

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 548 (Delegate Healey, *et al.*)
Environment and Transportation

Railroad Companies - Condemnation Authority - Application

This bill specifies that the general authority of a railroad company to acquire property by condemnation does not apply to an entity that owns or operates (1) a railroad powered by a magnetic levitation propulsion system or (2) passenger or freight transportation where pressurized capsules travel at high speed in reduced-pressure tubes on a thin layer of pressurized air or gas.

Fiscal Summary

State Effect: The bill is not anticipated to impact State operations or finances.

Local Effect: The bill is not anticipated to impact local government operations or finances.

Small Business Effect: None.

Analysis

Current Law: “Railroad” means a common carrier by rail powered in any manner, and includes material, equipment, and property used on or in connection with a railroad.

Condemnation Generally

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.” 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.

Condemnation and Railroad Companies

A railroad company may agree with the owner of property to purchase, use, occupy, or divert the owner’s land or improvements that the company wants for the construction or repair of the railroad company’s roads or works. The company may acquire the property by condemnation under Title 12 of the Real Property Article if (1) the company cannot agree with the owner of the property or (2) an owner is a minor, is adjudged to be mentally incompetent, or is under any other legal disability to contract, or is absent from the county in which the property is located. The power of a railroad company to condemn land and other property includes the power to condemn private crossings.

A railroad company and a public entity that owns or has control of any road or ground necessary to locate any part of the railroad may agree on the manner, terms, and conditions allowing the railroad company to use or occupy the ground. If the parties are unable to agree and the railroad company needs to use or occupy the ground, the railroad company may acquire the property by condemnation under Title 12 of the Real Property Article. A railroad company that lays track on any public street, road, alley, or other public way or ground is responsible for any damage done to private property on or near the public way or ground.

Generally, the condemnation authority applies to all railroads operated by electricity, cable, or other improved motive power. However, a railroad company may not pass through Baltimore City without the consent of the mayor and city council.

Background: For information on railroads powered by magnetic levitation propulsion systems, see the **Appendix – Background on Magnetic Levitation Systems in Maryland**.

In October 2017, the Boring Company was granted a conditional utility permit to let it begin digging a 10.3-mile tunnel beneath the State-owned portion of the Baltimore-Washington Parkway. The project is reported by the *Baltimore Sun* to be part

of the initial steps needed for the establishment of an underground hyperloop system in the State. The hyperloop system is described as low-pressure, underground tubes with capsules that are transported at both low and high speeds throughout the length of the tubes to transport people and objects. The capsules are supported on a cushion of air and are accelerated using magnetic accelerators placed at various stations within the tubes.

Additional Information

Prior Introductions: None.

Cross File: SB 1073 (Senator Pinsky) - Rules.

Information Source(s): Judiciary (Administrative Office of the Courts); Department of General Services; Department of Labor, Licensing, and Regulation; Maryland Department of Planning; Maryland Department of Transportation; Public Service Commission; Montgomery and Prince George's counties; U.S. Department of Energy; Baltimore-Washington Superconducting Magnetic Levitation Project; *Baltimore Sun*; The Boring Company; Tesla; Department of Legislative Services

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mm/hlb

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Appendix – Background on Magnetic Levitation Systems in Maryland

Magnetic Levitation Trains – Generally

Unlike traditional steel wheel trains that travel along rails, magnetic levitation (Maglev) trains use superconducting magnets to levitate train cars. Magnets attached to the train interact with magnets along rails within a concrete guideway to propel the train. The [U.S. Department of Energy](#) (DOE) reports that a Maglev train can travel at speeds of up to 375 miles per hour with very little turbulence compared to steel wheel trains. DOE also notes that Maglev trains are safer than traditional trains; for example, traditional train derailments that result from cornering too quickly are nearly impossible. Several countries have implemented Maglev train systems, including Germany, Japan, and South Korea, and many others have explored the prospects of doing so.

History of Maglev in Maryland

The federal Transportation Equity Act for the 21st Century (TEA-21), which was signed into law in 1998, authorized federal funding to implement a Maglev system in the United States. Funding through TEA-21 lapsed in 2003, and although the Act did not result in the implementation of a Maglev system, several states explored the costs and benefits of doing so. Maryland was particularly interested because a Maglev system could significantly reduce the travel time between Baltimore City and the District of Columbia.

The Maryland Department of Transportation (MDOT) began to devote funding to the development and evaluation of a Maglev system in fiscal 2001. At that time, the Federal Railroad Administration (FRA) and MDOT commenced the Environmental Impact Study (EIS) for the project, which is required by the National Environmental Policy Act (NEPA).

The final EIS was never published, however, because State legislation enacted in 2003 and 2004 prohibited the funding of a Maglev project following the final report of the Task Force to Evaluate the Development and Construction of a Magnetic Levitation Transportation System. In its final report, which was issued in 2003, the task force noted that, among other challenges, a significant amount of funding would be required to implement a Maglev system in Maryland. As a result, during the 2003 session, the General Assembly prohibited spending any State funds to study, develop, or construct a Maglev system and required the enactment of legislation prior to any agreement to construct or operate such a system. During the 2004 session, these provisions were modified to prohibit any State or federal funding for any phase of a Maglev project after

July 1, 2005. The Budget Reconciliation and Financing Act of 2011, however, repealed these prohibitions.

Current Status of Maglev in Maryland

The Baltimore-Washington Superconducting Magnetic Levitation (SCMAGLEV) Project, which has been proposed by a private company, is a proposed Maglev train system between Baltimore City and the District of Columbia, with an intermediate stop at the Baltimore Washington International Thurgood Marshall Airport. In 2016, MDOT was awarded \$27.8 million by FRA to conduct the required EIS, and that analysis is currently underway. Additional information about the project can be found on the [Baltimore-Washington SCMAGLEV Project website](#).