

Department of Legislative Services
 Maryland General Assembly
 2025 Session

FISCAL AND POLICY NOTE
 First Reader

House Bill 827 (Delegate Clippinger, *et al.*)
 Economic Matters

Solar Energy - Distributed Generation Certificate of Public Convenience and Necessity, Ground-Mounted Solar, and Small Solar Siting Workgroup

This bill creates a Distributed Generation Certificate of Public Convenience and Necessity (DGPCN) that authorizes an applicant, on issuance of a DGPCN by the Public Service Commission (PSC), to construct and operate a “distributed solar energy generating system.” If a DGPCN is approved, the applicant is exempt from having to obtain a Certificate of Public Convenience and Necessity (CPCN). The bill also establishes (1) implementation timelines for PSC and the Department of Natural Resources (DNR); (2) requirements and timelines for processing DGPCNs; and (3) the Small Solar Siting Workgroup and a related reporting requirement. The bill also temporarily prohibits a county from enacting zoning laws or adopting regulations that restrict or prohibit the construction or operation of specified solar facilities with capacities of up to two megawatts. **The bill takes effect July 1, 2025. Provisions pertaining to the enactment of county zoning laws and the workgroup terminate June 30, 2027.**

Fiscal Summary

State Effect: General/special fund expenditures for DNR increase by \$952,600 in FY 2026; future years reflect annualization, inflation, a reduction in consultant expenses, and ongoing costs. Special fund expenditures for PSC increase by \$121,300 in FY 2027; future years reflect inflation and ongoing costs; special fund revenues for PSC increase correspondingly from fees and assessments. Other effects are described below.

(in dollars)	FY 2026	FY 2027	FY 2028	FY 2029	FY 2030
SF Revenue	\$0	\$121,300	\$119,800	\$125,100	\$130,500
SF Expenditure	\$0	\$121,300	\$119,800	\$125,100	\$130,500
GF/SF Exp.	\$952,600	\$500,000	\$513,400	\$527,400	\$541,300
Net Effect	(\$952,600)	(\$500,000)	(\$513,400)	(\$527,400)	(\$541,300)

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

Local Effect: Local government finances and operations are affected, as discussed below.

Analysis

Bill Summary:

Definitions

A “DGPCPN” means a certificate issued by PSC that authorizes the construction and operation of a distributed solar energy generating system. A “distributed solar energy generating system” means a community solar energy generating system, as defined, that (1) would be required to obtain a CPCN, if the system does not obtain a DGPCPN; (2) has a capacity to produce at least two megawatts but not more than five megawatts of alternating current and (3) is not located within a municipality.

“Standard licensing conditions” means the predetermined licensing conditions adopted by PSC for the construction and operation of a distributed solar energy generating system that has been issued a DGPCPN.

“Standard siting and design requirements” are the predetermined objective requirements adopted by PSC for the siting and design of a distributed solar energy generating system that has been issued a DGPCPN.

Distributed Generation Certificate of Public Convenience and Necessity

A person may not begin construction of a distributed solar energy generating system in the State unless the person first obtains a DGPCPN or CPCN from PSC. When a person submits an DGPCPN application to PSC, the person must also submit a copy of the application to the Power Plant Research Program (PPRP) within DNR and the governing body of the county where the distributed solar energy generating system is proposed to be located.

Duties of the Power Plant Research Program

By July 1, 2026, after giving notice and opportunity for public comment, PPRP must develop and submit to PSC proposed standard siting requirements, design requirements, and licensing conditions for the issuance of a DGPCPN. In developing the requirements and conditions, PPRP must consider the following:

- achievement of the State’s climate and renewable energy commitments;
- reasonable setbacks and landscape screening requirements;

- environmental preservation, including prohibitions on forest clearance except where necessary to reduce solar panel shading (as specified), facilitate interconnection infrastructure, and ensure adequate site access;
- stormwater management, erosion and sediment control, and site stabilization, accounting for specified impacts of solar panels;
- minimization and mitigation of effects of a distributed solar energy generating system on historic sites;
- public safety;
- industry best practices; and
- licensing conditions previously adopted by PSC for solar energy generating systems, including requirements related to decommissioning.

Within 90 days after a DGPCPN application is filed with PSC, PPRP must (1) determine whether the distributed solar energy generating system satisfies the standard siting and design requirements for the DGPCPN and (2) notify PSC in writing as to the determination it has made, including how an application that is determined not to satisfy those requirements can cure the deficiency. In making its determination, PPRP must consider public comments received by PSC.

Duties of the Public Service Commission

By July 1, 2027, PSC must adopt regulations to (1) implement standard siting and design requirements and standard licensing conditions for a DGPCPN; (2) specify the application form and any application fee; and (3) specify its procedure for processing a DGPCPN application. In adopting these regulations, PSC must consider the proposed standard siting and design requirements and the proposed standard licensing conditions developed by PPRP. If PSC chooses to set an application fee for a DGPCPN application, it may do so at an amount that offsets the associated administrative costs (as calculated based on an estimate of the number of DGPCPN applications that will be filed each year).

PSC, in consultation with PPRP, may periodically solicit public comments regarding improvements to the standard siting and design requirements and standard licensing conditions for a DGPCPN. The process for soliciting public comments regarding these requirements and conditions must be the same as the process for soliciting public comment regarding the adoption of a regulation.

Before PPRP makes its determination on a DGPCPN application, PSC must provide an opportunity for public comment and hold a public hearing on the application in each county where any portion of the construction of the distributed solar energy generating system is proposed to be located. PSC may hold the public hearing virtually, rather than in person, if the commission provides a comparable opportunity for public comment and participation in the hearing.

Within 60 days after PPRP makes its determination on a DGPCPN application, PSC must schedule a hearing to consider the application. At the hearing, PSC must determine whether the proposed distributed solar energy generating system satisfies the standard siting and design requirements. In making this determination, PSC may consider any public comments it has received. If PSC determines that the proposed system satisfies the requirements, PSC must issue a DGPCPN to the applicant, subject to the standard licensing conditions. If, however, PSC determines that the proposed system does not satisfy each of the requirements, a DGPCPN may not be issued.

Requirements on Holders of Distributed Generation Certificates of Public Convenience and Necessity

A DGPCPN issued by PSC must require the person constructing the distributed solar energy generating system to obtain the following permits and approvals from the county, municipality, or soil conservation district in which the system is to be constructed (subject to existing provisions related to local approval applicable to the CPCN process): (1) site plan approval; (2) stormwater management plan approval; (3) erosion and sediment control plan approval; (4) all applicable building and electrical permits; and (5) any additional local permit required by the standard licensing conditions.

Limitations on Counties

A county may not enact zoning laws or adopt regulations that restrict or prohibit the construction or operation of energy generating systems or facilities that are ground-mounted solar with a capacity to produce up to two megawatts of alternating current. This provision terminates June 30, 2027.

Small Solar Siting Workgroup

The Small Solar Siting Workgroup is established, staffed by the Maryland Energy Administration (MEA). Workgroup members may not receive compensation but are entitled to reimbursement for expenses under the standard State travel regulations.

The workgroup must review, determine, and make recommendations regarding (1) best practices for solar energy generating systems with capacities of up to two megawatts of alternating current and (2) the establishment of a statewide model policy for such systems. The workgroup's review of best practices must include:

- the possibility of statewide setback and screening requirements;
- whether there should be additional State or local incentives for the development of solar energy generating systems on brownfields, parking lots, and other nonagriculturally zoned land;

- whether there should be additional State or local incentives for agrivoltaics development; and
- what other forms of standardization should apply to these solar energy generating systems.

By December 1, 2025, the workgroup must submit an interim report of its initial findings and recommendations to the Governor and the General Assembly. The workgroup's final report must be submitted to the Governor and the General Assembly by December 1, 2026.

No Effect on Previously Approved Solar Energy Generating Systems

The bill may not be applied or interpreted to have any effect on the construction or modification of any solar energy generating system for which a CPCN or other approval was obtained before the effective date of the regulations adopted by PSC for DGPCNs.

Intent That Bill Not Be Construed to Abrogate, Modify, or Limit Perennial Solar Decision

It is the intent of the General Assembly that nothing in the bill be construed to abrogate, modify, or limit the Supreme Court of Maryland's holding in *Bd. of Cty. Commissioners of Washington Cty. v. Perennial Solar, LLC*, 464 Md. 610 (2019).

Current Law:

Certificates of Public Convenience and Necessity

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 PPRP and the Maryland Department of the Environment (MDE).

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. However, a generating station does not include a facility (including a solar 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. It also does not include certain co-located or adjacent solar facilities with a maximum cumulative capacity of 14 megawatts.

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; the effect of the project on various aspects of the State infrastructure, economy, and environment; the effect of climate change on the project; and, for a generating station only, other specified information.

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. Chapter 515 of 2023 established that a county or municipality has the authority to approve or deny any local permit required under a CPCN issued by PSC. A county or municipality must approve or deny such a permit within a reasonable time and in accordance with local laws, to the extent that local laws are not preempted by State law. A county or municipality is prohibited from conditioning the approval of a local permit required under a CPCN on receipt of a conditional use approval, a special exception approval, or a floating zone approval for any aspect of a generating station, an overhead transmission line, or a qualified lead line proposed to be constructed under the CPCN.

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

Community Solar Energy Generating Systems

A community solar energy generating system, as defined in statute, is a system that, in addition to other requirements, (1) has a generating capacity that does not exceed five megawatts; (2) has at least two subscribers; and (3) credits its generated electricity, or the value of its generated electricity, to the bills of the subscribers to that system through virtual net energy metering.

Stormwater Management Plans

Stormwater management is implemented at the local level, and MDE is responsible for providing oversight and assistance to local programs. A person may generally not develop any land for residential, commercial, industrial, or institutional use without submitting a stormwater management plan to the county or municipality that has jurisdiction and obtaining plan approval. Further, a grading or building permit may not be issued for a property unless a stormwater management plan has been approved that is consistent with the Stormwater Management Act. Developers must certify that all land clearing, construction, development, and drainage is conducted according to the plan.

Sediment Control Plans

In general, a county or municipality is authorized to issue grading and building permits, but these permits may only be issued to a developer who has submitted a grading and

sediment control plan approved by the appropriate approval authority and has certified that all land clearing, construction, and development will be done in accordance with the plan. Typically, the appropriate approval authority is (1) the appropriate soil conservation district; (2) a municipality in Montgomery County that is designated by a soil conservation district, as specified; (3) any municipality not within a soil conservation district; or (4) MDE, for construction projects undertaken by the State or a federal unit, specified abandoned mine reclamation projects conducted by MDE, and for large redevelopment sites.

State Fiscal Effect: Both DNR and PSC anticipate operational effects to establish the DGPCPN process within the timelines specified in the bill, and both agencies anticipate the need for ongoing costs associated with DGPCPN approvals. The Department of Legislative Services (DLS) advises that the estimates provided below assume that the total number of project applications that DNR and PSC must review increase under the bill. It is anticipated that some smaller solar projects, which would not have been required to go through the CPCN process, scale up to the new capacity limits established under the DGPCPN process and choose to apply for a DGPCPN. DLS notes that, to the extent the bill simply shifts projects that would have otherwise gone through the CPCN process to the DGPCPN process, the bill's net effect on DNR and PSC expenditures is less.

Department of Natural Resources

DNR advises that the bill's requirements have significant fiscal and operational impacts on PPRP, particularly in the near term. In order for PPRP to develop proposed standard siting requirements, design requirements, and licensing conditions for DGPCPNs by July 1, 2026, DNR advises that PPRP must shift some of its current staff from reviewing CPCN applications to working on the development of those requirements and conditions. DNR, therefore, advises that it must hire additional staff to continue processing CPCN applications in a timely manner. DNR also advises that it needs to hire an additional part-time attorney to provide legal support related to DGPCPNs.

According to DNR, PPRP requires significant support from outside consultants to develop the requirements and conditions for DGPCPNs and do so within one year of the bill's effective date. After a significant one-time increase in consultant expenses in fiscal 2026, DNR anticipates that consultant expenses will normalize but still increase from current levels, as PPRP will need consultants to provide ongoing technical expertise on any DGPCPN applications received.

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 \$952,565 in fiscal 2026, which assumes a 90-day start-up delay from the bill's July 1, 2025 effective date. This estimate reflects the cost of hiring two site assessors within PPRP to assist with completing evaluations of CPCN applications (thereby allowing PPRP to reassign more experienced site assessors to work on implementing the bill's requirements) and one half-time attorney to provide legal support related to the implementation of the DGPCN process. The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses, in addition to consulting expenses of \$700,000.

Positions	2.5
Salaries and Fringe Benefits	\$230,873
Consultant Expenses	700,000
Other Operating Expenses	<u>21,692</u>
Total FY 2026 DNR Expenditures	\$952,565

Future year expenditures 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* \$200,000 annually. Consulting expenses in fiscal 2027 and future years may be higher to the extent that PPRP must review more than 20 DGPCN applications each year.

Public Service Commission

Under the bill, PSC must develop new regulations pertaining to DGPCNs and adopt them by July 1, 2027. PSC advises that existing commission staff can handle the development and implementation of these new regulations. However, because PSC anticipates that the bill will result in an increase in the number of applications for solar projects, PSC advises that it needs to hire one Public Utility Law Judge to assist with adjudicating DGPCN cases.

Accordingly, special fund expenditures for PSC increase by \$121,258 in fiscal 2027, which accounts for a one-year start-up delay from the bill's July 1, 2025 effective date. This estimate reflects the cost of hiring one Public Utility Law Judge to adjudicate DGPCN cases before PSC. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1.0
Salary and Fringe Benefits	\$113,602
Other Operating Expenses	<u>7,656</u>
Total FY 2027 PSC Expenditures	\$121,258

Future year expenditures reflect a salary 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. However, under the bill, PSC may choose to establish an application fee for DGPCNs up to an amount that offsets the administrative costs of the DGPCN approval process. At this time, PSC has not indicated whether it intends to set an application fee for DGPCNs and, if it does, what the fee level would be. This analysis assumes that the fee revenues that PSC collects for DGPCN applications are likely minimal and offset revenues generated from the standard assessment. Accordingly, special fund revenues for PSC increase by a corresponding amount from application fees and assessments imposed on public service companies.

Maryland Department of the Environment

According to MDE, the bill may increase the volume of permit applications it must review and the number of site inspections it must conduct. To the extent that the bill results in a significant increase in applications to develop solar projects, MDE advises that it may need to hire additional staff to adequately handle these responsibilities. MDE further advises that, under the bill, it may generate additional revenue through permitting fees, compliance inspections, and environmental impact assessments. Any such impact cannot be reliably estimated at this time and has not been accounted for in this analysis.

The bill requires a person who is issued a DGPCN to obtain specified permits and approvals from local governments or soil conservation districts before proceeding with the construction of a distributed solar energy generating system. Although MDE delegates portions of the permitting process for certain permits (*e.g.*, permits for stormwater management and erosion and sediment control) to local approving authorities, MDE maintains ultimate authority over their approval and directly issues permits for certain projects. Since the bill only references local governments and soil conservation districts in regard to permitting and approvals, MDE is concerned that it could be interpreted as transferring permitting and approval authority from MDE to those local entities. Any impact relating to MDE's authority over affected permits has not been accounted for in this analysis.

Maryland Energy Administration

MEA advises that it can staff the Small Solar Siting Workgroup and prepare the workgroup's interim and final reports to the Governor and the General Assembly with existing budgeted resources.

Local Fiscal Effect: At a minimum, the bill creates temporary operational effects related to the siting of small solar facilities for counties by creating a two-year prohibition on the enactment of zoning laws or adoption of regulations that restrict or prohibit the construction or operation of ground-mounted solar facilities with capacities of up to two megawatts. These are systems that do not require a CPCN under current law or a DGPCN under the bill due to their relatively small size. To the extent that additional solar energy generating systems are planned and/or built in the State due to the bill, local government operations and finances are further affected, both from additional administrative requirements, such as project reviews, permitting, etc., and from various associated revenues, such as permit fees and property taxes.

Small Business Effect: Small businesses engaged in the development of distributed solar energy generating systems benefit from the bill's expedited review process for DGPCN applications relative to the current CPCN process. Additionally, to the extent that additional solar energy generating systems are built in the State as a result of the bill, small businesses that participate in the construction and/or maintenance of such systems benefit.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See HB 1046 and SB 1025 of 2024.

Designated Cross File: SB 983 (Senator Brooks) - Education, Energy, and the Environment.

Information Source(s): Calvert, Howard, and Prince George's counties; Maryland Association of Counties; City of Frederick; Maryland Municipal League; Maryland Department of the Environment; Department of Natural Resources; Maryland Energy Administration; 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.