

SENATE BILL 741

C5, M1, M3

0lr2678
CF 0lr3192

By: **Senator Feldman**

Introduced and read first time: February 3, 2020

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Certificate of Public Convenience and Necessity – Electric Facilities –**
3 **Study and Procedures**

4 FOR the purpose of requiring the Secretary of Natural Resources to require the
5 Department of Natural Resources to complete a certain independent environmental
6 and socioeconomic project assessment report; requiring the Secretary of Natural
7 Resources and the Secretary of the Environment to forward certain information to
8 the Public Service Commission in accordance with a certain procedural schedule
9 adopted by the Commission; specifying additional units of local governments to
10 which the Commission must submit a certain application under certain
11 circumstances; requiring the Commission to promptly list certain information on the
12 service list for a certain proceeding; requiring the Commission to set a date by which
13 the Department of Natural Resources and the Department of the Environment must
14 submit certain materials; requiring the Department of Natural Resources and the
15 Department of the Environment to submit the materials before a certain date unless
16 waived by the Commission; authorizing the office of planning and zoning for certain
17 counties or municipal corporations to submit a certain report to the Commission;
18 prohibiting the Commission from requiring a certain applicant to apply for or receive
19 certain approval from a county or municipal corporation; prohibiting the Commission
20 from denying a certain certificate of public convenience and necessity for failure to
21 receive certain approval from a county or municipal corporation; requiring the
22 Commission to incorporate certain licensing conditions into an order granting a
23 certificate of public convenience and necessity to a solar photovoltaic facility;
24 requiring the Commission to adopt certain regulations; specifying that a lack of
25 certain regulations may not serve as a basis for delaying or denying a certain
26 application; prohibiting a certain county or municipal corporation from unreasonably
27 withholding or delaying issuance of a certain site plan or any other permits or
28 approvals; prohibiting a certain county or municipal corporation from implementing
29 a site plan approval or other permit or approval that is inconsistent with or more
30 stringent than the requirements of a certain certificate of public convenience and
31 necessity; excluding the installation of visual buffering from the definition of

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



“construction”; and generally relating to certificates of public convenience and necessity and electric generating stations and transmission lines.

BY repealing and reenacting, with amendments,
Article – Natural Resources
Section 3–306
Annotated Code of Maryland
(2018 Replacement Volume and 2019 Supplement)

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

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

Article – Natural Resources

3–306.

(a) (1) Notwithstanding anything to the contrary in this article or the Public Utilities Article, on application to the Public Service Commission for a certificate of public convenience and necessity associated with power plant construction involving, but not limited to, use or diversion of the waters of the State, or private wetlands, the Commission shall notify immediately the Department of Natural Resources and the Department of the Environment of the application.

(2) The Commission shall supply the Department of Natural Resources and the Department of the Environment with any pertinent information available regarding the application. The Department of the Environment shall treat the application for a certificate of public convenience and necessity as an application for appropriation or use of waters of the State under Title 5 of the Environment Article and as an application for a license for dredging and filling under Title 16 of the Environment Article.

(b) (1) Within 60 days after the application for a certificate of public convenience and necessity has been filed with the Commission, the Secretary shall require the Department of Natural Resources to complete **AN INDEPENDENT ENVIRONMENTAL AND SOCIOECONOMIC PROJECT ASSESSMENT REPORT AND** any **OTHER** additional **REQUIRED** study and investigation concerning the application, and the Secretary of the Environment shall require the Department of the Environment to study and investigate the necessity for dredging and filling at the proposed plant site and water appropriation or use. [The Secretary and the Secretary of the Environment jointly shall forward the results of the study and investigation, together with a recommendation that the certificate be granted, denied, or granted with any condition deemed necessary, to the chairman of the

Commission.]

(2) IN ACCORDANCE WITH THE PROCEDURAL SCHEDULE ADOPTED BY THE COMMISSION FOR CONSIDERATION OF THE APPLICATION, THE SECRETARY AND THE SECRETARY OF THE ENVIRONMENT JOINTLY SHALL FORWARD TO THE COMMISSION:

(I) THE RESULTS OF THE STUDY AND INVESTIGATION, INCLUDING THE INDEPENDENT ENVIRONMENTAL AND SOCIOECONOMIC PROJECT ASSESSMENT REPORT COMPLETED BY THE DEPARTMENT OF NATURAL RESOURCES;

(II) A RECOMMENDATION THAT THE CERTIFICATE BE GRANTED OR DENIED, ALONG WITH THE FACTUAL BASIS FOR THE RECOMMENDATION; AND

(III) PROPOSED LICENSING CONDITIONS FOR THE CONSTRUCTION, OPERATION, AND DECOMMISSIONING OF THE PROPOSED FACILITY FOR CONSIDERATION BY THE COMMISSION.

(c) [The results and recommendations] **THE SUBMISSION MADE UNDER SUBSECTION (B)(2) OF THIS SECTION** shall be open for public inspection and shall be presented by the Secretaries or their designees at the hearing the Commission holds as required by Title 7, Subtitle 2 of the Public Utilities Article. [Within 15 days from the conclusion of the hearing, and based on the evidence there presented, the Secretaries jointly shall present their final recommendation to the chairman of the Commission including, but not limited to, any specific conclusions as to any private wetlands involved and any specific conclusions as to any water use or restriction of water use involved.]

Article – Public Utilities

7–207.

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

(2) “Brownfields site” means:

(i) a former industrial or commercial site identified by federal or State laws or regulation as contaminated or polluted;

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

(iii) mined land.

(3) (i) “Construction” means:

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

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

(ii) "Construction" does not include:

1. a change that is needed for the temporary use of a site or route for nonutility purposes or for use in securing geological data, including any boring that is necessary to ascertain foundation conditions; **OR**

2. THE INSTALLATION OF VISUAL BUFFERING, INCLUDING VEGETATIVE SCREENING AND FENCING.

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

(ii) "Mined land" includes:

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

2. land excavations;

3. workings; and

4. overburden.

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

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

1. a generating station; or

2. a qualified generator lead line.

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

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

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

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

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

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

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

(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) 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, **INCLUDING THE OFFICE OF PLANNING AND ZONING FOR EACH COUNTY OR MUNICIPAL CORPORATION IN WHICH THE GENERATING STATION, QUALIFIED GENERATOR LEAD LINE, OR OVERHEAD TRANSMISSION LINE IS PROPOSED TO BE LOCATED**, 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.

(4) ON RECEIPT OF AN APPLICATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY, THE COMMISSION SHALL PROMPTLY LIST ON THE SERVICE LIST FOR THE PROCEEDING THE OFFICE OF PLANNING AND ZONING FOR

EACH COUNTY OR MUNICIPAL CORPORATION IN WHICH THE GENERATING STATION, QUALIFIED GENERATOR LEAD LINE, OR OVERHEAD TRANSMISSION LINE IS PROPOSED TO BE LOCATED.

(d) (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.

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

1. by advertisement in a newspaper of general circulation in the county or municipal corporation affected by the application;
2. on two types of social media; and
3. on the Commission's website.

(ii) Before a public hearing, the Commission shall coordinate 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 to identify additional options for providing, in an efficient and cost-effective manner, notice of the public hearing through other types of media that are familiar to the residents of the county or municipal corporation.

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

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

1. state the time, room number, and subject of the public hearing; and
2. be at least 17 by 22 inches in size.

[(5) (i) The Commission shall ensure presentation and

1 recommendations from each interested State unit, and shall allow representatives of each
2 State unit to sit during hearing of all parties.

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

5 **(5) (I) THE COMMISSION SHALL SET A DATE IN ITS PROCEDURAL**
6 **SCHEDULE BEFORE THE EVIDENTIARY HEARING FOR THE DEPARTMENT OF**
7 **NATURAL RESOURCES AND THE DEPARTMENT OF THE ENVIRONMENT TO SUBMIT**
8 **THE MATERIALS REQUIRED UNDER § 3-306(B)(2) OF THE NATURAL RESOURCES**
9 **ARTICLE.**

10 **(II) THE DEPARTMENT OF NATURAL RESOURCES AND THE**
11 **DEPARTMENT OF THE ENVIRONMENT SHALL COMPLY WITH THE DATE SET BY THE**
12 **COMMISSION UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH EXCEPT WHEN**
13 **WAIVED BY THE COMMISSION FOR UNDUE HARDSHIP OR ON THE AGREEMENT OF**
14 **THE PARTIES TO THE PROCEEDING.**

15 **(III) THE OFFICE OF PLANNING AND ZONING FOR EACH COUNTY**
16 **OR MUNICIPAL CORPORATION IN WHICH THE GENERATING STATION, QUALIFIED**
17 **GENERATOR LEAD LINE, OR OVERHEAD TRANSMISSION LINE IS PROPOSED TO BE**
18 **LOCATED MAY SUBMIT A WRITTEN REPORT ON THE CONSISTENCY OF THE**
19 **APPLICATION FOR A GENERATING STATION WITH THE COMPREHENSIVE PLAN AND**
20 **ZONING OF THE COUNTY OR MUNICIPAL CORPORATION ON THE DATE SET UNDER**
21 **SUBPARAGRAPH (I) OF THIS PARAGRAPH.**

22 **(IV) THE COMMISSION MAY NOT REQUIRE AN APPLICANT FOR A**
23 **CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR A GENERATING**
24 **STATION TO APPLY FOR OR RECEIVE A SPECIAL EXCEPTION, CONDITIONAL USE**
25 **PERMIT, FLOATING ZONE, OR OTHER DISCRETIONARY ZONING APPROVAL FROM A**
26 **COUNTY OR MUNICIPAL CORPORATION IN WHICH THE GENERATING STATION IS**
27 **PROPOSED TO BE LOCATED.**

28 **(V) THE COMMISSION MAY NOT DENY A CERTIFICATE OF**
29 **PUBLIC CONVENIENCE AND NECESSITY TO A GENERATING STATION ON THE BASIS**
30 **THAT IT DID NOT APPLY FOR OR RECEIVE A SPECIAL EXCEPTION, CONDITIONAL USE**
31 **PERMIT, FLOATING ZONE, OR OTHER DISCRETIONARY ZONING APPROVAL FROM A**
32 **COUNTY OR MUNICIPAL CORPORATION IN WHICH THE GENERATING STATION IS**
33 **PROPOSED TO BE LOCATED.**

34 (e) The Commission shall take final action on an application for a certificate of
35 public convenience and necessity only after due consideration of:

36 (1) the recommendation of the governing body of each county or municipal

1 corporation in which any portion of the construction of the generating station, overhead
2 transmission line, or qualified generator lead line is proposed to be located;

3 (2) the effect of the generating station, overhead transmission line, or
4 qualified generator lead line on:

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

6 (ii) economics;

7 (iii) esthetics;

8 (iv) historic sites;

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

11 (vi) when applicable, air quality and water pollution; and

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

14 (3) for a generating station:

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

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

20 (f) For the construction of an overhead transmission line, in addition to the
21 considerations listed in subsection (e) of this section, the Commission shall:

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

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

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

30 (2) require as an ongoing condition of the certificate of public convenience
31 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) **(1) IN AN ORDER GRANTING A CERTIFICATE OF PUBLIC**
14 **CONVENIENCE AND NECESSITY TO A SOLAR PHOTOVOLTAIC FACILITY, THE**
15 **COMMISSION SHALL INCORPORATE LICENSING CONDITIONS REQUIRING:**

16 **(I) COMMERCIALY REASONABLE SETBACKS AND VISUAL**
17 **BUFFERING REQUIREMENTS USING PREDETERMINED SETBACK DISTANCES AND**
18 **SCREENING PLANS APPLICABLE TO ALL SOLAR PHOTOVOLTAIC FACILITIES IN THE**
19 **STATE, AS THE COMMISSION ADOPTS BY REGULATION;**

20 **(II) ADHERENCE TO STORMWATER MANAGEMENT GUIDELINES**
21 **ADOPTED BY THE DEPARTMENT OF THE ENVIRONMENT FOR SOLAR PHOTOVOLTAIC**
22 **FACILITIES; AND**

23 **(III) DECOMMISSIONING AT THE END OF THE USEFUL LIFE OF**
24 **THE PROJECT OR IN CASE OF ABANDONMENT THAT:**

25 **1. ALLOWS THE USE OF SALVAGE VALUE IN**
26 **CALCULATING DECOMMISSIONING COSTS IN BOTH INITIAL AND UPDATED**
27 **DECOMMISSIONING PLANS;**

28 **2. ALLOWS THE USE OF A SURETY BOND, LETTER OF**
29 **CREDIT, OR ANY CORPORATE GUARANTEE TO SECURE THE COST OF**
30 **DECOMMISSIONING, IF ANY; AND**

31 **3. INCLUDES ANY OTHER COMMERCIALY REASONABLE**
32 **REQUIREMENTS THE COMMISSION ADOPTS BY REGULATION.**

(2) THE COMMISSION SHALL ADOPT REGULATIONS TO IMPLEMENT THIS SUBSECTION ON OR BEFORE OCTOBER 1, 2020.

(3) THE LACK OF REGULATIONS TO IMPLEMENT THIS SUBSECTION MAY NOT SERVE AS A BASIS FOR:

(I) DELAYING THE PROCESSING OF AN APPLICATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY; OR

(II) DENYING AN APPLICATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY.

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

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

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

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

(I) (1) A COUNTY OR MUNICIPAL CORPORATION IN WHICH A GENERATING STATION, A QUALIFIED GENERATOR LEAD LINE, OR AN OVERHEAD TRANSMISSION LINE THAT HAS RECEIVED A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY IS PROPOSED TO BE LOCATED MAY NOT UNREASONABLY WITHHOLD OR DELAY ISSUANCE OF SITE PLAN APPROVAL OR ANY OTHER PERMIT OR APPROVAL TO THE GENERATING STATION, QUALIFIED GENERATOR LEAD LINE, OR OVERHEAD TRANSMISSION LINE.

(2) A COUNTY OR MUNICIPAL CORPORATION MAY NOT IMPLEMENT A SITE PLAN APPROVAL OR OTHER PERMIT OR APPROVAL REQUIREMENT THAT IS INCONSISTENT WITH OR MORE STRINGENT THAN THE LICENSING REQUIREMENTS OF A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY ISSUED TO THE GENERATING STATION, QUALIFIED GENERATOR LEAD LINE, OR OVERHEAD TRANSMISSION LINE.

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