

# HOUSE BILL 1168

C5, C8

4lr2098

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By: **Southern Maryland Delegation**

Introduced and read first time: February 7, 2014

Assigned to: Economic Matters

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## A BILL ENTITLED

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 within a certain area before a certain date;  
6 requiring the Commission to consider certain information when evaluating a  
7 proposal for a certificate of public convenience and necessity for certain  
8 facilities; providing for the termination of this Act; and generally relating to  
9 wind turbines and certificates of public convenience and necessity.

10 BY repealing and reenacting, with amendments,  
11 Article – Public Utilities  
12 Section 7–207  
13 Annotated Code of Maryland  
14 (2010 Replacement Volume and 2013 Supplement)

15 BY repealing and reenacting, without amendments,  
16 Article – Public Utilities  
17 Section 7–207.1(a)(1)(ii)  
18 Annotated Code of Maryland  
19 (2010 Replacement Volume and 2013 Supplement)

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

22 **Article – Public Utilities**

23 7–207.

24 (a) (1) (i) In this section and § 7–208 of this subtitle, “construction”  
25 means:

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3                   2.     the entry into a binding agreement or contractual  
4 obligation to purchase equipment exclusively for use in construction in the State or to  
5 undertake a program of actual construction in the State which cannot be canceled or  
6 modified without substantial loss to the owner or operator of the proposed generating  
7 station.

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

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

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

19                               1.     a generating station; or

20                               2.     a qualified generator lead line.

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

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

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

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

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

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

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

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

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

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

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

26           2. require larger or higher structures to accommodate:

27           A. increased voltage; or

28           B. larger conductors.

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

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

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

4 (i) the Department of Planning;

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

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

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

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

17 (vi) all other interested persons.

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

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

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

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

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

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

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

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

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

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

15           (ii) economics;

16           (iii) esthetics;

17           (iv) historic sites;

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

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

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

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

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

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

1 (ii) the Maryland Aviation Administration concurs in that  
2 determination.

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

7 **(H) (1) THE COMMISSION MAY NOT APPROVE A CERTIFICATE OF**  
8 **PUBLIC CONVENIENCE AND NECESSITY FOR, AND A PERSON MAY NOT**  
9 **UNDERTAKE, CONSTRUCTION OF A WIND-POWERED GENERATING STATION**  
10 **THAT INCLUDES ANY WIND TURBINE EXCEEDING 50 FEET IN HEIGHT WITHIN**  
11 **THE AREA DESCRIBED IN § 7-207.1(A)(1)(II)5 OF THIS SUBTITLE BEFORE JULY**  
12 **1, 2015.**

13 **(2) IN EVALUATING ANY PROPOSAL FOR A WIND-POWERED**  
14 **GENERATING STATION WITHIN THE AREA DESCRIBED IN § 7-207.1(A)(1)(II)5 OF**  
15 **THIS SUBTITLE, THE COMMISSION SHALL REVIEW AND CONSIDER ALL**  
16 **AVAILABLE PERTINENT INFORMATION RELATING TO THE POTENTIAL FOR**  
17 **INTERFERENCE OF THE PROPOSED GENERATING STATION ON THE**  
18 **MAINTENANCE AND OPERATIONS OF THE ATLANTIC TEST RANGE UTILIZED BY**  
19 **THE PATUXENT RIVER NAVAL AIR STATION AND RELATED DEFENSE**  
20 **FACILITIES, BOTH AS A SPECIFIC PROPOSAL AND IN COMBINATION WITH OTHER**  
21 **EXISTING AND PROPOSED WIND-POWERED GENERATING STATIONS AFFECTING**  
22 **THE TEST RANGE.**

23 7-207.1.

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

25 (1) constructs a generating station:

26 (ii) that produces electricity from wind if:

27 1. the generating station is land-based;

28 2. the capacity of the generating station does not exceed  
29 70 megawatts;

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

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

1                   5.     the generating station's wind turbines are not located  
2 within a distance from the Patuxent River Naval Air Station that is determined by  
3 regulations adopted by the Commission in coordination with the Commander, Naval  
4 Air Warfare Center Aircraft Division, provided that the distance requirement under  
5 the regulation is:

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

9                   B.     not greater than 46 miles, measured from location  
10 38.29667N, 76.37668W; and

11                  C.     subject to modification if necessary to reflect changes  
12 in missions or technology at the Patuxent River Naval Air Station or changes in wind  
13 energy technology; or

14                 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
15 June 1, 2014. It shall remain effective for a period of 1 year and 1 month and, at the  
16 end of June 30, 2015, with no further action required by the General Assembly, this  
17 Act shall be abrogated and of no further force and effect.