

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

House Bill 90 (Frederick County Delegation)
Economic Matters

Public Utility Companies - Electric Generating Stations - Zoning

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 provides that sites certified as suitable by the Department of Natural Resources (DNR) may be operated for electric generating and associated on-site transmission only if the use complies with all applicable zoning laws, ordinances and regulations, and only if the use is submitted to and approved by the appropriate county or municipal zoning board, authority, or other unit. In addition, the construction of a generating station must comply with all applicable zoning and subdivision laws, ordinances, and regulations.

The bill takes effect July 1, 2003.

Fiscal Summary

State Effect: The bill would 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 would 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 local finances cannot be reliably estimated at this time.

Small Business Effect: Potential meaningful.

Analysis

Current Law: 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.

A person may not begin construction in the State of a generating station unless a Certificate of Public Convenience and Necessity (CPCN) for the construction is first obtained from the Public Service Commission (PSC). Although the Public Utilities Article does not expressly preempt local laws, 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.”

Background: The licensing of new electric power plants in the State is a comprehensive two-part process involving 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 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.

PSC advises that in 2002, it received five applications for a CPCN. In 2001, PSC received six applications for a CPCN.

State Fiscal Effect: Because future siting decisions cannot be predicted, a reliable estimate of the bill's impact cannot be made at this time. By giving local jurisdictions increased authority over the siting of electric generating stations, the bill could make it difficult to find suitable locations for the construction of new power plants in the State. Further, to the extent the bill prevents new power plants from being constructed, it could ultimately affect the price and availability of power in the State, especially during peak usage periods. As a user of energy, State agencies could be affected by any increases in price and any power outages that occur. As a regulator, the bill could make it difficult for PSC to comply with its principal function of assuring adequate electrical service statewide.

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 PPRP. Therefore, it is unclear what practical effect the repeal of the provision will have on the operation of PPRP.

Local Fiscal Effect: The bill would provide local jurisdictions with increased authority over the siting of electric generating stations. While this could benefit local jurisdictions, it also could impose some additional costs related to the zoning process. Any such costs cannot be reliably estimated at this time, but are not anticipated to be significant.

To the extent the bill results in an increase in the price of electricity or power outages, local jurisdictions, as users of energy, would be affected. Because future siting decisions cannot be predicted, however, the bill's impact on local finances cannot be reliably estimated at this time.

Small Business Effect: To the extent the bill results in an increase in the price of electricity or power outages, small businesses, as users of energy, would be affected.

Additional Information

Prior Introductions: Similar legislation was introduced as SB 814/HB 1054 of 2002. SB 814 received an unfavorable report from the Senate Finance Committee. HB 1054 received an unfavorable report from the House Environmental Matters Committee.

Cross File: SB 359 (Frederick County Senators) – Finance.

Information Source(s): Public Service Commission; Department of Natural Resources; Frederick, Garrett, Montgomery, and Prince George's counties; Department of Legislative Services

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ncs/jr

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