

SENATE BILL 938

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By: **Senator Hershey**

Constitutional Requirements Complied with for Introduction in the last 35 Days of Session
Introduced and read first time: March 21, 2015

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Public Service Commission – Certificate of Public Convenience and Necessity –**
3 **Land–Based Wind Generating Stations in Kent County**

4 FOR the purpose of prohibiting the Public Service Commission from taking final action on
5 an application for a certificate of public convenience and necessity for the
6 construction of a certain land–based wind generating station that will be wholly or
7 partly located in Kent County until the County Commissioners of Kent County have
8 approved the construction of the generating station; and generally relating to the
9 issuance of certificates of public convenience and necessity for land–based wind
10 generating stations in Kent County.

11 BY repealing and reenacting, with amendments,
12 Article – Public Utilities
13 Section 7–207
14 Annotated Code of Maryland
15 (2010 Replacement Volume and 2014 Supplement)

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

18 **Article – Public Utilities**

19 7–207.

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

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

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

16 1. a generating station; or

17 2. a qualified generator lead line.

18 (ii) If a person obtains Commission approval for construction under
19 § 7-207.1 of this subtitle, the Commission shall exempt a person from the requirement to
20 obtain a certificate of public convenience and necessity under this section.

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

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

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

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

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

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

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

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

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

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

20 2. require larger or higher structures to accommodate:

21 A. increased voltage; or

22 B. larger conductors.

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

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

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

32 (i) the Department of Planning;

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

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

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

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

10 (vi) all other interested persons.

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

14 (d) (1) The Commission shall provide an opportunity for public comment and
15 hold a public hearing on the application for a certificate of public convenience and necessity
16 in each county and municipal corporation in which any portion of the construction of a
17 generating station, an overhead transmission line designed to carry a voltage in excess of
18 69,000 volts, or a qualified generator lead line is proposed to be located.

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

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

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

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

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

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

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

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

7 (ii) economics;

8 (iii) esthetics;

9 (iv) historic sites;

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

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

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

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

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

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

25 (ii) the Maryland Aviation Administration concurs in that
26 determination.

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

30 **(H) (1) THIS SUBSECTION APPLIES ONLY TO AN APPLICATION FOR THE**
31 **CONSTRUCTION OF A GENERATING STATION THAT PRODUCES ELECTRICITY FROM**
32 **WIND THAT:**

- 1 **(I) IS LAND-BASED;**
- 2 **(II) WILL HAVE A CAPACITY THAT MEETS OR EXCEEDS 70**
3 **MEGAWATTS; AND**
- 4 **(III) WILL WHOLLY OR PARTLY BE LOCATED IN KENT COUNTY.**
- 5 **(2) IN ADDITION TO THE CONSIDERATIONS LISTED IN SUBSECTION**
6 **(E) OF THIS SECTION, THE COMMISSION MAY NOT TAKE FINAL ACTION ON AN**
7 **APPLICATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY UNTIL**
8 **THE COUNTY COMMISSIONERS OF KENT COUNTY HAVE APPROVED THE**
9 **CONSTRUCTION OF THE GENERATING STATION.**

10 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
11 October 1, 2015.