

**Department of Legislative Services**  
Maryland General Assembly  
2013 Session

**FISCAL AND POLICY NOTE**  
**Revised**

Senate Bill 370

(Senator Edwards)

Finance

Economic Matters

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**Garrett County - County Commissioners - Industrial Wind Energy Conversion Systems**

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This emergency bill requires “industrial wind energy conversion systems” in Garrett County to comply with specified setback requirements. Before a permit is issued for an industrial wind energy conversion system, the Garrett County Department of Planning and Land Development must (1) at the permit applicant’s expense, retain a professional engineer to prepare a net cost estimate for decommissioning and site restoration, less salvage value and (2) require the applicant to post a bond equal to 100% of the net cost estimate of the decommissioning and site restoration. If Garrett County adopts a rule, regulation, law, or an ordinance for zoning of industrial wind energy conversion systems, it supersedes the bill’s provisions. The bill does not apply to systems that have submitted a specified interconnection application before March 1, 2013.

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**Fiscal Summary**

**State Effect:** None.

**Local Effect:** Garret County can implement the bill with existing resources.

**Small Business Effect:** Minimal or none.

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**Analysis**

**Bill Summary:** “Industrial wind energy conversion system” means a specified aggregation of parts necessary to convert the power of wind into mechanical or electrical energy that is intended for sale to energy providers through the electric transmission grid. “Decommissioning” means the removal and legal disposal of an industrial wind energy conversion system and any other components related to the system, and, unless otherwise

specified by the property owner, includes the removal and legal disposal of buildings, roads, concrete, fencing, gravel, stone, and foundations to a depth of 36 inches. "Restoration of 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 industrial wind energy conversion system must comply with specified setback distances equal to no less than two and a half times the structure height. The applicant of a proposed industrial wind energy conversion system, on written authorization of all the adjoining property owners to a proposed wind turbine in the system, may seek a variance with the Garrett County Department of Planning and Land Development of up to 50% of the minimum setback distance requirements.

Before an occupancy permit is issued for an industrial wind energy conversion system, the department must (1) at the applicant's expense, retain an independent and certified professional engineer to prepare a net cost estimate for decommissioning and restoration of the pad site, less the salvage value of the system and (2) require the applicant to post a bond equal to 100% of the net 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 system, and every 10 years thereafter, the Garrett County Department of Planning and Land Development must, at the applicant's expense, retain an engineer to prepare an updated net cost estimate for decommissioning and restoration of the pad site, less the salvage value of the system. The department may alter the amount of the bond after an updated net 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 an industrial wind energy conversion system has not generated electricity for 365 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 industrial wind energy conversion systems, it supersedes the bill; however, Garrett County may not adopt a rule, regulation, law, or an ordinance for zoning of a system that has submitted an interconnection application to the PJM Interconnection queue before March 1, 2013. The bill's provisions do not apply to any industrial wind energy conversion system that has submitted an interconnection application to the PJM Interconnection queue before March 1, 2013.

**Current Law:** Generally, counties have authority to specifically restrict or authorize the construction of wind-powered 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.

### *Certificate of Public Convenience and Necessity*

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, *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 certificate of public convenience and necessity (CPCN).

If a commercial wind-powered generating facility is granted a CPCN by 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 facilities with a capacity under 70 megawatts and located in specified areas of the State may apply for a CPCN or may request an exemption from CPCN requirements. Specifically, PSC must grant an exemption from CPCN requirements as long as certain conditions are met:

- the wind-powered facility is land-based;
- the generating capacity is 70 megawatts or less;
- the excess electricity is sold on the wholesale market pursuant to an interconnection, operation, and maintenance agreement with the local electric company;
- PSC provides an opportunity for public comment at a public hearing; and
- the facility is no closer than a PSC-determined distance from the Patuxent River Naval Air Station, which may not exceed 46 miles.

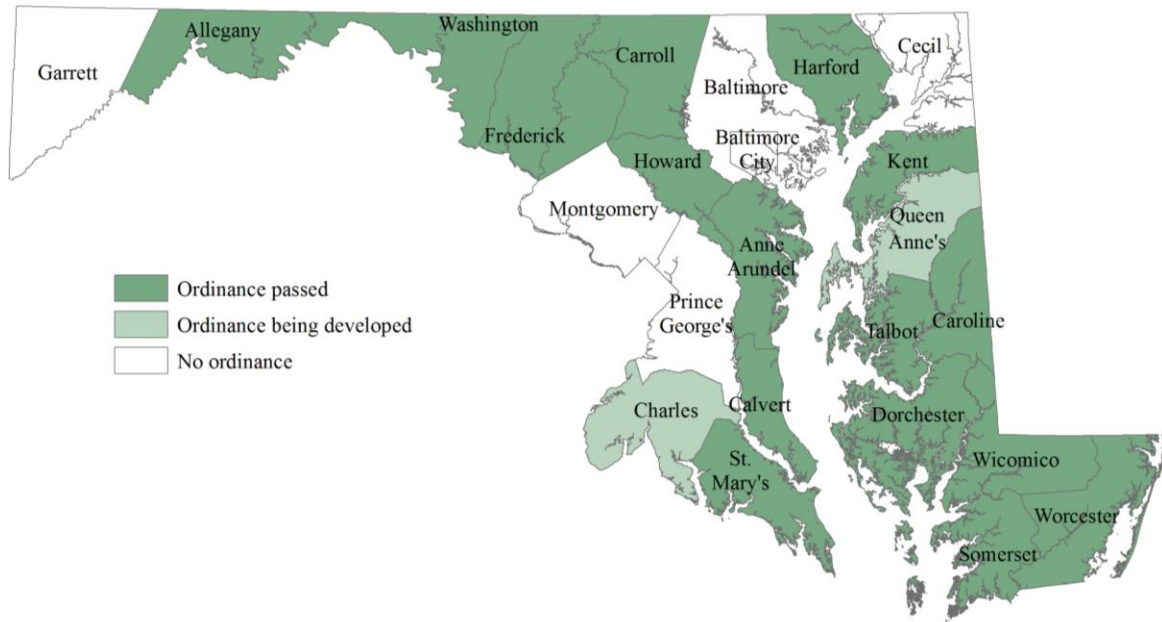
If a generating facility is granted an exemption from the CPCN requirement, PSC evaluation is limited to ensuring safety and reliability of the electric system. All issues other than safety and reliability of the electric system are left up to other State and local agencies.

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

**Background:** 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 have adopted local ordinances for small wind generation.

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**Exhibit 1**  
**Counties with Wind Ordinances**



Source: Maryland Energy Administration. Information current as of January 4, 2012.

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Current and future land-based wind farms in the State are focused where there is an adequate wind resource: in Western Maryland and on the Eastern Shore. 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.

## *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.

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### **Additional Information**

**Prior Introductions:** A similar bill, SB 767 of 2012, passed the Senate and was referred to the House Economic Matters Committee. No further action was taken. Its cross file, HB 747, passed the House with amendments and was referred to the Senate Rules Committee. No further action was taken.

**Cross File:** HB 504 (Delegate Beitzel) – Economic Matters.

**Information Source(s):** Garrett County, Public Service Commission, Maryland Energy Administration, Department of Legislative Services

**Fiscal Note History:** First Reader - February 1, 2013  
mc/lgc Revised - Senate Third Reader/Clarification - March 19, 2013

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