

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

Senate Bill 862 (Senator Zirkin)
Judicial Proceedings

Real Property - Easements - Natural Gas Pipelines

This bill requires an easement negotiated between a land owner and a constructor, operator, or owner of a natural gas pipeline to be (1) for a single pipeline and (2) limited in scope to the construction, operation, or maintenance of the pipeline. An easement entered into under the bill may not authorize the easement holder to use the easement at a future date for anything other than the construction, operation, or maintenance of the pipeline. An easement that does not meet the requirements of the bill is invalid.

Fiscal Summary

State Effect: Minimal or none. The bill does not directly affect governmental operations or finances.

Local Effect: Minimal or none.

Small Business Effect: Minimal or none.

Analysis

Current Law: Subject to specified limitations, a domestic or foreign corporation that is or may become engaged in the business of transmitting or supplying natural gas, artificial gas, or a mixture of both may acquire by condemnation, in accordance with the Real Property Article, rights-of-way or easements necessary to lay, construct, modify, repair, maintain, operate, and remove pipelines and related equipment for transmitting and supplying gas. A corporation may not condemn rights-of-way or easements unless the corporation transmits gas directly to local consumers in the State along the corporation's proposed rights-of-way.

The Public Service Commission has no role in the legal proceedings established prior to the commencement of intrastate or interstate gas transmission lines. The Federal Energy Regulatory Commission (FERC) is responsible for issuing certificates of public convenience and necessity to prospective companies providing energy services or constructing and operating interstate pipelines and storage facilities.

Background: Generally, an easement is a limited interest in land, that limits (1) the amount of ground affected; (2) the purpose for which the nonpossessory interest is granted; and (3) who may exercise the interest. It may be limited in time or continue in perpetuity.

The Natural Gas Act (NGA) of 1938 gives FERC exclusive jurisdiction over the transportation of natural gas in interstate commerce, the sale in interstate commerce of natural gas for resale, and natural gas companies engaged in that transportation or sale. It also gives FERC the authority to grant certificates allowing construction and operation of facilities used in interstate gas transmission and authorizing the provision of services. A “certificate of public convenience and necessity” issued under NGA permits pipeline companies to charge customers for some of the expenses incurred in pipeline construction and operation. NGA also requires FERC approval prior to abandonment of any pipeline facility or services. NGA does not apply to the production, gathering, or local distribution of natural gas.

According to the U.S. Department of Transportation’s Pipeline and Hazardous Materials Safety Administration, a right-of-way agreement between a pipeline company and the property owner, or easement, is usually filed in the public records with property deeds. A pipeline right-of-way is a strip of land over and around pipelines where some of the property owner’s legal rights have been granted to a pipeline company. Rights-of-way and easements provide a limited interest in the land that enables the pipeline company to operate, test, inspect, repair, maintain, replace, and protect one or more pipelines on property owned by others. The agreement may vary the rights and widths of the right-of-way, but generally, the pipeline company’s rights-of-way extend 25 feet from each side of a pipeline unless special conditions exist.

Additional Information

Prior Introductions: None.

Cross File: HB 979 (Delegate Cardin, *et al.*) - Economic Matters.

Information Source(s): State Board of Contract Appeals, Judiciary (Administrative Office of the Courts), U.S. Department of Transportation, Federal Energy Regulatory Commission, Department of Legislative Services

Fiscal Note History: First Reader - March 6, 2013
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