

HOUSE BILL 1188

C5

3lr1429
CF SB 931

By: **Delegate Atterbeary**

Introduced and read first time: February 10, 2023

Assigned to: Economic Matters

Committee Report: Favorable

House action: Adopted

Read second time: March 8, 2023

CHAPTER _____

1 AN ACT concerning

2 **Public Utilities – Certificate of Public Convenience and Necessity – Solar**
3 **Photovoltaic Systems**

4 FOR the purpose of defining “generating station” as it relates to the requirement to obtain
5 a certificate of public convenience and necessity or approval from the Public Service
6 Commission for a person who constructs a generating station that has the capacity
7 to produce a certain amount of electricity from a solar photovoltaic system; and
8 generally relating to the requirement to obtain a certificate of public convenience
9 and necessity.

10 BY repealing and reenacting, with amendments,
11 Article – Public Utilities
12 Section 7–207(a), 7–207.1, and 7–207.2
13 Annotated Code of Maryland
14 (2020 Replacement Volume and 2022 Supplement)

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

17 **Article – Public Utilities**

18 7–207.

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



(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 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.

(4) "GENERATING STATION" DOES NOT INCLUDE:

(I) A GENERATING UNIT OR FACILITY THAT:

1. IS USED FOR THE PRODUCTION OF ELECTRICITY;

2. HAS THE CAPACITY TO PRODUCE NOT MORE THAN 2 MEGAWATTS OF ALTERNATING CURRENT; AND

3. IS INSTALLED WITH EQUIPMENT THAT PREVENTS THE FLOW OF ELECTRICITY TO THE ELECTRIC GRID DURING TIME PERIODS WHEN THE ELECTRIC GRID IS OUT OF SERVICE; OR

(II) A COMBINATION OF TWO OR MORE GENERATING UNITS OR FACILITIES THAT:

1. ARE USED FOR THE PRODUCTION OF ELECTRICITY;

2. ARE LOCATED ON THE SAME PROPERTY OR ADJACENT PROPERTIES;

1 **3. HAVE THE CAPACITY TO PRODUCE, WHEN**
2 **CALCULATED CUMULATIVELY FOR ALL GENERATING UNITS OR FACILITIES ON THE**
3 **PROPERTY OR ADJACENT PROPERTY, MORE THAN 2 MEGAWATTS OF ALTERNATING**
4 **CURRENT; AND**

5 **4. FOR EACH INDIVIDUAL GENERATING UNIT OR**
6 **FACILITY:**

7 **A. HAS THE CAPACITY TO PRODUCE NOT MORE THAN 2**
8 **MEGAWATTS OF ALTERNATING CURRENT;**

9 **B. IS SEPARATELY METERED BY THE ELECTRIC**
10 **COMPANY; AND**

11 **C. DOES NOT EXPORT ELECTRICITY FOR SALE ON THE**
12 **WHOLESALE MARKET UNDER AN AGREEMENT WITH PJM INTERCONNECTION, LLC.**

13 **[(4)] (5)** (i) “Mined land” means the surface or subsurface of an area
14 in which surface mining operations will be, are being, or have been conducted.

15 (ii) “Mined land” includes:

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

18 2. land excavations;

19 3. workings; and

20 4. overburden.

21 **[(5)] (6)** “Qualified generator lead line” means an overhead transmission
22 line that is designed to carry a voltage in excess of 69,000 volts and would allow an
23 out-of-state Tier 1 or Tier 2 renewable source to interconnect with a portion of the electric
24 system in Maryland that is owned by an electric company.

25 7-207.1.

26 **(A) IN THIS SECTION, “GENERATING STATION” DOES NOT INCLUDE:**

27 **(1) A GENERATING UNIT OR FACILITY THAT:**

28 **(I) IS USED FOR THE PRODUCTION OF ELECTRICITY;**

(II) HAS THE CAPACITY TO PRODUCE NOT MORE THAN 2
MEGAWATTS OF ALTERNATING CURRENT; AND

(III) IS INSTALLED WITH EQUIPMENT THAT PREVENTS THE FLOW
OF ELECTRICITY TO THE ELECTRIC GRID DURING TIME PERIODS WHEN THE
ELECTRIC GRID IS OUT OF SERVICE; OR

(2) A COMBINATION OF TWO OR MORE GENERATING UNITS OR
FACILITIES THAT:

(I) ARE USED FOR THE PRODUCTION OF ELECTRICITY;

(II) ARE LOCATED ON THE SAME PROPERTY OR ADJACENT
PROPERTIES;

(III) HAVE THE CAPACITY TO PRODUCE, WHEN CALCULATED
CUMULATIVELY FOR ALL GENERATING UNITS OR FACILITIES ON THE PROPERTY OR
ADJACENT PROPERTY, MORE THAN 2 MEGAWATTS OF ALTERNATING CURRENT; AND

(IV) FOR EACH INDIVIDUAL GENERATING UNIT OR FACILITY:

1. HAS THE CAPACITY TO PRODUCE NOT MORE THAN 2
MEGAWATTS OF ALTERNATING CURRENT;

2. IS SEPARATELY METERED BY THE ELECTRIC
COMPANY; AND

3. DOES NOT EXPORT ELECTRICITY FOR SALE ON THE
WHOLESALE MARKET UNDER AN AGREEMENT WITH PJM INTERCONNECTION, LLC.

[(a)] (B) This section applies to a person who:

(1) constructs a generating station:

(i) designed to provide on-site generated electricity if:

1. the capacity of the generating station does not exceed 70
megawatts; and

2. the electricity that may be exported for sale from the
generating station to the electric system is sold only on the wholesale market pursuant to
an interconnection, operation, and maintenance agreement with the local electric company;
or

(ii) that produces electricity from wind if:

1. the generating station is land-based;

2. the capacity of the generating station does not exceed 70 megawatts;

3. the electricity that may be exported for sale from the generating station to the electric system is sold only on the wholesale market pursuant to an interconnection, operation, and maintenance agreement with the local electric company;

4. the Commission provides an opportunity for public comment at a public hearing as provided in subsection [(f)] (G) of this section; and

5. the generating station's wind turbines are not located within a distance from the Patuxent River Naval Air Station that is determined by regulations adopted by the Commission in coordination with the Commander, Naval Air Warfare Center Aircraft Division, provided that the distance requirement under the regulation is:

A. not greater than is necessary to encompass an area in which utility scale wind turbines could create Doppler radar interference for missions at the Patuxent River Naval Air Station;

B. not greater than 46 miles, measured from location 38.29667N, 76.37668W; and

C. subject to modification if necessary to reflect changes in missions or technology at the Patuxent River Naval Air Station or changes in wind energy technology; or

(2) constructs a generating station if:

(i) the capacity of the generating station does not exceed 25 megawatts;

(ii) the electricity that may be exported for sale from the generating station to the electric system is sold only on the wholesale market pursuant to an interconnection, operation, and maintenance agreement with the local electric company; and

(iii) at least 10% of the electricity generated at the generating station each year is consumed on-site.

[(b)] (C) (1) The Commission shall require a person that is exempted from the requirement to obtain a certificate of public convenience and necessity to obtain

approval from the Commission under this section before the person may construct a generating station described in subsection [(a)] (B) of this section.

(2) An application for approval under this section shall:

(i) be made to the Commission in writing on a form adopted by the Commission;

(ii) be verified by oath or affirmation; and

(iii) contain information that the Commission requires, including:

1. proof of compliance with all applicable requirements of the independent system operator; and

2. a copy of an interconnection, operation, and maintenance agreement between the generating station and the local electric company.

[(c)] (D) On receipt of an application for approval under this section, the Commission shall provide notice immediately or require the applicant to provide notice immediately of the application to:

(1) the governing body of each county or municipal corporation in which any portion of the generating station is proposed to be constructed;

(2) the governing body of each county or municipal corporation within 1 mile of the proposed location of the generating station;

(3) each member of the General Assembly representing any part of a county in which any portion of the generating station is proposed to be constructed; and

(4) each member of the General Assembly representing any part of each county within 1 mile of the proposed location of the generating station.

[(d)] (E) When reviewing an application for approval under this section, the Commission shall:

(1) ensure the safety and reliability of the electric system;

(2) require the person constructing the generating station to notify the Commission 2 weeks before the first export of electricity from a generating station approved under this section; and

(3) conduct its review and approval in an expeditious manner.

1 **[(e)] (F)** Except for the notice required under subsection **[(c)] (D)** of this section,
2 the Commission may waive an element of the approval process under this section if the
3 Commission determines that the waiver is in the public interest.

4 **[(f)] (G)** (1) The Commission shall provide an opportunity for public
5 comment and hold a public hearing as provided under this subsection on an application for
6 approval made under subsection **[(a)(1)(ii)] (B)(1)(II)** of this section in each county and
7 municipal corporation in which any portion of the construction of a generating station is
8 proposed to be located.

9 (2) Upon the request of the governing body of a county or municipal
10 corporation in which any portion of the construction of a generating station is proposed to
11 be located, the Commission shall hold the public hearing jointly with the governing body.

12 (3) Once in each of 2 successive weeks immediately before the hearing date,
13 the Commission, at the expense of the applicant, shall provide weekly notice of the public
14 hearing and opportunity for public comment by advertisement in a newspaper of general
15 circulation in the county or municipal corporation affected by the application.

16 7-207.2.

17 **(A) IN THIS SECTION, “GENERATING STATION” DOES NOT INCLUDE:**

18 **(1) A GENERATING UNIT OR FACILITY THAT:**

19 **(I) IS USED FOR THE PRODUCTION OF ELECTRICITY;**

20 **(II) HAS THE CAPACITY TO PRODUCE NOT MORE THAN 2**
21 **MEGAWATTS OF ALTERNATING CURRENT; AND**

22 **(III) IS INSTALLED WITH EQUIPMENT THAT PREVENTS THE FLOW**
23 **OF ELECTRICITY TO THE ELECTRIC GRID DURING TIME PERIODS WHEN THE**
24 **ELECTRIC GRID IS OUT OF SERVICE; OR**

25 **(2) A COMBINATION OF TWO OR MORE GENERATING UNITS OR**
26 **FACILITIES THAT:**

27 **(I) ARE USED FOR THE PRODUCTION OF ELECTRICITY;**

28 **(II) ARE LOCATED ON THE SAME PROPERTY OR ADJACENT**
29 **PROPERTIES;**

30 **(III) HAVE THE CAPACITY TO PRODUCE, WHEN CALCULATED**
31 **CUMULATIVELY FOR ALL GENERATING UNITS OR FACILITIES ON THE PROPERTY OR**
32 **ADJACENT PROPERTY, MORE THAN 2 MEGAWATTS OF ALTERNATING CURRENT; AND**

(IV) FOR EACH INDIVIDUAL GENERATING UNIT OR FACILITY:

1. HAS THE CAPACITY TO PRODUCE NOT MORE THAN 2 MEGAWATTS OF ALTERNATING CURRENT;

2. IS SEPARATELY METERED BY THE ELECTRIC COMPANY; AND

3. DOES NOT EXPORT ELECTRICITY FOR SALE ON THE WHOLESALE MARKET UNDER AN AGREEMENT WITH PJM INTERCONNECTION, LLC.

[(a)] (B) This section applies to a person who constructs a generating station that:

(1) has the capacity to produce [at least] MORE THAN 2 megawatts of electricity, AS MEASURED BY THE ALTERNATING CURRENT RATING OF THE SYSTEM'S INVERTER, from a solar photovoltaic system; and

(2) is exempted under § 7–207.1 of this subtitle from the requirement to obtain a certificate of public convenience and necessity.

[(b)] (C) (1) A person shall file an application for approval to construct a generating station under § 7–207.1 of this subtitle at least 6 months before construction commences.

(2) The Commission shall require a person who files an application for approval to construct a generating station to pay a deposit of 1% of total installed costs.

[(c)] (D) (1) The Commission shall place any deposits collected under subsection [(b)] (C) of this section into an escrow account.

(2) If a person demonstrates to the Commission that the person is fully authorized to commence construction within 18 months after filing an application for approval, the Commission shall refund the deposit, less reasonable administrative costs.

(3) (i) Subject to subparagraph (ii) of this paragraph, if a person does not commence construction within 18 months after filing an application for approval, the money held in the escrow account shall be:

1. deemed to be abandoned; and

2. transferred to the Maryland Strategic Energy Investment Fund under § 9–20B–05 of the State Government Article, less reasonable administrative costs.

1 (ii) 1. A person may request an extension for a project that does
2 not commence construction within 18 months after the filing of an application for approval.

3 2. The Commission may grant the request based on factors
4 the Commission considers compelling, including the occurrence of events outside the
5 person's control.

6 SECTION 2. AND BE IT FURTHER ENACTED, That it is the intent of the General
7 Assembly that this Act apply to solar energy generating facilities and eligible
8 customer-generators authorized by an electric company to engage in net energy metering
9 under § 7-306 of the Public Utilities Article and COMAR 20.50.10.07.

10 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
11 October 1, 2023.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.