

Department of Legislative Services  
Maryland General Assembly  
2017 Session

FISCAL AND POLICY NOTE  
Third Reader - Revised

House Bill 1308  
Economic Matters

(Delegate Branch)

Finance

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Electricity - Construction of Overhead Transmission Lines - Condemnation  
Authority

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This bill authorizes a person that has received a Certificate of Public Convenience and Necessity (CPCN) from the Public Service Commission (PSC) for the construction of an overhead transmission line to acquire any property or right necessary for the construction or maintenance of the transmission line, in accordance with eminent domain provisions in the Real Property Article.

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Fiscal Summary

**State Effect:** The bill does not materially affect State finances or operations.

**Local Effect:** The bill does not materially affect local government finances or operations.

**Small Business Effect:** None.

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Analysis

**Current Law:** Generally, a person may not begin construction in the State of a generating station, overhead transmission line, or a qualified generator lead line unless a CPCN is first obtained from PSC.

PSC may issue a CPCN for the construction of an overhead transmission line only if the applicant (1) is an electric company or (2) is subject to regulation as a public utility by an officer or agency of the United States, or will be subject to regulation as a public utility on the start of commercial operation of the overhead transmission line. However, PSC may not issue a CPCN for the construction of an overhead transmission line in the distribution service territory of an electric company to an applicant other than an electric company if

(1) the overhead transmission line is to be located solely within the service territory of that electric company and (2) the cost of the overhead transmission line is to be paid solely by that electric company and its ratepayers.

For construction related to an overhead transmission line, in addition to other specified requirements in current law, PSC must require as an ongoing condition of the CPCN that the applicant complies with (1) all relevant agreements with the regional transmission operator related to the ongoing operation and maintenance of the overhead transmission line and (2) all obligations imposed by the North America Electric Reliability Council and the Federal Energy Regulatory Commission related to the ongoing operation and maintenance of the overhead transmission line.

*Eminent Domain – Generally*

The power to take, or condemn, private property for public use is one of the inherent powers of state government. Courts have long held that this power, known as “eminent domain,” is derived from the sovereignty of the state. Both the federal and State constitutions limit the condemnation authority and establish two requirements for taking property through the power of eminent domain. First, the property taken must be for a “public use.” Second, the party whose property is being taken must receive “just compensation.” In either event, the party whose property is being taken is generally entitled to a judicial proceeding prior to the taking of the property. However, the Maryland Constitution does authorize “quick-take” condemnations in limited circumstances prior to a court proceeding.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 969 (Senator Feldman) - Finance.

**Information Source(s):** Office of People’s Counsel; Public Service Commission; Department of Legislative Services

**Fiscal Note History:** First Reader - March 3, 2017  
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