

SENATE BILL 1142

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CF HB 1632

By: **Senator Nathan–Pulliam**

Introduced and read first time: February 16, 2018

Assigned to: Rules

A BILL ENTITLED

1 AN ACT concerning

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

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 Commission; requiring an applicant to complete the rapid HIA in a certain manner;
9 requiring the rapid HIA report to be considered part of a certain application;
10 requiring the Commission to take final action on a certain application only after due
11 consideration of the applicant's findings from the rapid HIA completed under this
12 Act; defining a certain term; and generally relating to rapid health impact
13 assessments for applications for certificates of public convenience and necessity.

14 BY repealing and reenacting, with amendments,
15 Article – Public Utilities
16 Section 7–207
17 Annotated Code of Maryland
18 (2010 Replacement Volume and 2017 Supplement)

19 Preamble

20 WHEREAS, The Public Service Commission has the discretion and authority to
21 regulate the quality of public utility services and approve certain construction projects and
22 electricity generation; and

23 WHEREAS, The Public Service Commission is not now required to systematically
24 provide for additional health and safety protections for ratepayers; and

25 WHEREAS, In general, the Public Service Commission may approve an application
26 without consideration of any health impacts of the activity on nearby Maryland residents;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 and

2 WHEREAS, Additional public protections should be a requirement in the application
3 approval process; and

4 WHEREAS, An applicant proposing a project that requires approval from the Public
5 Service Commission should be required to conduct or contract with subject matter experts
6 to conduct a Health Impact Assessment to more fully assess impacts on nearby residents
7 to inform the Commission's approval of applications; now, therefore,

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

10 **Article – Public Utilities**

11 7–207.

12 (a) (1) (i) In this section and § 7–208 of this subtitle, “construction” means:

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

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

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

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

27 **(3) IN THIS SECTION, “RAPID HIA” MEANS A HEALTH IMPACT**
28 **ASSESSMENT THAT:**

29 **(I) ANALYZES THE LIKELY ACTUAL OR POTENTIAL EFFECTS OF**
30 **CONSTRUCTION UNDER THIS SECTION ON THE HEALTH OF THE ADJACENT**
31 **POPULATION, INCLUDING THE DISTRIBUTION OF THOSE EFFECTS WITHIN THE**
32 **POPULATION;**

33 **(II) MAKES RECOMMENDATIONS ON MITIGATING OR MANAGING**

1 ANY NEGATIVE HEALTH IMPACTS;

2 (III) USES EXISTING KNOWLEDGE AND EVIDENCE;

3 (IV) IS COMPLETED WITHIN 3 WEEKS; AND

4 (V) DOES NOT INVOLVE PUBLIC NOTICE, COMMENT, OR
5 ENGAGEMENT.

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

9 1. a generating station; or

10 2. a qualified generator lead line.

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

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

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

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

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

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

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

1 (3) (i) Except as provided in paragraph (4) of this subsection, unless a
2 certificate of public convenience and necessity for the construction is first obtained from the
3 Commission, a person may not begin construction of an overhead transmission line that is
4 designed to carry a voltage in excess of 69,000 volts or exercise a right of condemnation
5 with the construction.

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

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

13 1. is an electric company; or

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

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

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

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

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

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

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

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

3 2. require larger or higher structures to accommodate:

4 A. increased voltage; or

5 B. larger conductors.

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

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

12 **(C) (1) AN APPLICANT FOR A CERTIFICATE OF PUBLIC CONVENIENCE**
13 **AND NECESSITY FOR THE CONSTRUCTION OF A GENERATING STATION, AN**
14 **OVERHEAD TRANSMISSION LINE DESIGNED TO CARRY A VOLTAGE IN EXCESS OF**
15 **69,000 VOLTS, OR A QUALIFIED GENERATOR LEAD LINE SHALL CONDUCT A RAPID**
16 **HIA ON THE PROPOSED PROJECT AND REPORT ON ITS FINDINGS.**

17 **(2) THE RAPID HIA REPORT REQUIRED UNDER PARAGRAPH (1) OF**
18 **THIS SUBSECTION SHALL BE COMPLETED NO LATER THAN 45 DAYS AFTER THE**
19 **APPLICANT SUBMITS ITS APPLICATION TO THE COMMISSION.**

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

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

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

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

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

1 (i) the Department of Planning;

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

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

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

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

14 (vi) all other interested persons.

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

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

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

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

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

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

35 1. by advertisement in a newspaper of general circulation in

1 the county or municipal corporation affected by the application;

2 2. on two types of social media; and

3 3. on the Commission's Web site.

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

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

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

15 1. state the time, room number, and subject of the public
16 hearing; and

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

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

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

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

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

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

30 [(2)] (3) the effect of the generating station, overhead transmission line,
31 or qualified generator lead line on:

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

- 1 (ii) economics;
- 2 (iii) esthetics;
- 3 (iv) historic sites;
- 4 (v) aviation safety as determined by the Maryland Aviation
5 Administration and the administrator of the Federal Aviation Administration;
- 6 (vi) when applicable, air and water pollution; and
- 7 (vii) the availability of means for the required timely disposal of
8 wastes produced by any generating station; and

9 **[(3)] (4)** for a generating station:

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

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

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

17 (1) take final action on an application for a certificate of public convenience
18 and necessity only after due consideration of the need to meet existing and future demand
19 for electric service; and

20 (2) require as an ongoing condition of the certificate of public convenience
21 and necessity that an applicant complies with:

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

25 (ii) all obligations imposed by the North America Electric Reliability
26 Council and the Federal Energy Regulatory Commission related to the ongoing operation
27 and maintenance of the overhead transmission line.

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

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

1 and

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

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

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 2018.