

**Department of Legislative Services**  
Maryland General Assembly  
2004 Session

**FISCAL AND POLICY NOTE**

House Bill 284 (Frederick County Delegation)  
Economic Matters

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**Frederick County – Electric Generating Stations – Zoning Restrictions**

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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, 2004.

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**Fiscal Summary**

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

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

**Small Business Effect:** None.

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**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 Utility Companies 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, to date in 2004, it has received two applications for a CPCN; one of those pertains to the construction of a power plant in Frederick County. In 2003, PSC received two applications for a CPCN; one of those pertained to the modification of a transmission line in Frederick County. In 2002, PSC received five applications for a CPCN; none 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. However, due to federal and state deregulation, the electricity market is increasingly a regional and national market. Accordingly, this bill alone is not expected to have a significant impact on State finances or 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 PPRP. Therefore, it is unclear what practical effect the bill's changes would have on the operation of 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.

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### **Additional Information**

**Prior Introductions:** Identical legislation was introduced as HB 89/SB 362 of 2003. HB 89 received an unfavorable report from the House Environmental Matters Committee. SB 362 received an unfavorable report from the Senate Finance Committee.

**Cross File:** None.

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

**Fiscal Note History:** First Reader - March 12, 2004  
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