

Department of Legislative Services
Maryland General Assembly
2020 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1390 (Delegate Brooks)
Economic Matters

Certificate of Public Convenience and Necessity - Electric Facilities - Study and Procedures

This bill adds requirements to the evaluations conducted and notifications made as part of the Certificate of Public Convenience and Necessity (CPCN) process, subject to specified requirements, and prohibits a local government from taking specified adverse actions related to CPCN projects. The Public Service Commission (PSC) is prohibited from requiring a CPCN applicant for a generating station to apply for or receive specified local zoning approvals and may likewise not deny a CPCN for the same reasons. The bill also establishes specific requirements for CPCNs for solar photovoltaic (PV) systems and excludes the installation of visual buffering, including vegetative screening and fencing, from the definition of “construction” for purposes of the CPCN process. PSC must adopt related regulations by October 1, 2020.

Fiscal Summary

State Effect: The bill does not materially affect State finances. The bill has several operational effects, discussed below.

Local Effect: The bill likely does not materially affect local government finances or operations.

Small Business Effect: Minimal.

Analysis

Bill Summary: In addition to existing evaluation requirements during the CPCN application process, the Secretary of Natural Resources must require the department to

conduct an independent environmental and socioeconomic project assessment report. The results of the study, along with other existing required information, must be forwarded to PSC, along with a recommendation as to whether the CPCN be granted or denied, the basis for that recommendation, and any proposed licensing conditions.

A county or municipality in which a generating station, a qualified generator lead line, or an overhead transmission line that has received a CPCN is proposed to be located may not unreasonably withhold or delay issuance of site plan approval or any other permit or approval to the project. Likewise, a county or municipality may not implement a site plan approval or other permit or approval requirement that is inconsistent with or more stringent than the licensing requirements of a CPCN issued to the project.

Specific to CPCNs for solar PV facilities, PSC must incorporate licensing conditions requiring (1) reasonable setbacks; (2) adherence to specified stormwater management guidelines; and (3) decommissioning, subject to specified requirements.

Current Law/Background:

Certificates of Public Convenience and Necessity

PSC is the lead agency for licensing the siting, construction, and operation of power plants and related facilities in the State through the CPCN process, which is a comprehensive process involving several other State agencies, including the Department of Natural Resources (DNR) and its Power Plant Research Program (PPRP) and the Maryland Department of the Environment.

Generally, a person may not begin construction in the State of a generating station, overhead transmission line, or a qualified generator lead line unless a CPCN is first obtained from PSC. The application process involves notifying specified stakeholders, public hearings, and the consideration of recommendations by State and local government entities, and the project's effect on various aspects of the State infrastructure, economy, and environment. There are conditions under which a person constructing a generating station may apply to PSC for an exemption from the CPCN requirement.

PSC must take final action on a CPCN application only after due consideration of the recommendations of the governing body of each county or municipality in which any portion of the project is proposed to be located and the effect of the project on various aspects of the State infrastructure, economy, and environment. For example, when applicable, PSC must consider air quality and water pollution.

Recent Court Cases

PSC advises that several of the bill's provisions are related to two recent court cases on solar CPCNs and local zoning authority in Washington (Perennial Solar) and Frederick (Biggs Ford Solar) counties.

State Fiscal Effect: DNR advises that the new study requirements and procedures as they relate to the CPCN process require PPRP to conduct high-level reviews of applications instead of in-depth environmental and socioeconomic assessments, due to time constraints. The timelines may also limit the agencies able to review PPRP's assessments. While PSC can generally implement the bill with existing budgeted resources, PSC advises that the requirement to adopt regulations by October 1, 2020, does not allow for sufficient time to engage relevant State, local, and other stakeholders in the process.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 741 (Senator Feldman) - Finance.

Information Source(s): Public Service Commission; Office of People's Counsel; Department of Natural Resources; Dorchester, Garrett, and Montgomery counties; City of Laurel; Maryland Association of Counties; Maryland Municipal League; Department of Legislative Services

Fiscal Note History: First Reader - February 21, 2020
rh/lgc

Analysis by: Stephen M. Ross

Direct Inquiries to:
(410) 946-5510
(301) 970-5510