

BENJAMIN BROOKS
Legislative District 10
Baltimore County

Education, Energy, and the
Environment Committee



THE SENATE OF MARYLAND
ANNAPOLIS, MARYLAND 21401

Annapolis Office
James Senate Office Building
11 Bladen Street, Room 303
Annapolis, Maryland 21401
410-841-3606 · 301-858-3606
800-492-7122 Ext. 3606
Benjamin.Brooks@senate.state.md.us

District Office
Windsor Mill Office
8419 Liberty Road, Suite B
Windsor Mill, Maryland 21244
410-496-4037

TESTIMONY IN SUPPORT WITH AMENDMENT OF SB489
Public Service Commission – Certificates of Public Convenience and Necessity –
Local Permits

Education, Energy and the Environment Committee
February 21, 2023

Chair Feldman, Vice-Chair Kagan, and Members of the Committee,

Thank you for the opportunity to testify before you on SB489, Public Service Commission – Certificates of Public Convenience and Necessity – Local Permits. This bill merely fixes a gap in current statute which arose after the Supreme Court of Maryland’s decision in Board of County Commissioners vs. Perennial Solar, LLC (2019). As amended, SB489, states notwithstanding any inconsistency with a local law, regulation, or plan, a county or municipal corporation is authorized to and shall process within a reasonable time any local permit required under a Certificate of Public Convenience and Necessity (CPCN) issued.

The Public Service Commission (“PSC”) has sole siting authority over solar projects (defined as “generating stations”) over 2 Megawatts (2MW). To approve the siting of such a project, the Commission issues a Certificate of Public Convenience and Necessity (“CPCN”) through a formal written order.

The CPCN process includes requirements for CPCN applicants to provide information to and seek input from counties, municipal corporations, and the public at least 90 days prior to submitting their CPCN application and provides opportunity for counties and municipal corporations to provide substantive input on a proposed project for PSC consideration, including as parties to the CPCN proceeding.

CPCNs include conditions that require projects to apply to the county or the municipal corporation where the project is located for ministerial and technical permits (site plan approval, stormwater management plan approval, building permits, etc.) prior to the start of construction.

Some counties have taken the position that they do not have legal authority to issue such ministerial and technical permits based solely on the issuance of a CPCN in the absence of the preempted local zoning approvals (e.g., special exception, change of use, etc.). This position will prevent solar projects from moving forward because such permits are

necessary to begin construction. This may lead to years of litigation that will prevent otherwise shovel-ready projects from moving forward.

SB489 would provide counties and municipal corporations with legal authority and require issuance of all permits and approvals required by a CPCN, fixing this perceived gap. This proposed legislation would not impact any aspect of the CPCN process, local permitting, or otherwise change preemption of local zoning approvals, but clarifies that local governments have the authority to process ministerial and technical permits required prior to the start of construction.

If enacted, the State would be able to achieve its renewable energy and climate change sooner by allowing projects to move forward that otherwise would have been delayed for years as the courts decided these issues.

For these reasons, I am requesting a favorable report.

With kindest regards,

A handwritten signature in cursive script that reads "Benjamin T. Brooks".

Benjamin Brooks