

Department of Legislative Services  
Maryland General Assembly  
2014 Session

FISCAL AND POLICY NOTE

House Bill 1463 (Delegate Davis)  
Rules and Executive Nominations

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Solar Farms - Construction Requirements - Exemptions

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This bill exempts “solar farms” from the Sediment Control subtitle of the Environment Article and exempts specified solar farms that do not result in a change in land use category from the Forest Conservation subtitle of the Natural Resources Article. The process for certificate of public convenience and necessity (CPCN) *exemption* does not apply to solar farms with specified characteristics.

The bill takes effect July 1, 2014.

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Fiscal Summary

**State Effect:** The bill is not anticipated to materially affect State operations or finances.

**Local Effect:** The bill is not anticipated to materially affect local government operations or finances.

**Small Business Effect:** Minimal.

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Analysis

**Bill Summary:** “Solar farm” means an area of land where solar photovoltaic systems are installed on at least one acre in order to provide electricity generation.

The process for CPCN exemption does not apply to a solar farm with a generating station if (1) the generating station does not provide on-site generated electricity; (2) the capacity of the generating station does not exceed 25 megawatts; (3) the solar farm does not exceed 25 acres in size; and (4) the electricity that may be exported for sale from the

generating station is sold only on the wholesale market pursuant to an interconnection, operation, and maintenance agreement with the local electric company.

## **Current Law:**

### *Sediment Control*

The Sediment Control subtitle of the Environment Article does not apply to (1) agricultural land management practices; (2) construction of agricultural structures, or (3) except in Calvert County, to construction of single-family residences or their accessory buildings that disturb an area of less than one-half acre and occur on lots of at least two acres. Maryland Department of Environment (MDE) regulations also specify that sediment control plans are not required for grading activities that disturb less than 5,000 square feet of land area and disturb less than 100 cubic yards of earth.

A county or municipality may issue grading and building permits as provided by law. Generally, a grading or building permit may not be issued until the developer submits a grading and sediment control plan that is (1) approved by the appropriate soil conservation district and (2) certifies that all land clearing, construction, and development will be done under the plan.

Regardless of planning, zoning, or subdivision controls, a county or municipality may not issue a permit for grading or construction of any building, other than those enumerated and exempted under current law, unless the grading or construction conforms with approved sediment control plans.

### *Forest Conservation*

The Forest Conservation Act (FCA) provides a set of minimum standards that developers must follow when designing a new project that affects forest land. Local governments are responsible for making sure these standards are met, but they may choose to implement even more stringent criteria. If there is no local agency in place to review development plans, the Department of National Resources (DNR) does so. In general, FCA calls for a minimum amount of forest cover on development sites based upon the site's zoning. FCA applies, subject to enumerated exceptions, to any public or private development requiring a subdivision plan, grading permit, or sediment control permit that is to apply on 40,000 square feet (approximately 0.9 acres) or greater of land.

DNR administers the State Forest Conservation Fund to facilitate afforestation or reforestation requirements when an applicant cannot reasonably accomplish these requirements on- or off-site. In addition, a local approval authority may establish and

administer a local forest conservation fund to apply in that local jurisdiction instead of the State fund. A State or local forest conservation fund consists of payments made by an applicant in lieu of performance of afforestation or reforestation requirements and penalties collected for noncompliance with a forest conservation program, a forest conservation plan, or an associated two-year management agreement.

### *Certificate of Public Convenience and Necessity*

Generally, a person may not begin construction in the State of a generating station, overhead transmission line, or a qualified generator lead line unless a CPCN is first obtained from PSC. PSC regulations define a “generating station” as property or facilities located in Maryland constituting an integral piece of equipment or unit for the production of electric energy, including any new production unit that would be added to an existing production plant. It does not include an integral piece of equipment or unit less than 1.5 megawatts if it is installed with equipment that prevents the flow of electricity to the electric system during time periods when the electric system is out of service.

There are three general conditions under which a person constructing an electric generating station may apply to PSC for an exemption from the CPCN requirement:

- the facility is designed to provide on-site generated electricity (generally, 80% or more of the electricity is consumed on-site), the capacity is up to 70 megawatts, and the excess electricity can be sold only on the wholesale market pursuant to an interconnection, operation, and maintenance agreement with the local electric company;
- at least 10% of the electricity generated is consumed on-site, the capacity is up to 25 megawatts, and the excess electricity is sold on the wholesale market pursuant to an interconnection, operation, and maintenance agreement with the local electric company; or
- the facility is wind-powered and land-based, the capacity is up to 70 megawatts, and the facility is no closer than a PSC-determined distance from the Patuxent River Naval Air Station, among other requirements.

However, PSC must require a person that is exempted from the CPCN requirement to obtain approval from the commission before the person may construct a generating station as described above. The application must contain specified information that PSC requires, including proof of compliance with all applicable requirements of the independent system operator.

PSC must take final action on an application for CPCN for a proposed generating station only after due consideration of:

- the recommendation of the governing body of each county or municipality in which any portion of the construction of the generating station is proposed to be located; and
- the effect of the generating station on the stability and reliability of the electric system, economics, esthetics, historic sites, aviation safety, air and water pollution (when applicable), and the availability of means for the required timely disposal of wastes produced by the generating station.

**Background:** Chapter 120 of 2007 modified Maryland's RPS to include a solar carve-out, requiring that at least 0.005% of electricity in 2008 be from solar generation, increasing to at least 2.0% in 2022. Chapter 494 of 2010 increased the solar requirement for each year between 2011 and 2016. Chapter 583 of 2012 again increased the solar requirement for each year between 2013 and 2021. As of March 2013, there is approximately 170 megawatts of solar capacity in the State.

The Maryland Energy Administration indicates that current solar photovoltaic technology requires approximately four to five acres per megawatt of capacity. Therefore, the 25-acre size limit specified in the bill under the CPCN exemption process supports approximately five to six megawatts of solar photovoltaic capacity.

**Additional Comments:** The bill precludes certain solar farms from the CPCN exemption process. The Department of Legislative Services advises that any solar farm with those specified characteristics (provided that its capacity is greater than 1.5 megawatts) must obtain a CPCN under both current law and the bill. Conversely, if a solar farm is below 1.5 megawatts and meets other criteria, it is exempt from the CPCN requirement under both current law and the bill.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 1020 (Senator Middleton) - Finance.

**Information Source(s):** Maryland Department of Agriculture, Department of Natural Resources, Maryland Department of the Environment, Maryland Energy Administration, Public Service Commission, Department of Legislative Services

**Fiscal Note History:** First Reader - March 21, 2014  
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