

HOUSE BILL 28

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2001 Regular Session
(11r0417)

ENROLLED BILL
-- Environmental Matters/Finance --

Introduced by **Delegates Leopold, Cadden, and Rosso**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
____ day of _____ at _____ o'clock, ____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **~~Electric Power Plants and Generating Stations—Approval Process—~~**
3 **~~Modifications and Construction~~**
4 **Public Service Commission - Certificate of Public Convenience and Necessity**

5 FOR the purpose of ~~expanding the application of the Public Service Commission~~
6 ~~approval process for proposed modifications to electric power plants and~~
7 ~~generating stations to all persons seeking a modification; expanding the~~
8 ~~application of the Public Service Commission approval process for construction~~
9 ~~of a generating station and associated transmission lines to all persons seeking~~
10 ~~to construct a generating station; making conforming changes to provisions on~~
11 ~~the consideration and issuance of registrations and permits to construct~~
12 ~~facilities that may cause or control emissions into the air under the jurisdiction~~
13 ~~of the Department of the Environment; and generally relating to the~~
14 ~~modification of electric power plants and the modification and construction of~~
15 ~~generating stations and associated transmission lines requiring that any person~~
16 ~~who constructs a generating station and associated overhead transmission lines~~
17 ~~follow certain procedures to obtain a certificate of public convenience and~~

1 *necessity from the Public Service Commission; requiring that any person who*
 2 *modifies a generating station obtain a certificate of public convenience and*
 3 *necessity from the Commission; clarifying that the grant of a certificate of public*
 4 *convenience and necessity constitutes registration and a permit to construct;*
 5 *clarifying that the Department of the Environment is prohibited from requiring a*
 6 *registration or permit for the construction of a generating station by any person*
 7 *required to obtain a certificate of public convenience and necessity; clarifying*
 8 *when an applicant for an operating permit issued by the Department must send*
 9 *a copy of the application to the Commission; clarifying when the Department*
 10 *must request the Commission to institute a hearing prior to issuing an operating*
 11 *permit; and generally relating to the authority of the Public Service Commission*
 12 *to issue certificates of public convenience and necessity and the authority of the*
 13 *Department of the Environment to issue permits to construct and issue operating*
 14 *permits for generating stations.*

15 BY repealing and reenacting, with amendments,
 16 Article - Environment
 17 Section 2-402 and 2-405
 18 Annotated Code of Maryland
 19 (1996 Replacement Volume and 2000 Supplement)

20 ~~BY repealing and reenacting, without amendments,~~
 21 ~~Article - Public Utility Companies~~
 22 ~~Section 7-205(a)~~
 23 ~~Annotated Code of Maryland~~
 24 ~~(1998 Volume and 2000 Supplement)~~

25 BY repealing and reenacting, with amendments,
 26 Article - Public Utility Companies
 27 Section ~~7-205(b)~~ 7-205, 7-206, and ~~7-208(a), (b), (c), and (h)~~ 7-208
 28 Annotated Code of Maryland
 29 (1998 Volume and 2000 Supplement)

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

32 **Article - Environment**

33 2-402.

34 The Department may not require a permit or registration for:

35 (1) Any machinery or equipment that normally is used in a mobile
 36 manner;

37 (2) Any boiler used exclusively to operate steam engines for farm and
 38 domestic use;

1 (3) The construction of a generating station constructed by [an electric
2 company] A ANY PERSON THAT IS REQUIRED TO OBTAIN A CERTIFICATE OF PUBLIC
3 CONVENIENCE AND NECESSITY UNDER TITLE 7, SUBTITLE 2 §§ 7-207 AND 7-208 OF
4 THE PUBLIC UTILITY COMPANIES ARTICLE AND REGULATIONS ADOPTED BY THE
5 PUBLIC SERVICE COMMISSION;

6 (4) Actual construction of buildings, apart from any possible emission
7 producing machinery housed in the buildings;

8 (5) Any parking garage; or

9 (6) Any parking lot.

10 2-405.

11 (a) (1) Whenever the Public Service Commission notifies the Secretary of an
12 application for a certificate of public convenience and necessity under § 7-207 of the
13 Public Utility Companies Article, the Secretary shall prepare a recommendation in
14 connection with the permit or registration required by this subtitle. The
15 recommendation shall be presented at the hearing required by § 7-207 of the Public
16 Utility Companies Article.

17 (2) The recommendation shall identify the requirements of all applicable
18 federal and State environmental laws and standards and shall recommend and
19 evaluate various methods and conditions for compliance.

20 (3) If [an electric company] A PERSON files an application for an
21 operating permit UNDER THIS SUBTITLE simultaneously with an application for a
22 certificate, the Department shall consolidate its procedures for the issuance of the
23 operating permit with the Public Service Commission's proceedings for issuance of the
24 certificate and shall issue the operating permit simultaneously with the certificate
25 unless consolidation would be inconsistent with the procedures set forth in the federal
26 Clean Air Act.

27 (4) The Department shall incorporate into the initial operating permit
28 the conditions of the certificate which relate to air quality control.

29 (b) Subject to judicial review as provided under Title 3, Subtitle 2 of the Public
30 Utility Companies Article, the decision of the Public Service Commission in
31 connection with a certificate of public convenience and necessity or a filing under §
32 7-206 of the Public Utility Companies Article is binding on the Secretary.

33 (c) [Any electric company upon application] WHEN A PERSON THAT IS
34 REQUIRED TO OBTAIN A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY
35 APPLIES for an operating permit for a generating station under this [subtitle]
36 SUBTITLE, THE PERSON shall send a copy of the application, at the time of filing, to
37 the Public Service Commission.

38 (d) The Department shall consolidate procedures for the issuance of the
39 operating permit with procedures of the Public Service Commission for the approval

1 of the installation of pollution control equipment or a change in the method of
2 operation unless consolidation would be inconsistent with the procedures set forth in
3 the federal Clean Air Act.

4 (e) (1) Before issuing an operating permit which requires the installation of
5 pollution control equipment or a change in the method of operation of the generating
6 station or unit TO A ANY PERSON THAT IS REQUIRED TO OBTAIN A CERTIFICATE OF
7 PUBLIC CONVENIENCE AND NECESSITY, the Secretary shall notify the applicant and
8 the Public Service Commission and request that the Public Service Commission
9 institute a hearing as required by § 7-206 of the Public Utility Companies Article.

10 (2) In addition to the notification, the Secretary shall file the record of
11 the operating permit proceeding and the Department's reasons for requiring the
12 installation of pollution control equipment or change in method of operation.

13 (f) (1) The Commission shall conduct the hearing required by subsection (e)
14 of this section in the manner set forth in §§ 7-205 and 7-207 of the Public Utility
15 Companies Article.

16 (2) The Department shall incorporate the Commission's order rendered
17 in accordance with § 7-206 of the Public Utility Companies Article.

18 (g) Except as provided in subsection (h) of this section, the Secretary shall
19 consult with the Public Service Commission concerning the impact of any operating
20 permit, order or injunction on the supply and cost of electricity in this State before
21 issuing any operating permit, issuing any order, or seeking any injunction under this
22 subtitle that:

23 (1) Significantly impacts the supply of electricity from a generating
24 station owned or operated by [an electric company] A ANY PERSON THAT IS
25 REQUIRED TO OBTAIN A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY; or

26 (2) Significantly affects the cost of electricity provided by [an electric
27 company] A ANY PERSON THAT IS REQUIRED TO OBTAIN A CERTIFICATE OF PUBLIC
28 CONVENIENCE AND NECESSITY.

29 (h) (1) The Secretary need not consult with the Commission before issuing
30 an order or seeking an injunction if the Secretary concludes that the delay during
31 consultation could harm public health or the environment.

32 (2) If the Secretary does not consult with the Commission before the
33 issuance of the order or of the seeking of an injunction, the Secretary shall consult
34 with the Commission as soon thereafter as practicable.

35 (i) The failure of the Department or the Public Service Commission to comply
36 with this section is not a defense to an action against [an electric company] A
37 PERSON to enforce, to obtain, or to punish for noncompliance with any permit,
38 certificate, order, or injunction.

1 (j) The Secretary may adopt regulations to carry out the provisions of this
2 section. The Secretary may not require a permit nor require the payment of a permit
3 fee in violation of the federal Clean Air Act.

4 **Article - Public Utility Companies**

5 7-205.

6 (a) (1) In this section, "modification" means a physical alteration of,
7 replacement of, or other change to the facilities at a power plant, or a change in the
8 fuel used by the plant, that could result in a change of the air emissions from the
9 plant or from a generating unit of the plant.

10 (2) "Modification" does not include:

11 (i) routine maintenance or repairs of the facilities of a power plant;
12 or

13 (ii) a change that would result in ambient air quality levels less
14 than or equal to the levels that were a basis for the issuance of a prior certificate of
15 public convenience and necessity under § 7-207 of this subtitle.

16 (b) Subject to subsections (c) through (e) of this section, [an electric company]
17 A PERSON may not commence a modification without the prior approval of the
18 Commission under this title.

19 (c) (1) Unless the Commission orders otherwise, an application for a
20 modification to a power plant shall be filed with the Commission at least 180 days
21 before the date on which the modification is to commence.

22 (2) The applicant for the modification shall submit to the Commission
23 and to the Department of the Environment all information relating to the
24 modification, including:

25 (i) detailed plans and specifications; and

26 (ii) the impact of the modification on air quality.

27 (d) The Commission shall render its decision within 150 days after the day the
28 application is filed.

29 (e) Notwithstanding the provisions of this section, a modification to a power
30 plant that involves the short-term inability to obtain the type of fuel normally used by
31 the plant is subject to Title 2, Subtitle 5 of the Environment Article.

32 7-206.

33 (a) This section applies to the installation of pollution control equipment or a
34 change in the method of operation at a generating station that [an electric company]

1 A PERSON performs in order to comply with Phase II pollution control requirements of
2 the federal Clean Air Act.

3 (b) [An electric company] ~~A ANY PERSON~~ that performs an installation or
4 change in operation under subsection (a) of this section shall obtain prior review and
5 approval of the Commission in accordance with:

6 (1) §§ 7-203, 7-207, and 7-208 of this subtitle; and

7 (2) the procedures set forth in § 7-205 of this subtitle and § 2-405 of the
8 Environment Article.

9 7-208.

10 (a) This section applies to [an electric company] ~~A PERSON~~ THE APPLICANT
11 ANY PERSON:

12 (1) constructing a generating station and its associated overhead
13 transmission lines designed to carry a voltage in excess of 69,000 volts; or

14 (2) exercising the right of condemnation in connection with the
15 construction.

16 (b) (1) To obtain the certificate of public convenience and necessity required
17 under § 7-207 of this subtitle for construction under this section, [an electric
18 company] A PERSON shall file an application with the Commission at least 2 years
19 before construction of the facility will commence.

20 (2) The Commission may waive the 2-year requirement on a showing of
21 good cause.

22 (c) [An electric company] ~~A PERSON~~ THE APPLICANT shall:

23 (1) include in an application under this section the information that the
24 Commission requests initially; and

25 (2) furnish any additional information that the Commission requests
26 subsequently.

27 (d) (1) On the receipt of an application under this section, together with any
28 additional information requested under subsection (c)(2) of this section, the
29 Commission shall provide notice to:

30 (i) all interested persons;

31 (ii) the Department of Agriculture;

32 (iii) the Department of Business and Economic Development;

33 (iv) the Department of the Environment;

1 (v) the Department of Natural Resources;

2 (vi) the Department of Transportation; and

3 (vii) the Department of Planning.

4 (2) The Commission shall hold a public hearing on the application as
5 required by § 7-207 of this subtitle, after:

6 (i) the receipt of any additional information requested under
7 subsection (c)(2) of this section that the Commission considers necessary; and

8 (ii) any publication of notice the Commission considers to be proper.

9 (3) (i) At the public hearing, the Commission shall ensure presentation
10 of the information and recommendations of the State units specified in paragraph (1)
11 of this subsection and shall allow the official representative of each unit to sit during
12 hearing of all parties.

13 (ii) Based on the evidence relating to the unit's areas of concern, the
14 Commission shall allow each unit 15 days after the conclusion of the hearing to modify
15 or affirm the unit's initial recommendations.

16 (e) Within 90 days after the conclusion of the hearing on an application under
17 this section, the Commission shall:

18 (1) (i) grant a certificate of public convenience and necessity
19 unconditionally;

20 (ii) grant the certificate, subject to conditions the Commission
21 determines to be appropriate; or

22 (iii) deny the certificate; and

23 (2) notify all interested parties of its decision.

24 (f) (1) The Commission shall include in each certificate it issues under
25 subsection (e) of this section:

26 (i) the requirements of the federal and State environmental laws
27 and standards that are identified by the Department of the Environment; and

28 (ii) the methods and conditions that the Commission determines are
29 appropriate to comply with those environmental laws and standards.

30 (2) The Commission may not adopt any method or condition under
31 paragraph (1)(ii) of this subsection that the Department of the Environment
32 determines is inconsistent with federal and State environmental laws and standards.

33 (g) (1) A decision of the Commission regarding the issuance of a certificate
34 requires the vote of a majority of the members of the Commission.

1 (2) *If a majority of the members of the Commission fails to reach*
2 *agreement on the conditions to be attached to a conditional certificate, the certificate*
3 *shall be denied.*

4 (h) The grant of a certificate by the Commission to [an electric company] A
5 ANY PERSON under subsection (e) of this section constitutes:

6 (1) authority for the ~~company~~ PERSON to dredge and construct
7 bulkheads in the waters or private wetlands of the State and to appropriate or use the
8 waters; and

9 (2) registration ~~OF AND A PERMIT TO CONSTRUCT~~ for the construction of
10 ~~any facility necessary to control emissions into the air resulting from the operation of~~
11 ~~the generating station~~, as required under Title 2, Subtitle 4 of the Environment
12 Article.

13 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
14 ~~October~~ July 1, 2001.