 and necessity that an applicant comply with:

6 (i) all relevant agreements with PJM Interconnection, L.L.C., or its
 7 successors, related to the ongoing operation and maintenance of the overhead transmission
 8 line; and

9 (ii) all obligations imposed by the North America Electric Reliability
 10 Council and the Federal Energy Regulatory Commission related to the ongoing operation
 11 and maintenance of the overhead transmission line; and

12 (3) require the applicant to identify whether the overhead transmission
 13 line is proposed to be constructed on:

14 (i) an existing brownfields site;

15 (ii) property that is subject to an existing easement; or

16 (iii) a site where a tower structure or components of a tower structure
 17 used to support an overhead transmission line exist.

18 (g) (1) The Commission may not authorize, and a person may not undertake,
 19 the construction of an overhead transmission line that is aligned with and within 1 mile of:

20 (I) A CONSERVATION EASEMENT AS DEFINED IN § 10-705 OF
 21 THE REAL PROPERTY ARTICLE, UNLESS THERE IS AN EXCEPTIONAL SHOWING OF
 22 GOOD CAUSE; OR

23 (II) either end of a public airport runway, unless:

24 [(i)] 1. the Federal Aviation Administration determines that the
 25 construction of an overhead transmission line will not constitute a hazard to air navigation;
 26 and

27 [(ii)] 2. the Maryland Aviation Administration concurs in that
 28 determination.

29 (2) A privately owned airport runway shall qualify as a public airport
 30 runway under this subsection only if the runway has been on file with the Federal Aviation
 31 Administration for at least 2 years as being open to the public without restriction.

32 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to

1 apply only prospectively to certificates of public convenience and necessity issued by the
2 Public Service Commission on or after October 1, 2020, and may not be applied or
3 interpreted to have any effect on certificates of public convenience and necessity issued by
4 the Public Service Commission before October 1, 2020.

5 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 October 1, 2020.