

**Department of Legislative Services**  
Maryland General Assembly  
2025 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

Senate Bill 189 (Senators Brooks and Hettleman)

Judicial Proceedings and Education, Energy,  
and the Environment

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**Eminent Domain – Agricultural and Conservation Easements – Prohibited  
Taking**

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This bill, under Title 12 (“Eminent Domain”) of the Real Property Article, prohibits the State or any of its instrumentalities or political subdivisions from taking, by eminent domain, privately owned property that is subject to a perpetual agricultural or conservation easement.

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**Fiscal Summary**

**State Effect:** Costs of State capital projects may increase, resulting either in increased overall State capital expenditures or delay/canceling of other capital projects, as discussed below. Revenues are not affected.

**Local Effect:** Similar to above, costs of local government capital projects may increase, as discussed below. Revenues are not affected.

**Small Business Effect:** Potential meaningful.

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**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.

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.

### *Maryland Agricultural Land Preservation Foundation*

The Maryland Agricultural Land Preservation Foundation (MALPF) was created by the Maryland General Assembly to preserve productive agricultural land and woodland, limit the extent of urban development, and protect agricultural land and woodland as open space. MALPF, with the assistance and cooperation of landowners and local governments, purchases development rights easements as a means of protecting agricultural land and woodland production activities.

Statute specifies that State law provisions governing MALPF do not prohibit an agency of the State or of a county or other governmental authority from acquiring by condemnation land, which is under an agricultural preservation easement held by MALPF or a county agricultural land preservation program if such acquisition is for a public purpose.

MALPF regulations establish that an owner of land subject to a MALPF easement may not grant or permit another easement, right-of-way, or other servitude in that land without MALPF’s written permission. MALPF may grant permission, subject to conditions it deems necessary to protect and maintain the agricultural integrity of the farm, under specified circumstances, including:

- if the overlay easement enhances a public road or bridge for the public health, safety, or welfare, where a minimal amount of land is required for the project and the grantee of the proposed overlay easement has condemning authority; and
- if the overlay easement is used to install a utility easement for electricity, telephone, cable, oil, gas, or similar utility and the grantee of the proposed overlay easement has condemning authority.

### *Conservation Easements*

Under provisions of the Real Property Article establishing notice requirements applicable to the sale of property encumbered by a conservation easement, the term “conservation easement,” is defined as 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, 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.

**State and Local Expenditures:** Costs of State and/or local government capital projects may increase, to the extent projects require access or other property rights (*e.g.*, an easement for utility infrastructure) on privately owned property subject to a perpetual agricultural or conservation easement, due to:

- a need to pay a higher cost to obtain those property rights, through negotiation, than is otherwise paid, in the absence of the bill, through condemnation; or
- a need to modify and relocate the project.

Any such increased costs either increase overall State and/or local capital expenditures or result in delay or canceling of other capital projects.

The extent of any impact on State or local capital expenditures or other capital projects cannot be reliably estimated but it appears that any direct impacts likely occur infrequently. The Maryland Department of Agriculture (MDA) indicates, for example, that historically there have been very few instances of MALPF easement property being taken through eminent domain.

**Small Business Effect:** Small businesses that own land encumbered by an agricultural or conservation easement may be meaningfully positively impacted by the ability to avoid condemnation of their land 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, however, a landowner may also be prevented from willingly granting an overlay easement on their land (and receiving associated compensation for the easement).

**Additional Comments:** If the bill affects the extent to which property rights are able to be acquired in order for the Maryland Piedmont Reliability Project (MPRP) (described below) to cross lands subject to an agricultural or conservation easement, 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 (the Public Service Commission (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 certificate of public convenience and necessity (CPCN) for the project with PSC on December 31, 2024 ([MailLog # 314555](#)).

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. Section 7-207 of the Public Utilities Article authorizes a person who has been issued a CPCN for the construction of an overhead transmission line to 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.

As discussed above under Current Law, MALPF's current regulations allow for overlay easements for utility infrastructure only where a grantee has condemning authority. MDA notes that, because of those regulations, the bill's prohibition under Title 12 of the Real Property Article against condemning private property subject to a perpetual agricultural or conservation easement may also prevent a private landowner from willingly granting (selling) an overlay easement for utility infrastructure pursuant to the MALPF regulations since the bill removes the authority to condemn the property (whether in fee simple or for an overlay easement).

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### **Additional Information**

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

**Designated Cross File:** HB 631 (Delegate Guyton, *et al.*) - Environment and Transportation.

**Information Source(s):** Baltimore, Charles, Dorchester, and Howard counties; Maryland Association of Counties; Maryland Municipal League; Maryland Department of Agriculture; Department of Natural Resources; Maryland Department of Planning; Maryland Department of Transportation; Public Service Commission; Department of Legislative Services

**Fiscal Note History:** First Reader - January 22, 2025

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