Department of Legislative Services

Maryland General Assembly
2026 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1187 (Delegate Hinebaugh)
Environment and Transportation

Water Companies and Sewage Disposal Companies - Eminent Domain Proceedings and Service Rates

This bill prohibits the Public Service Commission (PSC) from approving a rate increase for a water company or a sewage disposal company if a county or municipality has commenced or indicated an intent to commence a condemnation proceeding in accordance with Title 12 of the Real Property Article. The bill requires a factfinder in a condemnation proceeding involving a water company or a sewage disposal company to consider (1) any reasonable system upgrades necessary for the water company or sewage disposal company to provide safe and reliable service and (2) the value to customers from any potential reductions in water or sewer bills if the water company or sewage disposal company is acquired by a county or municipality through condemnation.

Fiscal Summary

State Effect: PSC can implement the bill's changes using existing resources. Because it is assumed that most State agencies are not served by water and sewage disposal companies, State expenditures for water and/or sewage disposal are likely not materially affected. Revenues are not affected.

Local Effect: Local government expenditures may decrease, beginning as early as FY 2027, as discussed below. Local revenues are not affected. The potential effect on rates for water and sewage disposal services is discussed in the Additional Comments below.

Small Business Effect: Potential meaningful. The potential effect on rates for water and sewage disposal services is discussed in the Additional Comments below.

Analysis

Current Law:

Definitions

"Public service company" means a common carrier company, electric company, gas company, sewage disposal company, telegraph company, telephone company, water company, or any combination of public service companies, and does not include a campground or a person that owns or operates equipment used for charging electric vehicles, as specified.

"Sewage disposal company" means a privately owned public service company that owns or maintains facilities for the disposal of sewage.

"Water company" means a public service company that owns a water plant and sells or distributes water for gain.

Public Service Company Rates

A public service company must charge just and reasonable rates for the regulated services that it renders. Generally, PSC has the power to set a just and reasonable rate of a public service company, as a maximum rate, minimum rate, or both. A "just and reasonable rate" means a rate that:

- does not violate any provision of the Public Utilities Article;
- fully considers and is consistent with the public good; and
- except for rates of a common carrier, will result in an operating income to the public service company that yields, after reasonable deduction for depreciation and other necessary and proper expenses and reserves, a reasonable return on the fair value of the public service company's property used and useful in providing service to the public.

Generally, a public service company must file a tariff schedule of its rates and charges for its regulated services and for standard offer service with PSC. A public service company may not sell, render services, or furnish a commodity until it files and publishes its rate schedules with PSC. Additionally, a public service company may not demand or collect (1) compensation that differs from compensation specified in its rate schedules that are in force at the time of the demand or collection or (2) a charge that violates the statutory provisions that govern public utilities.

Rate Case Initiation and Notice Requirements

Unless otherwise ordered by PSC, a public service company may not establish a new rate or change in rate unless the public service company (1) provides to PSC notice of the new rate or change in rate at least 30 days before the new rate is established or current rate is changed and (2) publishes the new rate or change in rate, as specified, during the entire 30-day notice period in new schedules or plainly indicated amendments to existing schedules. The public service company must plainly set forth in the notice and publication (1) the changes that it proposes to the rate schedules currently in force and (2) the effective date of the changes.

PSC may suspend, effective immediately and without formal proceedings, any new rate or change in rate proposed by a public service company. PSC may (1) suspend the rate initially for up to 180 days after the proposed effective date and (2) extend the suspension for up to an additional 90 days if the filing is for an alternative form of ratemaking for a public service company.

Public Service Commission Proceedings

To the extent necessary to receive public comment for each application for a rate increase, PSC must hold a hearing at a convenient location and time during evening hours (1) in person in the affected service area or (2) virtually, with appropriate notice provided so that persons in the affected service area may participate in the hearing.

Eminent Domain – In General

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.

Other entities have been given express statutory authority by the State to exercise condemnation powers under specified circumstances, including the major subdivisions of the State, municipalities, and specified utilities such as gas, oil pipeline, railroad, telephone and telegraph, and water companies.

Public Use

There is no clear-cut rule to determine whether a particular use of property taken through eminent domain is a "public use," and Maryland courts have broadly interpreted the term. The Court of Appeals has recognized takings that encompass a "public benefit" or a "public purpose." Maryland's courts have given great deference to a legislative determination as to whether property should be taken for a particular public purpose.

Damages Awarded – In General

Title 12 of the Real Property Article specifies that the damages to be awarded for the taking of land is the land's fair market value.

For the taking of a part of land, damages awarded is the fair market value of the part taken, but not less than the actual value of the part taken plus any severance or resulting damages to the remaining land by reason of the taking and of future use by the plaintiff of the part taken. The severance or resulting damages must be diminished to the extent of the value of the special (particular) benefits to the remainder arising from the plaintiff's future use of the part taken.

Relocation Assistance

Under Title 12, Subtitle 2 of the Real Property Article, when land is acquired by condemnation, the displacing agency, after receiving an application, must pay a displaced person for:

- actual reasonable moving expenses for moving the person, the person's family, business, farm operation, or other personal property;
- actual direct loss of tangible personal property as a result of moving or discontinuing a business or farm operation, up to the agency's determination of the reasonable expenses that would have been required to relocate the personal property;
- actual reasonable expenses in searching for a replacement business or farm; and
- actual reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or small business at its new site as determined by the displacing agency, up to $60,000.

In lieu of those allowable expenses, a person who is displaced from a place of business or farm operation and meets criteria established by the agency may elect to accept a fixed payment from the agency. Such payments range from $1,000 to $60,000, or the amount provided under the federal Uniform Relocation Assistance Act, whichever is greater.

Negotiation for Relocation Plan

In any condemnation proceeding for the acquisition of private property for public use in which land or any part of it is being used for a business or farm operation, a representative of the displacing agency must contact the owner of the business or farm operation at least 30 days before the filing of the action and negotiate in good faith regarding a plan to relocate the business or farm operation.

Condemnation Proceeding

Procedure

Title 12, Chapter 200, of the Maryland Rules governs court actions for acquisition of property by condemnation under the power of eminent domain. An action for condemnation must be commenced by filing a complaint. A complaint 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.

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. All parties may file a written election submitting an issue of fact to the court for determination without submitting the whole action.

Fair Market Value

Pursuant to the Real Property Article, 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.

Local Expenditures: To the extent that the bill's changes affect the damages awarded in a condemnation proceeding, local government expenditures decrease as early as fiscal 2027. The amount and timing of any decrease cannot be reliably estimated.

Small Business Effect: According to PSC's website, the commission currently regulates 22 water and/or sewage disposal companies. To the extent any affected water and/or sewage disposal companies are considered small businesses, they may be negatively affected by (1) the bill's prohibition of the approval by PSC of a rate increase if a county or municipality has commenced (or has indicated an intent to commence) a condemnation proceeding and (2) the establishment of factors to be considered in a condemnation proceeding.

Additional Comments: By prohibiting PSC from approving a rate increase for a water company or a sewage disposal company if a county or municipality has commenced (or has indicated an intent to commence) a condemnation proceeding, the customers of any affected companies benefit from avoiding a rate increase that might otherwise be approved. While customers of the affected companies are mostly residential, they could include local governments and small businesses.

Additional Information

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

Designated Cross File: SB 799 (Senator McKay) - Education, Energy, and the Environment.

Information Source(s): Baltimore, Garrett, Montgomery, and Prince George's counties; Washington Suburban Sanitary Commission; Judiciary (Administrative Office of the Courts); Maryland Department of the Environment; 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 - March 1, 2026
caw/hlb

Analysis by: Joanne E. Tetlow

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