

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 699 (Senator Ready)
Education, Energy, and the Environment

Forest Conservation Act - Linear Projects - Alteration

This bill establishes that a “linear project” – which, under current law, is exempt from the Forest Conservation Act (FCA) (if not more than 20,000 square feet of forest is cleared) and is not subject to afforestation requirements (if it does not involve a change in land use) – does not include a project for a new transmission line or new distribution line constructed on or after October 1, 2025.

Fiscal Summary

State Effect: Special fund (State Forest Conservation Fund) revenues may increase beginning in FY 2026, potentially only minimally, as discussed below. Expenditures are not directly affected.

Local Effect: Local forest conservation fund revenues may increase beginning in FY 2026, potentially only minimally, as discussed below. Expenditures are not directly affected.

Small Business Effect: Potential meaningful.

Analysis

Current Law:

Forest Conservation Act – In General

The Forest Service within the Department of Natural Resources (DNR) administers FCA, but it is primarily implemented on the local level. FCA establishes minimum forest conservation requirements for land development, and local governments with planning and

zoning authority are required to develop local forest conservation programs that meet or are more stringent than the requirements of FCA. However, Allegany and Garrett counties, and municipalities within those counties, are exempt from the requirements of FCA. FCA applies to any public or private subdivision plan or application for a grading or sediment control permit by any person, including a unit of State or local government, on areas 40,000 square feet (0.9 acres) or greater, subject to certain exceptions.

A proposed construction activity goes through a process of evaluation of existing vegetation on a site and development of a forest conservation plan for the site defining how forest area will be retained and/or afforestation or reforestation will be undertaken. If afforestation or reforestation requirements cannot be reasonably accomplished on site or off site (which can include use of off-site forest mitigation banks), payment may be made into the applicable forest conservation fund (fee-in-lieu payments) to be spent by the State or the local government on reforestation and afforestation, maintenance of existing forest, and achieving urban canopy goals.

Exemptions

Linear Project

There are several activities FCA does not apply to, including any activity conducted on a single lot of any size or a linear project provided that (1) the activity does not result in the cutting, clearing, or grading of more than 20,000 square feet of forest and (2) the activity on the lot or linear project will not result in the cutting, clearing, or grading of any forest that is subject to the requirements of a previous forest conservation plan prepared under FCA.

“Linear project” means a project whose configuration is elongated with nearly parallel sides and used to transport a utility product or public service not otherwise contained in an application for subdivision, such as electricity, gas, water, sewer, communications, trains, and vehicles. Linear projects may traverse fee simple properties through defined boundaries or through easement rights.

Public Utility Rights-of-way or Land for Electric Generating Stations

FCA also does not apply to the cutting or clearing of public utility rights-of-way or land for electric generating stations licensed pursuant to specified provisions of the Public Utilities Article (including provisions governing high voltage overhead transmission lines), provided that (1) any required Certificates of Public Convenience and Necessity (CPCN) have been issued in accordance with a requirement under FCA that the Public Service Commission (PSC) give due consideration to the need to minimize the loss of forest, the FCA provisions for afforestation and reforestation, and all applicable electrical safety

codes, when reviewing applications for a CPCN and (2) the cutting or clearing of the forest is conducted so as to minimize the loss of forest. See the attached **Appendix – Certificate of Public Convenience and Necessity** for more information on CPCNs.

Chapters 541 and 542 of 2023 (as amended by Chapter 457 of 2024, which delays until July 2026 the effective date of most provisions of Chapters 541 and 542) modify the above exemption as of July 1, 2026, to remove “or land,” so that it reads “cutting or clearing of public utility rights-of-way for electric generating stations....”

Afforestation Requirements

Under FCA, if the existing forested area of a site is below a specified percentage of the net tract area, it must be afforested (establishing forested area where there is none) up to the specified percentage of the net tract area. For agricultural and resource areas and medium density residential areas, the percentage is 20%. For institutional development areas, high density residential areas, mixed use and planned unit development areas, and commercial and industrial use areas, the percentage is 15%. Local forest conservation programs adopted under FCA may include afforestation and reforestation requirements, that are more stringent than those under FCA.

Linear projects that involve no change in land use are not subject to afforestation requirements.

Chapters 541 and 542 (as amended by Chapter 457) make certain changes related to afforestation requirements (though not affecting the linear project exemption from afforestation requirements) as of July 1, 2026, including allowing a local jurisdiction, with approval of DNR, to establish alternative afforestation, reforestation, and preservation requirements from those established under FCA if the requirements are expected to result in the local forest conservation program at a minimum maintaining its existing level of forest cover over a four-year period.

State/Local Revenues: State special fund (State Forest Conservation Fund) and local forest conservation fund revenues may increase beginning in fiscal 2026 to the extent the bill – by excluding a new transmission or distribution line from the definition of “linear project” – causes the construction of new transmission or distribution lines to be subject to FCA requirements, including afforestation requirements, when they otherwise would not be. The extent of any increase in revenues, however, is unclear and may be minimal, since it is unclear to what extent:

- new transmission or distribution lines that are not already exempt from FCA (because they (1) are high voltage transmission lines that fall under the public utility right-of-way exemption mentioned above under Current Law and (2) instead are

subject to PSC review of forest conservation efforts) would result in cutting, clearing, or grading of less than 20,000 square feet of forest (0.46 acres) and fall under the “linear project” exemption in the absence of the bill; and

- the bill’s removal – for new transmission or distribution lines – of the existing exemption of linear projects (including those affecting more than 20,000 square feet of forest) from FCA afforestation requirements if they do not involve a change in land use, results in any increased afforestation (or fee-in-lieu payments) associated with transmission or distribution line projects (afforestation requirements would only apply if, as indicated under Current Law (*Afforestation Requirements*), a transmission or distribution line crosses largely unforested land).

Small Business Effect: To the extent the bill makes construction of any new transmission or distribution lines subject to FCA requirements that they are not subject to in the absence of the bill, small businesses involved in FCA compliance could meaningfully benefit, including those that own forest mitigation banks (which provide credits that can be used to meet reforestation/afforestation requirements) and those providing materials and services for reforestation/afforestation and FCA and local forest conservation program compliance (nurseries, landscapers, consultants).

Additional Information

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

Designated Cross File: HB 1224 (Delegate Rose, *et al.*) - Economic Matters and Environment and Transportation.

Information Source(s): Baltimore, Carroll, and Frederick counties; City of Frederick; Maryland Association of Counties; Maryland Municipal League; Public Service Commission; Office of People’s Counsel; Department of Natural Resources; 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.