

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1367 (Delegate Valderrama)
 Economic Matters

Public Utilities - Certificates of Public Convenience and Necessity - Energy Storage Devices

This bill requires a person to obtain a Certificate of Public Convenience and Necessity (CPCN) before constructing an “energy storage device” in the State. The bill makes conforming changes to provisions relating to the CPCN process. An “energy storage device” means a resource that (1) is capable of absorbing electrical energy, storing it for a period of time, and delivering the energy for use at a later time as needed, regardless of where the resource is located on the electric distribution system; (2) has a minimum energy storage capacity of one megawatt (MW); and (3) is installed behind or in front of the meter. The bill applies only prospectively.

Fiscal Summary

State Effect: Special fund expenditures for the Public Service Commission (PSC) increase by \$336,800 in FY 2025; future years reflect annualization, inflation, and ongoing costs. Special fund revenues for PSC increase correspondingly from fees and assessments. General/special fund expenditures for the Department of Natural Resources (DNR) increase by *at least* \$622,800 in FY 2025; future years reflect annualization, inflation, and ongoing costs.

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
SF Revenue	\$336,800	\$403,100	\$421,000	\$439,400	\$458,700
SF Expenditure	\$336,800	\$403,100	\$421,000	\$439,400	\$458,700
GF/SF Exp.	\$622,800	\$813,200	\$828,400	\$844,000	\$860,100
Net Effect	(\$622,800)	(\$813,200)	(\$828,400)	(\$844,000)	(\$860,100)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: The bill is not expected to materially affect local finances. However, the bill does have an operational effect on local governments, as discussed below.

Small Business Effect: Potential meaningful.

Analysis

Current Law: PSC is the lead agency for licensing the siting, construction, and operation of power plants and related facilities in the State through the CPCN process, which is a comprehensive process involving several other State agencies, including DNR and its Power Plant Research Program (PPRP) and the Maryland Department of the Environment (MDE).

Certificate of Public Convenience and Necessity Process

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. The application process involves notifying specified stakeholders, public hearings, the consideration of recommendations by State and local government entities, and the project's effect on various aspects of the State infrastructure, economy, and environment.

PSC must take final action on a CPCN application only after due consideration of the recommendations of the governing body of each county or municipality in which any portion of the project is proposed to be located and the effect of the project on various aspects of the State infrastructure, economy, and environment. For a generating station specifically, PSC must provide due consideration of (1) a CPCN application's consistency with the comprehensive plan and zoning of each county or municipality where any portion of the generating station is proposed to be located and (2) the efforts to resolve issues presented by a county or municipality pertaining to a proposed generating station located within its geographic lines.

The Supreme Court of Maryland, in *Bd. of Cty. Commissioners of Washington Cty. v. Perennial Solar, LLC*, 464 Md. 610 (2019), held that State law impliedly preempts local zoning regulation of solar energy generating systems that require a CPCN.

For additional information on the CPCN process, please see the **Appendix – Certificate of Public Convenience and Necessity**.

Maryland Energy Storage Program

Chapter 570 of 2023 requires PSC, by July 1, 2025, to establish and implement the Maryland Energy Storage Program, under which PSC must set targets for the cost-effective deployment of new energy storage devices in the State with a goal of achieving at least a cumulative total of 750 MW by the end of the 2027 PJM Interconnection, LLC (PJM) delivery year, 1,500 MW by the end of the 2030 delivery year, and 3,000 MW by the end of the 2033 delivery year. (PJM defines a “delivery year” as the 12 months beginning

June 1 and extending through May 31 of the following year.) Chapter 570 specifies that if a target cannot be met cost effectively, the target must be reduced to the maximum cost-effective amount for the relevant delivery year.

The Maryland Energy Storage Program must include competitive procurement mechanisms to reach a minimum of 3,000 MW of energy storage, or the maximum cost-effective amount of energy storage that can be deployed, by the end of the 2033 PJM delivery year. The program may include:

- a system of energy storage credits and market-based incentives designed to develop a robust energy storage market in the State;
- a requirement that investor-owned electric companies install or contract for energy storage devices or contract for energy storage credits from an energy storage project under the Maryland Energy Storage Pilot Program;
- a requirement that program participants make reasonable efforts to apply for all applicable State and federal grants, rebates, tax credits, loan guarantees, and other similar benefits as the benefits become available; or
- any other mechanism or policy that PSC determines is appropriate to achieve the goal of a robust cost-effective energy storage system in the State.

State Fiscal Effect:

Department of Natural Resources

By requiring a person to obtain a CPCN before constructing an energy storage device in the State, DNR anticipates that the bill results in an increase in the number of CPCN applications submitted each year. According to DNR, PPRP's evaluations of CPCN applications are highly time-intensive and require significant technical expertise to complete. As a result, DNR advises that existing staff within PPRP cannot handle the anticipated increase in workload and that it needs additional staff – as well as consultant support – to prepare the additional evaluations of CPCN applications stemming from the bill.

Accordingly, general/special fund expenditures for DNR increase by *at least* \$622,795 in fiscal 2025, which accounts for the bill's October 1, 2024 effective date. This estimate reflects the cost of hiring two site assessors within PPRP to complete evaluations of the additional CPCN applications anticipated to be submitted under the bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses, in addition to *at least* \$450,000 in consulting expenses for the same purpose. Consultant costs could be higher depending on the volume of additional CPCN applications submitted.

Positions	2.0
Salaries and Fringe Benefits	\$158,283
Consultant Costs	450,000
Other Operating Expenses	<u>14,512</u>
Minimum FY 2025 DNR Expenditures	\$622,795

Future year expenditures – which also reflect minimum costs – reflect (1) full salaries with annual increases and employee turnover; (2) annual increases in ongoing operating expenses; and (3) ongoing consultant costs of *at least* \$606,000 in fiscal 2026, adjusted annually for inflation.

In general, special funds from the Environmental Trust Fund (ETF) are used to fund PPRP’s operations. However, DNR indicates that general funds may be required to cover part of or all the expenses that PPRP incurs under the bill because the department anticipates that a revenue shortfall could materialize in ETF as soon as fiscal 2025.

Public Service Commission

Likewise, PSC also anticipates an increase in the volume of CPCN applications submitted each year under the bill. PSC further advises that the incremental workload required by the bill cannot be absorbed within existing resources and that it needs additional staff to (1) review the additional CPCN applications anticipated to be submitted under the bill and (2) provide litigation support in the additional CPCN proceedings resulting from the bill.

Accordingly, special fund expenditures for PSC increase by \$336,833 in fiscal 2025, which accounts for the bill’s October 1, 2024 effective date. This estimate reflects the cost of hiring two engineers to review additional CPCN applications and two staff attorneys to provide litigation support in related CPCN proceedings. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	4.0
Salaries and Fringe Benefits	\$307,809
Other Operating Expenses	<u>29,024</u>
Total FY 2025 PSC Expenditures	\$336,833

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Generally, PSC is funded through an assessment each fiscal year on the public service companies that it regulates. Under the bill, PSC will also collect a fee from each applicant for a CPCN seeking to construct an energy storage device; current regulations set an application fee of \$500 for each CPCN submitted. CPCN application fee revenues, though

unknown, are likely minimal and assumed to offset revenues generated from the standard assessment. Accordingly, special fund revenues for PSC increase correspondingly from application fees and assessments imposed on public service companies.

Other Agencies

MDE advises that while the bill results in an increase in workload relating to additional review under the CPCN process, it can handle any increase in workload using existing budgeted resources. The Office of People's Counsel also anticipates that it can handle any increase in workload using existing resources.

Local Fiscal Effect: According to the Maryland Municipal League, the bill shifts significant control over the approval and siting of energy storage devices from local governments to PSC due to its requirement that energy storage devices go through the CPCN process. Whereas municipalities currently have considerable input into whether an energy storage device is constructed and where the device is sited, PSC is only required to consider local zoning and comprehensive plans when rendering a decision to approve or deny a CPCN permit. Operational impacts to local governments notwithstanding, the bill is not anticipated to materially affect local finances.

Small Business Effect: Small businesses engaged in the development of energy storage facilities are required to pay the additional costs of preparing and filing CPCN applications to construct energy storage devices and may incur costs related to litigating CPCN proceedings. Some small business developers may be dissuaded from building energy storage facilities because of not wanting to go through the CPCN process; however, others may benefit from the bill's changes if they can obtain a CPCN and construct an energy storage device that a local government, in the absence of the bill, would not have approved or would have taken longer to approve.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Anne Arundel, Baltimore, Charles, Garrett, and Howard counties; Maryland Association of Counties; cities of Greenbelt and Laurel; Maryland Municipal League; Town of La Plata; Maryland Department of the Environment; Department of Natural Resources; Maryland Department of Planning; Maryland Energy Administration; Public Service Commission; Department of Legislative Services

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Appendix – Certificate of Public Convenience and Necessity

General Overview

The Public Service Commission (PSC) is the lead agency for licensing the siting, construction, and operation of power plants and related facilities in the State through Certificates of Public Convenience and Necessity (CPCN). The CPCN process is comprehensive and involves several other State agencies, including the Department of Natural Resources (and its Power Plant Research Program), and the Maryland Department of the Environment. Subject to limited exemptions described below, a person may not begin construction in the State of a generating station, overhead transmission line, or qualified generator lead line unless a CPCN is first obtained from PSC.

State law provides that a “generating station” excludes a facility with up to 2 megawatts of capacity if it meets other specified requirements. Additionally, pursuant to Chapter 460 of 2023, a generating station excludes a combination of two or more co-located or adjacent facilities used for electricity production from solar photovoltaic systems or specified eligible customer-generators that have a maximum cumulative capacity of 14 megawatts (including maximum individual capacities of 2 megawatts) and meet other requirements.

The CPCN process, detailed further below, involves the notification of specified stakeholders, the holding of public hearings, the consideration of recommendations by State and local government entities, and the consideration of the project’s effects on various aspects of the State infrastructure, economy, and environment.

In December 2020, PSC initiated a rulemaking (RM 72) to revise regulations governing CPCNs for generating stations. Updated regulations became effective in September 2021. Among other changes, the regulations contain additional information requirements – to assist in project evaluation – and allow for electronic submission and distribution of application materials.

Notification Process

Upon receipt of a CPCN application, PSC – or the CPCN applicant, if required by PSC – must immediately provide notice to specified recipients, including the executive and governing body of affected local governments, affected members of the General Assembly, and other interested persons. When providing the notice, PSC must also forward the CPCN application to each appropriate unit of State and local government for review, evaluation, and comment and to each member of the General Assembly who requests a copy.

Public Hearing and Comment

PSC must provide an opportunity for public comment and hold a public hearing on a CPCN application in each county and municipality in which any portion of the construction of a generating station, overhead transmission line, or qualified generator lead line is proposed to be located. PSC must hold the hearing jointly with the governing body of the county or municipality and must provide weekly notice during the four weeks prior to the hearing, both in a newspaper and online, and must further coordinate with each local government to identify additional hearing notification options. PSC must ensure presentation and recommendations from each interested State unit and must allow representatives of each State unit to sit during the hearing of all parties. PSC must then allow each State unit 15 days after the conclusion of the hearing to modify the unit's initial recommendations.

Public Service Commission Considerations

PSC must take final action on a CPCN application only after due consideration of (1) recommendations of the governing body of each county or municipality in which any portion of the project is proposed to be located; (2) various aspects of the State infrastructure, economy, and environment; and (3) the effect of climate change on the project. For example, PSC must consider the effect of the project on the stability and reliability of the electric system and, when applicable, air and water pollution. There are additional considerations specifically for a generating station or an overhead transmission line. For example, PSC must consider the impact of a generating station on the quantity of annual and long-term statewide greenhouse gas emissions.

Generating Station Exemptions

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

- the facility is designed to provide onsite generated electricity, the capacity is up to 70 megawatts, and the excess electricity can be sold only on the wholesale market pursuant to a specified agreement with the local electric company;
- at least 10% of the electricity generated is consumed onsite, the capacity is up to 25 megawatts, and the excess electricity is sold on the wholesale market pursuant to a specified 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 who 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.