

Department of Legislative Services
Maryland General Assembly
2026 Session

FISCAL AND POLICY NOTE

First Reader

House Bill 1244 (Delegate Rose, *et al.*)

(Delegate Rose, *et al.*)

Environment and Transportation and Economic Matters

Overhead Transmission Lines and Eminent Domain - Property Value - Damages

This bill 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. The bill also allows for owners of nearby residential 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:

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 Residential Property Owners

The bill authorizes an owner of property used for residential 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 300 feet of the owner's residence 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 certificate of public convenience and necessity (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 the circumstances in which a defendant may be reimbursed for legal, expert, and other fees and costs in a condemnation proceeding and the amount of the reimbursement. 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 in a manner prescribed by the Maryland Rules. 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 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.

Additional Comments: If the bill affects the costs of acquiring property rights for the Maryland Piedmont Reliability Project (MPRP) (described below), it presumably increases costs of the project; however, the extent to which any such impact may ultimately impact electricity prices (PSC has advised in the past 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.

Additional Information

Recent Prior Introductions: Similar legislation has been introduced within the last three years. See SB 955 of 2025.

Designated Cross File: SB 630 (Senators West and Hester) - Judicial Proceedings and Education, Energy, and the Environment.

Information Source(s): Talbot and Wicomico counties; Maryland Municipal League; Judiciary (Administrative Office of the Courts); Maryland Department of Agriculture; Maryland Department of Planning; Maryland Department of Transportation; Office of People's Counsel; Public Service Commission; Department of Legislative Services

Fiscal Note History: First Reader - February 18, 2026
js/sdk

Analysis by: Joanne E. Tetlow

Direct Inquiries to:
(410) 946-5510
(301) 970-5510