

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 773

(Delegate Szeliga, *et al.*)

Economic Matters

Electricity - Condemnation of Property or Rights for Overhead Transmission
Lines - Public Service Commission Approval

This bill requires 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 receive PSC approval to acquire any property or right necessary for the construction or maintenance of the transmission line through eminent domain.

Fiscal Summary

State Effect: 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: None.

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 (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: Chapter 840 of 2017 authorized the condemnation authority for the construction or maintenance of an overhead transmission line that is modified by the bill to include PSC approval. The language added by the bill was removed by amendment during the legislative process.

Additional Information

Prior Introductions: None.

Cross File: SB 695 (Senator Jennings, *et al.*) - Finance.

Information Source(s): Public Service Commission; Judiciary (Administrative Office of the Courts); Department of Legislative Services

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