

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 720

(Senator Eckardt)

Judicial Proceedings

Real Property - Eminent Domain - Broadband Services

This bill clarifies the damages to be awarded for the taking of land or an interest in land subject to a utility easement when the easement is being used for providing broadband telecommunication services.

Fiscal Summary

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

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

Small Business Effect: Minimal.

Analysis

Bill Summary: If telecommunications equipment has already been installed on or under the land, the damages to be awarded for any *new* installation or attachment related to the provision of broadband telecommunication services must be the value of the increased interference, if any, to the plaintiff's use and enjoyment of the remaining land as a result of the additional installation or attachment.

If telecommunications equipment has not already been installed, the damages for an installation or attachment related to providing broadband telecommunication services must be calculated as provided under current law, based on the fair market value of the land taken. Damages must be computed at the time of taking and may not accrue over time.

Evidence of revenues or profits derived by a utility from providing broadband services may not be used for any purpose.

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.” 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.

Damages

Generally, the damages to be awarded when land is taken is the fair market value of the part taken. The total damages may not be less than the actual value of the part taken plus any severance or resulting damages to the remaining land. The total damages must take into account any future use of the land intended by the prior owner, and the value of the particular benefits to the remaining land.

Background: Chapters 620 and 621 of 2017 established the Task Force on Rural Internet, Broadband, Wireless, and Cellular Service to study and make recommendations regarding how Western Maryland counties; Southern Maryland counties; Eastern Shore counties; and Frederick, Carroll, and Harford counties can work together to obtain federal assistance to improve Internet, broadband, wireless, and cellular services and accessibility in the affected counties. Chapters 177 and 178 of 2018 subsequently expanded the scope of the task force to encompass all rural areas of the State, extended the task force for one year, and generally expanded its mandate.

The [task force report](#), dated January 2, 2019, includes six primary recommendations including one similar to the bill. The task force proposed adding language to the Real

Property Article to limit the damages recoverable in an eminent domain, trespass, or unjust enrichment proceeding. The task force specified that where preexisting equipment in an electric utility easement is used to facilitate telecommunications services, including broadband, the damages would be limited to compensation for the increased interference, if any, with the property owner's use and enjoyment of the property caused by any new physical attachments for the purpose of providing broadband services. Such actual damages would be fixed at the time of the initial installation and would not be deemed to accrue over time. Evidence of revenues or profits derived by an electric utility or other corporation from providing telecommunications services, including broadband, would not be admissible for any purpose in any subsequent proceeding.

The Federal Communications Commission definition of broadband speed Internet, as of 2015, is an Internet connection with a minimum of 25 Mbps download and 3 Mbps upload. According to InterenetChoice.Org, 93.8% of the population of the State has access to broadband speed Internet.

Additional Information

Prior Introductions: None.

Cross File: HB 1310 (Delegate Mautz, *et al.*) - Rules and Executive Nominations.

Information Source(s): Anne Arundel and Montgomery counties; Maryland Association of Counties; Maryland Municipal League; Maryland State Treasurer's Office; Judiciary (Administrative Office of the Courts); Maryland Department of the Environment; Department of General Services; Maryland Department of Transportation; Public Service Commission; Federal Communications Commission; *InterenetChoice.Org*; Department of Legislative Services

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