

HOUSE BILL 1188

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3lr1429
CF 3lr3073

By: **Delegate Atterbeary**

Introduced and read first time: February 10, 2023

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Public Utilities – Certificate of Public Convenience and Necessity – Solar**
3 **Photovoltaic Systems**

4 FOR the purpose of defining “generating station” as it relates to the requirement to obtain
5 a certificate of public convenience and necessity or approval from the Public Service
6 Commission for a person who constructs a generating station that has the capacity
7 to produce a certain amount of electricity from a solar photovoltaic system; and
8 generally relating to the requirement to obtain a certificate of public convenience
9 and necessity.

10 BY repealing and reenacting, with amendments,
11 Article – Public Utilities
12 Section 7–207(a), 7–207.1, and 7–207.2
13 Annotated Code of Maryland
14 (2020 Replacement Volume and 2022 Supplement)

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

17 **Article – Public Utilities**

18 7–207.

19 (a) (1) In this section the following words have the meanings indicated.

20 (2) “Brownfields site” means:

21 (i) a former industrial or commercial site identified by federal or
22 State laws or regulation as contaminated or polluted;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (ii) a closed landfill regulated by the Department of the
2 Environment; or

3 (iii) mined land.

4 (3) (i) "Construction" means:

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

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

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

15 (4) "GENERATING STATION" DOES NOT INCLUDE:

16 (I) A GENERATING UNIT OR FACILITY THAT:

17 1. IS USED FOR THE PRODUCTION OF ELECTRICITY;

18 2. HAS THE CAPACITY TO PRODUCE NOT MORE THAN 2
19 MEGAWATTS OF ALTERNATING CURRENT; AND

20 3. IS INSTALLED WITH EQUIPMENT THAT PREVENTS THE
21 FLOW OF ELECTRICITY TO THE ELECTRIC GRID DURING TIME PERIODS WHEN THE
22 ELECTRIC GRID IS OUT OF SERVICE; OR

23 (II) A COMBINATION OF TWO OR MORE GENERATING UNITS OR
24 FACILITIES THAT:

25 1. ARE USED FOR THE PRODUCTION OF ELECTRICITY;

26 2. ARE LOCATED ON THE SAME PROPERTY OR ADJACENT
27 PROPERTIES;

28 3. HAVE THE CAPACITY TO PRODUCE, WHEN
29 CALCULATED CUMULATIVELY FOR ALL GENERATING UNITS OR FACILITIES ON THE
30 PROPERTY OR ADJACENT PROPERTY, MORE THAN 2 MEGAWATTS OF ALTERNATING
31 CURRENT; AND

1 4. FOR EACH INDIVIDUAL GENERATING UNIT OR
2 FACILITY:

3 A. HAS THE CAPACITY TO PRODUCE NOT MORE THAN 2
4 MEGAWATTS OF ALTERNATING CURRENT;

5 B. IS SEPARATELY METERED BY THE ELECTRIC
6 COMPANY; AND

7 C. DOES NOT EXPORT ELECTRICITY FOR SALE ON THE
8 WHOLESALE MARKET UNDER AN AGREEMENT WITH PJM INTERCONNECTION, LLC.

9 [(4)] (5) (i) “Mined land” means the surface or subsurface of an area
10 in which surface mining operations will be, are being, or have been conducted.

11 (ii) “Mined land” includes:

12 1. private ways and roads used for mining appurtenant to
13 any surface mining area;

14 2. land excavations;

15 3. workings; and

16 4. overburden.

17 [(5)] (6) “Qualified generator lead line” means an overhead transmission
18 line that is designed to carry a voltage in excess of 69,000 volts and would allow an
19 out-of-state Tier 1 or Tier 2 renewable source to interconnect with a portion of the electric
20 system in Maryland that is owned by an electric company.

21 7-207.1.

22 (A) IN THIS SECTION, “GENERATING STATION” DOES NOT INCLUDE:

23 (1) A GENERATING UNIT OR FACILITY THAT:

24 (I) IS USED FOR THE PRODUCTION OF ELECTRICITY;

25 (II) HAS THE CAPACITY TO PRODUCE NOT MORE THAN 2
26 MEGAWATTS OF ALTERNATING CURRENT; AND

1 **(III) IS INSTALLED WITH EQUIPMENT THAT PREVENTS THE FLOW**
2 **OF ELECTRICITY TO THE ELECTRIC GRID DURING TIME PERIODS WHEN THE**
3 **ELECTRIC GRID IS OUT OF SERVICE; OR**

4 **(2) A COMBINATION OF TWO OR MORE GENERATING UNITS OR**
5 **FACILITIES THAT:**

6 **(I) ARE USED FOR THE PRODUCTION OF ELECTRICITY;**

7 **(II) ARE LOCATED ON THE SAME PROPERTY OR ADJACENT**
8 **PROPERTIES;**

9 **(III) HAVE THE CAPACITY TO PRODUCE, WHEN CALCULATED**
10 **CUMULATIVELY FOR ALL GENERATING UNITS OR FACILITIES ON THE PROPERTY OR**
11 **ADJACENT PROPERTY, MORE THAN 2 MEGAWATTS OF ALTERNATING CURRENT; AND**

12 **(IV) FOR EACH INDIVIDUAL GENERATING UNIT OR FACILITY:**

13 **1. HAS THE CAPACITY TO PRODUCE NOT MORE THAN 2**
14 **MEGAWATTS OF ALTERNATING CURRENT;**

15 **2. IS SEPARATELY METERED BY THE ELECTRIC**
16 **COMPANY; AND**

17 **3. DOES NOT EXPORT ELECTRICITY FOR SALE ON THE**
18 **WHOLESALE MARKET UNDER AN AGREEMENT WITH PJM INTERCONNECTION, LLC.**

19 **[(a)] (B)** This section applies to a person who:

20 (1) constructs a generating station:

21 (i) designed to provide on-site generated electricity if:

22 1. the capacity of the generating station does not exceed 70
23 megawatts; and

24 2. the electricity that may be exported for sale from the
25 generating station to the electric system is sold only on the wholesale market pursuant to
26 an interconnection, operation, and maintenance agreement with the local electric company;
27 or

28 (ii) that produces electricity from wind if:

29 1. the generating station is land-based;

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

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

6 4. the Commission provides an opportunity for public
7 comment at a public hearing as provided in subsection [(f)] (G) of this section; and

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

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

16 B. not greater than 46 miles, measured from location
17 38.29667N, 76.37668W; and

18 C. subject to modification if necessary to reflect changes in
19 missions or technology at the Patuxent River Naval Air Station or changes in wind energy
20 technology; or

21 (2) constructs a generating station if:

22 (i) the capacity of the generating station does not exceed 25
23 megawatts;

24 (ii) the electricity that may be exported for sale from the generating
25 station to the electric system is sold only on the wholesale market pursuant to an
26 interconnection, operation, and maintenance agreement with the local electric company;
27 and

28 (iii) at least 10% of the electricity generated at the generating station
29 each year is consumed on-site.

30 [(b)] (C) (1) The Commission shall require a person that is exempted from
31 the requirement to obtain a certificate of public convenience and necessity to obtain
32 approval from the Commission under this section before the person may construct a
33 generating station described in subsection [(a)] (B) of this section.

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

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

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

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

5 1. proof of compliance with all applicable requirements of the
6 independent system operator; and

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

9 **[(c)] (D)** On receipt of an application for approval under this section, the
10 Commission shall provide notice immediately or require the applicant to provide notice
11 immediately of the application to:

12 (1) the governing body of each county or municipal corporation in which
13 any portion of the generating station is proposed to be constructed;

14 (2) the governing body of each county or municipal corporation within 1
15 mile of the proposed location of the generating station;

16 (3) each member of the General Assembly representing any part of a county
17 in which any portion of the generating station is proposed to be constructed; and

18 (4) each member of the General Assembly representing any part of each
19 county within 1 mile of the proposed location of the generating station.

20 **[(d)] (E)** When reviewing an application for approval under this section, the
21 Commission shall:

22 (1) ensure the safety and reliability of the electric system;

23 (2) require the person constructing the generating station to notify the
24 Commission 2 weeks before the first export of electricity from a generating station approved
25 under this section; and

26 (3) conduct its review and approval in an expeditious manner.

27 **[(e)] (F)** Except for the notice required under subsection **[(c)] (D)** of this section,
28 the Commission may waive an element of the approval process under this section if the
29 Commission determines that the waiver is in the public interest.

30 **[(f)] (G)** (1) The Commission shall provide an opportunity for public
31 comment and hold a public hearing as provided under this subsection on an application for
32 approval made under subsection **[(a)(1)(ii)] (B)(1)(II)** of this section in each county and

1 municipal corporation in which any portion of the construction of a generating station is
2 proposed to be located.

3 (2) Upon the request of the governing body of a county or municipal
4 corporation in which any portion of the construction of a generating station is proposed to
5 be located, the Commission shall hold the public hearing jointly with the governing body.

6 (3) Once in each of 2 successive weeks immediately before the hearing date,
7 the Commission, at the expense of the applicant, shall provide weekly notice of the public
8 hearing and opportunity for public comment by advertisement in a newspaper of general
9 circulation in the county or municipal corporation affected by the application.

10 7-207.2.

11 (A) IN THIS SECTION, "GENERATING STATION" DOES NOT INCLUDE:

12 (1) A GENERATING UNIT OR FACILITY THAT:

13 (I) IS USED FOR THE PRODUCTION OF ELECTRICITY;

14 (II) HAS THE CAPACITY TO PRODUCE NOT MORE THAN 2
15 MEGAWATTS OF ALTERNATING CURRENT; AND

16 (III) IS INSTALLED WITH EQUIPMENT THAT PREVENTS THE FLOW
17 OF ELECTRICITY TO THE ELECTRIC GRID DURING TIME PERIODS WHEN THE
18 ELECTRIC GRID IS OUT OF SERVICE; OR

19 (2) A COMBINATION OF TWO OR MORE GENERATING UNITS OR
20 FACILITIES THAT:

21 (I) ARE USED FOR THE PRODUCTION OF ELECTRICITY;

22 (II) ARE LOCATED ON THE SAME PROPERTY OR ADJACENT
23 PROPERTIES;

24 (III) HAVE THE CAPACITY TO PRODUCE, WHEN CALCULATED
25 CUMULATIVELY FOR ALL GENERATING UNITS OR FACILITIES ON THE PROPERTY OR
26 ADJACENT PROPERTY, MORE THAN 2 MEGAWATTS OF ALTERNATING CURRENT; AND

27 (IV) FOR EACH INDIVIDUAL GENERATING UNIT OR FACILITY:

28 1. HAS THE CAPACITY TO PRODUCE NOT MORE THAN 2
29 MEGAWATTS OF ALTERNATING CURRENT;

1 **2. IS SEPARATELY METERED BY THE ELECTRIC**
 2 **COMPANY; AND**

3 **3. DOES NOT EXPORT ELECTRICITY FOR SALE ON THE**
 4 **WHOLESALE MARKET UNDER AN AGREEMENT WITH PJM INTERCONNECTION, LLC.**

5 **[(a)] (B)** This section applies to a person who constructs a generating station
 6 that:

7 (1) has the capacity to produce [at least] **MORE THAN 2** megawatts of
 8 electricity, **AS MEASURED BY THE ALTERNATING CURRENT RATING OF THE SYSTEM'S**
 9 **INVERTER**, from a solar photovoltaic system; and

10 (2) is exempted under § 7-207.1 of this subtitle from the requirement to
 11 obtain a certificate of public convenience and necessity.

12 **[(b)] (C)** (1) A person shall file an application for approval to construct a
 13 generating station under § 7-207.1 of this subtitle at least 6 months before construction
 14 commences.

15 (2) The Commission shall require a person who files an application for
 16 approval to construct a generating station to pay a deposit of 1% of total installed costs.

17 **[(c)] (D)** (1) The Commission shall place any deposits collected under
 18 subsection **[(b)] (C)** of this section into an escrow account.

19 (2) If a person demonstrates to the Commission that the person is fully
 20 authorized to commence construction within 18 months after filing an application for
 21 approval, the Commission shall refund the deposit, less reasonable administrative costs.

22 (3) (i) Subject to subparagraph (ii) of this paragraph, if a person does
 23 not commence construction within 18 months after filing an application for approval, the
 24 money held in the escrow account shall be:

25 1. deemed to be abandoned; and

26 2. transferred to the Maryland Strategic Energy Investment
 27 Fund under § 9-20B-05 of the State Government Article, less reasonable administrative
 28 costs.

29 (ii) 1. A person may request an extension for a project that does
 30 not commence construction within 18 months after the filing of an application for approval.

31 2. The Commission may grant the request based on factors
 32 the Commission considers compelling, including the occurrence of events outside the
 33 person's control.

1 SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the General
2 Assembly that this Act apply to solar energy generating facilities and eligible
3 customer-generators authorized by an electric company to engage in net energy metering
4 under § 7-306 of the Public Utilities Article and COMAR 20.50.10.07.

5 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
6 October 1, 2023.