

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 399

(Senator McKay)

Education, Energy, and the Environment

Economic Matters

Natural Resources - Wildland Areas - Overhead Transmission Lines

This bill exempts, under specified circumstances, certain lands from continuing to be designated as part of the Big Savage Mountain Wildland, Bear Pen Wildland, or Dan's Mountain Wildland. For the construction of a new overhead transmission line that passes through any of those wildlands, the Public Service Commission (PSC) must require an applicant for a Certificate of Public Convenience and Necessity (CPCN) to provide wildland impact mitigation guarantees, including working with the Department of Natural Resources (DNR) to acquire and replace the Type 1 State wildland acreage that is lost as a result of the transmission line, as specified. It is the intent of the General Assembly that nothing in the bill be construed as a recommendation that a proposed NextEra Energy transmission line (*i.e.*, the Mid-Atlantic Resiliency Link project) be issued a CPCN from PSC. **Provisions altering wildland designations and the CPCN process are contingent on specified actions. The bill terminates if PSC, as further specified, (1) approves a CPCN for an alternative NextEra Energy transmission line that does not pass through any of those wildlands or (2) denies a CPCN for a NextEra Energy transmission line.**

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State finances or operations, as discussed below.

Local Effect: The bill is not anticipated to materially affect local finances; however, there may be an impact on local government operations, as discussed below.

Small Business Effect: None.

Analysis

Bill Summary: The bill establishes that the existing boundaries of the Big Savage Mountain Wildland, Bear Pen Wildland, or Dan's Mountain Wildland do not include any NextEra Energy transmission line if the company obtains a CPCN for its construction and the new transmission line:

- runs parallel to the Potomac Edison transmission line, as specified;
- does not disturb any area further than 200 feet from the nearest point of the Potomac Edison transmission line right-of-way, except as otherwise specified; and
- is designed in consultation with DNR to minimize specified environmental impacts, including forest loss and fragmentation.

For the construction of an overhead transmission line as specified above, PSC must require a CPCN applicant to provide wildland impact mitigation guarantees, including working with DNR to (1) acquire and replace the Type 1 wildland acreage that is lost due to the transmission line with acreage that is *twice* the size and is suitable for designation as wildland acreage and (2) develop and implement a land a conservation management plan for the area affected by the transmission line that supports wildlife habitats.

Any alterations to the existing boundaries of the Big Savage Mountain Wildland, Bear Pen Wildland, or Dan's Mountain Wildland – and the changes to the CPCN process discussed above – are contingent on (1) a 120-day stakeholder process, as specified; (2) DNR completing a 90-day deliberation period; and (3) the Secretary of Natural Resources recommending that PSC issue a CPCN for the proposed overhead transmission line. The stakeholder process must include:

- a public participation process that meets the requirements of COMAR 20.79.01;
- at least one public advertised meeting within 25 miles of each impacted designated wildland area;
- at least one public meeting that provides for virtual participation;
- special effort by the CPCN applicant to reach out to organizations with special expertise in wildlands, wildlife management, and environmental stewardship; and
- a portal for public comments, which must be submitted to DNR.

Current Law:

State Wildlands

There is a State wildlands preservation system established in statute for the purpose of securing for the people of present and future generations the benefits of an enduring

resource of State wildlands. DNR's Land Acquisition and Planning Unit is responsible for administering the State wildlands preservation system. "Wildlands" are defined as limited areas of land or water that have retained their wilderness character, although not necessarily completely natural and undisturbed, or have rare or vanishing species of plant or animal life or similar features of interest worthy of preservation for use of present and future residents of the State.

Under § 5-1203 of the Natural Resources Article, Big Savage Mountain Wildland, Bear Pen Wildland, and Dan's Mountain Wildland are each classified as Type 1 State wildlands. A "Type 1 wildland" means a primitive area which by its size and location is in effect untouched by urban civilization and can offer the experience of solitude and self-reliance. These wildlands are usually lands located at higher elevations that protect watersheds and are ecologically vulnerable to human interferences.

Big Savage Mountain Wildland (2,879 acres), Bear Pen Wildland (1,517 acres), and Dan's Mountain Wildland (4,047 acres) are 3 of 38 separate wildlands designated in statute, consisting of approximately 66,000 acres statewide. Generally, the wildland areas must be devoted to public purposes for recreational, scenic, scientific, educational, conservation, and historical use. Commercial enterprises and permanent roads (subject to existing private rights), temporary roads, use of motorized equipment/vehicles/boats, and structures or installations are not allowed in the wildland areas. Certain statutory exceptions apply, however, including general exceptions (*e.g.*, minimum measures necessary to administer the area as a wildland; maintenance of boundary roads; normal maintenance and certain upgrades and expansions of utility lines; and measures to protect nearby private land) and exceptions specific to certain wildland areas.

The Secretary of Natural Resources may review areas under the Secretary's jurisdiction as to their suitability for preservation as State wildlands and report findings to the Governor. The Governor, in turn, makes recommendations to the General Assembly with respect to the designation or reclassification of wildland areas or alteration of boundaries. Such additions or changes can only be made by the General Assembly. The Secretary must provide specified notice to the public and relevant State and local officials and hold a public hearing at a location convenient to the area affected prior to submitting recommendations to the Governor.

Pittman-Robertson Wildlife Restoration Act

The Pittman-Robertson Wildlife Restoration Act, first established in 1937, provides funding to states to support wildlife restoration, conservation, and hunter education and safety programs. Programs under the Act are administered by the U.S. Fish and Wildlife Service (USFWS), and funding is apportioned to states through several programs. Among other purposes, states may use this funding to acquire, restore, and manage wildlife areas

(for example, Maryland's wildlands preservation system); provide public access to wildlife resources; and facilitate public access for hunting or other wildlife-oriented recreation. Federal funds may be used for up to 75% of a state's cost to implement eligible programs or projects.

To be eligible for Pittman-Robertson funding, a state must comply with certain requirements, including maintaining legislation that ensures the conservation of fish and wildlife and requires that all revenue from hunting and fishing licenses be controlled by and used for the administration of the state fish and wildlife agency. If a state fish and wildlife agency uses grant funds to acquire an interest in a parcel of land, the agency must use it for the purpose authorized in the grant.

If a state fish and wildlife agency allows a use of real property that interferes with its authorized purpose under a grant, the agency must fully restore the real property to its authorized purpose. Alternatively, if the agency cannot restore the real property to its authorized purpose, it must replace the real property using non-federal funds. The agency must determine that the replacement property is (1) of at least equal value at current market prices and (2) has fish, wildlife, and public use benefits consistent with the purposes of the original grant. USFWS regulations specify that an agency has up to three years, after receiving specified notice, to restore the property or acquire replacement property. If the agency fails to do so within three years, USFWS may declare the agency ineligible to receive new grants in the program(s) that funded the original acquisition.

Certificate of Public Convenience and Necessity

Generally, a person may not begin construction in the State of an overhead transmission line that is designed to carry a voltage in excess of 69,000 volts unless a CPCN is first obtained from PSC. 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 the construction of a new overhead transmission line specifically, PSC must also provide due consideration of (1) the need to meet existing and future demand for electric service and (2) the alternative routes that the applicant considered, including the estimated costs of each alternative route and a statement of the reason why the alternative route was rejected. Additionally, PSC must require the applicant to (1) comply with specified agreements and obligations related to the ongoing operations and maintenance of the overhead transmission line and (2) identify whether the overhead transmission line is proposed to be constructed on an existing brownfields site, a property that is subject to an existing easement, or a site where a tower structure or components thereof exist and can be used to support an overhead transmission line.

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

Public Participation Process (COMAR 20.79.01)

Under COMAR 20.79.01, prior to filing a CPCN application for the construction of a new qualifying generating station, a prospective CPCN applicant must offer to engage the participation of the affected communities for the purpose of educating those communities concerning the proposed project and soliciting their feedback. At a minimum, the prospective CPCN applicant must:

- designate a community liaison officer for the proposed project;
- identify actual community members and organizations within the affected communities and provide notification of the proposed project and any public meeting invitation to those community members and organizations; and
- hold a minimum of one public meeting within the county or municipality in which any portion of the construction of the project is proposed to be located, in accordance with various administrative and public notice requirements.

The applicant must then prepare a statement of public engagement and participation certification, which must describe the applicant's efforts to provide notice to and engage the affected communities and must include a summary discussion of any actions the applicant has agreed to take to address the concerns raised at the public meeting.

State Fiscal Effect: The bill's provisions affecting the designation of State wildlands and the CPCN process for overhead transmission lines are contingent on the completion of a stakeholder process, a 90-day deliberation period by DNR, and a recommendation by the Secretary of Natural Resources that a CPCN be issued to NextEra Energy for a proposed transmission line. For purposes of this analysis, it is assumed that these contingencies are met. If any of these contingencies are not met, the bill has no material impact on State finances or operations.

DNR advises that State wildlands are partially managed using federal grant monies received under the Pittman-Robertson Wildlife Restoration Act. According to DNR, the bill may jeopardize *a portion* of the funding it receives annually under the Act because it would permit the installation of overhead transmission lines on land that is currently part of existing State wildlands. DNR advises that the State, which acquired many of its wildlands using Pittman-Robertson funds, is subject to strict requirements on how such land must be used and maintained.

As previously discussed, if a state fish and wildlife agency allows real property to be used in a way that interferes with its authorized purpose under a Pittman-Robertson grant, the

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agency must either fully restore the property to its authorized purpose or replace the real property using non-federal funds. Under the bill, if an overhead transmission line is eventually constructed at Big Savage Mountain, Bear Pen, and/or Dan's Mountain, DNR would not be able to fully restore the property to its authorized purpose. However, the bill requires the CPCN applicant to provide wildland impact mitigation guarantees, including working with DNR to acquire and replace the Type 1 State wildland acreage that is lost as a result of the transmission line's construction with twice as much acreage that is suitable for designation as State wildlands. DNR anticipates that this can be accomplished, if necessary, within the three-year timeframe required by USFWS, using existing funding. The Department of Legislative Services concurs with DNR's assessment.

DNR advises that any increase in its workload resulting from the bill's implementation, including the 90-day deliberation period it must undertake to review a proposed transmission line, can be handled using existing staff. According to PSC, the bill does not have any impact on its finances or operations.

Therefore, it is likely that State finances and operations are not materially affected as a result of the bill. In the event, however, that the proposed overhead transmission line is built, and the State is unable to replace the resulting acreage that is removed from State wildlands within three years, federal fund revenues (and corresponding expenditures) for DNR may decrease in the future (likely in the out-years).

Local Fiscal Effect: Should NextEra decide to proceed with a CPCN application to build an overhead transmission line through acreage that is currently part of Big Savage Mountain Wildland, Bear Pen Wildland, and/or Dan's Mountain Wildland, county and other local entities in Allegany and Garrett counties are likely to be involved in the consultation, review, and permitting process for the transmission line. It is not anticipated that such involvement would have a material impact on local finances.

Additional Comments: According to DNR, Big Savage Mountain Wildland, Bear Pen Wildland, and Dan's Mountain Wildland collectively support two endangered bat species, the rare Appalachian cottontail rabbit, and 25 other known rare, threatened, or endangered species.

PJM Interconnection, LLC, the regional transmission organization for 13 states (including Maryland) and the District of Columbia, approved a set of proposed projects in December 2023 to expand the region's transmission capacity, enhance the grid, and accommodate increasing electricity demand. Among the projects that PJM approved is the Mid-Atlantic Resiliency Link, a proposed transmission line that would be built by NextEra Energy and run from southwestern Pennsylvania, through parts of Maryland and West Virginia, into northern Virginia. According to NextEra Energy, it has not selected a

route yet for the project; however, it anticipates sharing potential routes for the transmission line on its website in spring 2025.

Additional Information

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

Designated Cross File: HB 1270 (Delegate Hinebaugh) - Economic Matters.

Information Source(s): Maryland Department of the Environment; Department of Natural Resources; Office of People's Counsel; Public Service Commission; PJM Interconnection, LLC; NextEra Energy; U.S. Fish and Wildlife Service; 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 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.