

Department of Legislative Services
 Maryland General Assembly
 2025 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 1406 (Delegate Behler, *et al.*)
 Economic Matters

Certificate of Public Convenience and Necessity - Environmental Impact
 Analysis and Existing Burden Report

This bill requires an applicant for a Certificate of Public Convenience and Necessity (CPCN) to submit an environmental impact analysis and, under specified circumstances, an existing burden report with their application, subject to specified requirements. The Public Service Commission (PSC) may not approve a CPCN application if it determines that the proposed project would cause or contribute to an increased potential for adverse environmental and public health impacts within a specified surrounding area. However, PSC may grant a conditional CPCN, subject to specified requirements for mitigation by the applicant. **The bill takes effect July 1, 2025.**

Fiscal Summary

State Effect: Special fund expenditures for PSC increase by \$237,500 in FY 2026; special fund revenues increase correspondingly from assessments imposed on public service companies. General/special fund expenditures for the Department of Natural Resources (DNR) increase by \$219,100 in FY 2026. Future years reflect inflation and ongoing costs. The Maryland Department of the Environment (MDE) can likely handle any increase in workload with existing resources.

(in dollars)	FY 2026	FY 2027	FY 2028	FY 2029	FY 2030
SF Revenue	\$237,500	\$216,800	\$226,400	\$236,500	\$246,600
SF Expenditure	\$237,500	\$216,800	\$226,400	\$236,500	\$246,600
GF/SF Exp.	\$219,100	\$212,400	\$216,700	\$221,100	\$225,500
Net Effect	(\$219,100)	(\$212,400)	(\$216,700)	(\$221,100)	(\$225,500)

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

Local Effect: The bill is not anticipated to materially affect local finances or operations.

Small Business Effect: Minimal.

Analysis

Bill Summary:

Application for Certificate of Public Convenience and Necessity – New Requirements

A person applying for a CPCN – in addition to complying with existing application requirements specified in PSC regulations – must include an initial environmental impact analysis and, if applicable, an initial existing burden report with the person’s application.

After the public hearing and comment period that is required for a CPCN application under existing law, an applicant must revise their initial environmental impact analysis and, if applicable, their initial existing burden report. The revised analysis and report must take into account (1) any feedback received from existing stakeholders contacted as part of the CPCN process and (2) any public comments received during the comment period. The applicant must submit a finalized environmental impact analysis and, if applicable, a finalized existing burden report to PSC.

Environmental Impact Analysis: An initial environmental impact analysis must include (1) a description of the proposed project and the environmental conditions of the proposed project site; (2) the environmental and public health impacts of the proposed generating station or line; (3) any irreversible or irretrievable commitment of resources involved in the construction; and (4) mitigation measures proposed to minimize identified environmental impacts.

Existing Burden Report: A person applying for a CPCN must submit an initial existing burden report for each at-risk census tract and area located within a 1.5-mile radius of the tract’s boundaries that may be impacted by the proposed generating station or line.

“At-risk census tract” means a census tract for which the final Environmental Justice (EJ) score as determined by the Maryland EJ tool is at or above the 75th percentile (EJ scores and the Maryland EJ tool are discussed further in the Current Law section).

An initial existing burden report must include:

- the EJ score, calculated by the Maryland EJ tool, for the census tract where the applicant is seeking to construct the generating station or line;
- a comprehensive list of each existing pollution source or category of sources that are impacting the community in which the applicant is seeking to construct the generating station or line, as specified;

- ambient concentrations of regulated air pollutants and hazardous air pollutants, whether regulated or unregulated;
- traffic volume and general noise and odor levels;
- exposure or potential exposure to lead, including lead-based paint;
- exposure or potential exposure to contaminated drinking water supplies;
- proximity of the proposed generating station or line to existing sources of pollution, as specified;
- the potential or projected contribution of the proposed generating station or line to existing pollution burdens in the community in which the applicant is seeking to construct the generating station or line, and the potential health effects of the contribution (given the existing burden);
- an evaluation of existing environmental and public health stressors in the community in which the applicant is seeking to construct the generating station or line; and
- an evaluation of any unavoidable environmental and public health stressors posed by the proposed generating station or line.

Public Service Commission – Additional Notice Requirements

PSC, when providing initial notice to specified stakeholders that it has received a CPCN application (as required under existing law), must include the final EJ score for each at-risk census tract and area located within a 1.5-mile radius of the tract’s boundaries where the proposed generating station or line will be located, plus a link to its website to access the related analysis and report. PSC must submit the finalized environmental impact analyses and existing burden reports, plus all related public comments, to those same stakeholders.

Public Service Commission – Approval of Certificate of Public Convenience and Necessity Applications

PSC may not approve a CPCN application unless the application includes the final environmental impact analysis and, if applicable, the final existing burden report. PSC must determine whether a final environmental impact analysis and any applicable final existing burden report indicate that a proposed generating station or line may cause or contribute to an increased potential for adverse environmental and public health impacts within an at-risk census tract and area located within a 1.5-mile radius of the tract’s boundaries. If PSC determines that a proposed generating station or line would cause or contribute to an increased potential for such adverse impacts within these specified zones, it may not approve the associated CPCN application.

However, the bill authorizes PSC to grant a conditional CPCN for a proposed generating station or line if it determines that, despite the increased potential for adverse

environmental and public health impacts, the station or line would serve an essential environmental, health, or safety need of the community where the station or line is to be located and there is no reasonable alternative available.

Conditional Certificates of Public Convenience and Necessity

If PSC grants a conditional CPCN, it must (1) impose additional permit conditions to protect public health and (2) require the applicant to enter into a cumulative impacts mitigation fund agreement in accordance with specified requirements.

A cumulative impacts mitigation fund agreement must be entered into with a community-based organization (or collection of community-based organizations) representing the community or communities affected by the proposed generating station or line. The agreement must establish ongoing monetary payments that are agreed on by the applicant and the community-based organization and deposited into a project-specific cumulative impacts mitigation fund for the life of the project.

A cumulative impacts mitigation fund agreement must (1) be enforceable in a State court and include language that the agreement is enforceable in a State court; (2) benefit all residents who live within the at-risk census tract affected by the proposed generating station or line; and (3) not restrict the right of residents or organizations to express concerns about or raise objections to the proposed generating station or line.

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

Certificate of Public Convenience Necessity Application Requirements that Relate to Environmental Impacts

PSC regulations require a CPCN applicant to provide extensive information about the project’s potential environmental impact, including (1) a summary of the environmental effects of the construction and operation of the project, including a description of the unavoidable impact and recommended mitigation; (2) a copy of all studies of the environmental impact of the proposed project prepared by the applicant; and (3) a statement of the ability to conform to the applicable environmental standards.

For the construction or modification of a generating station specifically, a CPCN applicant must also provide the following environmental information:

- a description of the effect on air quality, as specified;
- a description of the effect on water quality and appropriation, as specified;
- a description of the extent and effect on State or private tidal wetlands, nontidal wetlands and their buffers, or waterways and floodplains, as specified;
- a discussion of the economics and availability of means for the disposal of plant-generated wastes; and
- a discussion of the project’s impact on the State’s ability to satisfy the State’s Renewable Energy Portfolio Standard and greenhouse gas reduction requirements.

Environmental Justice Screening

A person who is applying for specified permits under § 1-601(a) of the Environment Article must include, as part of the permit application, the “EJ Score” from the “Maryland EJ tool” for the census tract where the applicant is seeking a permit, unless the permit requires the applicant to use a tool developed by the U.S. Environmental Protection Agency. MDE must review the EJ Score for the census tract where the applicant is seeking a permit using the Maryland EJ tool to verify the applicant’s information.

“EJ Score” means an overall evaluation of an area’s environment and existing environmental justice indicators, as defined by MDE in regulation, including pollution burden exposure, pollution burden environmental effects, sensitive populations, and socioeconomic factors. “Maryland EJ tool” means a publicly available State mapping tool that allows users to (1) explore layers of EJ concern; (2) determine an overall EJ Score for census tracts in the State; and (3) view additional context layers relevant to an area.

State Fiscal Effect:

Department of Natural Resources

PPRP’s evaluation of CPCN applications is a highly time-intensive task and requires significant technical expertise to complete. Because PPRP independently assesses CPCN projects for potential environmental and socioeconomic impacts, PPRP advises that it will need to examine the additional information that must be included in CPCN applications under the bill. According to DNR, existing staff within PPRP cannot handle the anticipated increase in workload and it needs additional staff – as well as technical support from consultants – to complete its evaluations of CPCN applications.

In general, special funds from the Environmental Trust Fund are used to fund PPRP’s operations. However, general funds may be required to cover part or all of the expenses that PPRP incurs under the bill because DNR anticipates a special fund revenue shortfall.

Accordingly, general/special fund expenditures for DNR increase by \$219,084 in fiscal 2026, which accounts for the bill’s July 1, 2025 effective date. This estimate reflects the cost of PPRP hiring one part-time site assessor and engaging consultants to evaluate the additional information that CPCN applications must include as a result of the bill. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses, in addition to \$150,000 in consulting expenses.

Position	0.5
Salary and Fringe Benefits	\$61,991
Consultant Costs	150,000
Other Operating Expenses	<u>7,093</u>
Total FY 2026 DNR Expenditures	\$219,084

Future year expenditures reflect (1) a half-time salary with annual increases and employee turnover; (2) annual increases in ongoing operating expenses; and (3) annual increases in ongoing consultant costs.

Public Service Commission

PSC anticipates that its review of CPCN applications becomes more complex and lengthier as a result of the bill. PSC advises that the incremental workload resulting from the bill cannot be absorbed within existing resources and that it needs additional staff to perform the requisite evaluations of the environmental impact analyses and existing burden reports included in CPCN applications pursuant to the bill.

Accordingly, special fund expenditures for PSC increase by \$237,500 in fiscal 2026, which accounts for the bill's July 1, 2025 effective date. This estimate reflects the cost of hiring two climate policy and impact analysts to support technical staff in the wider-ranging reviews of CPCN applications required by the bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2.0
Salaries and Fringe Benefits	\$222,210
Operating Expenses	<u>15,290</u>
Total FY 2026 PSC Expenditures	\$237,500

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

Generally, PSC is funded through an assessment on the public service companies that it regulates. As a result, special fund revenues for PSC increase correspondingly from assessments imposed on public service companies.

Maryland Department of the Environment

MDE advises it can likely handle any increase in workload that results from the bill using existing budget resources. However, depending on the extent to which the bill increases the frequency of applicants reaching out to MDE to get information for environmental impact analyses and existing burden reports, MDE may need to hire additional personnel.

Maryland Department of Transportation

The Maryland Department of Transportation advises that the additional information required for CPCN applications may have an operational and/or fiscal effect on any future solar projects, depending on the size of the project. Any potential effect has not been further reflected in the above analysis.

Additional Comments: The [Maryland EJ tool](#) is, as of the publication of this fiscal and policy note, temporarily inoperable due to federal data issues.

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, Cecil, and Frederick counties; City of Frederick; Judiciary (Administrative Office of the Courts); Maryland Department of the Environment; Department of Natural Resources; Maryland Department of Planning; Maryland Department of Transportation; Office of People’s Counsel; Public Service Commission; Department of Legislative Services

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js/smr

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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 used for electricity production with a capacity of up to 2 megawatts that is installed with equipment that prevents the flow of electricity to the electric grid during time periods when the grid is out of service;
- 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 (subject to satisfying other requirements); and
- a facility, or a combination of two or more facilities, used for electricity production for the purpose of onsite emergency backup for critical infrastructure when service from the electric company is interrupted and conducting necessary test and maintenance operations (subject to satisfying 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 and must consider alternative routes and related costs for the construction of a new overhead transmission line.

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.