

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
 Enrolled - Revised

Senate Bill 474 (The President, *et al.*) (By Request - Administration)
 Education, Energy, and the Environment Economic Matters

Certificate of Public Convenience and Necessity and Related Approvals -
 Definition of Generating Station (Critical Infrastructure Streamlining Act of
 2024)

This Administration bill allows generating units or facilities that meet specified requirements to be constructed without obtaining either (1) a Certificate of Public Convenience and Necessity (CPCN) or (2) approval to construct from the Public Service Commission (PSC) under the CPCN exemption process. The bill specifies related reporting requirements for owners or operators of those generating units or facilities and the Maryland Energy Administration (MEA). In addition, the Comptroller must distribute specified corporate income tax revenues attributable to qualified data centers that are operational on or after January 1, 2026, to the Strategic Energy Investment Fund (SEIF). **The bill takes effect July 1, 2024.**

Fiscal Summary

State Effect: General fund revenues decrease – and SEIF revenues increase – by an estimated \$2.3 million in FY 2026. Future years reflect annualization and projected growth in affected corporate income tax revenues. Special fund revenues for the Maryland Department of the Environment (MDE) may increase beginning as early as FY 2025 (not quantified below). While the bill’s changes can be implemented with existing resources, the bill may have operational effects, as discussed below. **This bill establishes a mandated distribution beginning as early as FY 2026.**

(\$ in millions)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
GF Revenue	\$0	(\$2.3)	(\$7.9)	(\$9.0)	(\$9.9)
SF Revenue	-	\$2.3	\$7.9	\$9.0	\$9.9
Expenditure	\$0	\$0	\$0	\$0	\$0
Net Effect	-	-	-	-	-

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

Local Effect: Potential significant impact on local government expenditures, as discussed below. Local revenues are not materially affected.

Small Business Effect: The Administration has determined that this bill has a meaningful impact on small business (attached). The Department of Legislative Services (DLS) concurs with this assessment, as discussed below. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary:

Certain Generating Units and Facilities Not Considered Generating Stations

For purposes of the requirement to obtain a CPCN or approval to construct under the CPCN exemption process, a “generating station” does not include a generating unit or facility that:

- is used for the production of electricity for the purpose of (1) onsite emergency backup at a facility when service from the electric company is interrupted due to electric distribution or transmission system failure or when there is equipment failure at a site where critical infrastructure is located and (2) test and maintenance operations necessary to ensure functionality of the generating unit or facility in the event of a service interruption from the electric company due to electric distribution or transmission system failure or when there is equipment failure at a site where critical infrastructure is located;
- is installed with equipment that prevents the flow of electricity to the electric grid;
- is subject to a permit to construct issued by MDE (while the bill does not specify the specific permit addressed by this provision, this analysis assumes the bill is referring to an air quality permit to construct); and
- is installed at a facility that is part of critical infrastructure if the facility complies with all applicable regulations regarding noise level and testing hours.

“Generating station” also does not include a combination of two or more generating units or facilities that satisfy the above requirements.

“Critical infrastructure” means assets, systems, and networks, whether physical or virtual, considered by the U.S. Department of Homeland Security to be so vital to the United States that their incapacitation or destruction would have a debilitating effect on one or more of the following: (1) security; (2) national economic security; (3) national public health; or

(4) safety. “Critical infrastructure” includes a hospital or health care facility and a data center as defined in § 11-239 of the Tax-General Article.

Reporting Requirements

Owners or Operators of Generating Units or Facilities: By December 1, 2025, and each December 1 thereafter, the owner or operator of a generating unit or facility exempted from the CPCN process under the bill must submit a report to MDE that includes (1) dates on which the generating unit or facility was used for the previous 12 months; (2) the length of time the generating unit or facility was operated for the previous 12 months; and (3) for each instance the generating unit or facility was operated over the previous 12 months, the reason the generating unit or facility was operated.

The reports must be made publicly available and may not be redacted, unless MDE determines that a report poses a risk to cybersecurity, national security, or the security of the State.

Maryland Energy Administration: By December 1, 2025, and every two years thereafter, MEA, in consultation with the Department of Commerce and industry representatives selected by Commerce, must submit a report to the General Assembly that details the following: (1) advancements in backup generation technologies; (2) the commercial availability of new backup generation technologies that can be procured; and (3) the affordability of adopting new backup generation technologies.

Distribution of Specified Corporate Income Tax Revenues

After certain existing required distributions, the Comptroller must distribute 15% of the remaining income tax revenue from corporations that is attributable to qualified data centers, within the meaning of § 11-239 of the Tax-General Article (sales and use tax exemption for qualified data center personal property), that are operational on or after January 1, 2026, to SEIF.

Current Law: Under § 11-239 of the Tax-General Article, “data center” means a building or group of buildings used to house computer systems, computer storage equipment, and associated infrastructure that businesses or other organizations use to organize, process, store, and disseminate large amounts of data.

Generating Stations

Chapter 460 of 2023 specified that a generating station, as defined, does not include a generating unit or facility that is used to produce electricity, has a capacity of up to 2 megawatts (MW), and is installed with equipment that prevents the flow of electricity to

the electric grid during times when the electric grid is out of service. Additionally, a generating station does not include a combination of two or more generating units or facilities, located on the same property or adjacent properties, that (1) are used to produce electricity from a solar photovoltaic system or an eligible customer-generator that is subject to the State’s net metering law; (2) have individual capacities of up to 2 MW and a cumulative capacity of more than 2 MW, but not more than 14 MW; (3) are separately metered by the electric company; and (4) do not export electricity for sale on the wholesale market under an agreement with PJM Interconnection, LLC.

For general information on the CPCN process, please see the **Appendix – Certificate of Public Convenience and Necessity**.

Air Quality Permits to Construct

Title 2, Subtitle 4 of the Environment Article authorizes MDE to adopt regulations that require a person to obtain a permit or registration before the construction, modification, operation, or use of a source that may cause or control emissions into the air. MDE regulations define the types of sources that are subject to the permit requirements. MDE may not, however, require a permit or registration for the construction of a generating station constructed by a person that is required to obtain a CPCN. Title 2, Subtitle 4 includes a requirement applicable to specified permits to construct a new source or significantly modify (or replace components of) an existing permitted source that documentation be submitted to MDE that demonstrates compliance with all applicable local zoning and land use requirements.

Distribution of Corporate Income Tax Revenues

After an allowance for refunds (§ 2-613 of the Tax-General Article), the Comptroller must distribute 6% and 9.15% of remaining corporate income tax revenues to the Higher Education Investment Fund (HEIF) and the general fund, respectively (§ 2-613.1). After a subsequent distribution to an administrative cost account, the Comptroller must distribute a specified percentage of the remaining corporate income tax revenues to the Gasoline and Motor Vehicle Revenue Account in the Transportation Trust Fund (TTF) (20% for fiscal 2024, 21% for fiscal 2025, 22% for fiscal 2026 and 2027, and 20% for fiscal 2028 and beyond) (§ 2-614). Remaining corporate income tax revenues are distributed to the general fund (§ 2-615).

Sales and Use Tax Exemption for Qualified Data Center Personal Property

Chapter 640 of 2020 established a sales and use tax exemption for the sale of qualified data center personal property for use at a qualified data center. “Qualified data center” means a

data center located in the State in which an individual or a corporation, within three years after submitting an application for the sales and use tax exemption, has invested at least \$5.0 million (for a data center located within a Tier I county, \$2.0 million) in qualified data center personal property and created at least five qualified positions. “Qualified data center” includes (1) a data center that is a co-located or hosting data center where equipment, space, and bandwidth are available to lease to multiple customers and (2) an enterprise data center owned and operated by the company it supports.

To qualify for the sales and use tax exemption, an individual or corporation must file an application for an exemption certificate with the Department of Commerce. Commerce must annually provide the Comptroller with a list of individuals and corporations that the department determines are eligible for the exemption; within 30 days after receiving the list, the Comptroller must issue an exemption certificate to each eligible individual and corporation. An exemption certificate issued by the Comptroller must be renewed annually and may not be renewed for more than 10 consecutive years (20 consecutive years if the individual or corporation invests at least \$250.0 million in qualified data center personal property).

Background: In August 2023, PSC denied a CPCN exemption request sought by Aligned Data Centers (ADC) to install up to 168 diesel generators – rated at 3 MW each – as a backup power source at a proposed data center site in Frederick County. In denying ADC’s exemption request, PSC raised concerns about the environmental impact of the proposed generators and noted that granting an exemption would allow ADC, under certain circumstances, to operate all 168 diesel generators simultaneously, which would be the equivalent of operating a 504 MW diesel power plant. PSC authorized a provisional exemption for 70 MW of generation, subject to additional requirements. In October 2023, ADC announced it would not proceed with its project due to PSC’s decision. The PSC determination and ADC decision to pull out of the project illustrates the potentially substantial energy needs and regulatory considerations for data center development in the State.

Maryland has the potential to become a hub for data center development. Its next-door neighbor, Virginia, is home to approximately 35% of all known hyperscale data centers worldwide, most of which are in Fairfax County and Loudoun County. With space constraints in those two counties and a diminishing appetite among residents for further data center development, the industry is looking at new jurisdictions (including Maryland) in which it can build data centers.

The industry’s first major foray into Maryland came in June 2021, when Quantum Loophole, Inc. acquired more than 2,100 acres of land near Adamstown in Frederick County for the development of Quantum Frederick, a first-of-its kind “master-planned data center campus” that Quantum Loophole envisions as a gigawatt-scale

technology hub that will offer city-scale infrastructure for hyperscale, colocation, and purpose-built data center developers. Quantum Frederick will be connected to Data Center Alley in Northern Virginia through an underground hyperscale fiber network ring referred to as the “QLoop.” Proponents of the project point to potential economic benefits, including jobs and tax revenues, and contend that it is being located on the grounds of an abandoned aluminum smelting factory, a prime location for responsible cleanup and redevelopment. However, concerns have been raised by members of the public, advocacy groups, and governmental entities about the impact Quantum Frederick could have on the environment and energy use.

State Revenues:

Distribution of Specified Corporate Income Tax Revenues

After the distributions required under §§ 2-613 (to refund account), 2-613.1 (to HEIF and general fund), and 2-614 of the Tax-General Article (to administrative cost account and TTF), the Comptroller must distribute 15% of the *remaining* income tax revenue from corporations that is attributable to qualified data centers that are operational on or after January 1, 2026, to SEIF. In the absence of the bill, such revenues would be distributed to the general fund in accordance with § 2-615 of the Tax-General Article. This analysis assumes that the bill’s distribution requirement generally begins with tax year 2026.

Thus, SEIF revenues increase – and general fund revenues decrease – by an estimated \$2.3 million in fiscal 2026 (reflecting approximately 30% of the tax year 2026 effect), \$7.9 million in fiscal 2027, \$9.0 million in fiscal 2028, and \$9.9 million in fiscal 2029. Due to taxpayer confidentiality requirements, DLS does not have access to income tax return data; this estimate is based on an analysis of corporation tax statistics published by the Internal Revenue Service and Economic Census data published by the U.S. Census Bureau. For context, Commerce advises that five data centers filed for the sales and use tax exemption for qualified data center personal property in fiscal 2023. This estimate does not account for the State income tax effects of any increase in data center development generated as a direct result of the bill.

Air Quality Permit Application Fees

To the extent that the bill results in an increase in the number of applications for air quality permits to construct submitted to MDE, special fund revenues from permit application fees increase accordingly. Because MDE cannot reliably estimate the number of additional permit applications it may receive, a reliable estimate of the potential magnitude of the bill’s impact on special fund revenues cannot be made at this time. Pursuant to current regulations, the relevant application fee for an air quality permit to construct for a

generating unit/facility affected by the bill ranges from \$400 for an individual generating unit to \$20,500 for a major source (such as a cluster of back-up generators at a data center).

State Expenditures: Although the bill does not materially affect State expenditures, PSC, the Department of Natural Resources, and MDE may have fewer CPCN applications to review while, as noted above, MDE may have additional air quality permits to construct to process.

MEA can submit the required reports using existing budgeted resources – and Commerce can assist with the reports as required using existing budgeted resources. In addition, although the bill may result in an increase in workload for MDE due to the requirement that it review the annual reports submitted by owners and operators of generating units and facilities, MDE advises that it can handle any increase in workload with existing budgeted resources.

The Comptroller's Office advises that it must hire a full-time, dedicated accountant beginning in fiscal 2026 to administer the distribution of specified corporate income tax revenues to SEIF. However, DLS advises that the bill's corporate income tax distribution likely applies to a very limited number of corporate returns. (For reference – as noted above, in fiscal 2023, a total of five qualified data centers filed for the existing sales and use tax exemption for qualified data center personal property.) Thus, it is assumed that the Comptroller's Office can implement the bill's corporate income tax distribution requirement with existing budgeted resources.

Local Expenditures: The bill's impact on local expenditures cannot be reliably estimated; however, in some jurisdictions, the impact may be significant. The impact varies by local jurisdiction and depends on a variety of factors, including a jurisdiction's geography, its existing approach to electric generation projects, and the number and type of electric generating stations under consideration for construction in the jurisdiction.

The bill enables a developer to bypass the CPCN process for a project that, among other requirements, produces electricity for emergency backup when service from the electric company is interrupted and test and maintenance operations necessary to ensure systems function properly in the event of a service interruption. It is unknown to what extent developers will attempt to use this exemption, but the number of developers that do so could be significant (particularly for the construction of data centers).

To the extent that the number of applications for CPCNs decreases under the bill, a local jurisdiction may have fewer CPCN cases to intervene in. On the other hand, if the bill's changes lead to a significant increase in the number of electric generation projects in the State that bypass the CPCN process, a local government may feel compelled to more actively regulate and/or scrutinize such projects within its jurisdictional limits. A local

government could incur significant expenditures if it (1) imposes new requirements on developers of electric generation projects; (2) employs engineers and other personnel to study and review prospective electric generation projects; or (3) hires external consultants to study a project's possible environmental, economic, and/or socioeconomic impacts. Additionally, a local government may choose to adopt regulations setting maximum allowable noise levels that generating units or facilities may emit and/or limiting the hours in which generating units or facilities may conduct testing and maintenance operations.

Small Business Effect: To the extent that additional generating stations are built in the State as a result of the bill, small businesses that participate in the construction and/or maintenance of the generating stations benefit. Small businesses may also benefit from providing construction and/or maintenance services for new data centers if the bill incentivizes data center development in the State that otherwise would not have moved forward.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: HB 579 (The Speaker, *et al.*) (By Request - Administration) - Economic Matters.

Information Source(s): Maryland Municipal League; Governor's Office; Maryland Department of the Environment; Maryland Energy Administration; Department of Commerce; Department of Natural Resources; Office of People's Counsel; Public Service Commission; Comptroller's Office; Internal Revenue Service; U.S. Census Bureau; Bay Journal; Virginia Economic Development Partnership; Department of Legislative Services

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Appendix – Certificate of Public Convenience and Necessity

General Overview

The Public Service Commission (PSC) is the lead agency for licensing the siting, construction, and operation of power plants and related facilities in the State through Certificates of Public Convenience and Necessity (CPCN). The CPCN process is comprehensive and involves several other State agencies, including the Department of Natural Resources (and its Power Plant Research Program), and the Maryland Department of the Environment. Subject to limited exemptions described below, 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.

State law provides that a “generating station” excludes a facility with up to 2 megawatts of capacity if it meets other specified requirements. Additionally, pursuant to Chapter 460 of 2023, a generating station excludes a combination of two or more co-located or adjacent facilities used for electricity production from solar photovoltaic systems or specified eligible customer-generators that have a maximum cumulative capacity of 14 megawatts (including maximum individual capacities of 2 megawatts) and meet other requirements.

The CPCN process, detailed further below, involves the notification of specified stakeholders, the holding of public hearings, the consideration of recommendations by State and local government entities, and the consideration of the project’s effects on various aspects of the State infrastructure, economy, and environment.

In December 2020, PSC initiated a rulemaking (RM 72) to revise regulations governing CPCNs for generating stations. Updated regulations became effective in September 2021. Among other changes, the regulations contain additional information requirements – to assist in project evaluation – and allow for electronic submission and distribution of application materials.

Notification Process

Upon receipt of a CPCN application, PSC – or the CPCN applicant, if required by PSC – must immediately provide notice to specified recipients, including the executive and governing body of affected local governments, affected members of the General Assembly, and other interested persons. When providing the notice, PSC must also forward the CPCN application to each appropriate unit of State and local government for review, evaluation, and comment and to each member of the General Assembly who requests a copy.

Public Hearing and Comment

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, and must further coordinate with each local government to identify additional hearing notification options. PSC must ensure presentation and recommendations from each interested State unit and must allow representatives of each State unit to sit during the hearing of all parties. PSC must then allow each State unit 15 days after the conclusion of the hearing to modify the unit's initial recommendations.

Public Service Commission Considerations

PSC must take final action on a CPCN application only after due consideration of (1) recommendations of the governing body of each county or municipality in which any portion of the project is proposed to be located; (2) various aspects of the State infrastructure, economy, and environment; and (3) the effect of climate change on the project. For example, PSC must consider the effect of the project on the stability and reliability of the electric system and, when applicable, air and water pollution. There are additional considerations specifically for a generating station or an overhead transmission line. For example, PSC must consider the impact of a generating station on the quantity of annual and long-term statewide greenhouse gas emissions.

Generating Station Exemptions

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

- the facility is designed to provide onsite generated electricity, the capacity is up to 70 megawatts, and the excess electricity can be sold only on the wholesale market pursuant to a specified agreement with the local electric company;
- at least 10% of the electricity generated is consumed onsite, the capacity is up to 25 megawatts, and the excess electricity is sold on the wholesale market pursuant to a specified 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 who 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.

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Certificate of Public Convenience and Necessity and Related Approvals - Definition of Generating Station (Critical Infrastructure Streamlining Act of 2024)

BILL NUMBER: SB0474

PREPARED BY: Governor's Legislative Office

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS