

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1396
Economic Matters

(Delegate Rose, *et al.*)

Property Rights Protection Act of 2025

This bill (1) prohibits a person from exercising a right of condemnation to acquire property for the purpose of constructing a generating station that produces electricity from wind or solar energy; (2) repeals the authority for a person who has obtained a Certificate of Public Convenience and Necessity (CPCN) from the Public Service Commission (PSC) to exercise a right of condemnation when constructing an overhead transmission line; (3) prohibits the State or any of its instrumentalities or political subdivisions – notwithstanding any other law – from acquiring by condemnation a property that is encumbered by a conservation easement or will be used for the construction of a power line or a generating station that produces electricity from wind or solar energy; and (4) prohibits an electric company from exercising a right of condemnation to acquire property for the construction of a power line.

Fiscal Summary

State Effect: The bill is not anticipated to materially affect State finances or operations. The potential effect on electricity prices is discussed in the Additional Comments section below.

Local Effect: The bill is not anticipated to materially affect local finances or operations. The potential effect on electricity prices is discussed in the Additional Comments section below.

Small Business Effect: Minimal. The potential effect on electricity prices is discussed in the Additional Comments section below.

Analysis

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.

Pursuant to § 7-207 of the Public Utilities Article, a person may not exercise a right of condemnation in connection with the construction of a generating station or an overhead transmission line unless the person has obtained a CPCN from PSC and, for a generating station only, PSC has found that capacity is needed to ensure a sufficient supply of electricity to customers in the State. An approval to construct a generating station from PSC under § 7-207.1 of the Public Utilities Article (the CPCN exemption process) does not authorize a person to exercise a right of condemnation.

Conservation Easements

As defined under § 10-705 of the Real Property Article, “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, the Maryland Agricultural Land Preservation Foundation, the Department of Natural Resources (DNR), a county or municipality (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.

Certificate of Public Convenience and Necessity Process

Generally, a person may not begin construction in the State of a generating station, overhead transmission line, or a qualified generator lead line unless a CPCN is first obtained from PSC. The application process involves notifying specified stakeholders,

public hearings, 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.

PSC must take final action on a CPCN application only after due consideration of the recommendations of the governing body of each county or municipality in which any portion of the project is proposed to be located and the effect of the project on various aspects of the State infrastructure, economy, and environment.

Under specified circumstances, a person constructing a generating station may apply to PSC for a CPCN exemption, including if the facility is wind-powered and land-based, the capacity is up to 70 megawatts, and the facility is no closer than a PSC-determined distance from the Patuxent River Naval Air Station, among other requirements. For construction related to an existing overhead transmission line, PSC must waive the requirement to obtain a CPCN if it finds that construction does not require (1) the person to obtain new real property or additional rights-of-way through eminent domain or (2) require larger or higher structures to accommodate increased voltage or larger conductors.

For additional information on the CPCN process, including other circumstances under which a CPCN exemption may be granted, please see the **Appendix – Certificate of Public Convenience and Necessity**.

Additional Comments: According to PSC, eminent domain has never been used for a solar energy project that it has approved (under the CPCN process or otherwise). Additionally, PSC advises that most approvals for wind energy projects are granted under § 7-207.1 of the Public Utilities Article (the CPCN exemption process). As noted above, a project that is approved by PSC under § 7-207.1 does not come with the authority to exercise eminent domain.

According to PSC, the bill makes it difficult to build transmission lines in the State. Restricting where transmission line projects can be built in the State, by removing the ability to use eminent domain, may lead to increased costs for ratepayers over time, including the State, local governments, and small businesses. Any additional costs associated with reduced transmission capacity and/or more expensive transmission projects due to route limitations would be recovered through rates.

Additional Information

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

Designated Cross File: SB 737 (Senator Folden) - Education, Energy, and the Environment.

Information Source(s): Baltimore, Carroll, Cecil, and Frederick counties; Maryland Association of Counties; 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

Fiscal Note History: First Reader - March 5, 2025

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Appendix – Certificate of Public Convenience and Necessity

General Overview

The Public Service Commission (PSC) is the lead agency for licensing the siting, construction, and operation of power plants and related facilities in the State through Certificates of Public Convenience and Necessity (CPCN). The CPCN process is comprehensive and involves several other State agencies, including the Department of Natural Resources (and its Power Plant Research Program), and the Maryland Department of the Environment. Subject to limited exemptions described below, a person may not begin construction in the State of a generating station, overhead transmission line, or qualified generator lead line unless a CPCN is first obtained from PSC.

State law provides that a “generating station” excludes:

- a facility used for electricity production with a capacity of up to 2 megawatts that is installed with equipment that prevents the flow of electricity to the electric grid during time periods when the grid is out of service;
- a combination of two or more co-located or adjacent facilities used for electricity production from solar photovoltaic systems or specified eligible customer-generators that have a maximum cumulative capacity of 14 megawatts, including maximum individual capacities of 2 megawatts (subject to satisfying other requirements); and
- a facility, or a combination of two or more facilities, used for electricity production for the purpose of onsite emergency backup for critical infrastructure when service from the electric company is interrupted and conducting necessary test and maintenance operations (subject to satisfying other requirements).

The CPCN process, detailed further below, involves the notification of specified stakeholders, the holding of public hearings, the consideration of recommendations by State and local government entities, and the consideration of the project’s effects on various aspects of the State infrastructure, economy, and environment.

In December 2020, PSC initiated a rulemaking (RM 72) to revise regulations governing CPCNs for generating stations. Updated regulations became effective in September 2021. Among other changes, the regulations contain additional information requirements – to assist in project evaluation – and allow for electronic submission and distribution of application materials.

Notification Process

Upon receipt of a CPCN application, PSC – or the CPCN applicant, if required by PSC – must immediately provide notice to specified recipients, including the executive and governing body of affected local governments, affected members of the General Assembly, and other interested persons. When providing the notice, PSC must also forward the CPCN application to each appropriate unit of State and local government for review, evaluation, and comment and to each member of the General Assembly who requests a copy.

Public Hearing and Comment

PSC must provide an opportunity for public comment and hold a public hearing on a CPCN application in each county and municipality in which any portion of the construction of a generating station, overhead transmission line, or qualified generator lead line is proposed to be located. PSC must hold the hearing jointly with the governing body of the county or municipality and must provide weekly notice during the four weeks prior to the hearing, both in a newspaper and online, and must further coordinate with each local government to identify additional hearing notification options. PSC must ensure presentation and recommendations from each interested State unit and must allow representatives of each State unit to sit during the hearing of all parties. PSC must then allow each State unit 15 days after the conclusion of the hearing to modify the unit's initial recommendations.

Public Service Commission Considerations

PSC must take final action on a CPCN application only after due consideration of (1) recommendations of the governing body of each county or municipality in which any portion of the project is proposed to be located; (2) various aspects of the State infrastructure, economy, and environment; and (3) the effect of climate change on the project. For example, PSC must consider the effect of the project on the stability and reliability of the electric system and, when applicable, air and water pollution. There are additional considerations specifically for a generating station or an overhead transmission line. For example, PSC must consider the impact of a generating station on the quantity of annual and long-term statewide greenhouse gas emissions and must consider alternative routes and related costs for the construction of a new overhead transmission line.

Generating Station Exemptions

There are three general conditions under which a person constructing a generating station may apply to PSC for an exemption from the CPCN requirement:

- the facility is designed to provide onsite generated electricity, the capacity is up to 70 megawatts, and the excess electricity can be sold only on the wholesale market pursuant to a specified agreement with the local electric company;
- at least 10% of the electricity generated is consumed onsite, the capacity is up to 25 megawatts, and the excess electricity is sold on the wholesale market pursuant to a specified agreement with the local electric company; or
- the facility is wind-powered and land-based, the capacity is up to 70 megawatts, and the facility is no closer than a PSC-determined distance from the Patuxent River Naval Air Station, among other requirements.

However, PSC must require a person who is exempted from the CPCN requirement to obtain approval from the commission before the person may construct a generating station as described above. The application must contain specified information that PSC requires, including proof of compliance with all applicable requirements of the independent system operator.