

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 784

(Delegates Impallaria and Reilly)

Economic Matters

Electric Facilities - Construction of Overhead Transmission Lines - Repeal of
Condemnation Authority, Location, and Workgroup

This bill prohibits the Public Service Commission (PSC) from issuing a Certificate of Public Convenience and Necessity (CPCN) for the construction of an overhead transmission line except for in specified locations, provided that the locations are not at full capacity. The bill also repeals the condemnation authority of a person that has received a CPCN from PSC for the construction of an overhead transmission line. A related workgroup, staffed by PSC, is established and must submit a report on its findings to the Governor and the General Assembly by December 31, 2018. **The bill takes effect June 1, 2018, and provisions related to the workgroup terminate June 30, 2019.**

Fiscal Summary

State Effect: PSC can handle the bill's requirements with existing budgeted resources. Under the assumptions discussed below, the bill does not otherwise materially affect State finances or operations.

Local Effect: The bill does not materially affect local government finances or operations.

Small Business Effect: None.

Analysis

Bill Summary: PSC may not issue a CPCN for the construction of an overhead transmission line that is designed to carry a voltage in excess of 69,000 volts unless it will be located on (1) an existing brownfields site, as defined in the bill; (2) property that is subject to an existing easement; or (3) a site where a tower structure or components of a

tower structure used to support an overhead transmission line exist. PSC may issue a CPCN for this purpose at another location if these locations are at full capacity, as verified by an independent authority.

The authority of a person that has received a CPCN from PSC for the construction of an overhead transmission line to acquire any property or right necessary for the construction or maintenance of the transmission line, in accordance with eminent domain provisions in the Real Property Article, is repealed.

Workgroup

The Workgroup on Overhead Transmission Lines is established and must examine:

- whether the authority to condemn land for the construction or maintenance of an overhead transmission line is necessary;
- whether private companies should have the authority to condemn land for the construction or maintenance of an overhead transmission line;
- how to adequately compensate a person whose property or right is condemned for the construction or maintenance of an overhead transmission line;
- whether there are other methods to acquire land for the construction or maintenance of an overhead transmission line; and
- how to meet the State's energy demands without (1) increasing the amount of energy in the State from renewable sources or out-of-state sources and (2) constructing new overhead transmission lines.

PSC must provide staff for the workgroup. A member of the workgroup may not receive compensation but is entitled to reimbursement of standard travel expenses. The workgroup must submit a report on its findings to the Governor and the General Assembly by December 31, 2018.

Current Law: Generally, a person may not begin construction in the State of a generating station, overhead transmission line, or a qualified generator lead line (project) unless a CPCN is first obtained from PSC. The application process involves notifying specified stakeholders, public hearings, and the consideration of recommendations by State and local government entities and the project's effect on various aspects of the State infrastructure, economy, and environment. There are conditions under which a person constructing a generating station may apply to PSC for an exemption from the CPCN requirement.

Overhead Transmission Lines

Generally, unless a CPCN for the construction is first obtained from 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. Such a CPCN may only be issued to an electric company or a person that will be subject to regulation as a public utility by an officer or an agency of the United States at the start of commercial operation.

A person that has received a CPCN from PSC for the construction of an overhead transmission line may acquire any property or right necessary for the construction or maintenance of the transmission line, in accordance with eminent domain provisions in the Real Property Article. There is no further approval needed from PSC beyond the CPCN.

As noted above, the CPCN application process involves public hearings. At least 30 days before a hearing, a public service company must provide written notice to each owner of land, by certified mail, of intent to run a line or similar transmission device over, on, or under the land. The public service company must determine the property owners from current tax assessment records. Unless willful or deliberate, the failure of a public service company to provide notice does not invalidate a public hearing or require that another hearing take place.

Eminent Domain – Generally

The power to take, or condemn, private property for public use is one of the inherent powers of state government. 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 and establish two requirements for taking property through the power of eminent domain. First, the property taken must be for a “public use.” Second, the party whose property is being 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.

Background: Chapter 840 of 2017 authorized the condemnation authority for the construction or maintenance of an overhead transmission line that is repealed by the bill. The Maryland Department of the Environment maintains a list of brownfields sites on its [website](#).

State Fiscal Effect: PSC can implement the modified CPCN process and staff the workgroup on overhead transmission lines with existing budgeted resources. However, the bill requires verification by an “independent authority” that certain sites are at full capacity

before PSC may issue a CPCN for the construction of an overhead transmission line located outside one of those areas. The bill does not further specify the nature of the independent authority, or who is responsible for payment. This analysis assumes that the CPCN applicant must select and pay for the independent authority, subject to review and approval by PSC. Under this assumption, State finances and operations are not materially affected. However, if the bill requires PSC or another State agency to hire a consultant or make the verification, State expenditures increase, potentially significantly, beginning as early as fiscal 2018.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Public Service Commission; Judiciary (Administrative Office of the Courts); Maryland Department of the Environment; Department of Housing and Community Development; Department of Legislative Services

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