

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

Senate Bill 724

(Senator Madaleno)

Budget and Taxation

**Transportation Projects - Reimbursement to Owners of Real Property for Loss
of Rental Income**

This bill extends eligibility for specified benefits under Title 12 (Eminent Domain) of the Real Property Article and Title 8 (Highways) of the Transportation Article to individuals who (1) own real property adjacent to a transportation construction site; (2) have rented or leased the property to another person for not less than 180 days prior to the beginning of construction on the site adjacent to the property; and (3) have suffered a loss of rental income due to the proximity of the property to the construction site. For each month payment is sought, individuals must petition the displacing agency for payment and demonstrate that rental income was lost due to the construction site. The bill requires payments to be equal to 75% of the monthly fair market rental rate for the property.

Fiscal Summary

State Effect: Transportation Trust Fund (TTF) and nonbudgeted expenditures may increase significantly to compensate property owners. Revenues are not affected.

Local Effect: Local expenditures may increase significantly to compensate property owners. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Meaningful.

Analysis

Current Law: 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 constitution 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 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.

Just Compensation

The damages to be awarded for the taking of land are determined by the land’s “fair market value.” By statute, fair market value of the condemned property (property taken through eminent domain) is the price as of the valuation date for the highest and best use of the property that a willing seller would accept from a willing buyer, excluding any change in value proximately caused by the public project for which the property is needed.

Relocation Assistance

When land is acquired by condemnation, the displacing agency must pay a displaced person who is displaced from an owner-occupied dwelling an additional payment of up to \$45,000, if the dwelling was owned and occupied for at least 180 days prior to the negotiations for the property’s acquisition. The limit may be exceeded on a case-by-case basis under specified circumstances.

The displacing agency must pay a displaced person not eligible for the payment mentioned above the amount necessary to enable that person to lease or rent a comparable replacement dwelling, limited to \$10,500, for up to 42 months. The limit may be exceeded on a case-by-case basis under specified circumstances. To be eligible, the displaced person must have occupied the dwelling for at least 90 days before the initiation of negotiations for the acquisition of the dwelling or in any case in which displacement is not a direct result of acquisition, other criteria prescribed by the lead agency.

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, 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.

State Highway Administration

The State Highway Administration may acquire for the State, by condemnation under Title 12 of the Real Property Article or by lease, agreement, gift, grant, purchase, or otherwise, any private property for any public purpose that it considers necessary or desirable to perform its duties.

Background: Historically, the State has used its condemnation authority primarily for the construction of roads and highways, although this has not always been the case. More recent examples include the construction by the Maryland Stadium Authority of Oriole Park at Camden Yards, M&T Bank Stadium, and the Hippodrome Theater in Baltimore City. Local governments have used the power of eminent domain primarily for small, targeted public projects such as construction of an airport, fire station, or parking lot. On a larger scale, Baltimore City has exercised its condemnation powers for the redevelopment of the Inner Harbor and the Charles Center. Montgomery County used its condemnation authority as part of the downtown Silver Spring redevelopment.

State Fiscal Effect: To the extent specified landowners seek compensation for loss of rental income due to proximity to a transportation construction site, TTF and nonbudgeted expenditures may increase. The number of eligible landowners and the costs associated with compensation in each case cannot be predicted. Expenditures related to such compensation may be significant, even with a relatively small number of affected properties.

The Maryland Transit Administration estimates the bill may require \$4 million in expenditures in fiscal 2014 associated with just the Red Line and Kirk Bus Division projects. The State Highway Administration estimates the bill may result in \$4 million in additional annual expenditures.

Local Fiscal Effect: To the extent local governments acquire private property for construction of transportation projects and the project affects adjacent landowner's rental

income, expenditures may increase. Expenditures related to these additional costs may be significant, even with a relatively small number of affected properties.

Small Business Effect: Small businesses located adjacent to transportation construction projects may receive additional compensation for loss of rental income.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Maryland Department of Transportation, Department of Legislative Services

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