

**Department of Legislative Services**

Maryland General Assembly

2024 Session

**FISCAL AND POLICY NOTE**

**First Reader**

House Bill 579

(The Speaker, *et al.*) (By Request - Administration)

Economic Matters

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**Certificate of Public Convenience and Necessity and Related Approvals –  
Definition of Generating Station (Critical Infrastructure Streamlining Act of  
2024)**

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This Administration bill allows generating units or facilities that meet specified requirements to be constructed without obtaining either (1) a Certificate of Public Convenience and Necessity (CPCN) or (2) approval to construct from the Public Service Commission (PSC) under the CPCN exemption process. **The bill takes effect July 1, 2024.**

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**Fiscal Summary**

**State Effect:** Special fund revenues for the Maryland Department of the Environment (MDE) may increase beginning as early as FY 2025, as discussed below. The bill is not anticipated to otherwise materially affect State government operations or finances, although PSC, the Department of Natural Resources, and MDE may have fewer CPCN applications to review, while MDE may have additional air quality permits to construct to process.

**Local Effect:** Potential significant impact on local government expenditures, as discussed below. Local revenues are not materially affected.

**Small Business Effect:** The Administration has determined that this bill has a meaningful impact on small business (attached). The Department of Legislative Services concurs with this assessment, as discussed below.

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## Analysis

**Bill Summary:** For purposes of the requirement to obtain a CPCN or approval to construct under the CPCN exemption process, a “generating station” does not include a generating unit or facility that:

- is used for the production of electricity for the purpose of (1) onsite emergency backup at a facility when service from the electric company is interrupted and (2) test and maintenance operations necessary to ensure functionality of the generating unit or facility in the event of a service interruption;
- is installed with equipment that prevents the flow of electricity to the electric grid; and
- is subject to a permit to construct issued by MDE. (While the bill does not specify the specific permit addressed by this provision, this analysis assumes the bill is referring to an air quality permit to construct).

“Generating station” also does not include a combination of two or more generating units or facilities that satisfy the above requirements.

**Current Law:** Chapter 460 of 2023 specified that a generating station, as defined, does not include a generating unit or facility that is used to produce electricity, has a capacity of up to 2 megawatts (MW), and is installed with equipment that prevents the flow of electricity to the electric grid during times when the electric grid is out of service. Additionally, a generating station does not include a combination of two or more generating units or facilities, located on the same property or adjacent properties, that (1) are used to produce electricity from a solar photovoltaic system or an eligible customer-generator that is subject to the State’s net metering law; (2) have individual capacities of up to 2 MW and a cumulative capacity of more than 2 MW, but not more than 14 MW; (3) are separately metered by the electric company; and (4) do not export electricity for sale on the wholesale market under an agreement with PJM Interconnection, LLC.

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

### *Air Quality Permit to Construct*

Title 2, Subtitle 4 of the Environment Article authorizes MDE to adopt regulations that require a person to obtain a permit or registration before the construction, modification, operation, or use of a source that may cause or control emissions into the air. MDE regulations define the types of sources that are subject to the permit requirements. MDE

may not, however, require a permit or registration for the construction of a generating station constructed by a person that is required to obtain a CPCN. Title 2, Subtitle 4 includes a requirement applicable to specified permits to construct a new source or significantly modify (or replace components of) an existing permitted source that documentation be submitted to MDE that demonstrates compliance with all applicable local zoning and land use requirements.

**Background:** In August 2023, PSC denied a CPCN exemption request sought by Aligned Data Centers (ADC) to install up to 168 diesel generators – rated at 3 MW each – as a backup power source at a proposed data center site in Frederick County. In denying ADC’s exemption request, PSC raised concerns about the environmental impact of the proposed generators and noted that granting an exemption would allow ADC, under certain circumstances, to operate all 168 diesel generators simultaneously, which would be the equivalent of operating a 504 MW diesel power plant. PSC authorized a provisional exemption for 70 MW of generation, subject to additional requirements. In October 2023, ADC announced it would not proceed with its project due to PSC’s decision. The PSC determination and ADC decision to pull out of the project illustrates the potentially substantial energy needs and regulatory considerations for data center development in the State.

Maryland has the potential to become a hub for data center development. Its next-door neighbor, Virginia, is home to approximately 35% of all known hyperscale data centers worldwide, most of which are in Fairfax County and Loudoun County. With space constraints in those two counties and a diminishing appetite among residents for further data center development, the industry is looking at new jurisdictions (including Maryland) in which it can build data centers.

The industry’s first major foray into Maryland came in June 2021, when Quantum Loophole, Inc. acquired more than 2,100 acres of land near Adamstown in Frederick County for the development of Quantum Frederick, a first-of-its kind “master-planned data center campus” that Quantum Loophole envisions as a gigawatt-scale technology hub that will offer city-scale infrastructure for hyperscale, colocation, and purpose-built data center developers. Quantum Frederick will be connected to Data Center Alley in Northern Virginia through an underground hyperscale fiber network ring referred to as the “QLoop.” Proponents of the project point to potential economic benefits, including jobs and tax revenues, and contend that it is being located on the grounds of an abandoned aluminum smelting factory, a prime location for responsible cleanup and redevelopment. However, concerns have been raised by members of the public, advocacy groups, and governmental entities about the impact Quantum Frederick could have on the environment and energy use.

**State Revenues:** To the extent that the bill results in an increase in the number of applications for air quality permits to construct submitted to MDE, special fund revenues from permit application fees increase accordingly. Because MDE cannot reliably estimate the number of additional permit applications it may receive, a reliable estimate of the potential magnitude of the bill's impact on special fund revenues cannot be made at this time. Pursuant to current regulations, the relevant application fee for an air quality permit to construct for a generating unit/facility affected by the bill ranges from \$400 for an individual generating unit to \$20,500 for a major source (such as a cluster of back-up generators at a data center).

**Local Expenditures:** The bill's impact on local expenditures cannot be reliably estimated; however, in some jurisdictions, the impact may be significant. The impact varies by local jurisdiction and depends on a variety of factors, including a jurisdiction's geography, its existing approach to electric generation projects, and the number and type of electric generating stations under consideration for construction in the jurisdiction.

The bill enables a developer to bypass the CPCN process for a project that, among other requirements, produces electricity for emergency backup when service from the electric company is interrupted and test and maintenance operations necessary to ensure systems function properly in the event of a service interruption. It is unknown to what extent developers will attempt to use this exemption, but the number of developers that do so could be significant (particularly for the construction of data centers).

To the extent that the number of applications for CPCNs decreases under the bill, a local jurisdiction may have fewer CPCN cases to intervene in. On the other hand, if the bill's changes lead to a significant increase in the number of electric generation projects in the State that bypass the CPCN process, a local government may feel compelled to more actively regulate and/or scrutinize such projects within its jurisdictional limits. A local government could incur significant expenditures if it (1) imposes new requirements on developers of electric generation projects; (2) employs engineers and other personnel to study and review prospective electric generation projects; or (3) hires external consultants to study a project's possible environmental, economic, and/or socioeconomic impacts.

**Small Business Effect:** To the extent that additional generating stations are built in the State as a result of the bill, small businesses that participate in the construction and/or maintenance of the generating stations benefit. Small businesses may also benefit from providing construction and/or maintenance services for new data centers if the bill incentivizes data center development in the State that otherwise would not have moved forward.

## Additional Information

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

**Designated Cross File:** SB 474 (The President, *et al.*) (By Request - Administration) - Education, Energy, and the Environment.

**Information Source(s):** Maryland Municipal League; Governor's Office; Maryland Department of the Environment; Department of Natural Resources; Office of People's Counsel; Public Service Commission; Bay Journal; Virginia Economic Development Partnership; Department of Legislative Services

**Fiscal Note History:** First Reader - February 20, 2024  
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## **Appendix – Certificate of Public Convenience and Necessity**

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### *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.



## ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: **Certificate of Public Convenience and Necessity and Related Approvals - Definition of Generating Station (Critical Infrastructure Streamlining Act of 2024)**

BILL NUMBER: HB0579

PREPARED BY: Governor's Legislative Office

### PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

**OR**

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

### PART B. ECONOMIC IMPACT ANALYSIS