

HOUSE BILL 468

C5, M1

01r0171
CF SB 282

By: **The Speaker (By Request – Administration) and Delegates Manno, Elmore, Hecht, Bartlett, Beidle, Bobo, Bronrott, Cardin, Carr, Doory, Levy, Love, Morhaim, Niemann, Reznik, Shewell, and Stein**

Introduced and read first time: January 29, 2010

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Off-Shore Wind Generation – Qualified Submerged Renewable Energy Lines**

3 FOR the purpose of exempting certain energy lines from a certain prohibition on
4 construction or installation in a beach erosion control district under certain
5 circumstances; requiring a certificate of public convenience for certain energy
6 lines before constructing, installing, or exercising a right of condemnation;
7 requiring the Public Service Commission to conduct certain proceedings and
8 consider certain factors in deciding on a certificate for certain energy lines;
9 defining a certain term; and generally relating to qualified submerged
10 renewable energy lines.

11 BY repealing and reenacting, with amendments,
12 Article – Natural Resources
13 Section 8–1102
14 Annotated Code of Maryland
15 (2007 Replacement Volume and 2009 Supplement)

16 BY repealing and reenacting, with amendments,
17 Article – Public Utility Companies
18 Section 7–207 and 7–208
19 Annotated Code of Maryland
20 (2008 Replacement Volume and 2009 Supplement)

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

23 **Article – Natural Resources**

24 8–1102.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (a) (1) **[For] EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPHS (2)**
2 **AND (3) OF THIS SUBSECTION, FOR** the purposes of maintaining the Atlantic Coast
3 beaches of the State and the Beach Erosion Control District, the integrity and
4 continuity of the dunal system and assuring adequate maintenance of the beaches,
5 Beach Erosion Control District, and dunal system, to provide for shore erosion and
6 sediment control and storm protection, and to minimize structural interference with
7 the littoral drift of sand and any anchoring vegetation, any land clearing, construction
8 activity, or the construction or placement of permanent structures within the Beach
9 Erosion Control District is prohibited.

10 (2) This prohibition does not apply to any project or activity approved
11 by the Department and the appropriate soil conservation district specifically for storm
12 control; beach erosion and sediment control; maintenance projects designed to benefit
13 the Beach Erosion Control District; the widening of the boardwalk in Ocean City up to
14 an additional 40 feet to the east between South Second Street and the south side of
15 Worcester Street and from the south side of Somerset Street to the southerly terminus
16 of the steel and concrete bulkhead at 4th Street, and an additional 80 feet to the east
17 between the south side of Worcester Street and the south side of Somerset Street to
18 include associated appurtenances and construction of one restroom facility in an
19 easterly direction between South Second Street and the southerly terminus of the steel
20 and concrete bulkhead at 4th Street for the purpose of public health, safety, and
21 welfare; and a planned public utility pipeline carrying treated sewage effluent from a
22 unit not exceeding 14 million gallons per day, if, in addition to the approvals required
23 by all other applicable federal and local laws and regulations, it is approved by the
24 Board of Public Works as essential to the public health, safety, and welfare of the
25 citizens of Worcester County, after having received the permission of the Secretaries of
26 the Environment and Natural Resources, and the Director of Planning, including a
27 guarantee that in any contract under this provision a person will not make any
28 significant permanent environmental disruption to the area, and the construction area
29 for the purpose of laying a single pipe with a diameter not exceeding 36 inches is
30 limited to a single 100 foot wide area perpendicular eastward from the west crest of
31 the natural dune line on Assateague Island and in Ocean City, and if the Secretaries
32 of the Environment and Natural Resources and the Director of Planning find that
33 there is no economically and environmentally feasible alternative, and that there is
34 insufficient capacity at the existing Ocean City wastewater treatment facility and
35 discharge pipe.

36 **(3) (I) THIS PROHIBITION DOES NOT APPLY TO THE**
37 **CONSTRUCTION AND INSTALLATION OF A QUALIFIED SUBMERGED RENEWABLE**
38 **ENERGY LINE, AS DEFINED IN TITLE 7, SUBTITLE 2 OF THE PUBLIC UTILITY**
39 **COMPANIES ARTICLE, IF THE PROJECT DOES NOT RESULT IN ANY SIGNIFICANT**
40 **PERMANENT ENVIRONMENTAL DISRUPTION TO THE BEACH EROSION CONTROL**
41 **DISTRICT.**

42 **(II) AN APPLICATION FOR A CERTIFICATE OF PUBLIC**
43 **CONVENIENCE AND NECESSITY TO CONSTRUCT A QUALIFIED SUBMERGED**

1 RENEWABLE ENERGY LINE, AS DEFINED IN TITLE 7, SUBTITLE 2 OF THE PUBLIC
2 UTILITY COMPANIES ARTICLE, IS SUBJECT TO REVIEW BY THE DEPARTMENT
3 AND THE DEPARTMENT OF THE ENVIRONMENT AS PROVIDED IN § 3-306 OF
4 THIS ARTICLE.

5 (b) The Secretary of the Environment, the Secretary of Natural Resources,
6 and the Director of Planning, with the approval of the Board of Public Works, shall
7 jointly adopt regulations in accordance with Title 10, Subtitle 1 of the State
8 Government Article for the purpose of implementing the provisions of this section.

9 **Article – Public Utility Companies**

10 7-207.

11 (a) (1) In this section and § 7-208 of this subtitle[,] **THE FOLLOWING**
12 **WORDS HAVE THE MEANINGS INDICATED.**

13 (2) [“construction”] **“CONSTRUCTION”** means:

14 (i) any physical change at a site, including fabrication, erection,
15 installation, or demolition; or

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

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

24 (3) **“QUALIFIED SUBMERGED RENEWABLE ENERGY LINE” MEANS**
25 **A BURIED OR SUBMERGED LINE CARRYING ELECTRICITY AND CONNECTING AN**
26 **OFFSHORE WIND ENERGY GENERATION FACILITY LOCATED AT LEAST 3 MILES**
27 **OFF THE ATLANTIC COAST TO THE ELECTRIC GRID.**

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

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

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

6 (3) Unless a certificate of public convenience and necessity for the
7 construction is first obtained from the Commission, an electric company may not begin
8 construction of an overhead transmission line that is designed to carry a voltage in
9 excess of 69,000 volts or exercise a right of condemnation with the construction.

10 **(4) UNLESS A CERTIFICATE OF PUBLIC CONVENIENCE AND**
11 **NECESSITY IS FIRST OBTAINED FROM THE COMMISSION, A PERSON MAY NOT**
12 **BEGIN CONSTRUCTION OR INSTALLATION OF A QUALIFIED SUBMERGED**
13 **RENEWABLE ENERGY LINE OR EXERCISE A RIGHT OF CONDEMNATION IN**
14 **CONNECTION WITH THE CONSTRUCTION.**

15 (c) (1) On receipt of an application for a certificate of public convenience
16 and necessity under this section, the Commission shall provide notice to the
17 Department of Planning and to all other interested persons.

18 (2) The Department of Planning shall forward the application to each
19 appropriate State unit and unit of local government for review, evaluation, and
20 comment regarding the significance of the proposal to State, area-wide, and local
21 plans or programs.

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

28 (2) The Commission shall hold the public hearing jointly with the
29 governing body of the county or municipal corporation in which any portion of the
30 construction of the generating station [or], overhead transmission line, **OR**
31 **QUALIFIED SUBMERGED RENEWABLE ENERGY LINE** is proposed to be located,
32 unless the governing body declines to participate in the hearing.

33 (3) Once in each of the 4 successive weeks immediately before the
34 hearing date, the Commission shall provide weekly notice of the public hearing and an
35 opportunity for public comment by advertisement in a newspaper of general
36 circulation in the county or municipal corporation affected by the application.

37 (4) (i) The Commission shall ensure presentation and
38 recommendations from each interested State unit, and shall allow representatives of
39 each State unit to sit during hearing of all parties.

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

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

5 (1) the recommendation of the governing body of each county or
6 municipal corporation in which any portion of the construction of the generating
7 station [or], overhead transmission line, **OR QUALIFIED SUBMERGED RENEWABLE**
8 **ENERGY LINE** is proposed to be located; and

9 (2) the effect of the generating station [or], overhead transmission
10 line, **OR QUALIFIED SUBMERGED RENEWABLE ENERGY LINE** on:

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

12 (ii) economics;

13 (iii) esthetics;

14 (iv) historic sites;

15 (v) **WHERE APPLICABLE**, aviation safety as determined by the
16 Maryland Aviation Administration and the administrator of the Federal Aviation
17 Administration;

18 (vi) when applicable, air and water pollution; and

19 (vii) the availability of means for the required timely disposal of
20 wastes produced by any generating station.

21 (f) For the construction of an overhead transmission line, in addition to the
22 considerations listed in subsection (e) of this section, the Commission shall take final
23 action on an application for a certificate of public convenience and necessity only after
24 due consideration of the need to meet existing and future demand for electric service.

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

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

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

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

5 (h) The Commission shall consider and take final action on an application for
6 a certificate of public convenience and necessity in an expeditious manner if the
7 application is for the construction of a generating station:

8 (1) that is designed to provide electricity for a single electric customer
9 that uses at least 1,500,000,000 kilowatt hours of electricity each year; and

10 (2) with a generating capacity that does not exceed 750 megawatts.

11 7–208.

12 (a) This section applies to any person:

13 (1) constructing a generating station and its associated overhead
14 transmission lines designed to carry a voltage in excess of 69,000 volts; [or]

15 (2) exercising the right of condemnation in connection with the
16 construction; **OR**

17 **(3) CONSTRUCTING A QUALIFIED SUBMERGED RENEWABLE**
18 **ENERGY LINE.**

19 (b) (1) To obtain the certificate of public convenience and necessity
20 required under § 7–207 of this subtitle for construction under this section, a person
21 shall file an application with the Commission at least 2 years before construction of
22 the facility will commence.

23 (2) The Commission may waive the 2–year requirement on a showing
24 of good cause.

25 (c) The applicant shall:

26 (1) include in an application under this section the information that
27 the Commission requests initially; and

28 (2) furnish any additional information that the Commission requests
29 subsequently.

30 (d) (1) On the receipt of an application under this section, together with
31 any additional information requested under subsection (c)(2) of this section, the
32 Commission shall provide notice to:

- 1 (i) all interested persons;
- 2 (ii) the Department of Agriculture;
- 3 (iii) the Department of Business and Economic Development;
- 4 (iv) the Department of the Environment;
- 5 (v) the Department of Natural Resources;
- 6 (vi) the Department of Transportation; and
- 7 (vii) the Department of Planning.

8 (2) The Commission shall hold a public hearing on the application as
9 required by § 7–207 of this subtitle, after:

- 10 (i) the receipt of any additional information requested under
11 subsection (c)(2) of this section that the Commission considers necessary; and
- 12 (ii) any publication of notice the Commission considers to be
13 proper.

14 (3) (i) At the public hearing, the Commission shall ensure
15 presentation of the information and recommendations of the State units specified in
16 paragraph (1) of this subsection and shall allow the official representative of each unit
17 to sit during hearing of all parties.

18 (ii) Based on the evidence relating to the unit's areas of concern,
19 the Commission shall allow each unit 15 days after the conclusion of the hearing to
20 modify or affirm the unit's initial recommendations.

21 (e) Within 90 days after the conclusion of the hearing on an application
22 under this section, the Commission shall:

- 23 (1) (i) grant a certificate of public convenience and necessity
24 unconditionally;
- 25 (ii) grant the certificate, subject to conditions the Commission
26 determines to be appropriate; or
- 27 (iii) deny the certificate; and

28 (2) notify all interested parties of its decision.

29 (f) (1) The Commission shall include in each certificate it issues under
30 subsection (e) of this section:

1 (i) the requirements of the federal and State environmental
2 laws and standards that are identified by the Department of the Environment; and

3 (ii) the methods and conditions that the Commission determines
4 are appropriate to comply with those environmental laws and standards.

5 (2) The Commission may not adopt any method or condition under
6 paragraph (1)(ii) of this subsection that the Department of the Environment
7 determines is inconsistent with federal and State environmental laws and standards.

8 (g) (1) A decision of the Commission regarding the issuance of a
9 certificate requires the vote of a majority of the members of the Commission.

10 (2) If a majority of the members of the Commission fails to reach
11 agreement on the conditions to be attached to a conditional certificate, the certificate
12 shall be denied.

13 (h) The grant of a certificate by the Commission to any person under
14 subsection (e) of this section constitutes:

15 (1) authority for the person to dredge and construct bulkheads in the
16 waters or private wetlands of the State and to appropriate or use the waters; and

17 (2) registration and a permit to construct, as required under Title 2,
18 Subtitle 4 of the Environment Article.

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
20 July 1, 2010.