

HOUSE BILL 109

C5, J1
HB 308/19 – ECM

0lr1158

By: **Delegates R. Lewis, Charkoudian, and Qi**

Introduced and read first time: January 13, 2020

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Public Service Commission – Certificate of Public Convenience and Necessity –**
3 **Rapid Health Impact Assessment and Final Action**

4 FOR the purpose of requiring an applicant for a certificate of public convenience and
5 necessity for certain construction to conduct a rapid health impact assessment (HIA)
6 on the project and report on its findings; requiring a rapid HIA report to be completed
7 within a certain period of time after the applicant submits its application to the
8 Public Service Commission; requiring an applicant to complete the rapid HIA in a
9 certain manner; requiring the rapid HIA report to be considered part of a certain
10 application; altering the factors to which the Commission is required to give due
11 consideration before taking final action on a certain application; defining a certain
12 term; and generally relating to certificates of public convenience and necessity.

13 BY repealing and reenacting, with amendments,
14 Article – Public Utilities
15 Section 7–207
16 Annotated Code of Maryland
17 (2010 Replacement Volume and 2019 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
19 That the Laws of Maryland read as follows:

20 **Article – Public Utilities**

21 7–207.

22 (a) (1) In this section the following words have the meanings indicated.

23 (2) “Brownfields site” means:

24 (i) a former industrial or commercial site identified by federal or

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 State laws or regulation as contaminated or polluted;

2 (ii) a closed landfill regulated by the Department of the
3 Environment; or

4 (iii) mined land.

5 (3) (i) "Construction" means:

6 1. any physical change at a site, including fabrication,
7 erection, installation, or demolition; or

8 2. the entry into a binding agreement or contractual
9 obligation to purchase equipment exclusively for use in construction in the State or to
10 undertake a program of actual construction in the State which cannot be canceled or
11 modified without substantial loss to the owner or operator of the proposed generating
12 station.

13 (ii) "Construction" does not include a change that is needed for the
14 temporary use of a site or route for nonutility purposes or for use in securing geological
15 data, including any boring that is necessary to ascertain foundation conditions.

16 (4) (i) "Mined land" means the surface or subsurface of an area in which
17 surface mining operations will be, are being, or have been conducted.

18 (ii) "Mined land" includes:

19 1. private ways and roads used for mining appurtenant to
20 any surface mining area;

21 2. land excavations;

22 3. workings; and

23 4. overburden.

24 (5) "Qualified generator lead line" means an overhead transmission line
25 that is designed to carry a voltage in excess of 69,000 volts and would allow an out-of-state
26 Tier 1 or Tier 2 renewable source to interconnect with a portion of the electric system in
27 Maryland that is owned by an electric company.

28 **(6) "RAPID HIA" MEANS A HEALTH IMPACT ASSESSMENT THAT:**

29 **(I) ANALYZES THE ACTUAL OR POTENTIAL HEALTH EFFECTS OF**
30 **ACTIVITY DESCRIBED UNDER SUBSECTION (C) OF THIS SECTION ON THE**
31 **SURROUNDING POPULATION, INCLUDING THE DISTRIBUTION OF THOSE EFFECTS**
32 **WITHIN THE POPULATION;**

1 **(II) MAKES RECOMMENDATIONS ON MITIGATING, AVOIDING, OR**
2 **MANAGING ANY NEGATIVE HEALTH IMPACTS;**

3 **(III) USES EXISTING KNOWLEDGE AND EVIDENCE; AND**

4 **(IV) IS COMPLETED WITHIN 30 DAYS.**

5 (b) (1) (i) Unless a certificate of public convenience and necessity for the
6 construction is first obtained from the Commission, a person may not begin construction in
7 the State of:

8 1. a generating station; or

9 2. a qualified generator lead line.

10 (ii) If a person obtains Commission approval for construction under
11 § 7–207.1 of this subtitle, the Commission shall exempt a person from the requirement to
12 obtain a certificate of public convenience and necessity under this section.

13 (iii) Notwithstanding subparagraph (i) of this paragraph, a person
14 may not apply to obtain a certificate of public convenience and necessity for construction of
15 a qualified generator lead line unless:

16 1. at least 90 days before the filing of an application for a
17 certificate of public convenience and necessity, the person had in good faith offered the
18 electric company that owns that portion of the electric grid in Maryland to which the
19 qualified generator lead line would interconnect a full and fair opportunity for the electric
20 company to construct the qualified generator lead line; and

21 2. at any time at least 10 days before the filing of an
22 application for a certificate of public convenience and necessity, the electric company:

23 A. did not accept from the person a proposal or a negotiated
24 version of the proposal under which the electric company would construct the qualified
25 generator lead line; or

26 B. stated in writing that the electric company did not intend
27 to construct the qualified generator lead line.

28 (2) Unless a certificate of public convenience and necessity for the
29 construction is first obtained from the Commission, and the Commission has found that the
30 capacity is necessary to ensure a sufficient supply of electricity to customers in the State, a
31 person may not exercise a right of condemnation in connection with the construction of a
32 generating station.

33 (3) (i) Except as provided in paragraph (4) of this subsection, unless a

certificate of public convenience and necessity for the construction is first obtained from the Commission, a person may not begin construction of an overhead transmission line that is designed to carry a voltage in excess of 69,000 volts or exercise a right of condemnation with the construction.

(ii) For construction related to an existing overhead transmission line, the Commission may waive the requirement in subparagraph (i) of this paragraph for good cause.

(iii) Notwithstanding subparagraph (i) of this paragraph and subject to subparagraph (iv) of this paragraph, the Commission may issue a certificate of public convenience and necessity for the construction of an overhead transmission line only if the applicant for the certificate of public convenience and necessity:

1. is an electric company; or

2. is or, on the start of commercial operation of the overhead transmission line, will be subject to regulation as a public utility by an officer or an agency of the United States.

(iv) The Commission may not issue a certificate of public convenience and necessity for the construction of an overhead transmission line in the electric distribution service territory of an electric company to an applicant other than an electric company if:

1. the overhead transmission line is to be located solely within the electric distribution service territory of that electric company; and

2. the cost of the overhead transmission line is to be paid solely by that electric company and its ratepayers.

(v) 1. This subparagraph applies to the construction of an overhead transmission line for which a certificate of public convenience and necessity is required under this section.

2. On issuance of a certificate of public convenience and necessity for the construction of an overhead transmission line, a person may acquire by condemnation, in accordance with Title 12 of the Real Property Article, any property or right necessary for the construction or maintenance of the transmission line.

(4) (i) Except as provided in subparagraph (ii) of this paragraph, for construction related to an existing overhead transmission line designed to carry a voltage in excess of 69,000 volts, the Commission shall waive the requirement to obtain a certificate of public convenience and necessity if the Commission finds that the construction does not:

1. require the person to obtain new real property or additional rights-of-way through eminent domain; or

2. require larger or higher structures to accommodate:

A. increased voltage; or

B. larger conductors.

(ii) 1. For construction related to an existing overhead transmission line, including repairs, that is necessary to avoid an imminent safety hazard or reliability risk, a person may undertake the necessary construction.

2. Within 30 days after construction is completed under subsubparagraph 1 of this subparagraph, a person shall file a report with the Commission describing the work that was completed.

(C) (1) AN APPLICANT FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE CONSTRUCTION OF A GENERATING STATION, AN OVERHEAD TRANSMISSION LINE DESIGNED TO CARRY A VOLTAGE IN EXCESS OF 69,000 VOLTS, OR A QUALIFIED GENERATOR LEAD LINE SHALL CONDUCT A RAPID HIA ON THE PROPOSED PROJECT AND REPORT ON THE FINDINGS OF THE RAPID HIA.

(2) THE RAPID HIA REPORT REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE COMPLETED NOT LATER THAN 45 DAYS AFTER THE APPLICANT SUBMITS THE APPLICANT'S APPLICATION TO THE COMMISSION.

(3) AN APPLICANT SHALL COMPLETE A RAPID HIA REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION:

(I) BY CONTRACTING WITH A PERSON WITH EXPERTISE RELEVANT TO THE RAPID HIA; OR

(II) IN ACCORDANCE WITH ANY GUIDANCE ON CONDUCTING A RAPID HIA AVAILABLE FROM THE LOCAL HEALTH DEPARTMENT, THE MARYLAND DEPARTMENT OF HEALTH, OR ANY OTHER FEDERAL OR STATE AGENCY.

(4) THE RAPID HIA REPORT REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE CONSIDERED PART OF THE APPLICATION SUBMITTED TO THE COMMISSION UNDER THIS SECTION.

[(c)] (D) (1) On receipt of an application for a certificate of public convenience and necessity under this section, the Commission shall provide notice immediately or require the applicant to provide notice immediately of the application to:

(i) the Department of Planning;

(ii) the governing body, and if applicable the executive, of each county or municipal corporation in which any portion of the generating station, overhead transmission line, or qualified generator lead line is proposed to be constructed;

(iii) the governing body, and if applicable the executive, of each county or municipal corporation within 1 mile of the proposed location of the generating station, overhead transmission line, or qualified generator lead line;

(iv) each member of the General Assembly representing any part of a county in which any portion of the generating station, overhead transmission line, or qualified generator lead line is proposed to be constructed;

(v) each member of the General Assembly representing any part of each county within 1 mile of the proposed location of the generating station, overhead transmission line, or qualified generator lead line;

(vi) for a proposed overhead transmission line, each owner of land and each owner of adjacent land; and

(vii) all other interested persons.

(2) The Commission, when sending the notice required under paragraph (1) of this subsection, shall forward a copy of the application to:

(i) each appropriate State unit and unit of local government for review, evaluation, and comment regarding the significance of the proposal to State, area-wide, and local plans or programs; and

(ii) each member of the General Assembly included under paragraph (1)(iv) and (v) of this subsection who requests a copy of the application.

(3) On receipt of an application for a certificate of public convenience and necessity under this section, the Commission shall provide notice of the application on the Commission's social media platforms and website.

[(d)] (E) (1) The Commission shall provide an opportunity for public comment and hold a public hearing on the application for a certificate of public convenience and necessity in each county and municipal corporation in which any portion of the construction of a generating station, an overhead transmission line designed to carry a voltage in excess of 69,000 volts, or a qualified generator lead line is proposed to be located.

(2) The Commission shall hold the public hearing jointly with the governing body of the county or municipal corporation in which any portion of the construction of the generating station, overhead transmission line, or qualified generator lead line is proposed to be located, unless the governing body declines to participate in the hearing.

1 (3) (i) Once in each of the 4 successive weeks immediately before the
2 hearing date, the Commission shall provide weekly notice of the public hearing and an
3 opportunity for public comment:

4 1. by advertisement in a newspaper of general circulation in
5 the county or municipal corporation affected by the application;

6 2. on two types of social media; and

7 3. on the Commission's website.

8 (ii) Before a public hearing, the Commission shall coordinate with
9 the governing body of the county or municipal corporation in which any portion of the
10 construction of the generating station, overhead transmission line, or qualified generator
11 lead line is proposed to be located to identify additional options for providing, in an efficient
12 and cost-effective manner, notice of the public hearing through other types of media that
13 are familiar to the residents of the county or municipal corporation.

14 (4) (i) On the day of a public hearing, an informational sign shall be
15 posted prominently at or near each public entrance of the building in which the public
16 hearing will be held.

17 (ii) The informational sign required under subparagraph (i) of this
18 paragraph shall:

19 1. state the time, room number, and subject of the public
20 hearing; and

21 2. be at least 17 by 22 inches in size.

22 (5) (i) The Commission shall ensure presentation and
23 recommendations from each interested State unit, and shall allow representatives of each
24 State unit to sit during hearing of all parties.

25 (ii) The Commission shall allow each State unit 15 days after the
26 conclusion of the hearing to modify the State unit's initial recommendations.

27 [(e)] (F) The Commission shall take final action on an application for a
28 certificate of public convenience and necessity only after due consideration of:

29 (1) the recommendation of the governing body of each county or municipal
30 corporation in which any portion of the construction of the generating station, overhead
31 transmission line, or qualified generator lead line is proposed to be located;

32 **(2) THE APPLICANT'S FINDINGS FROM THE RAPID HIA COMPLETED**
33 **UNDER SUBSECTION (C) OF THIS SECTION;**

1 **[(2)] (3)** the effect of the generating station, overhead transmission line,
2 or qualified generator lead line on:

3 (i) the stability and reliability of the electric system;

4 (ii) economics;

5 (iii) esthetics;

6 (iv) historic sites;

7 (v) aviation safety as determined by the Maryland Aviation
8 Administration and the administrator of the Federal Aviation Administration;

9 (vi) **[when applicable,] air [quality] and water [pollution] QUALITY**
10 **IN THE SURROUNDING AREAS;** and

11 (vii) the availability of means for the required timely disposal of
12 wastes produced by any generating station; and

13 **[(3)] (4)** for a generating station:

14 (i) the consistency of the application with the comprehensive plan
15 and zoning of each county or municipal corporation where any portion of the generating
16 station is proposed to be located; and

17 (ii) the efforts to resolve any issues presented by a county or
18 municipal corporation where any portion of the generating station is proposed to be located.

19 **[(f)] (G)** For the construction of an overhead transmission line, in addition to the
20 considerations listed in subsection **[(e)] (F)** of this section, the Commission shall:

21 (1) take final action on an application for a certificate of public convenience
22 and necessity only after due consideration of:

23 (i) the need to meet existing and future demand for electric service;
24 and

25 (ii) for construction related to a new overhead transmission line, the
26 alternative routes that the applicant considered, including the estimated capital and
27 operating costs of each alternative route and a statement of the reason why the alternative
28 route was rejected;

29 (2) require as an ongoing condition of the certificate of public convenience
30 and necessity that an applicant comply with:

1 (i) all relevant agreements with PJM Interconnection, L.L.C., or its
2 successors, related to the ongoing operation and maintenance of the overhead transmission
3 line; and

4 (ii) all obligations imposed by the North America Electric Reliability
5 Council and the Federal Energy Regulatory Commission related to the ongoing operation
6 and maintenance of the overhead transmission line; and

7 (3) require the applicant to identify whether the overhead transmission
8 line is proposed to be constructed on:

9 (i) an existing brownfields site;

10 (ii) property that is subject to an existing easement; or

11 (iii) a site where a tower structure or components of a tower structure
12 used to support an overhead transmission line exist.

13 **[(g)] (H)** (1) The Commission may not authorize, and a person may not
14 undertake, the construction of an overhead transmission line that is aligned with and
15 within 1 mile of either end of a public airport runway, unless:

16 (i) the Federal Aviation Administration determines that the
17 construction of an overhead transmission line will not constitute a hazard to air navigation;
18 and

19 (ii) the Maryland Aviation Administration concurs in that
20 determination.

21 (2) A privately owned airport runway shall qualify as a public airport
22 runway under this subsection only if the runway has been on file with the Federal Aviation
23 Administration for at least 2 years as being open to the public without restriction.

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 2020.