

# SENATE BILL 931

L6, C5, M1

7lr2887

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By: **Senators Astle and Hershey**

Introduced and read first time: February 3, 2017

Assigned to: Finance and Education, Health, and Environmental Affairs

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## A BILL ENTITLED

1 AN ACT concerning

2 **Local Jurisdictions – Zoning Authority – Generating Stations**

3 FOR the purpose of authorizing a local jurisdiction to adopt certain zoning regulations for  
4 the siting of generating stations; requiring a local jurisdiction that adopts zoning  
5 regulations in accordance with this Act to make a certain determination regarding  
6 the types of energy generating technologies that the zoning regulations will include;  
7 prohibiting the siting or construction of a certain generating station beginning on  
8 the date of a certain notice until certain zoning regulations are adopted or after a  
9 certain period of time from the date of a certain notice, subject to a certain exception;  
10 requiring a local jurisdiction to provide a certain notice before proposing certain  
11 zoning regulations; requiring a local jurisdiction to offer to meet with certain  
12 representatives of energy generation technologies that will be included in the zoning  
13 regulations within a certain period of time from the date of a certain notice; requiring  
14 a certain power plant environmental research program to identify and recommend  
15 certain representatives to meet with a local jurisdiction; requiring a local jurisdiction  
16 to consider certain factors when establishing certain zoning regulations; requiring a  
17 local jurisdiction to identify certain generating station sites for certain energy  
18 generation technologies included in the zoning regulations; requiring the Public  
19 Service Commission to review and comment on a local jurisdiction's proposed zoning  
20 regulations; establishing that a local jurisdiction's zoning regulations in effect before  
21 a certain date are deemed to be in compliance with this Act and binding on a certain  
22 generating station if the Commission makes a certain determination; requiring a  
23 local jurisdiction to comply with the requirements of this Act when amending,  
24 repealing, or reclassifying zoning regulations adopted under this Act; requiring the  
25 owner of a certain generating station to comply with zoning regulations adopted in  
26 accordance with this Act; authorizing the Commission to preempt a local  
27 jurisdiction's zoning regulations adopted in accordance with this Act under certain  
28 circumstances; applying this Act to charter counties and Baltimore City; prohibiting  
29 the Commission from issuing a certificate of public convenience and necessity for or  
30 approving the construction of a certain generating station unless the construction  
31 complies with a local jurisdiction's zoning regulations adopted in accordance with

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 this Act; requiring a certain power plant environmental research program to study  
 2 and make certain recommendations regarding certain matters; requiring the power  
 3 plant environmental research program to consult with certain representatives in  
 4 conducting the study and developing recommendations; requiring the program to  
 5 report its findings and recommendations to the Governor and the General Assembly  
 6 on or before a certain date; defining a certain term; providing for the application of  
 7 this Act; and generally relating to zoning authority and generating stations.

8 BY repealing and reenacting, with amendments,

9 Article – Land Use

10 Section 1–401(b) and 10–103(b)

11 Annotated Code of Maryland

12 (2012 Volume and 2016 Supplement)

13 BY adding to

14 Article – Land Use

15 Section 4–211

16 Annotated Code of Maryland

17 (2012 Volume and 2016 Supplement)

18 BY repealing and reenacting, with amendments,

19 Article – Public Utilities

20 Section 7–207(b)(1) and 7–207.1(b)

21 Annotated Code of Maryland

22 (2010 Replacement Volume and 2016 Supplement)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

24 That the Laws of Maryland read as follows:

25 **Article – Land Use**

26 1–401.

27 (b) The following provisions of this division apply to a charter county:

28 (1) this subtitle, including Parts II and III (Charter county  
 29 – Comprehensive plans);

30 (2) § 1–101(l), (m), and (o) (Definitions – “Plan”, “Priority funding area”,  
 31 and “Sensitive area”);

32 (3) § 1–201 (Visions);

33 (4) § 1–206 (Required education);

34 (5) § 1–207 (Annual report – In general);

- 1 (6) § 1–208 (Annual report – Measures and indicators);
- 2 (7) Title 1, Subtitle 3 (Consistency);
- 3 (8) Title 1, Subtitle 5 (Growth Tiers);
- 4 (9) § 4–104(b) (Limitations – Bicycle parking);
- 5 (10) § 4–208 (Exceptions – Maryland Accessibility Code);
- 6 (11) § 4–210 (Permits and variances – Solar panels);
- 7 **(12) § 4–211 (GENERATING STATION ZONING);**
- 8 ~~[(12)]~~ **(13)** § 5–102(d) (Subdivision regulations – Burial sites);
- 9 ~~[(13)]~~ **(14)** § 5–104 (Major subdivision – Review);
- 10 ~~[(14)]~~ **(15)** Title 7, Subtitle 1 (Development Mechanisms);
- 11 ~~[(15)]~~ **(16)** Title 7, Subtitle 2 (Transfer of Development Rights);
- 12 ~~[(16)]~~ **(17)** except in Montgomery County or Prince George’s County, Title
- 13 7, Subtitle 3 (Development Rights and Responsibilities Agreements);
- 14 ~~[(17)]~~ **(18)** Title 7, Subtitle 4 (Inclusionary Zoning);
- 15 ~~[(18)]~~ **(19)** § 8–401 (Conversion of overhead facilities);
- 16 ~~[(19)]~~ **(20)** for Baltimore County only, Title 9, Subtitle 3 (Single–County
- 17 Provisions – Baltimore County);
- 18 ~~[(20)]~~ **(21)** for Howard County only, Title 9, Subtitle 13 (Single–County
- 19 Provisions – Howard County);
- 20 ~~[(21)]~~ **(22)** for Talbot County only, Title 9, Subtitle 18 (Single–County
- 21 Provisions – Talbot County); and
- 22 ~~[(22)]~~ **(23)** Title 11, Subtitle 2 (Civil Penalty).

23 **4–211.**

24 **(A) (1) IN THIS SECTION, “LOCAL JURISDICTION” HAS THE MEANING**

25 **STATED IN § 1–101 OF THIS ARTICLE.**

1           **(2) “LOCAL JURISDICTION” INCLUDES:**

2                   **(I) A COUNTY PLANNING BOARD AS DEFINED UNDER § 14-101**  
3 **OF DIVISION II OF THIS ARTICLE WHEN THE PROVISIONS OF THIS SECTION WOULD**  
4 **APPLY IN A MANNER THAT IS PRIMARILY LOCAL IN SCOPE; AND**

5                   **(II) A DISTRICT COUNCIL AS DEFINED UNDER § 14-101 OF THIS**  
6 **ARTICLE WHEN THE PROVISIONS OF THIS SECTION WOULD APPLY IN A MANNER**  
7 **THAT IS BEYOND THE JURISDICTION OF A COUNTY PLANNING BOARD.**

8           **(B) (1) THIS SECTION APPLIES TO:**

9                   **(I) A GENERATING STATION:**

10                           **1. THAT IS REQUIRED TO OBTAIN A CERTIFICATE OF**  
11 **PUBLIC CONVENIENCE AND NECESSITY UNDER § 7-207 OF THE PUBLIC UTILITIES**  
12 **ARTICLE; OR**

13                           **2. WITH A GENERATION CAPACITY OF AT LEAST 2**  
14 **MEGAWATTS; AND**

15                   **(II) A GROUP OF GENERATING STATIONS THAT:**

16                           **1. ARE DEVELOPED BY THE SAME PERSON;**

17                           **2. ARE GEOGRAPHICALLY ADJACENT TO ONE ANOTHER;**  
18 **AND**

19                           **3. WHEN TAKEN IN THE AGGREGATE, WOULD:**

20                                   **A. BE REQUIRED TO OBTAIN A CERTIFICATE OF PUBLIC**  
21 **CONVENIENCE AND NECESSITY UNDER § 7-207 OF THE PUBLIC UTILITIES ARTICLE;**  
22 **OR**

23                                   **B. HAVE A GENERATION CAPACITY OF AT LEAST 2**  
24 **MEGAWATTS.**

25           **(2) THIS SECTION DOES NOT APPLY TO:**

26                   **(I) TRANSMISSION LINES;**

27                   **(II) GAS PIPELINES; OR**

1                   **(III) OIL PIPELINES.**

2           **(c) (1) (i) A LOCAL JURISDICTION MAY ADOPT ZONING REGULATIONS**  
3 **FOR THE SITING OF GENERATING STATIONS.**

4                   **(ii) A LOCAL JURISDICTION THAT ADOPTS ZONING**  
5 **REGULATIONS UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL:**

6                   1.    **DETERMINE THE TYPES OF ENERGY GENERATING**  
7 **TECHNOLOGIES THAT THE ZONING REGULATIONS WILL INCLUDE; AND**

8                   2.    **COMPLY WITH THE REQUIREMENTS OF THIS SECTION.**

9                   **(2) (i) EXCEPT AS PROVIDED IN SUBPARAGRAPH (II) OF THIS**  
10 **PARAGRAPH, BEGINNING ON THE DATE OF THE NOTICE REQUIRED UNDER**  
11 **PARAGRAPH (3) OF THIS SUBSECTION, A GENERATING STATION THAT WILL USE AN**  
12 **ENERGY GENERATION TECHNOLOGY THAT WILL BE INCLUDED IN A LOCAL**  
13 **JURISDICTION'S ZONING REGULATIONS MAY NOT BE SITED OR CONSTRUCTED UNTIL**  
14 **THE DATE OF FINAL ADOPTION OF THE ZONING REGULATIONS OR 1 YEAR FROM THE**  
15 **DATE OF THE NOTICE, WHICHEVER IS EARLIER.**

16                   **(ii) SUBPARAGRAPH (1) OF THIS PARAGRAPH DOES NOT APPLY**  
17 **TO A GENERATING STATION THAT HAS AN APPLICATION FOR A CERTIFICATE OF**  
18 **PUBLIC CONVENIENCE AND NECESSITY SUBMITTED BEFORE THE DATE OF THE**  
19 **NOTICE.**

20                   **(3) BEFORE PROPOSING ZONING REGULATIONS FOR THE SITING OF A**  
21 **GENERATING STATION, A LOCAL JURISDICTION SHALL PROVIDE NOTICE OF THE**  
22 **ENERGY GENERATING TECHNOLOGIES THAT THE ZONING REGULATIONS WILL**  
23 **INCLUDE IN ACCORDANCE WITH THE LOCAL JURISDICTION NOTICE PROCEDURES**  
24 **AND THE NOTICE REQUIREMENTS IN § 4-203 OF THIS SUBTITLE.**

25                   **(4) (i) WITHIN 1 MONTH AFTER THE DATE OF THE NOTICE**  
26 **REQUIRED UNDER PARAGRAPH (3) OF THIS SUBSECTION, A LOCAL JURISDICTION**  
27 **SHALL OFFER TO MEET WITH REPRESENTATIVES OF EACH ENERGY GENERATING**  
28 **TECHNOLOGY THAT THE ZONING REGULATIONS WILL INCLUDE TO DISCUSS:**

29                   1.    **THE ENERGY GENERATING TECHNOLOGY'S SITING**  
30 **NEEDS; AND**

31                   2.    **THE LOCAL JURISDICTION'S LAND USE NEEDS.**

1                   **(II) THE POWER PLANT ENVIRONMENTAL RESEARCH PROGRAM**  
2 **ESTABLISHED UNDER § 3-303 OF THE NATURAL RESOURCES ARTICLE SHALL**  
3 **IDENTIFY AND RECOMMEND REPRESENTATIVES OF EACH ENERGY GENERATING**  
4 **TECHNOLOGY THAT THE ZONING REGULATIONS WILL INCLUDE TO MEET WITH THE**  
5 **LOCAL JURISDICTION.**

6                   **(5) A LOCAL JURISDICTION SHALL CONSIDER THE FOLLOWING**  
7 **FACTORS WHEN ESTABLISHING ZONING REGULATIONS FOR THE SITING OF**  
8 **GENERATING STATIONS:**

9                   **(I) SITING FACTORS IDENTIFIED BY THE PUBLIC SERVICE**  
10 **COMMISSION AS NECESSARY FOR A VIABLE GENERATING STATION BASED ON THE**  
11 **SPECIFIC ENERGY GENERATION TECHNOLOGY, INCLUDING:**

12                   **1. GRID CAPACITY WITHIN THE LOCAL JURISDICTION;**  
13 **AND**

14                   **2. THE LOCATION OF HIGH VOLTAGE GRID**  
15 **CONNECTIONS WITHIN THE LOCAL JURISDICTION; AND**

16                   **(II) FACTORS THAT ARE IMPORTANT TO THE GOALS AND**  
17 **OBJECTIVES OF THE LOCAL JURISDICTION'S COMPREHENSIVE PLAN IN LIGHT OF**  
18 **THE ZONING REGULATIONS, SUCH AS:**

19                   **1. THE LOCATION AND PROTECTION OF PRIME**  
20 **AGRICULTURAL SOILS, CULTURALLY OR HISTORICALLY IMPORTANT LANDS, AND**  
21 **ENVIRONMENTALLY SENSITIVE LANDS;**

22                   **2. IMPACTS ON THE LOCAL JURISDICTION'S**  
23 **INFRASTRUCTURE, SUCH AS USE OF ROADWAYS AND EFFECTS ON PUBLIC SAFETY**  
24 **SERVICES; AND**

25                   **3. ANY OTHER FACTORS THE LOCAL JURISDICTION**  
26 **CONSIDERS NECESSARY.**

27                   **(6) A LOCAL JURISDICTION SHALL IDENTIFY VIABLE GENERATING**  
28 **STATION SITES FOR EACH ENERGY GENERATION TECHNOLOGY INCLUDED IN THE**  
29 **ZONING REGULATIONS.**

30                   **(D) (1) THE PUBLIC SERVICE COMMISSION SHALL REVIEW AND**  
31 **COMMENT ON A LOCAL JURISDICTION'S PROPOSED ZONING REGULATIONS,**  
32 **INCLUDING WHETHER THE ZONING IDENTIFIES VIABLE GENERATING STATION SITES**  
33 **BASED ON THE REQUIREMENTS OF THIS SUBSECTION.**

1           **(2) A LOCAL JURISDICTION’S ZONING REGULATIONS IN EFFECT**  
2 **BEFORE JANUARY 1, 2017, SHALL BE DEEMED IN COMPLIANCE WITH THIS SECTION**  
3 **AND BINDING ON A PROPOSED GENERATING STATION IF THE LOCAL JURISDICTION**  
4 **SUBMITS THE ZONING REGULATIONS TO THE PUBLIC SERVICE COMMISSION FOR A**  
5 **DETERMINATION THAT:**

6           **(I) THE ZONING REGULATIONS REFLECT THE FACTORS**  
7 **IDENTIFIED IN SUBSECTION (C)(5) OF THIS SECTION; AND**

8           **(II) THE ZONING REGULATIONS IDENTIFY VIABLE GENERATING**  
9 **STATION SITES FOR EACH ENERGY GENERATION TECHNOLOGY ADDRESSED IN THE**  
10 **ZONING REGULATIONS.**

11           **(E) A LOCAL JURISDICTION SHALL COMPLY WITH THE REQUIREMENTS OF**  
12 **THIS SECTION WHEN AMENDING, REPEALING, OR RECLASSIFYING ZONING**  
13 **REGULATIONS ADOPTED UNDER THIS SECTION.**

14           **(F) EXCEPT AS PROVIDED IN SUBSECTION (G) OF THIS SECTION, AND**  
15 **NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE OWNER OF A PROPOSED**  
16 **GENERATING STATION SHALL COMPLY WITH ZONING REGULATIONS ADOPTED BY A**  
17 **LOCAL JURISDICTION IN ACCORDANCE WITH THIS SECTION.**

18           **(G) THE PUBLIC SERVICE COMMISSION MAY PREEMPT A LOCAL**  
19 **JURISDICTION’S ZONING REGULATIONS ADOPTED IN ACCORDANCE WITH THIS**  
20 **SECTION IF:**

21           **(1) THE PUBLIC SERVICE COMMISSION DETERMINES THAT A**  
22 **PROPOSED GENERATING STATION IS VITAL TO GRID INTEGRITY; AND**

23           **(2) THERE IS NOT A VIABLE ALTERNATIVE SITE AUTHORIZED UNDER**  
24 **THE ZONING REGULATIONS.**

25 10–103.

26           (b) The following provisions of this division apply to Baltimore City:

27           (1) this title;

28           (2) § 1–101(m) (Definitions – “Priority funding area”);

29           (3) § 1–101(o) (Definitions – “Sensitive area”);

30           (4) § 1–201 (Visions);

- 1 (5) § 1–206 (Required education);
- 2 (6) § 1–207 (Annual report – In general);
- 3 (7) § 1–208 (Annual report – Measures and indicators);
- 4 (8) Title 1, Subtitle 3 (Consistency);
- 5 (9) Title 1, Subtitle 4, Parts II and III (Home Rule  
6 Counties – Comprehensive Plans; Implementation);
- 7 (10) § 4–104(b) (Limitations – Bicycle parking);
- 8 (11) § 4–205 (Administrative adjustments);
- 9 (12) § 4–207 (Exceptions – Maryland Accessibility Code);
- 10 (13) § 4–210 (Permits and variances – Solar panels);
- 11 **(14) § 4–211 (GENERATING STATION ZONING);**
- 12 **[(14)] (15) § 5–201(d) (Subdivision regulations – Burial sites);**
- 13 **[(15)] (16) Title 7, Subtitle 1 (Development Mechanisms);**
- 14 **[(16)] (17) Title 7, Subtitle 2 (Transfer of Development Rights);**
- 15 **[(17)] (18) Title 7, Subtitle 3 (Development Rights and Responsibilities**  
16 **Agreements);**
- 17 **[(18)] (19) Title 7, Subtitle 4 (Inclusionary Zoning); and**
- 18 **[(19)] (20) Title 11, Subtitle 2 (Civil Penalty).**

### 19 Article – Public Utilities

20 7–207.

- 21 (b) (1) (i) Unless a certificate of public convenience and necessity for the  
22 construction is first obtained from the Commission, a person may not begin construction in  
23 the State of:
- 24 1. a generating station; or
- 25 2. a qualified generator lead line.



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

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

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

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

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

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

19 **(IV) NOTWITHSTANDING SUBPARAGRAPH (I) OF THIS**  
20 **PARAGRAPH, IF A LOCAL JURISDICTION HAS ADOPTED ZONING REGULATIONS**  
21 **UNDER § 4–211 OF THE LAND USE ARTICLE, THE COMMISSION MAY NOT ISSUE A**  
22 **CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE CONSTRUCTION**  
23 **OF A GENERATING STATION UNLESS THE CONSTRUCTION OF THE GENERATING**  
24 **STATION COMPLIES WITH THE LOCAL JURISDICTION’S ZONING REGULATIONS.**

25 7–207.1.

26 (b) (1) The Commission shall require a person that is exempted from the  
27 requirement to obtain a certificate of public convenience and necessity to obtain approval  
28 from the Commission under this section before the person may construct a generating  
29 station described in subsection (a) of this section.

30 (2) An application for approval under this section shall:

31 (i) be made to the Commission in writing on a form adopted by the  
32 Commission;

33 (ii) be verified by oath or affirmation; and

1 (iii) contain information that the Commission requires, including:

2 1. proof of compliance with all applicable requirements of the  
3 independent system operator; and

4 2. a copy of an interconnection, operation, and maintenance  
5 agreement between the generating station and the local electric company.

6 **(3) NOTWITHSTANDING PARAGRAPH (1) OF THIS SUBSECTION, IF A**  
7 **LOCAL JURISDICTION HAS ADOPTED ZONING REGULATIONS UNDER § 4-211 OF THE**  
8 **LAND USE ARTICLE, THE COMMISSION MAY NOT APPROVE THE CONSTRUCTION OF**  
9 **A GENERATING STATION UNLESS THE CONSTRUCTION OF THE GENERATING**  
10 **STATION COMPLIES WITH THE LOCAL JURISDICTION'S ZONING REGULATIONS.**

11 SECTION 2. AND BE IT FURTHER ENACTED, That:

12 (a) The power plant environmental research program established under § 3-303  
13 of the Natural Resources Article shall study and make recommendations on improving  
14 notice and communication processes between developers of generating stations, the State,  
15 and local jurisdictions.

16 (b) In conducting the study and developing recommendations, the program shall  
17 consult with representatives of:

18 (1) the Public Service Commission;

19 (2) the Maryland Energy Administration;

20 (3) the Maryland Association of Counties;

21 (4) the Maryland Municipal League;

22 (5) the Solar Energy Industries Association;

23 (6) the American Wind Energy Association;

24 (7) the Maryland Petroleum Council;

25 (8) the agricultural preservation community, including the Maryland  
26 Agricultural Land Preservation Foundation and the Rural Legacy Program;

27 (9) the land conservation community, including the Heritage Conservation  
28 Program and the Maryland Environmental Trust; and

29 (10) the historic preservation communities, including the Maryland  
30 Heritage Areas Program.

1           (c)    On or before December 31, 2017, the program shall submit its findings and  
2 recommendations to the Governor and, in accordance with § 2-1246 of the State  
3 Government Article, the General Assembly.

4           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
5 October 1, 2017.