

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 413

(Senator Pugh, *et al.*)

Budget and Taxation

Ways and Means

Property Tax Credit - Replacement Home Purchased After Acquisition of
Dwelling for Public Use

This bill alters an existing local property tax credit for a replacement home purchased after a homeowner is displaced through eminent domain by repealing the phase-out provisions of the tax credit. Under current law the tax credit phases out after five years.

The bill takes effect June 1, 2010, and applies to taxable years beginning after June 30, 2010.

Fiscal Summary

State Effect: None.

Local Effect: Local government property tax revenues may decrease by a minimal amount beginning in FY 2011 depending on the property tax credits granted for specified replacement homes in any given year. Expenditures are not affected.

Small Business Effect: None.

Analysis

Current Law: Chapters 558 and 559 of 2007 authorized local governments to grant a property tax credit for a property that is purchased as a replacement for a principal residence which was acquired either through condemnation or negotiation under the threat of condemnation for public use by the State, a political subdivision, or instrumentality of the State. The credit lasts for five years and may not exceed 100% of the property tax attributable to the eligible homestead assessment granted on the acquired

dwelling in the first taxable year, and is then reduced by 20% in each subsequent year over the five-year life of the credit. The credit may not be granted if the property owner has been compensated for the increase in property taxes for the new dwelling.

The new dwelling must be purchased by the end of the taxable year following the acquisition of the original dwelling. For the purposes of calculating the eligible homestead assessment amount, if the replacement dwelling is in the same jurisdiction, the credit equals the amount of eligible homestead of the original dwelling; however, if the property is in a different jurisdiction, the credit equals the amount of eligible homestead of the original dwelling for State purposes. If the new dwelling is valued less than the original dwelling, the credit is reduced in the first year by the difference in value.

Background:

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 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.

In order to condemn property for a highway purpose on an accelerated schedule, the State Roads Commission must file a petition for condemnation in the court for the county in which the property to be acquired is located; and pay the property owner, or pay the court for the owner’s benefit, the amount the commission estimates to be the fair value of the property to be acquired and fair compensation for any damage resulting to the remaining property of the owner. After the petition is filed and payment is made, the commission may take possession of the property (“quick-take”) and the State Highway Administration may proceed with construction without interference by the owner. At the conclusion of the condemnation proceedings, the commission must pay to the property owner any excess of the final award over the amount originally paid to the property owner.

Public Use

There is no clear rule to determine whether a particular use of property taken through eminent domain is a “public use,” and Maryland courts have broadly interpreted the term. The Court of Appeals has recognized takings that encompass a “public benefit” or a

“public purpose.” Maryland’s courts have given great deference to a legislative determination as to whether property should be taken for a particular public purpose.

The courts have stated that government may not simply transfer property from one private party to another. In *Van Witsen v. Gutman*, 79 Md. 405 (1894), the Court of Appeals invalidated a condemnation by Baltimore City in which the court found the transfer would have benefited one private citizen at the cost of others. However, transferring property from one private party to another is not necessarily forbidden. In *Prince George’s County v. Collington*, 275 Md. 171 (1975), the Court of Appeals authorized the county to use its eminent domain authority to take private property to be used for economic development purposes, even though the property was not blighted. The Collington court enunciated the following rule: “projects reasonably designed to benefit the general public, by significantly enhancing the economic growth of the State or its subdivisions, are public uses, at least where the exercise of the power of condemnation provides an impetus which private enterprise cannot provide.” *Id.* at 191.

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.

Date of Actual Taking

Property is deemed to be taken:

- in the case of a “quick-take” action – where certain governmental entities are authorized to take property immediately upon payment of fair value to the property owner or to a court – if the plaintiff is lawfully authorized to take the property, has made payment, and has taken possession of the property and actually and lawfully appropriated the property to the public purposes of the defendant; and
- in every other case, if the plaintiff pays the judgment and costs to the court.

Local Urban Renewal Projects

Under the Maryland Constitution, the General Assembly may authorize and empower any county or municipal corporation to acquire land, by condemnation or other means, to carry out urban renewal projects in slum or blighted areas, and may authorize the Mayor and City Council of Baltimore to acquire, by condemnation or other means, land: for

development or redevelopment, including, but not limited to, the comprehensive renovation or rehabilitation thereof; for storing, parking, and servicing self-propelled vehicles; and for or in connection with extending, developing, or improving the harbor or Port of Baltimore and its facilities and the highways and approaches thereto. The acquisition of land pursuant to these provisions is declared to be needed or taken for a public use.

Historically, the State has used its condemnation authority primarily for the construction of roads and highways. However, 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.

The Maryland Economic Development Corporation, even though charged with the task of encouraging increased business activity and commerce and promoting economic development in the State and authorized by law to condemn property, reports that it has not exercised the eminent domain power.

According to the Maryland Municipal League and the Maryland Association of Counties, local governments also have seldom exercised the power of eminent domain. When used, the purposes have been primarily for small, targeted public projects – for example, to construct an airport, a fire station, or a 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.

Local Fiscal Effect: Local property tax revenues may decrease beginning in fiscal 2011 depending on the number of eligible replacement dwellings and the amount of the credit. The property tax credit granted to a replacement dwelling cannot exceed the amount of the homestead tax credit for the previous dwelling in the first year. **Exhibit 1** shows the effect of the bill if there was one eligible replacement home purchased in each county, based on the average assessment and current county property tax rates for fiscal 2011.

Exhibit 1
Revenue Decrease Associated with Property Tax Credit for One Replacement Home
in Each County

County	Average Assessment	Average Homestead Credit	County Tax Rate	County Property Tax Credit
Allegany	\$110,394	\$12,530	\$0.9829	(\$123)
Anne Arundel	388,692	154,714	0.8760	(1,355)
Baltimore City	160,479	59,492	2.2680	(1,349)
Baltimore	281,919	80,957	1.1000	(891)
Calvert	376,552	42,868	0.8920	(382)
Caroline	230,242	48,881	0.8700	(425)
Carroll	329,221	49,485	1.0480	(519)
Cecil	265,084	27,318	0.9400	(257)
Charles	308,207	52,387	1.0260	(537)
Dorchester	208,354	49,435	0.8960	(443)
Frederick	318,627	60,851	1.0640	(647)
Garrett	156,863	31,461	0.9900	(311)
Harford	293,754	29,522	1.0640	(314)
Howard	441,888	115,051	1.1495	(1,323)
Kent	299,098	82,535	0.9720	(802)
Montgomery	493,800	57,213	0.9160	(524)
Prince George's	320,198	123,585	1.3190	(1,630)
Queen Anne's	408,460	87,480	0.7700	(674)
St. Mary's	327,205	84,793	0.8570	(727)
Somerset	149,012	26,216	0.9000	(236)
Talbot	512,702	265,845	0.4320	(1,148)
Washington	226,913	39,911	0.9480	(378)
Wicomico	189,456	24,717	0.7590	(188)
Worcester	271,601	79,706	0.7000	(558)
Statewide	\$334,520	\$86,883		

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore and Montgomery counties, Maryland Association of Counties, Maryland Municipal League, Department of General Services, Maryland Department of Transportation, Department of Legislative Services

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