

SENATE BILL 691

C5, N1

8lr1713
CF HB 812

By: **Senators Jennings, Cassilly, and Norman**

Introduced and read first time: February 2, 2018

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Electric Facilities – Condemnation – Conserved Land**

3 FOR the purpose of establishing certain restrictions on the acquisition of certain property
4 by condemnation in connection with a certificate of public convenience and necessity
5 for certain facilities used in the transmission of electricity; providing that a property
6 or right may not be taken by eminent domain for certain transmission or lead lines
7 unless certain conditions are met; requiring certain compensation to be paid based
8 on a certain valuation and to reimburse certain entities; and generally relating to
9 siting of electrical transmission lines and real property in conservation.

10 BY repealing and reenacting, with amendments,
11 Article – Public Utilities
12 Section 7–207
13 Annotated Code of Maryland
14 (2010 Replacement Volume and 2017 Supplement)

15 BY repealing and reenacting, without amendments,
16 Article – Public Utilities
17 Section 7–208
18 Annotated Code of Maryland
19 (2010 Replacement Volume and 2017 Supplement)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
21 That the Laws of Maryland read as follows:

22 **Article – Public Utilities**

23 7–207.

24 (a) (1) (i) In this section and § 7–208 of this subtitle, “construction” means:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 1. any physical change at a site, including fabrication,
2 erection, installation, or demolition; or

3 2. the entry into a binding agreement or contractual
4 obligation to purchase equipment exclusively for use in construction in the State or to
5 undertake a program of actual construction in the State which cannot be canceled or
6 modified without substantial loss to the owner or operator of the proposed generating
7 station.

8 (ii) “Construction” does not include a change that is needed for the
9 temporary use of a site or route for nonutility purposes or for use in securing geological
10 data, including any boring that is necessary to ascertain foundation conditions.

11 (2) In this section, “qualified generator lead line” means an overhead
12 transmission line that is designed to carry a voltage in excess of 69,000 volts and would
13 allow an out-of-state Tier 1 or Tier 2 renewable source to interconnect with a portion of
14 the electric system in Maryland that is owned by an electric company.

15 (b) (1) (i) Unless a certificate of public convenience and necessity for the
16 construction is first obtained from the Commission, a person may not begin construction in
17 the State of:

18 1. a generating station; or

19 2. a qualified generator lead line.

20 (ii) If a person obtains Commission approval for construction under
21 § 7-207.1 of this subtitle, the Commission shall exempt a person from the requirement to
22 obtain a certificate of public convenience and necessity under this section.

23 (iii) Notwithstanding subparagraph (i) of this paragraph, a person
24 may not apply to obtain a certificate of public convenience and necessity for construction of
25 a qualified generator lead line unless:

26 1. at least 90 days before the filing of an application for a
27 certificate of public convenience and necessity, the person had in good faith offered the
28 electric company that owns that portion of the electric grid in Maryland to which the
29 qualified generator lead line would interconnect a full and fair opportunity for the electric
30 company to construct the qualified generator lead line; and

31 2. at any time at least 10 days before the filing of an
32 application for a certificate of public convenience and necessity, the electric company:

33 A. did not accept from the person a proposal or a negotiated
34 version of the proposal under which the electric company would construct the qualified
35 generator lead line; or

1 B. stated in writing that the electric company did not intend
2 to construct the qualified generator lead line.

3 (2) Unless a certificate of public convenience and necessity for the
4 construction is first obtained from the Commission, and the Commission has found that the
5 capacity is necessary to ensure a sufficient supply of electricity to customers in the State, a
6 person may not exercise a right of condemnation in connection with the construction of a
7 generating station.

8 (3) (i) Except as provided in paragraph (4) of this subsection, unless a
9 certificate of public convenience and necessity for the construction is first obtained from the
10 Commission, a person may not begin construction of an overhead transmission line that is
11 designed to carry a voltage in excess of 69,000 volts or exercise a right of condemnation
12 with the construction.

13 (ii) For construction related to an existing overhead transmission
14 line, the Commission may waive the requirement in subparagraph (i) of this paragraph for
15 good cause.

16 (iii) Notwithstanding subparagraph (i) of this paragraph and subject
17 to subparagraph (iv) of this paragraph, the Commission may issue a certificate of public
18 convenience and necessity for the construction of an overhead transmission line only if the
19 applicant for the certificate of public convenience and necessity:

20 1. is an electric company; or

21 2. is or, on the start of commercial operation of the overhead
22 transmission line, will be subject to regulation as a public utility by an officer or an agency
23 of the United States.

24 (iv) The Commission may not issue a certificate of public convenience
25 and necessity for the construction of an overhead transmission line in the electric
26 distribution service territory of an electric company to an applicant other than an electric
27 company if:

28 1. the overhead transmission line is to be located solely
29 within the electric distribution service territory of that electric company; and

30 2. the cost of the overhead transmission line is to be paid
31 solely by that electric company and its ratepayers.

32 (v) 1. This subparagraph applies to the construction of an
33 overhead transmission line for which a certificate of public convenience and necessity is
34 required under this section.

35 2. On issuance of a certificate of public convenience and
36 necessity for the construction of an overhead transmission line, **AND SUBJECT TO**

1 **PARAGRAPH (5) OF THIS SUBSECTION**, a person may acquire by condemnation, in
2 accordance with Title 12 of the Real Property Article, any property or right necessary for
3 the construction or maintenance of the transmission line.

4 (4) (i) Except as provided in subparagraph (ii) of this paragraph, for
5 construction related to an existing overhead transmission line designed to carry a voltage
6 in excess of 69,000 volts, the Commission shall waive the requirement to obtain a certificate
7 of public convenience and necessity if the Commission finds that the construction does not:

8 1. require the person to obtain new real property or
9 additional rights-of-way through eminent domain; or

10 2. require larger or higher structures to accommodate:

11 A. increased voltage; or

12 B. larger conductors.

13 (ii) 1. For construction related to an existing overhead
14 transmission line, including repairs, that is necessary to avoid an imminent safety hazard
15 or reliability risk, a person may undertake the necessary construction.

16 2. Within 30 days after construction is completed under
17 subsubparagraph 1 of this subparagraph, a person shall file a report with the Commission
18 describing the work that was completed.

19 **(5) (I) THIS PARAGRAPH APPLIES TO PROPERTY THAT IS SUBJECT**
20 **TO A PERMANENT CONSERVATION EASEMENT OR ANOTHER FORM OF LAND**
21 **PRESERVATION PROGRAM.**

22 **(II) A PROPERTY OR RIGHT MAY NOT BE TAKEN BY EMINENT**
23 **DOMAIN FOR AN OVERHEAD TRANSMISSION LINE OR A QUALIFIED GENERATOR LEAD**
24 **LINE UNDER THIS SECTION OR § 7-208 OF THIS SUBTITLE UNLESS:**

25 1. **THERE IS NO PHYSICAL ALTERNATIVE ROUTE FOR**
26 **THE LINE ON THE BASIS OF PHYSICAL ALIGNMENT AND NOT ON THE BASIS OF ANY**
27 **COST; AND**

28 2. **THE NEED FOR THE TRANSMISSION CAPACITY OF THE**
29 **LINE IS DEMONSTRATED SOLELY ON THE BASIS OF PHYSICAL CAPACITY WITHOUT**
30 **REGARD TO ANY ECONOMIC BENEFIT.**

31 **(III) COMPENSATION FOR ANY PROPERTY OR RIGHT THAT IS**
32 **ALLOWED TO BE TAKEN BY EMINENT DOMAIN IN ACCORDANCE WITH THIS**
33 **PARAGRAPH SHALL BE:**

1 **1. VALUED BASED ON THE CURRENT FULL COMMERCIAL**
2 **VALUE OF THE PROPERTY OR RIGHT WITHOUT REDUCTION BASED ON THE VALUE OF**
3 **DEVELOPMENT OR OTHER RIGHTS RESTRICTED BY THE EASEMENT OR PROGRAM;**
4 **AND**

5 **2. PAID TO REIMBURSE ALL PUBLIC AND PRIVATE**
6 **GRANTORS AND TRUSTEES OF THE PROPERTY OR RIGHT UNDER THE EASEMENT OR**
7 **PROGRAM.**

8 (c) (1) On receipt of an application for a certificate of public convenience and
9 necessity under this section, the Commission shall provide notice immediately or require
10 the applicant to provide notice immediately of the application to:

11 (i) the Department of Planning;

12 (ii) the governing body, and if applicable the executive, of each
13 county or municipal corporation in which any portion of the generating station, overhead
14 transmission line, or qualified generator lead line is proposed to be constructed;

15 (iii) the governing body, and if applicable the executive, of each
16 county or municipal corporation within 1 mile of the proposed location of the generating
17 station, overhead transmission line, or qualified generator lead line;

18 (iv) each member of the General Assembly representing any part of
19 a county in which any portion of the generating station, overhead transmission line, or
20 qualified generator lead line is proposed to be constructed;

21 (v) each member of the General Assembly representing any part of
22 each county within 1 mile of the proposed location of the generating station, overhead
23 transmission line, or qualified generator lead line; and

24 (vi) all other interested persons.

25 (2) The Commission, when sending the notice required under paragraph
26 (1) of this subsection, shall forward a copy of the application to:

27 (i) each appropriate State unit and unit of local government for
28 review, evaluation, and comment regarding the significance of the proposal to State,
29 area-wide, and local plans or programs; and

30 (ii) each member of the General Assembly included under paragraph
31 (1)(iv) and (v) of this subsection who requests a copy of the application.

32 (d) (1) The Commission shall provide an opportunity for public comment and
33 hold a public hearing on the application for a certificate of public convenience and necessity

1 in each county and municipal corporation in which any portion of the construction of a
2 generating station, an overhead transmission line designed to carry a voltage in excess of
3 69,000 volts, or a qualified generator lead line is proposed to be located.

4 (2) The Commission shall hold the public hearing jointly with the
5 governing body of the county or municipal corporation in which any portion of the
6 construction of the generating station, overhead transmission line, or qualified generator
7 lead line is proposed to be located, unless the governing body declines to participate in the
8 hearing.

9 (3) (i) Once in each of the 4 successive weeks immediately before the
10 hearing date, the Commission shall provide weekly notice of the public hearing and an
11 opportunity for public comment:

12 1. by advertisement in a newspaper of general circulation in
13 the county or municipal corporation affected by the application;

14 2. on two types of social media; and

15 3. on the Commission's Web site.

16 (ii) Before a public hearing, the Commission shall coordinate with
17 the governing body of the county or municipal corporation in which any portion of the
18 construction of the generating station, overhead transmission line, or qualified generator
19 lead line is proposed to be located to identify additional options for providing, in an efficient
20 and cost-effective manner, notice of the public hearing through other types of media that
21 are familiar to the residents of the county or municipal corporation.

22 (4) (i) On the day of a public hearing, an informational sign shall be
23 posted prominently at or near each public entrance of the building in which the public
24 hearing will be held.

25 (ii) The informational sign required under subparagraph (i) of this
26 paragraph shall:

27 1. state the time, room number, and subject of the public
28 hearing; and

29 2. be at least 17 by 22 inches in size.

30 (5) (i) The Commission shall ensure presentation and
31 recommendations from each interested State unit, and shall allow representatives of each
32 State unit to sit during hearing of all parties.

33 (ii) The Commission shall allow each State unit 15 days after the
34 conclusion of the hearing to modify the State unit's initial recommendations.

1 (e) The Commission shall take final action on an application for a certificate of
2 public convenience and necessity only after due consideration of:

3 (1) the recommendation of the governing body of each county or municipal
4 corporation in which any portion of the construction of the generating station, overhead
5 transmission line, or qualified generator lead line is proposed to be located;

6 (2) the effect of the generating station, overhead transmission line, or
7 qualified generator lead line on:

8 (i) the stability and reliability of the electric system;

9 (ii) economics;

10 (iii) esthetics;

11 (iv) historic sites;

12 (v) aviation safety as determined by the Maryland Aviation
13 Administration and the administrator of the Federal Aviation Administration;

14 (vi) when applicable, air and water pollution; and

15 (vii) the availability of means for the required timely disposal of
16 wastes produced by any generating station; and

17 (3) for a generating station:

18 (i) the consistency of the application with the comprehensive plan
19 and zoning of each county or municipal corporation where any portion of the generating
20 station is proposed to be located; and

21 (ii) the efforts to resolve any issues presented by a county or
22 municipal corporation where any portion of the generating station is proposed to be located.

23 (f) For the construction of an overhead transmission line, in addition to the
24 considerations listed in subsection (e) of this section, the Commission shall:

25 (1) take final action on an application for a certificate of public convenience
26 and necessity only after due consideration of the need to meet existing and future demand
27 for electric service; and

28 (2) require as an ongoing condition of the certificate of public convenience
29 and necessity that an applicant complies with:

30 (i) all relevant agreements with PJM Interconnection, L.L.C., or its
31 successors, related to the ongoing operation and maintenance of the overhead transmission

1 line; and

2 (ii) all obligations imposed by the North America Electric Reliability
3 Council and the Federal Energy Regulatory Commission related to the ongoing operation
4 and maintenance of the overhead transmission line.

5 (g) (1) The Commission may not authorize, and a person may not undertake,
6 the construction of an overhead transmission line that is aligned with and within 1 mile of
7 either end of a public airport runway, unless:

8 (i) the Federal Aviation Administration determines that the
9 construction of an overhead transmission line will not constitute a hazard to air navigation;
10 and

11 (ii) the Maryland Aviation Administration concurs in that
12 determination.

13 (2) A privately owned airport runway shall qualify as a public airport
14 runway under this subsection only if the runway has been on file with the Federal Aviation
15 Administration for at least 2 years as being open to the public without restriction.

16 7–208.

17 (a) (1) In this section the following words have the meanings indicated.

18 (2) “Qualified offshore wind project” has the meaning stated in § 7–701 of
19 this title.

20 (3) “Qualified submerged renewable energy line” means:

21 (i) a line carrying electricity supply and connecting a qualified
22 offshore wind project to the transmission system; and

23 (ii) a line in which the portions of the line crossing any submerged
24 lands or any part of a beach erosion control district are buried or submerged.

25 (b) This section applies to any person:

26 (1) constructing a generating station and its associated overhead
27 transmission lines designed to carry a voltage in excess of 69,000 volts;

28 (2) exercising the right of condemnation in connection with the
29 construction; or

30 (3) constructing a qualified submerged renewable energy line.

31 (c) (1) To obtain the certificate of public convenience and necessity required

1 under § 7–207 of this subtitle for construction under this section, a person shall file an
2 application with the Commission at least 2 years before construction of the facility will
3 commence.

4 (2) The Commission may waive the 2–year requirement on a showing of
5 good cause.

6 (d) The applicant shall:

7 (1) include in an application under this section the information that the
8 Commission requests initially; and

9 (2) furnish any additional information that the Commission requests
10 subsequently.

11 (e) (1) On the receipt of an application under this section, together with any
12 additional information requested under subsection (d)(2) of this section, the Commission
13 shall provide notice to:

14 (i) all interested persons;

15 (ii) the Department of Agriculture;

16 (iii) the Department of Commerce;

17 (iv) the Department of the Environment;

18 (v) the Department of Natural Resources;

19 (vi) the Department of Transportation;

20 (vii) the Department of Planning; and

21 (viii) the Maryland Energy Administration.

22 (2) On receipt of an application under this section, and whenever
23 additional information is received under subsection (d)(2) of this section, the Commission
24 shall provide notice immediately or require the applicant to provide notice immediately to:

25 (i) the governing body of each county or municipal corporation in
26 which any portion of the generating station or the associated overhead transmission lines
27 is proposed to be constructed;

28 (ii) the governing body of each county or municipal corporation
29 within 1 mile of the proposed location of the generating station or the associated overhead
30 transmission lines;

1 (iii) each member of the General Assembly representing any part of
2 a county in which any portion of the generating station or the associated overhead
3 transmission lines is proposed to be constructed; and

4 (iv) each member of the General Assembly representing any part of
5 each county within 1 mile of the proposed location of the generating station or the
6 associated overhead transmission lines.

7 (3) The Commission shall hold a public hearing on the application as
8 required by § 7–207 of this subtitle after:

9 (i) the receipt of any additional information requested under
10 subsection (d)(2) of this section that the Commission considers necessary; and

11 (ii) any publication of notice the Commission considers to be proper.

12 (4) (i) At the public hearing, the Commission shall ensure presentation
13 of the information and recommendations of the State units specified in paragraph (1) of
14 this subsection and shall allow the official representative of each unit to sit during hearing
15 of all parties.

16 (ii) Based on the evidence relating to the unit's areas of concern, the
17 Commission shall allow each unit 15 days after the conclusion of the hearing to modify or
18 affirm the unit's initial recommendations.

19 (f) Within 90 days after the conclusion of the hearing on an application under
20 this section, the Commission shall:

21 (1) (i) grant a certificate of public convenience and necessity
22 unconditionally;

23 (ii) grant the certificate, subject to conditions the Commission
24 determines to be appropriate; or

25 (iii) deny the certificate; and

26 (2) notify all interested parties of its decision.

27 (g) (1) The Commission shall include in each certificate it issues under
28 subsection (f) of this section:

29 (i) the requirements of the federal and State environmental laws
30 and standards that are identified by the Department of the Environment; and

31 (ii) the methods and conditions that the Commission determines are
32 appropriate to comply with those environmental laws and standards.

1 (2) The Commission may not adopt any method or condition under
2 paragraph (1)(ii) of this subsection that the Department of the Environment determines is
3 inconsistent with federal and State environmental laws and standards.

4 (h) (1) A decision of the Commission regarding the issuance of a certificate
5 requires the vote of a majority of the members of the Commission.

6 (2) If a majority of the members of the Commission fails to reach agreement
7 on the conditions to be attached to a conditional certificate, the certificate shall be denied.

8 (i) The grant of a certificate by the Commission to any person under subsection
9 (f) of this section constitutes:

10 (1) authority for the person to dredge and construct bulkheads in the
11 waters or private wetlands of the State and to appropriate or use the waters; and

12 (2) registration and a permit to construct, as required under Title 2,
13 Subtitle 4 of the Environment Article.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 October 1, 2018.