

HOUSE BILL 308

C5, J1

9lr0792

By: **Delegates R. Lewis, Charkoudian, Hill, Lisanti, and Shetty**

Introduced and read first time: January 28, 2019

Assigned to: Economic Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 15, 2019

CHAPTER _____

1 AN ACT concerning

2 **Public Service Commission – Certificate of Public Convenience and Necessity –**
3 **Rapid Health Impact Assessment and Final Action**

4 FOR the purpose of requiring an applicant for a certificate of public convenience and
5 necessity for certain construction to conduct a rapid health impact assessment (HIA)
6 on the project and report on its findings; requiring a rapid HIA report to be completed
7 within a certain period of time after the applicant submits its application to the
8 Public Service Commission; requiring an applicant to complete the rapid HIA in a
9 certain manner; requiring the rapid HIA report to be considered part of a certain
10 application; altering the factors with respect to which the Commission is required to
11 give due consideration before taking final action on a certain application; defining a
12 certain term; and generally relating to certificates of public convenience and
13 necessity.

14 BY repealing and reenacting, with amendments,
15 Article – Public Utilities
16 Section 7–207
17 Annotated Code of Maryland
18 (2010 Replacement Volume and 2018 Supplement)

19 ~~Preamble~~

20 ~~WHEREAS, The Public Service Commission has the discretion and authority to~~
21 ~~regulate the quality of public utility services and approve certain construction projects and~~
22 ~~electricity generation; and~~

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.



~~1 WHEREAS, The Public Service Commission is not now required to systematically
2 provide for additional health and safety protections for ratepayers; and~~

~~3 WHEREAS, In general, the Public Service Commission may approve an application
4 without consideration of any health impacts of the activity on nearby Maryland residents;
5 and~~

~~6 WHEREAS, Additional public protections should be a requirement in the application
7 approval process; and~~

~~8 WHEREAS, An applicant proposing a project that requires approval from the Public
9 Service Commission should be required to conduct or contract with subject matter experts
10 to conduct a Health Impact Assessment to more fully assess impacts on nearby residents
11 to inform the Commission's approval of applications; now, therefore,~~

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

14 Article – Public Utilities

15 7–207.

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

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

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

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

27 (2) (i) In this section the following words have the meanings indicated.

28 (ii) “Brownfields site” means:

29 1. a former industrial or commercial site identified by federal
30 or State laws or regulation as contaminated or polluted;

31 2. a closed landfill regulated by the Department of the
32 Environment; or

1 3. mined land.

2 (iii) 1. "Mined land" means the surface or subsurface of an area
3 in which surface mining operations will be, are being, or have been conducted.

4 2. "Mined land" includes:

5 A. private ways and roads used for mining appurtenant to
6 any surface mining area;

7 B. land excavations;

8 C. workings; and

9 D. overburden.

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

14 (v) "RAPID HIA" MEANS A HEALTH IMPACT ASSESSMENT THAT:

15 1. ANALYZES THE ACTUAL OR POTENTIAL HEALTH
16 EFFECTS OF ACTIVITY DESCRIBED UNDER SUBSECTION (C) OF THIS SECTION ON THE
17 SURROUNDING POPULATION, INCLUDING THE DISTRIBUTION OF THOSE EFFECTS
18 WITHIN THE POPULATION;

19 2. MAKES RECOMMENDATIONS ON MITIGATING,
20 AVOIDING, OR MANAGING ANY NEGATIVE HEALTH IMPACTS;

21 3. USES EXISTING KNOWLEDGE AND EVIDENCE; AND

22 4. IS COMPLETED WITHIN 30 DAYS.

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

26 1. a generating station; or

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

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

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

32 (iii) Notwithstanding subparagraph (i) of this paragraph and subject
33 to subparagraph (iv) of this paragraph, the Commission may issue a certificate of public
34 convenience and necessity for the construction of an overhead transmission line only if the
35 applicant for the certificate of public convenience and necessity:

36 1. is an electric company; or

1 2. is or, on the start of commercial operation of the overhead
2 transmission line, will be subject to regulation as a public utility by an officer or an agency
3 of the United States.

4 (iv) The Commission may not issue a certificate of public convenience
5 and necessity for the construction of an overhead transmission line in the electric
6 distribution service territory of an electric company to an applicant other than an electric
7 company if:

8 1. the overhead transmission line is to be located solely
9 within the electric distribution service territory of that electric company; and

10 2. the cost of the overhead transmission line is to be paid
11 solely by that electric company and its ratepayers.

12 (v) 1. This subparagraph applies to the construction of an
13 overhead transmission line for which a certificate of public convenience and necessity is
14 required under this section.

15 2. On issuance of a certificate of public convenience and
16 necessity for the construction of an overhead transmission line, a person may acquire by
17 condemnation, in accordance with Title 12 of the Real Property Article, any property or
18 right necessary for the construction or maintenance of the transmission line.

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

23 1. require the person to obtain new real property or
24 additional rights—of—way through eminent domain; or

25 2. require larger or higher structures to accommodate:

26 A. increased voltage; or

27 B. larger conductors.

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

31 2. Within 30 days after construction is completed under
32 subsubparagraph 1 of this subparagraph, a person shall file a report with the Commission
33 describing the work that was completed.

1 **(C) (1) AN APPLICANT FOR A CERTIFICATE OF PUBLIC CONVENIENCE**
2 **AND NECESSITY FOR THE CONSTRUCTION OF A GENERATING STATION, AN**
3 **OVERHEAD TRANSMISSION LINE DESIGNED TO CARRY A VOLTAGE IN EXCESS OF**
4 **69,000 VOLTS, OR A QUALIFIED GENERATOR LEAD LINE SHALL CONDUCT A RAPID**
5 **HIA ON THE PROPOSED PROJECT AND REPORT ON THE FINDINGS OF THE RAPID**
6 **HIA.**

7 **(2) THE RAPID HIA REPORT REQUIRED UNDER PARAGRAPH (1) OF**
8 **THIS SUBSECTION SHALL BE COMPLETED NOT LATER THAN 45 DAYS AFTER THE**
9 **APPLICANT SUBMITS THE APPLICANT'S APPLICATION TO THE COMMISSION.**

10 **(3) AN APPLICANT SHALL COMPLETE A RAPID HIA REQUIRED UNDER**
11 **PARAGRAPH (1) OF THIS SUBSECTION:**

12 **(I) BY CONTRACTING WITH A PERSON WITH EXPERTISE**
13 **RELEVANT TO THE RAPID HIA; OR**

14 **(II) IN ACCORDANCE WITH ANY GUIDANCE ON CONDUCTING A**
15 **RAPID HIA AVAILABLE FROM THE LOCAL HEALTH DEPARTMENT, THE MARYLAND**
16 **DEPARTMENT OF HEALTH, OR ANY OTHER FEDERAL OR STATE AGENCY.**

17 **(4) THE RAPID HIA REPORT REQUIRED UNDER PARAGRAPH (1) OF**
18 **THIS SUBSECTION SHALL BE CONSIDERED PART OF THE APPLICATION SUBMITTED**
19 **TO THE COMMISSION UNDER THIS SECTION.**

20 **[(c)] (D) (1) On receipt of an application for a certificate of public convenience**
21 **and necessity under this section, the Commission shall provide notice immediately or**
22 **require the applicant to provide notice immediately of the application to:**

23 (i) the Department of Planning;

24 (ii) the governing body, and if applicable the executive, of each
25 county or municipal corporation in which any portion of the generating station, overhead
26 transmission line, or qualified generator lead line is proposed to be constructed;

27 (iii) the governing body, and if applicable the executive, of each
28 county or municipal corporation within 1 mile of the proposed location of the generating
29 station, overhead transmission line, or qualified generator lead line;

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

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

4 (vi) for a proposed overhead transmission line, each owner of land
5 and each owner of adjacent land; and

6 (vii) all other interested persons.

7 (2) The Commission, when sending the notice required under paragraph
8 (1) of this subsection, shall forward a copy of the application to:

9 (i) each appropriate State unit and unit of local government for
10 review, evaluation, and comment regarding the significance of the proposal to State,
11 area-wide, and local plans or programs; and

12 (ii) each member of the General Assembly included under paragraph
13 (1)(iv) and (v) of this subsection who requests a copy of the application.

14 (3) On receipt of an application for a certificate of public convenience and
15 necessity under this section, the Commission shall provide notice of the application on the
16 Commission's social media platforms and website.

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

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

27 (3) (i) Once in each of the 4 successive weeks immediately before the
28 hearing date, the Commission shall provide weekly notice of the public hearing and an
29 opportunity for public comment:

30 1. by advertisement in a newspaper of general circulation in
31 the county or municipal corporation affected by the application;

32 2. on two types of social media; and

33 3. on the Commission's website.

(ii) Before a public hearing, the Commission shall coordinate with the governing body of the county or municipal corporation in which any portion of the construction of the generating station, overhead transmission line, or qualified generator lead line is proposed to be located to identify additional options for providing, in an efficient and cost-effective manner, notice of the public hearing through other types of media that are familiar to the residents of the county or municipal corporation.

(4) (i) On the day of a public hearing, an informational sign shall be posted prominently at or near each public entrance of the building in which the public hearing will be held.

(ii) The informational sign required under subparagraph (i) of this paragraph shall:

1. state the time, room number, and subject of the public hearing; and

2. be at least 17 by 22 inches in size.

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

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

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

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

(2) THE APPLICANT'S FINDINGS FROM THE RAPID HIA COMPLETED UNDER SUBSECTION (C) OF THIS SECTION;

[(2)] (3) the effect of the generating station, overhead transmission line, or qualified generator lead line on:

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

(ii) economics;

(iii) esthetics;

(iv) historic sites;

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

3 (vi) [when applicable,] air [quality] and water [pollution] **QUALITY**
4 **IN THE SURROUNDING AREAS**; and

5 (vii) the availability of means for the required timely disposal of
6 wastes produced by any generating station; and

7 **[(3)] (4)** for a generating station:

8 (i) the consistency of the application with the comprehensive plan
9 and zoning of each county or municipal corporation where any portion of the generating
10 station is proposed to be located; and

11 (ii) the efforts to resolve any issues presented by a county or
12 municipal corporation where any portion of the generating station is proposed to be located.

13 **[(f)] (G)** For the construction of an overhead transmission line, in addition to the
14 considerations listed in subsection **[(e)] (F)** of this section, the Commission shall:

15 (1) take final action on an application for a certificate of public convenience
16 and necessity only after due consideration of:

17 (i) the need to meet existing and future demand for electric service;
18 and

19 (ii) for construction related to a new overhead transmission line, the
20 alternative routes that the applicant considered, including the estimated capital and
21 operating costs of each alternative route and a statement of the reason why the alternative
22 route was rejected;

23 (2) require as an ongoing condition of the certificate of public convenience
24 and necessity that an applicant comply with:

25 (i) all relevant agreements with PJM Interconnection, L.L.C., or its
26 successors, related to the ongoing operation and maintenance of the overhead transmission
27 line; and

28 (ii) all obligations imposed by the North America Electric Reliability
29 Council and the Federal Energy Regulatory Commission related to the ongoing operation
30 and maintenance of the overhead transmission line; and

31 (3) require the applicant to identify whether the overhead transmission
32 line is proposed to be constructed on:

33 (i) an existing brownfields site;

1 (ii) property that is subject to an existing easement; or

2 (iii) a site where a tower structure or components of a tower structure
3 used to support an overhead transmission line exist.

4 **[(g)] (H)** (1) The Commission may not authorize, and a person may not
5 undertake, the construction of an overhead transmission line that is aligned with and
6 within 1 mile of either end of a public airport runway, unless:

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

10 (ii) the Maryland Aviation Administration concurs in that
11 determination.

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

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
16 October 1, 2019.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.