

**Department of Legislative Services**

Maryland General Assembly

2002 Session

**FISCAL NOTE**

Senate Bill 814

(Senator Mooney)

Finance

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**Public Utility Companies - Electric Generating Stations - Zoning**

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This bill repeals a provision of current law that preempts local zoning laws regarding the use and operation of sites for electric generating and transmission purposes. The bill also provides that nothing in the Public Utility Companies Article may be construed to preempt any local zoning ordinance concerning the use of land for an electric generating station.

The bill takes effect June 1, 2002.

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**Fiscal Summary**

**State Effect:** The bill may provide local jurisdictions with increased authority over the siting of electric generating stations. Because future siting decisions cannot be predicted, the bill's impact on State operations and finances cannot be predicted at this time.

**Local Effect:** The bill may provide local jurisdictions with increased authority over the siting of electric generating stations. While this could benefit local jurisdictions, the bill's impact on local finances cannot be reliably estimated at this time.

**Small Business Effect:** None.

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**Analysis**

**Current Law:** The Department of Natural Resources (DNR) is required to implement a continuing research program for electric power plant site evaluation and related environmental and land use considerations. Any property certified as a suitable site and

placed in inventory or any sites acquired and placed in inventory must be used and operated for electric generating and associated on-site transmission purposes without regard to any local zoning rule, regulation, law, or ordinance. The use is not required to be submitted to or approved by any county or municipal zoning board, authority, or unit.

**Background:** The licensing of new electric power plants in the State is a comprehensive two-part process involving the Public Service Commission (PSC) and several other State agencies. PSC is the lead agency for licensing the siting, construction, and operation of power plants in the State. Companies wishing to obtain a license for a new power plant apply to PSC for a Certificate of Public Convenience and Necessity (CPCN).

DNR's Power Plant Research Program (PPRP), in cooperation with several specified State agencies, evaluates sites for their suitability for use as electric power plants, including related environmental and land use considerations. During the CPCN application process, the agencies hold extensive discussions with interested parties such as local governments, environmental organizations, the company proposing to build the power plant, and individual citizens. Concerns are identified and the State agencies incorporate those concerns into their evaluation.

Prior to the CPCN being issued for a proposed power plant, the State agencies provide PSC the results of their evaluation and a consolidated set of recommendations as to whether the proposed site is suitable and whether the proposed power plant can be constructed and operated in an acceptable manner. The agencies also provide detailed recommendations on conditions that should be attached to the CPCN. These conditions can relate, for example, to minimizing impacts to air, surface and groundwater, aquatic and terrestrial resources, cultural and historic resources, noise, and land use.

Current law provides that once a site has been placed in the inventory of suitable sites by DNR, it shall be used and operated for electric generation, without regard to any local zoning laws and without submittal to any county or municipal zoning board. However, DNR reports that this provision has never been used or referenced by DNR in its role with the PPRP. Therefore, it is unclear what practical affect the repeal of the provision will have on the operation of the PPRP.

The impact of the provision that adds language to the Public Utility Companies Article is also unclear. The language of the bill provides that "nothing in [the Public Utility Companies Article] may be construed to preempt any local zoning ordinance...." However, there is no language in the Public Utility Companies Article that expressly preempts local laws that regulate the location of power generation facilities and power transmission lines. This preemption is implicit, as found by the Court of Appeals of Maryland. In a 1990 decision, the court held that the "General Assembly intended to

grant broad powers to PSC to execute its principal duty of assuring adequate electrical service statewide.” Accordingly, local zoning ordinances are implicitly preempted by the laws and regulations of PSC.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 1054 (Delegate Hecht, *et al.*) – Environmental Matters.

**Information Source(s):** Department of Natural Resources, Public Service Commission, Prince George’s County, Caroline County, Department of Legislative Services

**Fiscal Note History:** First Reader - February 27, 2002  
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