



Senate Bill 931

Local Jurisdictions – Zoning Authority – Generating Stations

MACo Position: **SUPPORT**

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To: Finance Committee

From: Leslie Knapp Jr.

The Maryland Association of Counties (MACo) **SUPPORTS** SB 931. The bill would address the emerging and systemic problem of properly siting large-scale energy generation facilities by giving local communities and their governments a needed voice in the process.

What the Bill Does

SB 931 would allow counties and municipalities with zoning authority to enact binding zoning for utility-scale energy generation facilities that need to obtain a certificate of public convenience and necessity from the Public Service Commission (PSC) or have a generation capacity of at least 2 megawatts. Community or small-scale projects are unaffected.

In order for a local government's zoning to be binding, the local government must engage in an "enhanced" zoning process for each energy generation technology it wishes to zone for – including meeting with appropriate energy developer representatives and incorporating factors identified by the PSC as important to that energy generation technology. For the zoning to be binding, a local government must generate viable project sites and cannot simply ban a particular technology.

The bill also provides a maximum 1-year moratorium while the zoning is being undertaken, and grandfathering for energy projects already in the "pipeline" and local zoning enacted prior to the start of 2017 as long as the zoning complies with the bill's requirements. The bill allows the PSC to preempt local zoning that complies with the bill when a proposed generation facility is vital to grid integrity and there is no viable alternative site authorized under the zoning. Finally, the Power Plant Research Program must undertake a study to improve notice and communication for siting.

Disconnect Between Land Use and Energy Siting

Currently, there is a disconnect between laws governing the siting of energy facilities and laws governing land use planning. Maryland is nationally recognized as a state that embraces robust long-term comprehensive planning and Smart Growth. Counties set development plans; agriculture, open space, and historic preservation goals; and environmental protection targets within their comprehensive plans and subsequent zoning ordinances. These plans and goals are all designed to properly manage long-term growth and preserve the unique identities of Maryland's diverse communities. However, energy generation facilities are not subject to the same land use planning requirements.

Instead, energy facility siting is based on decades-old law that envisioned small and relatively compact facilities like coal, oil, and nuclear plants as primary energy generators. In 1971, as the location of the future Calvert Cliffs Nuclear Plant was being discussed, valid concerns over “not in my backyard” opposition prompted the Maryland General Assembly to pass the Power Plant Siting Act (SB 540). The Act gave the PSC absolute preemption authority over local zoning.

The Changing Nature of Energy

Increasingly, however, energy generation is becoming more “dispersed” as technologies like solar, wind, biomass, and gasification are now poised to be primary generators. These technologies bring many advantages but also some drawbacks – including a need for significant amounts of open space. For example, a 2 megawatt wind or solar facility consumes roughly 10 acres of land (about 5 football fields).

According to the Nature Conservancy, energy development now consumes more open space in the United States than residential, commercial, and industrial development. Maryland is seeing a “land gold rush” as energy companies are optioning thousands of acres, regardless of local government plans and needs. Over 3,000 acres are already in the development pipeline for utility-scale solar facilities alone.

This is an issue that affects urban and rural counties across the state, and in some instances, municipalities as well. As energy technology has changed, a new balance must be established.

Finding the Right Balance

SB 931 would solidify a needed local government voice in how the state’s energy landscape develops. Despite several recent decisions by the PSC that found in favor of local governments over proposed energy sites in Kent and Allegany Counties, the decisions made it very clear that the PSC retains its preemption authority over local zoning and that the decisions were based on the specific facts of the case. The finding could be different in the next case. *A systemic solution is still needed.*

SB 931 attempts to provide a solution by requiring local governments that wish to enact binding zoning to ensure they generate viable project sites while still giving the PSC the authority to override local zoning for grid integrity issues. The bill also moves local participation toward the start of the siting process, which will help provide more certainty both to citizens and energy developers. Otherwise, it is likely that contentious siting battles and costly litigation will continue.

Conclusion

SB 931 would strike a reasonable balance between long-term land use planning and the need for utility-scale energy generation facilities. Accordingly, MACo urges the Committee to give SB 931 a **FAVORABLE** report.