

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 767

(Senator Edwards)

Finance

Economic Matters

Garrett County - County Commissioners - Wind Energy Conversion Systems

This emergency bill requires “wind energy conversion systems” in Garrett County to comply with specified setback requirements. Before a permit is issued for a wind energy conversion system, the Garrett County Department of Planning and Land Development must, at the permit applicant’s expense, retain a professional engineer to prepare a decommissioning and site restoration cost estimate, and must require the applicant to post a bond equal to 100% of the cost estimate of the decommissioning and site restoration. If Garrett County adopts a rule, regulation, law, or an ordinance for zoning of wind energy conversion systems, it supersedes the bill’s provisions. The bill applies only prospectively to wind energy conversion systems constructed on or after the effective date of the bill.

The bill terminates May 31, 2015.

Fiscal Summary

State Effect: None.

Local Effect: Garrett County can implement the bill with existing budgeted resources.

Small Business Effect: Minimal or none.

Analysis

Bill Summary: “Wind energy conversion system” means an aggregation of parts, including the base, wind turbine, generator, supports, guy wires, and accessory equipment in a configuration necessary to convert the power of wind into mechanical or electrical

energy. “Decommissioning” means the removal and legal disposal of a wind energy conversion system and any other components related to the system, including buildings, roads, concrete, fencing, gravel, stone, and foundations to a depth of 36 inches. “Restoration of the pad site” means stabilizing, grading, and seeding disturbed areas at the location of the wind energy conversion system, and replacing the excavated foundation areas with specified topsoil.

In Garrett County only, each individual wind energy conversion system must comply with specified setback distances, based on the structure height of the system. A structure height (1) of less than 200 feet must be set back no less than the structure height; (2) of greater than 200 feet but less than 300 feet must be set back no less than twice the structure height; and (3) of greater than 300 feet must be set back no less than three times the structure height. The applicant of a proposed wind energy conversion system, on written authorization of all the adjoining property owners, may seek a variance with the Garrett County Department of Planning and Land Development of up to 50% of the minimum setback distance requirements. The department may increase the minimum setback distance requirements by up to 50% if the department determines that concerns regarding health, safety, and welfare warrant it.

Before a permit is issued for a wind energy conversion system, the department must, at the applicant’s expense, (1) retain an independent and certified professional engineer to prepare a cost estimate for decommissioning and restoration of the pad site; and (2) require the applicant to post a bond equal to 100% of the cost estimate developed by the engineer, including an adjustment for inflation. The bond must be held by the Garrett County Finance Department to be used as surety in the event of noncompliance with the decommissioning or pad restoration requirements of the bill. Upon completion of the project, and every five years thereafter, at the applicant’s expense, the Garrett County Department of Planning and Land Development must retain an engineer to prepare an updated cost estimate for decommissioning and restoration of the pad site. The department may alter the amount of the bond after an updated cost estimate.

If a wind energy conversion system is sold, the bond is released if the new owner posts a bond with the county that is equal to the amount of the bond posted by the seller, or a higher amount, if the department determines that additional security is necessary.

If a wind energy conversion system has not generated electricity for 180 days or an owner has abandoned a system, the department may require the owner to decommission and restore the pad site. If the owner fails to comply, the bond must be used by the county to cover the costs of decommissioning and restoration of the pad site.

If the county adopts a rule, regulation, law, or an ordinance for zoning of wind energy conversion systems, it supersedes the bill. The bill applies only prospectively to wind

energy conversion systems constructed on or after the effective date of the bill, and may not be applied or interpreted to have an effect on or application to any wind energy conversion systems constructed before the effective date of the bill.

Current Law:

Wind Powered Generating Facilities

Generally, counties have authority to specifically restrict or authorize the construction of wind power generating facilities through local zoning rule, regulation, law, or ordinance. Garrett County has the authority to adopt countywide zoning but the county has not adopted an implementing ordinance and a comprehensive plan, as is required to exercise this authority. As a result, Garrett County does not have authority to implement zoning restrictions for a single commercial use.

If a commercial wind powered generating facility is granted a certificate of public convenience and necessity (CPCN) by the Public Service Commission (PSC), the generating facility may be constructed without regard to local zoning rule, regulation, law, or ordinances. When considering an application for a CPCN, PSC may require an applicant to provide for decommissioning of the facility as a condition of approval. In past cases this has included establishing a bond or financial instrument to ensure that the facility can be returned to a state comparable to the condition of the land prior to construction.

Wind powered generating facilities with a capacity over 70 megawatts must obtain a CPCN prior to construction. Wind powered generating facilities with a capacity under 70 megawatts may apply for a CPCN or may request an exemption from CPCN requirements. PSC must grant an exemption from CPCN requirements as long as certain conditions are met: (1) the wind powered facility is land-based; (2) the generating capacity is 70 megawatts or less; (3) the excess electricity is sold on the wholesale market pursuant to an interconnection, operation, and maintenance agreement with the local electric company; and (4) PSC provides an opportunity for public comment at a public hearing. If a generating facility is granted an exemption from the CPCN requirement, PSC evaluation is limited to ensuring safety and reliability of the electric system. All issues other than safety and reliability of the electric system are left up to other State and local agencies.

State law does not provide specifically for the decommissioning of electric generation facilities. The requirements for decommissioning a nuclear power plant are set out in U.S. Nuclear Regulatory Commission regulations.

Certificate of Public Convenience and Necessity

The licensing of new electric power plants in the State is a comprehensive two-part process involving PSC and several other State agencies, *e.g.*, the Department of Natural Resources and the Maryland Department of the Environment. 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 must apply to PSC for a CPCN.

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 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 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.

Background: Current and future land-based wind farms in the State are primarily focused in Garrett and Allegany counties, where there is an adequate wind resource. There are currently two utility-scale wind farms operating in the State: Criterion Wind Project, a 70-megawatt facility in Garrett County; and the Roth Rock wind farm, a 50-megawatt facility also in Garrett County. One additional land-based wind farm of 150 megawatts is currently in the generation queue of the Pennsylvania, New Jersey, Maryland Interconnection, Inc. (PJM), interconnection grid in the State. The project would be located in Somerset County, and has a planned in-service date of October 2014. The Administration's nonbinding goal for in-state capacity for land based wind is 590 megawatts by 2022.

Small Wind Generation and Local Ordinance

Local zoning restrictions for wind turbines vary by jurisdiction. The Maryland Energy Administration provides a model zoning ordinance for small wind energy systems (less than 100 kilowatts), which has been adopted by some counties and municipalities. As shown in **Exhibit 1**, 16 counties (Allegany, Anne Arundel, Calvert, Caroline, Carroll, Dorchester, Frederick, Harford, Howard, Kent, St. Mary's, Somerset, Talbot, Washington, Wicomico, and Worcester) have adopted local ordinances for small wind generation.

Exhibit 1 Small Wind Zoning Ordinance Status



Source: Maryland Energy Administration, Status as of January 4, 2012

Decommissioning Costs

When the owner of a generating facility decides to close that facility permanently, the facility must be decommissioned by safely removing it from service and returning the site to its original condition. The cost of decommissioning a generating facility varies greatly depending on the type of the facility and the characteristics of the site location. An electric generating facility may contain a series of related physical structures which would need to be removed during decommissioning. An electric generating facility may also have the potential for pollution remediation due to soil or water contamination at the site. Decommissioning may also include restoring vegetation on the site to its pre-operating condition.

Additional Information

Prior Introductions: None.

Cross File: HB 747 (Delegate Beitzel) - Economic Matters.

Information Source(s): Public Service Commission; Maryland Energy Administration; Garrett County; U.S. Nuclear Regulatory Commission; Pennsylvania, New Jersey, Maryland Interconnection, Inc.; Maryland StateStat: Governor's Delivery Unit; TheWindPower.net; Department of Legislative Services

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