



February 22, 2024

Kim Coble
Executive Director

2024 Board of
Directors

Lynn Heller, Chair
The Hon. Nancy Kopp,
Treasurer
Kimberly Armstrong
Candace Dodson-Reed
Verna Harrison
Melanie Hartwig-Davis
Charles Hernick
The Hon. Steve Lafferty
Patrick Miller
Bonnie L. Norman
Katherine (Kitty)
Thomas

SUPPORT ONLY IF AMENDED: HB579 - Certificate of Public Convenience and Necessity and Related Approvals - Definition of Generating Stations (Critical Infrastructure Streamlining Act of 2024)

Dear Mr. Chairman and Members of the Committee:

Maryland LCV expresses its significant concerns with HB579 - Critical Infrastructure Streamlining Act of 2024. While we understand the importance of industries that support public health and safety, including the jobs they create and the expansion of technology hubs which provide safe and reliable storage of data, we also remain committed to goals of climate emissions reduction, community engagement, and environmental justice. As drafted, HB579 removes important public engagement and regulatory review processes for the sake of expediting back-up generators for facilities designated as “critical infrastructure.” The legislation also side-steps the intent of legislation passed in 2021 to require consideration of climate impacts and labor conditions in the development of energy facilities.

In 2023, Aligned Data Centers canceled its proposed project as part of the “Quantum Loophole project in Frederick County, citing the decision by the Public Service Commission to deny the exemption for its 168 back-up diesel generators. Cumulatively, these generators would have produced more than 500MW of energy, carrying a significant air pollution load.¹ This denial was based, at least in part, on a mandate established by the Maryland General Assembly in 2021 to require the Public Service Commission to consider labor conditions as well as climate impact when awarding Certificates for Public Convenience or Necessity (CPCN).² The intent of this important legislation was to ensure that decisions made by our state’s regulatory agencies are aligned with our shared goals of climate emissions reduction. HB579 works in direct conflict with this law and contributes to our state’s climate pollution at the moment when we are seeking to reduce it.

Maryland LCV is opposed to this legislation as drafted.

Maryland LCV’s concerns are as follows:

page 1 of 3

¹https://www.fredericknewspost.com/news/economy_and_business/aligned-pulls-plug-on-data-center-project-cites-objections-to-states-ruling-on-generators/article_a2f7dbaf-7ead-560b-946f-79cfbe675479.html

² https://mgaleg.maryland.gov/2021RS/chapters_noln/Ch_614_hb0298T.pdf

- 1) **Diesel back-up generators contribute carbon emissions to surrounding communities.** Diesel exhaust emissions include gases and fine particulates that can worsen respiratory ailments including asthma, allergies, bronchitis, and lung function, as well as increased risk of heart problems, premature death, and lung cancer.³ Proposed sites for new data centers, including the Quantum Loophole project, often offer space for multiple facilities, which would contribute significant pollution to surrounding communities. Therefore, we believe that providing a comprehensive assessment of the climate impacts from these back-up generators as provided by the CPCN process is a critical step.
- 2) **The review that is required for a CPCN includes important community engagement stemming from a 2019 settlement of a Title VI suit against the State of Maryland.** The automatic exemptions of back-up generators could be considered circumventing this agreement, opening the State up to a similar civil rights suit. A copy of the settlement agreement is attached. More importantly, community engagement is a fundamental element of addressing environmental justice. The removal of community engagement specifically as it pertains to climate impacts is not in alignment with the state's environmental justice goals.
- 3) **The legislation does not adequately define either the types of facilities considered under this provision or the acceptable use of back-up generators.** This legislation could create a dangerous precedent for expediting additional pollution generating projects that do not reach the threshold for essential public safety or infrastructure. Additionally, according to current regulation by the Maryland Department of the Environment, back-up generators may be operated for as many as 50 hours for non-emergencies in addition to routine maintenance.
- 4) **The legislation provides an exemption from the CPCN without necessary transparency or consideration for pollution impacts.** The Climate Solutions Now Act of 2022 requires the state to reduce its climate emissions by 60% by the year 2031, with a path to 100% climate neutrality by 2045. In order to achieve these goals, Maryland must take a whole-of-state approach to ambitious climate emission reductions from every sector of the economy - including critical infrastructure. If industries may be given exemptions from their pollution emitting generators, they must create an off-set to these increases.

Maryland LCV respectfully, submits that if HB579 is passed that it also incorporates a series of amendments that will mitigate the impacts that the legislation could have on overburdened and underserved communities, and the carbon pollution load to the state.

Proposed Amendment Concepts:

1. Explicitly limit the use of back-up generators to ONLY maintenance (1 hour every month) and power outages.

³<https://mde.maryland.gov/programs/air/mobilesources/pages/dieselhealthandenvironmentaleffects.aspx#:~:text=Health%20studies%20show%20that%20exposure,premature%20death%2C%20and%20lung%20cancer.>

2. Require annual reporting to the Public Service Commission by all exempted facilities, including date, length of time and reason why the back-up generator operated.
3. Require a study by the Public Service Commission, in coordination with relevant state agencies, of large, high-energy use facilities, with recommendation for future legislative or regulatory action and subject to public comment. This study should examine, the impacts of and best practices for:
 - i. minimizing the impact of energy consumption on grid capacity, reliability, and rate-payers
 - ii. mitigating water consumption and mitigation against resource constraints
 - iii. reducing and mitigating environmental Justice pollution loads and siting in already overburdened and underserved communities, including noise pollution
 - iv. ensuring consistency between land use requirements in consideration of other state goals, including, but not exclusive to, agricultural preservation, forest conservation, and solar development
 - v. reducing and mitigating impacts to climate goals from increased emission pollution
4. Narrow definition of 'critical infrastructure' addressed by legislation to only facilities necessary for public health and safety.
5. Require exempted facilities to adopt noise-mitigation measures in coordination and consultation with affected communities.
6. Require exempted facilities to give notice to surrounding community that it will be seeking air permits from MDE and provide information on how the community can participate (1 mile away except for rural areas which would be 3 miles away)
7. Require exempted facilities to retire two times the Tier 1 Renewable Energy Credits from solar, offshore wind, or geothermal sources equivalent to any fossil-fuel generated energy usage.

As drafted, HB549 is problematic legislation that undermines the important progress made on climate emission reductions over the past several years, and contradicts the goals set by the Maryland General Assembly and the Moore-Miller Administration.

Maryland LCV strongly urges the adoption of significant amendments to this legislation. Without these changes, Maryland LCV opposes the bill.