

HOUSE BILL 1168

C5, C8

(4lr2098)

ENROLLED BILL

— *Economic Matters/Finance* —

Introduced by **Southern Maryland Delegation**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

1 AN ACT concerning

2 **Electricity – Certificate – Wind Turbines – Limitation**

3 FOR the purpose of prohibiting the Public Service Commission from granting final
4 approval for, and a person from undertaking, construction of a certain
5 wind-powered generating station above certain heights within ~~a certain area~~
6 areas before a certain date; requiring the Commission to consider certain
7 information when evaluating a proposal for a certificate of public convenience
8 and necessity for certain facilities; altering the scope of a certain exception to
9 the requirement to obtain a certificate of public convenience and necessity
10 under certain circumstances; providing for the termination of this Act; defining
11 a certain term; providing for the application of this Act; and generally relating
12 to wind turbines and certificates of public convenience and necessity.

13 BY repealing and reenacting, with amendments,
14 Article – Public Utilities

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.



1 Section 7-207 and 7-207.1(a)(1)(ii)
 2 Annotated Code of Maryland
 3 (2010 Replacement Volume and 2013 Supplement)

4 ~~BY repealing and reenacting, without amendments,~~
 5 ~~Article – Public Utilities~~
 6 ~~Section 7-207.1(a)(1)(ii)~~
 7 ~~Annotated Code of Maryland~~
 8 ~~(2010 Replacement Volume and 2013 Supplement)~~

9 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 10 MARYLAND, That the Laws of Maryland read as follows:

11 **Article – Public Utilities**

12 7-207.

13 (a) (1) (i) In this section and § 7-208 of this subtitle, “construction”
 14 means:

15 1. any physical change at a site, including fabrication,
 16 erection, installation, or demolition; or

17 2. the entry into a binding agreement or contractual
 18 obligation to purchase equipment exclusively for use in construction in the State or to
 19 undertake a program of actual construction in the State which cannot be canceled or
 20 modified without substantial loss to the owner or operator of the proposed generating
 21 station.

22 (ii) “Construction” does not include a change that is needed for
 23 the temporary use of a site or route for nonutility purposes or for use in securing
 24 geological data, including any boring that is necessary to ascertain foundation
 25 conditions.

26 (2) In this section, “qualified generator lead line” means an overhead
 27 transmission line that is designed to carry a voltage in excess of 69,000 volts and
 28 would allow an out-of-state Tier 1 or Tier 2 renewable source to interconnect with a
 29 portion of the electric system in Maryland that is owned by an electric company.

30 (b) (1) (i) Unless a certificate of public convenience and necessity for
 31 the construction is first obtained from the Commission, a person may not begin
 32 construction in the State of:

33 1. a generating station; or

34 2. a qualified generator lead line.

1 (ii) If a person obtains Commission approval for construction
2 under § 7-207.1 of this subtitle, the Commission shall exempt a person from the
3 requirement to obtain a certificate of public convenience and necessity under this
4 section.

5 (iii) Notwithstanding subparagraph (i) of this paragraph, a
6 person may not apply to obtain a certificate of public convenience and necessity for
7 construction of a qualified generator lead line unless:

8 1. at least 90 days before the filing of an application for
9 a certificate of public convenience and necessity, the person had in good faith offered
10 the electric company that owns that portion of the electric grid in Maryland to which
11 the qualified generator lead line would interconnect a full and fair opportunity for the
12 electric company to construct the qualified generator lead line; and

13 2. at any time at least 10 days before the filing of an
14 application for a certificate of public convenience and necessity, the electric company:

15 A. did not accept from the person a proposal or a
16 negotiated version of the proposal under which the electric company would construct
17 the qualified generator lead line; or

18 B. stated in writing that the electric company did not
19 intend to construct the qualified generator lead line.

20 (2) Unless a certificate of public convenience and necessity for the
21 construction is first obtained from the Commission, and the Commission has found
22 that the capacity is necessary to ensure a sufficient supply of electricity to customers
23 in the State, a person may not exercise a right of condemnation in connection with the
24 construction of a generating station.

25 (3) (i) Except as provided in paragraph (4) of this subsection,
26 unless a certificate of public convenience and necessity for the construction is first
27 obtained from the Commission, an electric company may not begin construction of an
28 overhead transmission line that is designed to carry a voltage in excess of 69,000 volts
29 or exercise a right of condemnation with the construction.

30 (ii) For construction related to an existing overhead
31 transmission line, the Commission may waive the requirement in subparagraph (i) of
32 this paragraph for good cause.

33 (4) (i) Except as provided in subparagraph (ii) of this paragraph,
34 for construction related to an existing overhead transmission line designed to carry a
35 voltage in excess of 69,000 volts, the Commission shall waive the requirement to
36 obtain a certificate of public convenience and necessity if the Commission finds that
37 the construction does not:

1 1. require the electric company to obtain new real
2 property or additional rights-of-way through eminent domain; or

3 2. require larger or higher structures to accommodate:

4 A. increased voltage; or

5 B. larger conductors.

6 (ii) 1. For construction related to an existing overhead
7 transmission line, including repairs, that is necessary to avoid an imminent safety
8 hazard or reliability risk, an electric company may undertake the necessary
9 construction.

10 2. Within 30 days after construction is completed under
11 subsubparagraph 1 of this subparagraph, an electric company shall file a report with
12 the Commission describing the work that was completed.

13 (c) (1) On receipt of an application for a certificate of public convenience
14 and necessity under this section, the Commission shall provide notice immediately or
15 require the applicant to provide notice immediately of the application to:

16 (i) the Department of Planning;

17 (ii) the governing body of each county or municipal corporation
18 in which any portion of the generating station, overhead transmission line, or qualified
19 generator lead line is proposed to be constructed;

20 (iii) the governing body of each county or municipal corporation
21 within 1 mile of the proposed location of the generating station, overhead transmission
22 line, or qualified generator lead line;

23 (iv) each member of the General Assembly representing any part
24 of a county in which any portion of the generating station, overhead transmission line,
25 or qualified generator lead line is proposed to be constructed;

26 (v) each member of the General Assembly representing any part
27 of each county within 1 mile of the proposed location of the generating station,
28 overhead transmission line, or qualified generator lead line; and

29 (vi) all other interested persons.

30 (2) The Department of Planning shall forward the application to each
31 appropriate State unit and unit of local government for review, evaluation, and
32 comment regarding the significance of the proposal to State, area-wide, and local
33 plans or programs.

1 (d) (1) The Commission shall provide an opportunity for public comment
2 and hold a public hearing on the application for a certificate of public convenience and
3 necessity in each county and municipal corporation in which any portion of the
4 construction of a generating station, an overhead transmission line designed to carry a
5 voltage in excess of 69,000 volts, or a qualified generator lead line is proposed to be
6 located.

7 (2) The Commission shall hold the public hearing jointly with the
8 governing body of the county or municipal corporation in which any portion of the
9 construction of the generating station, overhead transmission line, or qualified
10 generator lead line is proposed to be located, unless the governing body declines to
11 participate in the hearing.

12 (3) Once in each of the 4 successive weeks immediately before the
13 hearing date, the Commission shall provide weekly notice of the public hearing and an
14 opportunity for public comment by advertisement in a newspaper of general
15 circulation in the county or municipal corporation affected by the application.

16 (4) (i) The Commission shall ensure presentation and
17 recommendations from each interested State unit, and shall allow representatives of
18 each State unit to sit during hearing of all parties.

19 (ii) The Commission shall allow each State unit 15 days after
20 the conclusion of the hearing to modify the State unit's initial recommendations.

21 (e) The Commission shall take final action on an application for a certificate
22 of public convenience and necessity only after due consideration of:

23 (1) the recommendation of the governing body of each county or
24 municipal corporation in which any portion of the construction of the generating
25 station, overhead transmission line, or qualified generator lead line is proposed to be
26 located; and

27 (2) the effect of the generating station, overhead transmission line, or
28 qualified generator lead line on:

29 (i) the stability and reliability of the electric system;

30 (ii) economics;

31 (iii) esthetics;

32 (iv) historic sites;

33 (v) aviation safety as determined by the Maryland Aviation
34 Administration and the administrator of the Federal Aviation Administration;

1 (vi) when applicable, air and water pollution; and

2 (vii) the availability of means for the required timely disposal of
3 wastes produced by any generating station.

4 (f) For the construction of an overhead transmission line, in addition to the
5 considerations listed in subsection (e) of this section, the Commission shall take final
6 action on an application for a certificate of public convenience and necessity only after
7 due consideration of the need to meet existing and future demand for electric service.

8 (g) (1) The Commission may not authorize, and an electric company may
9 not undertake, the construction of an overhead transmission line that is aligned with
10 and within 1 mile of either end of a public airport runway, unless:

11 (i) the Federal Aviation Administration determines that the
12 construction of an overhead transmission line will not constitute a hazard to air
13 navigation; and

14 (ii) the Maryland Aviation Administration concurs in that
15 determination.

16 (2) A privately owned airport runway shall qualify as a public airport
17 runway under this subsection only if the runway has been on file with the Federal
18 Aviation Administration for at least 2 years as being open to the public without
19 restriction.

20 (H) (1) IN THIS SUBSECTION, "REFERENCE POINT" MEANS A POINT
21 ON THE PATUXENT NAVAL AIR STATION CENTERED AT 38.29667N AND
22 76.37668W.

23 (2) THE COMMISSION MAY NOT APPROVE A CERTIFICATE OF
24 PUBLIC CONVENIENCE AND NECESSITY FOR, AND A PERSON MAY NOT
25 UNDERTAKE, CONSTRUCTION OF A WIND-POWERED GENERATING STATION
26 THAT INCLUDES ANY WIND TURBINE EXCEEDING 50 FEET IN THE HEIGHT
27 SPECIFIED WITHIN THE AREA DESCRIBED IN § 7-207.1(A)(1)(H)5 PARAGRAPH
28 (3) OF THIS SUBTITLE SUBSECTION BEFORE JULY 1, 2015.

29 (3) A WIND TURBINE FOR A WIND-POWERED GENERATING
30 STATION MAY NOT EXCEED THE HEIGHT ABOVE GROUND LEVEL SPECIFIED IN
31 THIS PARAGRAPH IN THE AREA DESCRIBED AS FOLLOWS:

32 (I) EAST OF A LINE PASSING THROUGH THE REFERENCE
33 POINT AND 39.0986N AND 76.5284W AND:

- 1 **1. NOT MORE THAN 24 MILES FROM THE REFERENCE**
2 **POINT, 0 FEET;**
- 3 **2. MORE THAN 24 MILES AND NOT MORE THAN 30**
4 **MILES FROM THE REFERENCE POINT, 100 FEET;**
- 5 **3. MORE THAN 30 MILES AND NOT MORE THAN 35**
6 **MILES FROM THE REFERENCE POINT, 200 FEET;**
- 7 **4. MORE THAN 35 MILES AND NOT MORE THAN 39**
8 **MILES FROM THE REFERENCE POINT, 300 FEET;**
- 9 **5. MORE THAN 39 MILES AND NOT MORE THAN 43**
10 **MILES FROM THE REFERENCE POINT, 400 FEET;**
- 11 **6. MORE THAN 43 MILES AND NOT MORE THAN 46**
12 **MILES FROM THE REFERENCE POINT, 500 FEET;**
- 13 **7. MORE THAN 46 MILES AND NOT MORE THAN 49**
14 **MILES FROM THE REFERENCE POINT, 600 FEET; AND**
- 15 **8. MORE THAN 49 MILES AND NOT MORE THAN 56**
16 **MILES FROM THE REFERENCE POINT, 700 FEET; AND**
- 17 **(II) WEST OF A LINE PASSING THROUGH THE REFERENCE**
18 **POINT AND 39.0986N AND 76.5284W AND:**
- 19 **1. SOUTH OF 38.4428N, 0 FEET;**
- 20 **2. NORTH OF 38.4428N AND NO FARTHER NORTH**
21 **THAN 38.5711N, 100 FEET;**
- 22 **3. NORTH OF 38.5711N AND NO FARTHER NORTH**
23 **THAN 38.5943N, 200 FEET;**
- 24 **4. NORTH OF 38.5943N AND NO FARTHER NORTH**
25 **THAN 38.6366N, 300 FEET;**
- 26 **5. NORTH OF 38.6366N AND NO FARTHER NORTH**
27 **THAN 38.6596N, 400 FEET;**
- 28 **6. NORTH OF 38.6596N AND NO FARTHER NORTH**
29 **THAN 38.6873N, 500 FEET;**

1 7. NORTH OF 38.6873N AND NO FARTHER NORTH
 2 THAN 38.7075N, 600 FEET; AND

3 8. NORTH OF 38.7075N AND NOT MORE THAN 56
 4 MILES FROM THE REFERENCE POINT, 700 FEET.

5 ~~(2)~~ (4) IN EVALUATING ANY PROPOSAL FOR A WIND-POWERED
 6 GENERATING STATION WITHIN THE AREA DESCRIBED IN ~~§ 7-207.1(A)(1)(H)5~~
 7 PARAGRAPH (3) OF THIS SUBTITLE SUBSECTION, THE COMMISSION SHALL
 8 REVIEW AND CONSIDER ALL AVAILABLE PERTINENT INFORMATION RELATING
 9 TO THE POTENTIAL FOR INTERFERENCE OF THE PROPOSED GENERATING
 10 STATION ON THE MAINTENANCE AND OPERATIONS OF THE ATLANTIC TEST
 11 RANGE UTILIZED BY THE PATUXENT RIVER NAVAL AIR STATION AND RELATED
 12 DEFENSE FACILITIES, BOTH AS A SPECIFIC PROPOSAL AND IN COMBINATION
 13 WITH OTHER EXISTING AND PROPOSED WIND-POWERED GENERATING STATIONS
 14 AFFECTING THE TEST RANGE.

15 7-207.1.

16 (a) This section applies to a person who:

17 (1) constructs a generating station:

18 (ii) that produces electricity from wind if:

19 1. the generating station is land-based;

20 2. the capacity of the generating station does not exceed
 21 70 megawatts;

22 3. the electricity that may be exported for sale from the
 23 generating station to the electric system is sold only on the wholesale market pursuant
 24 to an interconnection, operation, and maintenance agreement with the local electric
 25 company;

26 4. the Commission provides an opportunity for public
 27 comment at a public hearing as provided in subsection (f) of this section; and

28 5. the generating station's wind turbines are not located
 29 within a distance from the Patuxent River Naval Air Station AND AT A HEIGHT that
 30 ~~is~~ ARE determined by regulations adopted by the Commission in coordination with the
 31 Commander, Naval Air Warfare Center Aircraft Division, provided that the distance
 32 requirement under the regulation is:

1 A. not greater than is necessary to encompass an area in
2 which utility scale wind turbines could create Doppler radar interference for missions
3 at the Patuxent River Naval Air Station;

4 B. SUBJECT TO § 7-207(H) OF THIS SUBTITLE, not
5 greater than 46 miles, measured from location 38.29667N, 76.37668W; and

6 C. subject to modification if necessary to reflect changes
7 in missions or technology at the Patuxent River Naval Air Station or changes in wind
8 energy technology; or

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act may not be
10 construed to affect any wind-powered generating station:

11 (1) on which ~~physical~~ construction has begun on or before March 10,
12 2014; and

13 (2) for which proceeds from a Maryland Water Quality Financing
14 Administration loan have been paid to a manufacturer of wind-powered generating
15 stations to initiate construction of the wind-powered generating station.

16 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
17 June 1, 2014. It shall remain effective for a period of 1 year and 1 month and, at the
18 end of June 30, 2015, with no further action required by the General Assembly, this
19 Act shall be abrogated and of no further force and effect.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.