

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 955 (Senator West)
Education, Energy, and the Environment

Overhead Transmission Lines - Eminent Domain

This bill prohibits condemnation of property encumbered by a conservation easement for the purpose of constructing an overhead transmission line. The bill also requires that a reasonable counsel fee be awarded to counsel for the defendant in a condemnation proceeding if the final decision, or final decision on appeal, is that the assessed value of the property is greater than the appraised value placed on the property by the condemning authority. Finally, the bill allows for owners of nearby residential or agricultural property to bring an action for damages for diminished value of their property due to condemnation of property for an overhead transmission line or related infrastructure.

Fiscal Summary

State Effect: The bill is not expected to have a direct, material effect on State finances.

Local Effect: The bill is not expected to have a direct, material effect on local government finances.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Prohibition on Condemnation of Conservation Property for a Transmission Line

Under provisions of the Public Utilities Article that authorize condemnation of property for the construction or maintenance of an overhead transmission line upon issuance of a

Certificate of Public Convenience and necessity (CPCN) for the construction, the bill prohibits a person from exercising a right of condemnation to acquire property encumbered by a conservation easement for the purpose of constructing an overhead transmission line.

“Conservation easement” means an easement, covenant, restriction, or condition on real property, including an amendment to an easement, covenant, restriction, or condition, that is (1) owned by the Maryland Environmental Trust, the Maryland Historical Trust, Maryland Agricultural Land Preservation Foundation (MALPF), the Department of Natural Resources (DNR), a county or municipal corporation (with the easement funded by DNR, the Rural Legacy Program, or a local agricultural preservation program), or a land trust, or (2) required by a permit issued by the Maryland Department of the Environment.

Reasonable Counsel Fees If Assessed Value Is Greater Than Appraised Value

The bill establishes that if the final decision in a condemnation proceeding related to the construction of an overhead transmission line, or the final decision on appeal, is that the assessed value of the property is greater than the appraised value placed on the property by the condemning authority, a reasonable counsel fee fixed by the trial court must be awarded to counsel for the defendant and charged against the plaintiff together with the other costs of the case.

Court Action by Nearby Property Owners

The bill authorizes an owner of property used for residential or agricultural purposes to bring an action in a court of competent jurisdiction for damages incurred as a result of the value of their property being diminished by the taking of another property by condemnation if the property being taken (1) is located within 500 feet of the owner’s property and (2) was taken in conjunction with the construction of an overhead transmission line or related infrastructure. The action may be brought on the entering of the final decision in the condemnation proceeding. A property owner who is awarded damages may also seek, and the court may award, reasonable attorney’s fees.

Current Law:

Eminent Domain

The power to take, or condemn, private property for public use is one of the inherent powers of state government and, through the state, its political subdivisions. 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. Both constitutions establish two requirements for taking property through the power of eminent domain: (1) the property taken must be for a “public use”; and (2) the party whose property

is taken must receive “just compensation,” which may not be less than the fair market value of the real property. 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.

Under Title 12, Chapter 200, of the Maryland Rules, which governs court actions for acquisition of property by condemnation under the power of eminent domain, a complaint filed in an action for condemnation must contain, among other things:

- the names of all persons whose interest in the property is sought to be condemned;
- a description of the property;
- a statement of the nature of the interest the plaintiff seeks to acquire by the proposed condemnation;
- a statement that there is a public necessity for the proposed condemnation; and
- a statement that the parties are unable to agree or that a defendant is unable to agree because the defendant is unknown or under legal disability.

Fair Market Value

Title 12 of the Real Property Article establishes that the fair market value of property in a condemnation proceeding is the price as of the valuation date for the highest and best use of the property which a vendor, willing but not obligated to sell, would accept for the property, and which a purchaser, willing but not obligated to buy, would pay, excluding any increment in value proximately caused by the public project for which the property condemned is needed.

In addition, fair market value includes any amount by which the price reflects a diminution in value occurring between the effective date of legislative authority for the acquisition of the property and the date of actual taking if the trier of facts finds that the diminution in value was proximately caused by the public project for which the property condemned is needed, or by announcements or acts of the plaintiff or its officials concerning the public project, and was beyond the reasonable control of the property owner.

In a condemnation proceeding, the defendant property owner may elect to present as evidence, the assessed value of the property, as determined by the State Department of Assessments and Taxation, if the assessed value is greater than the appraised value placed on the property by the condemning authority.

Overhead Transmission Lines – Condemnation

Under § 7-207 of the Public Utilities Article, unless a CPCN for the construction is first obtained from the Public Service Commission (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. However, a person that has received a CPCN from PSC for the construction of an overhead transmission line may acquire by condemnation, in accordance with Title 12 of the Real Property Article, any property or right necessary for the construction or maintenance of the transmission line.

Fees and Costs

The U.S. Supreme Court in *United States v. Bodcaw Co.*, held that compensating a landowner for all the costs incurred as a result of a condemnation action is “a matter of legislative grace rather than constitutional command” 440 U.S. 202, 204 (1979). States vary on what circumstances and amount a defendant may be reimbursed for legal, expert, and other fees and costs in a condemnation proceeding. State law specifies the following circumstances in which a defendant may receive compensation for legal and other associated costs or fees:

- *Jury Trial* – An action for condemnation must be tried by a jury unless all parties file a written election submitting the case to the court for determination. The plaintiff in a condemnation proceeding must pay all the costs in the trial court, including costs related to the jury, and an allowance to the defendant, as fixed by the court, for the reasonable legal, appraisal, and engineering fees actually incurred by the defendant because of the condemnation proceeding, if the judgment is for the defendant on the right to condemn.
- *Appeals* – Any party to a condemnation case may appeal a final judgment or determination as prescribed by Maryland Rule 12-209. If the final decision on appeal is that the plaintiff is not entitled to condemn the property, a reasonable counsel fee fixed by the trial court must be awarded to counsel for the defendant and charged against the plaintiff together with the other costs of the case.
- *Abandonment* – If a plaintiff abandons an action for condemnation, the defendant is entitled to recover from the plaintiff the reasonable legal, appraisal, and engineering fees actually incurred by the defendant because of the condemnation proceeding. The clerk must enter the amount agreed upon by the parties, or as determined by the court if the parties cannot agree, as part of the costs.

Small Business Effect: Small businesses may meaningfully benefit from:

- the ability to avoid condemnation of land encumbered by a conservation easement, for an overhead transmission line, or to potentially receive compensation for the land (through negotiation) that is higher than the compensation they receive if the land is condemned. As discussed further below (under Additional Comments), however, a landowner may also be prevented from willingly granting an overlay easement on their land (and receiving associated compensation for the easement);
- not having to pay for the cost of their counsel in a condemnation proceeding (for an overhead transmission line) in which the final decision is that the assessed value of the property is greater than the appraised value placed on the property by the condemning authority; and
- the ability, if the small business is an owner of agricultural property near property condemned for an overhead transmission line or related infrastructure, to bring a court action for damages for diminished value of the property.

Additional Comments: If the bill affects the extent to which property rights are able to be acquired for the Maryland Piedmont Reliability Project (MPRP) (described below), or the costs of such acquisition, it presumably increases costs of the project; however, the extent to which any such impact may ultimately impact electricity prices (PSC advises that costs of transmission projects ultimately are passed on through electricity prices), including those paid by State and local government, cannot be reliably estimated.

MPRP is an approximately 67-mile high-voltage electricity transmission line proposed to be constructed across portions of Baltimore, Carroll, and Frederick counties. PSEG Renewable Transmission LLC filed an application for a CPCN for the project with PSC on December 31, 2024 ([Case Number: 9773](#)). The project's application materials indicate that it will require temporary easements (for construction and maintenance phases) and permanent easements (for the permanent structures and facilities) along the project's route.

With respect to conservation easements held by MALPF (agricultural preservation easements), MALPF's current regulations allow for an overlay easement (over an existing agricultural preservation easement) for utility infrastructure only where a grantee has condemning authority. The Maryland Department of Agriculture notes that, because of those regulations, the bill's prohibition under the Public Utilities Article against exercising a right of condemnation to acquired property encumbered by a conservation easement for the purpose of constructing an overhead transmission line may also prevent a private landowner from willingly granting (selling) an overlay easement for an overhead transmission line pursuant to the MALPF regulations since the bill removes the authority to condemn the property (whether in fee simple or for an overlay easement).

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Harford, Montgomery, Wicomico counties; Baltimore City; Judiciary (Administrative Office of the Courts); Maryland Department of Agriculture; Maryland Department of the Environment; Department of Natural Resources; Maryland Department of Planning; Office of People's Counsel; Public Service Commission; Department of Legislative Services

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