

Department of Legislative Services  
Maryland General Assembly  
2018 Session

FISCAL AND POLICY NOTE  
First Reader

Senate Bill 691  
Finance

(Senator Jennings, *et al.*)

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Electric Facilities – Condemnation – Conserved Land

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This bill prohibits the taking of conserved land by eminent domain under the certificate of public convenience and necessity (CPCN) process for an overhead transmission line unless specified conditions are met. The bill also requires that compensation must be based on full commercial value and specifies the entities that must be compensated.

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Fiscal Summary

**State Effect:** The Public Service Commission (PSC) can handle the bill’s requirements with existing budgeted resources. State finances and operations are not otherwise materially affected.

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

**Small Business Effect:** Potential meaningful.

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Analysis

**Bill Summary:** The bill applies to property that is subject to a permanent conservation easement or another form of land preservation program. A property or right may not be taken by eminent domain under the CPCN process for an overhead transmission line unless:

- there is no physical alternative route, on the basis of physical alignment and not on the basis of cost; and
- the need for the transmission capacity of the line is demonstrated solely on the basis of physical capacity, without regard to economic benefit.

Compensation for any property or right that is allowed to be taken by eminent domain must be valued based on the full commercial value of the property or right, without reduction based on the value of development or other rights restricted by the easement or program. The compensation must be paid to reimburse all of the public and private grantors and trustees of the property or right under the easement or program.

**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 (project) unless a CPCN is first obtained from PSC. The application process involves notifying specified stakeholders, public hearings, and the consideration of recommendations by State and local government entities and the project's effect on various aspects of the State infrastructure, economy, and environment. There are conditions under which a person constructing a generating station may apply to PSC for an exemption from the CPCN requirement.

### *Overhead Transmission Lines*

Generally, unless a CPCN for the construction is first obtained from PSC, a person may not begin construction of an overhead transmission line that is designed to carry a voltage in excess of 69,000 volts or exercise a right of condemnation with the construction. Such a CPCN may only be issued to an electric company or a person that will be subject to regulation as a public utility by an officer or an agency of the United States at the start of commercial operation.

A person that has received a CPCN from PSC for the construction of an overhead transmission line may 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. There is no further approval needed from PSC beyond the CPCN.

As noted above, the CPCN application process involves public hearings. At least 30 days before a hearing, a public service company must provide written notice to each owner of land, by certified mail, of intent to run a line or similar transmission device over, on, or under the land. The public service company must determine the property owners from current tax assessment records. Unless willful or deliberate, the failure of a public service company to provide notice does not invalidate a public hearing or require that another hearing take place.

### *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.

**Background:** There are a variety of federal, State, and local land conservation programs that protect lands through ownership or easements. Combined, these programs protect 1.6 million acres across the State. A recent report on the various programs can be found on the Department of Legislative Services’ [website](#).

According to PSC, the CPCN process does not preclude the siting of a project on or across land under conservation easement; however, as part of the environmental and socioeconomic evaluations conducted by the Power Plant Research Program and applicable State agencies in all CPCN cases, any issues associated with use of any potential site are raised in the evaluation. When the reviewing State agencies recommend a CPCN be granted using a potential site, they generally include recommended license conditions to which the applicant must comply to reduce or address any potential adverse environmental or socioeconomic impacts. PSC further advises that, historically, “just compensation” for purposes of eminent domain has been limited to “fair market value.”

The Maryland Department of Agriculture advises that one or two agricultural easements are subject to condemnation each year – often less than one acre.

**Small Business Effect:** Small businesses may benefit from additional compensation received due to the bill’s conditions for compensation under the eminent domain process. The amount, if any, cannot be reliably determined at this time.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 812 (Delegate Szeliga, *et al.*) - Economic Matters.

**Information Source(s):** Public Service Commission; Judiciary (Administrative Office of the Courts); Maryland Department of Agriculture; Department of Natural Resources; Department of Legislative Services

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