

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2018, Legislative Day No. 21

Bill No. 102-18

Mr. Wade Kach, Councilman

By the County Council, December 17, 2018

A BILL
ENTITLED

AN ACT concerning

Solar Facilities

FOR the purpose of imposing a temporary 9-month moratorium on the processing and approval of any petition for special exceptions for solar facilities in the Resource Conservation (R.C.) Zones to allow time and consideration of recommendations from the Baltimore County Planning Board; to provide for further review and to improve the law for processing and approval of solar facilities; and generally relating to solar facilities.

WHEREAS, the Baltimore County Council enacted legislation (Bill 37-17) to allow industrial and commercial solar facilities in designated R.C, business, and manufacturing zones by special exception; and

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter stricken from existing law.
~~Strike out~~ indicates matter stricken from bill.
Underlining indicates amendments to bill.

WHEREAS, the legislative purpose of Bill 37-17 was to balance the benefits of solar energy with safeguards to protect the County’s communities, agricultural land, forests, waterways, and other natural resources; and

WHEREAS, Bill 37-17 also called for the Baltimore County Planning Board to submit recommendations to the County Council and the County Executive regarding potential changes to current law; and

WHEREAS, the Baltimore County Planning Board submitted the following recommendations:

- Solar facilities should not be permitted on prime and productive soils;
- Solar facilities should be directed into business and manufacturing zones, brownfields, rooftops and parking lots where financially feasible;
- Further in-depth study of how other similar jurisdictions have responded to the use should be considered in a review of the current law;
- The feasibility of establishing locational criteria to determine appropriate siting of solar facilities should be investigated;
- Solar facilities should not be detrimental to scenic views or routes;
- Participation in future studies should be broadened to include stakeholders from each Councilmanic District; and

WHEREAS, the Baltimore County and Maryland farm bureaus have adopted policies opposing the use of prime and productive soils for solar arrays as well as using the term “solar farms;” and

WHEREAS, all of the petitions for proposed solar facilities pursuant to Bill 37-17 have thus far been on properties located in R.C. Zones, and mostly on prime and productive soils and along scenic roads or views; and

WHEREAS, there has been extensive community opposition to industrial and commercial solar facilities on prime and productive soils, and significant concern has been expressed about

potentially displacing industrial uses and jobs; and

WHEREAS, there are tremendous opportunities for co-locating solar facilities and adding value to contaminated and underutilized lands through smart solar siting and incentives; and

WHEREAS, there is growing consensus that the impacts of population growth will require prime and productive farm land to be more productive than it currently is in order to meet the needs of future generations; and

WHEREAS, as recognized by the United States Supreme Court in the 2002 case of *Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency*, temporary moratoriums are a common and valid tool throughout the country and are imposed during the review and revision of comprehensive land use plans to maintain the status quo while land use patterns are analyzed; and

WHEREAS, solar companies were involved in the legislative hearings on Bill 37-17 and were aware that the regulations were to be studied and that recommendations for regulation changes were expected by July 1, 2018; and

WHEREAS, the new County administration has identified the need to address climate change issues in a holistic manner, including a transition to 100% renewable energy, in order to assure Baltimore County is resilient in the face of emerging environmental challenges and weather patterns and is prepared to meet established goals to improve waterways and the Chesapeake Bay; and

WHEREAS, the State of Maryland has identified eligible facilities for inclusion in the Renewable Portfolio Standard (RPS) that include:

- Solar photovoltaic (PV) and thermal systems that produce electric power, and solar water-heating systems constructed after June 1, 2011;
- Land-based and offshore wind;
- Qualifying biomass;
- Methane from the anaerobic decomposition of organic materials in a landfill or a wastewater treatment plant;

- Geothermal including energy generated through geothermal exchange from or thermal energy avoided by groundwater or a shallow ground source;
- Ocean including energy from waves, tides, currents, and thermal differences;
- Fuel cells powered by methane or biomass;
- Hydroelectric plants under 30 MW licensed by FEREC or exempt from licensing;
- Poultry litter-to-energy within Maryland;
- Waste-to-energy (including blast furnace and refuse-derived fuels) within Maryland;
- Hydroelectric plants other than pumped storage hydropower; and

WHEREAS, energy conservation is an important component of energy policy and sustainability; and

WHEREAS, the 2030 Master Plan to be adopted in 2020 will likely benefit from the additional study and review contemplated by this Act, and will require new elements and data to address renewable energy and other new uses and environmental issues; and

WHEREAS, renewable energy must also be compatible with other demands on natural resources including forests, prime and productive soils, streams, wetlands, and clean air; and

WHEREAS, Baltimore County has abundant natural resources that can be utilized to create a sustainable future with a healthy environment and economy; and

WHEREAS, a comprehensive study to identify existing renewable resources, and utilize new and existing resources in the most effective, equitable and efficient way is needed to assure long-term benefits for county residents; now, therefore

1 SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF BALTIMORE
 2 COUNTY, MARYLAND, that there shall be a temporary 9-month moratorium on petitions for
 3 special exceptions for solar facilities in the Resource Conservation (R.C.) Zones. This
 4 moratorium shall halt, for nine (9) months from the effective date of this Act, the filing of any new
 5 petitions for special exception for a proposed solar facility and the processing and approval of any

1 pending petitions for solar facilities in R.C. Zones at any stage of the approval process.

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3 SECTION 2. AND BE IT FURTHER ENACTED, that the Planning Board shall, in
4 consultation with the Departments of Planning and Environmental Protection and Sustainability,
5 the participation of the Baltimore County Advisory Commission on Environmental Quality, a
6 representative of community groups from each Council district, and a representative from the
7 renewable energy industry, conduct a comprehensive study regarding siting of solar facilities in
8 R.C. Zones, and shall by August 31, 2019 present the results of the study and recommendations
9 to the County Council and the County Executive. The results of this study shall provide
10 information necessary to establish a goal to meet the optimal percentage of County energy needs
11 with renewable energy in order to ensure an aggressive but practical timeline, smart facility
12 siting, social justice, maximization of job creation, and best integration with the power grid and
13 existing energy facilities, while at the same time fulfilling the important legislative purpose to
14 balance the protection of communities, agricultural land, and the environment generally.

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16 SECTION 3. AND BE IT FURTHER ENACTED, that this Act, having been passed by
17 the affirmative vote of five members of the County Council, shall take effect on February 4,
18 2019, and this 9-month moratorium shall apply retroactively to all petitions for special
19 exceptions filed for solar facilities in the Resource Conservation (R.C.) Zones at any stage of the
20 approval process, including petitions pending at the Office of Administrative Hearings or the
21 Board of Appeals on appeal.