

# **SB 799 - Written Testimony - EEE.pdf**

Uploaded by: Mike McKay

Position: FAV

**MIKE MCKAY**  
*Legislative District 1*  
Garrett, Allegany, and Washington Counties



*Annapolis Office*  
James Senate Office Building  
11 Bladen Street, Room 416  
Annapolis, Maryland 21401  
410-841-3565  
800-492-7122 Ext. 3565  
Mike.McKay@senate.maryland.gov

Judicial Proceedings Committee  
Executive Nominations Committee

*Joint Committees*  
Administrative, Executive,  
and Legislative Review  
Children, Youth, and Families  
Program Open Space and Agricultural  
Land Preservation

**THE SENATE OF MARYLAND**  
**ANNAPOLIS, MARYLAND 21401**

*Cumberland Office*  
100N Mechanic Street  
Cumberland, Maryland 21502  
240-362-7040

*Williamsport Office*  
2N Conococheque Street  
Williamsport Town Hall  
Williamsport, Maryland

**Senate Bill 799 – Water Companies and Sewage Disposal Companies - Eminent Domain Proceedings and Service Rates**

March 3, 2026

Dear Chair Guzzone, Vice Chair Rosapepe, and Members of the Committee,

I am writing to express strong support for Senate Bill 799 Water Companies and Sewage Disposal Companies - Eminent Domain Proceedings and Service Rates. This legislation provides critical protections for Maryland residents by ensuring that the Public Service Commission cannot approve rate increases for water or sewage disposal companies when a county or municipality has initiated or signaled intent to commence condemnation proceedings. By preventing unjustified rate hikes during these transitions, SB799 safeguards consumers from financial burdens while promoting transparency and fairness in utility governance.

Additionally, SB799 strengthens the eminent domain process by requiring fact finders to consider essential factors such as necessary system upgrades for safe and reliable service and the potential value to customers from reduced water or sewer bills if ownership shifts to a local government. These provisions prioritize public interest and affordability, ensuring that communities benefit from improved infrastructure and cost savings.

I thank you for your time and I urge a favorable report.

Sincerely,

A handwritten signature in black ink, appearing to read "Mike McKay".

Senator Mike McKay  
Representing the Appalachia Region of Maryland  
Serving Garrett, Allegany, and Washington Counties

# **Runkle American Water SB 799 Testimony - Oppositio**

Uploaded by: Laura Runkle

Position: UNF



February 27, 2026

The Honorable Brian J. Feldman  
2 West Miller Senate Office Building  
Annapolis, Maryland 21401

Chair Feldman and Members of the Education, Energy, and the Environment Committee,

Maryland American Water strongly opposes SB 799 on the grounds that it is unworkable, unconstitutional, and would impair the Maryland Public Service Commission's power and constitutional duty to set just and reasonable utility rates, in violation of Md. Code, Pub. Util. § 4-102. Maryland American Water has served Maryland homes and businesses with safe, clean, reliable and affordable drinking water since the early 1930s. Over the last decade, we have invested approximately \$42 million to upgrade and replace drinking water infrastructure in Maryland, and many Maryland communities are in conversation with us about being a solution to their current and future water and wastewater infrastructure and compliance needs.

SB 799 would create an unworkable and hostile legal and regulatory climate in Maryland and would drive away investment in critical water and wastewater utility infrastructure at a time when Maryland needs to attract, not prevent, investment. As you are likely aware, the latest American Society of Civil Engineers report gave Maryland's water infrastructure a "C" grade and identified a need for almost \$10 billion in investment.

For starters, this legislation will inevitably delay the resolution of water and wastewater company rate cases. To the extent these delays prevent rate increases beyond the PSC's statutory rate suspension period, it will violate the constitutional and statutory right of water and wastewater companies to charge rates that will produce, after reasonable deduction for 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." Md. Code, Pub. Util. § 4-101 (definition of just and reasonable rate); see *id.* § 201 (empowering Commission to set just and reasonable rates).

Furthermore, under this proposal, municipalities and counties would be under intense political pressure to delay rate increases by "indicate[ing] an intent to commence" a condemnation proceeding any time a rate case is filed by a PSC-regulated water or wastewater company. The uncertainty presented by what constitutes the declaration of an intent to commence a condemnation proceeding is exacerbated by uncertainty around when the subsequent freeze on PSC action would end. Would it be when the condemnation proceeding is concluded, if it is filed at all? Or when the county or municipality indicates that it no longer intends to commence the condemnation? In either case, the outcome could be months and even years of delay – if the announced intent was even sincere in the first place and not a political ploy to simply delay a rate increase.

Ironically, this legislation could also force customers to pay higher rates until the entry of the delayed PSC order. If the PSC suspends the new rates upon the filing of a rate case (as it routinely does to provide a thorough review), and this legislation prevents the entry of an order within 270 days (as it inevitably will), the utility's full proposed rate increase will automatically take effect. Md. Code, Pub. Util. § 4-204(b)(3). Customers will thus pay the entire rate increase as filed by the utility pending resolution of the condemnation proceeding. While customers would eventually be entitled to refunds if the PSC ultimately approves a lesser rate increase, that might be years later given the nature of condemnation proceedings.

This legislation would also add a new section 12-105.2 to the eminent domain statute to require the factfinder in a condemnation proceeding involving a water or sewage disposal company to consider (1) "any reasonable 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." This provision is also deeply flawed and raises constitutional concerns.

The proposed legislation would require the factfinder to consider two factors that obviously are intended to reduce the compensation below the fair market value that otherwise would be paid for a condemned water or wastewater system. However, Maryland law provides that the damages for the taking of land is its fair market value. Md. Code, Real Prop. § 12-104. This reflects the constitutional requirement that private property shall not be taken for public use without "just compensation." U.S. Const. amend. 5. Thus, this legislation will contravene provisions of both existing Maryland law and the Fifth Amendment of the U.S Constitution.

Finally, Maryland has specific requirements for a government entity to start and then abandon a condemnation proceeding. See e.g., Md. Code Real Prop. § 12-109(e). The ill-defined "intent to commence" language in this legislation could create a risk to counties and municipalities that could leave them on the hook for the utility's legal and potentially other costs incurred due to their signaling and then abandoning of "intent." At the very least, this legislation would invite expensive litigation over this issue.

For these many reasons, we respectfully request that the committee provide an unfavorable report on SB 799.

Sincerely,

*Laura E. Runkle*

Laura E. Runkle  
President, Maryland American Water

# **SB 799 Information PSC (1).pdf**

Uploaded by: Barve Barve

Position: INFO

KUMAR P. BARVE  
CHAIR



FREDERICK H. HOOVER, JR.  
BONNIE A. SUCHMAN  
ODOGWU OBI LINTON  
RYAN C. MCLEAN

## PUBLIC SERVICE COMMISSION

Chair Brian Feldman  
Education, Energy, and the Environment Committee  
2 West Miller Senate Office Building  
Annapolis, MD 21401

### RE: SB 799- Information – Water Companies and Sewage Disposal Companies - Eminent Domain Proceedings and Service Rates

Dear Chair Feldman and Committee Members:

The Public Service Commission (the “Commission”) appreciates the opportunity to provide this informational testimony for SB 799. The bill requires the Commission to deny a rate increase request for a water or sewage company if a local government has commenced or indicated an intent to commence a condemnation proceeding. The purpose of this testimony is to identify potential conflicts that may arise from implementing this bill.

The US Supreme Court has established the legal standard that public utilities are entitled to recover their prudently incurred expenses and have an opportunity to recover a reasonable return on investment.<sup>1</sup> If a regulatory body sets rates so low that they do not cover operating expenses and a reasonable return on investment, it can be considered confiscatory, which constitutes a “taking” in violation of the Fifth and Fourteenth Amendments.<sup>2</sup> Pursuant to these legal standards, if a water or sewage company properly puts a request for a just and reasonable rate increase before the Commission, failure to approve that request could be considered an unconstitutional taking.

The Commission notes that the language in this bill is not consistent with a typical “stay-out” provision, which is a regulatory tool sometimes used to prevent a utility from filing a request for a rate increase for a specific time period. “Stay-out” provisions are typically agreed to by a utility in exchange for approval of other regulatory requests—e.g., a utility agrees to a “stay-out” term if it is granted a multi-year rate plan. The ability to apply SB 799 as a “stay-out” provision may

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<sup>1</sup> *Bluefield Water Works v. Pub. Serv. Comm'n of W. Va.*, 262 U.S. 679 (1923); *FPC v. Hope Nat. Gas Co.*, 320 U.S. 591 (1944).

<sup>2</sup> *See Duquesne Light Co. v. Barasch*, 488 U.S. 299, 307 (1989) (“The guiding principle has been that the Constitution protects utilities from being limited to a charge for their property serving the public which is so ‘unjust’ as to be confiscatory”). The Takings Clause of the Fifth Amendment to the US Constitution reads as follows: “Nor shall private property be taken for public use, without just compensation.” The Takings Clause is applicable to state governments through the Due Process Clause of the Fourteenth Amendment.

depend on an analysis of the administrative sufficiency associated with the alternate regulatory or statutory processes made available to the utilities.<sup>3</sup>

Additionally, it is not possible to ascertain the time period of the prohibition; it applies *before* a condemnation proceeding has been commenced if a local government has “indicated an intent” to begin one, and the bill does not specify for what period of time a utility would be prohibited from filing a rate case *after* a local government has commenced a condemnation proceeding. This could result in a utility being required to “stay-out” for an unreasonable or unquantifiable period of time, during which it may accrue detrimental effects from being denied a just and reasonable rate increase. In any case, the Commission would anticipate that any action it takes pursuant to this legislation would be subject to the risk of legal challenge that would need to be adjudicated by the courts.

Please contact Niki Wiggins, Director of Legislative Affairs, at [irene.wiggins3@maryland.gov](mailto:irene.wiggins3@maryland.gov) if you have any questions related to this informational testimony.

Sincerely,



Kumar P. Barve  
Chair, Maryland Public Service Commission

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<sup>3</sup> For example, the bill’s proposed § 12–105.2.(b) of the Real Property Article requires that when a fact finder is assessing the value of the potentially condemned property in a proceeding involving a water company, they must consider the cost of reasonable system upgrades necessary for the company to provide safe and reliable service. This may be interpreted to provide an alternate opportunity for the utility to be justly compensated, but there is no guarantee that the valuation would encompass all expenses that could otherwise be properly recovered in a rate case. The portion that is unrecoverable in a condemnation proceeding may still be considered an unconstitutional taking if the company sought to recover those costs in a rate proceeding before the Commission and was unduly denied the opportunity.