

SENATE BILL 90

C5, L6, M1

(PRE-FILED)

1lr1140
CF HB 103

By: **Senator Feldman**

Requested: October 26, 2020

Introduced and read first time: January 13, 2021

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Electric Facilities – Study and Procedures**

3 FOR the purpose of requiring the Public Service Commission to set a date by which the
4 Department of Natural Resources and the Department of the Environment must
5 submit certain materials for certain proceedings relating to a certificate of public
6 convenience and necessity; requiring the Department of Natural Resources and the
7 Department of the Environment to submit the materials before a certain date unless
8 waived by the Commission; authorizing the office of planning and zoning for certain
9 counties or municipal corporations to submit a certain report to the Commission;
10 prohibiting a certain county or municipal corporation from unreasonably
11 withholding, conditioning, or delaying issuance of a certain site plan or any other
12 permits or approvals for certain purposes; prohibiting a certain county or municipal
13 corporation from implementing a site plan approval or other permit or approval that
14 is inconsistent with or more stringent than the requirements of a certain certificate
15 of public convenience and necessity; excluding the installation of visual buffering
16 from the definition of “construction”; and generally relating to certificates of public
17 convenience and necessity and electric facilities.

18 BY repealing and reenacting, without amendments,
19 Article – Natural Resources
20 Section 3–306(b)
21 Annotated Code of Maryland
22 (2018 Replacement Volume and 2020 Supplement)

23 BY repealing and reenacting, with amendments,
24 Article – Public Utilities
25 Section 7–207
26 Annotated Code of Maryland
27 (2020 Replacement Volume and 2020 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 **Article – Natural Resources**

4 3–306.

5 (b) Within 60 days after the application for a certificate of public convenience and
6 necessity has been filed with the Commission, the Secretary shall require the Department
7 of Natural Resources to complete any additional study and investigation concerning the
8 application, and the Secretary of the Environment shall require the Department of the
9 Environment to study and investigate the necessity for dredging and filling at the proposed
10 plant site and water appropriation or use. The Secretary and the Secretary of the
11 Environment jointly shall forward the results of the study and investigation, together with
12 a recommendation that the certificate be granted, denied, or granted with any condition
13 deemed necessary, to the chairman of the Commission.

14 **Article – Public Utilities**

15 7–207.

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

17 (2) “Brownfields site” means:

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

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

22 (iii) mined land.

23 (3) (i) “Construction” means:

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

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

31 (ii) “Construction” does not include:

32 1. a change that is needed for the temporary use of a site or

1 route for nonutility purposes or for use in securing geological data, including any boring
2 that is necessary to ascertain foundation conditions; OR

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

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

7 (ii) “Mined land” includes:

- 8 1. private ways and roads used for mining appurtenant to
9 any surface mining area;
- 10 2. land excavations;
- 11 3. workings; and
- 12 4. overburden.

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

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

- 20 1. a generating station; or
- 21 2. a qualified generator lead line.

22 (ii) If a person obtains Commission approval for construction under
23 § 7-207.1 of this subtitle, the Commission shall exempt a person from the requirement to
24 obtain a certificate of public convenience and necessity under this section.

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

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

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

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

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

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

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

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

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

25 1. is an electric company; or

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

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

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

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

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

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

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

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

14 2. require larger or higher structures to accommodate:

15 A. increased voltage; or

16 B. larger conductors.

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

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

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

26 (i) the Department of Planning;

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

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

33 (iv) each member of the General Assembly representing any part of

1 a county in which any portion of the generating station, overhead transmission line, or
2 qualified generator lead line is proposed to be constructed;

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

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

8 (vii) all other interested persons.

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

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

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

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

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

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

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

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

34 2. on two types of social media; and

1 3. on the Commission's website.

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

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

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

13 1. state the time, room number, and subject of the public
14 hearing; and

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

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

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

21 **(5) (i) THE COMMISSION SHALL SET A DATE IN ITS PROCEDURAL**
22 **SCHEDULE BEFORE THE EVIDENTIARY HEARING FOR THE DEPARTMENT OF**
23 **NATURAL RESOURCES AND THE DEPARTMENT OF THE ENVIRONMENT TO SUBMIT**
24 **THE MATERIALS REQUIRED UNDER § 3-306(B) OF THE NATURAL RESOURCES**
25 **ARTICLE.**

26 **(ii) THE DEPARTMENT OF NATURAL RESOURCES AND THE**
27 **DEPARTMENT OF THE ENVIRONMENT SHALL COMPLY WITH THE DATE SET BY THE**
28 **COMMISSION UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH EXCEPT WHEN**
29 **WAIVED BY THE COMMISSION FOR UNDUE HARDSHIP OR ON THE AGREEMENT OF**
30 **THE PARTIES TO THE PROCEEDING.**

31 **(iii) THE OFFICE OF PLANNING AND ZONING FOR EACH COUNTY**
32 **OR MUNICIPAL CORPORATION IN WHICH THE GENERATING STATION OR QUALIFIED**
33 **GENERATOR LEAD LINE IS PROPOSED TO BE LOCATED MAY SUBMIT A WRITTEN**
34 **REPORT ON THE CONSISTENCY OF THE APPLICATION FOR A GENERATING STATION**
35 **WITH THE COMPREHENSIVE PLAN AND ZONING OF THE COUNTY OR MUNICIPAL**

1 **CORPORATION ON THE DATE SET UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH.**

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

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

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

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

10 (ii) economics;

11 (iii) esthetics;

12 (iv) historic sites;

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

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

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

18 (3) for a generating station:

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

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

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

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

28 (i) the need to meet existing and future demand for electric service;
29 and

30 (ii) for construction related to a new overhead transmission line, the

1 alternative routes that the applicant considered, including the estimated capital and
2 operating costs of each alternative route and a statement of the reason why the alternative
3 route was rejected;

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

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

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

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

14 (i) an existing brownfields site;

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

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

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

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

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

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

29 **(H) (1) A COUNTY OR MUNICIPAL CORPORATION IN WHICH A**
30 **GENERATING STATION OR QUALIFIED GENERATOR LEAD LINE THAT HAS RECEIVED**
31 **A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY IS PROPOSED TO BE**
32 **LOCATED MAY NOT UNREASONABLY WITHHOLD, CONDITION, OR DELAY ISSUANCE**
33 **OF SITE PLAN APPROVAL OR ANY OTHER PERMIT OR APPROVAL TO THE**
34 **GENERATING STATION OR QUALIFIED GENERATOR LEAD LINE.**

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

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 October 1, 2021.