

Department of Legislative Services
Maryland General Assembly
2003 Session

FISCAL AND POLICY NOTE

House Bill 89 (Frederick County Delegation)
Economic Matters

Frederick County - Electric Generating Stations - Zoning Restrictions

This bill provides that in Frederick County, sites determined suitable by the Department of Natural Resources (DNR) for the location of electric generating stations may be operated for electric generating and associated on-site transmission only if the use complies with all local zoning rules, regulations, laws, and ordinances. In addition, a person may not construct a generating station in Frederick County unless the construction complies with all applicable local zoning and subdivision rules and regulations.

The bill takes effect July 1, 2003.

Fiscal Summary

State Effect: The bill is not expected to have a significant impact on State operations or finances.

Local Effect: The bill is not expected to have a significant impact on local finances.

Small Business Effect: None.

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.” No local jurisdiction, including any in Frederick County, has zoning oversight with respect to electric generating stations.

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; none of those applications pertained to Frederick County. In 2001, PSC received six applications for a CPCN; one of those applications pertained to Frederick County.

State Fiscal Effect: By giving local jurisdictions in Frederick County 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 that county. Because this bill is limited to only one county, it is assumed that if PSC determined that additional

generation was necessary, suitable sites could be found in other counties. Accordingly, the bill is not expected to have a significant impact on State operations or finances, nor is it expected to have a measurable impact on the price or availability of electricity in the State.

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 effect the bill's changes will have on the operation of the PPRP.

Local Fiscal Effect: The bill would provide Frederick County and its municipalities with increased authority over the siting of electric generating stations. While this could benefit local jurisdictions in that county, 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.

Additional Information

Prior Introductions: Similar legislation was introduced as SB 814/HB 1054 of 2002, although those bills would have applied statewide. 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 362 (Senators Mooney and Brinkley) – Finance.

Information Source(s): Public Service Commission, Department of Natural Resources, Frederick County, Department of Legislative Services

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ncs/jr

Analysis by: Lesley Frymier

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