

Department of Legislative Services  
 Maryland General Assembly  
 2013 Session

FISCAL AND POLICY NOTE

House Bill 1282 (Delegate Eckardt, *et al.*)  
 Environmental Matters

Agricultural Land Condemnation Board

This bill establishes an Agricultural Land Condemnation Board to hold public meetings to consider proposed State and local condemnations of prime and productive farmland for “environmental mitigation purposes” and to issue written decisions on whether to approve proposed condemnations. Except in specified circumstances, a State or a local entity must notify the board in writing if they intend to condemn prime and productive farmland for environmental mitigation purposes. The State or a local entity may not initiate condemnation, including “quick-take” condemnation, of prime and productive farmland for environmental mitigation purposes without the board’s approval.

Fiscal Summary

**State Effect:** Maryland Department of Agriculture (MDA) general fund expenditures increase by \$59,900 in FY 2014 to hire a program coordinator to staff the board. Future year MDA expenditures reflect annualization and inflation. Overall, State expenditures may increase to the extent the bill makes it more difficult to implement environmental mitigation; however, any impact is likely minimal. Revenues are not directly affected.

(in dollars)	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	59,900	76,700	80,200	83,900	87,800
Net Effect	(\$59,900)	(\$76,700)	(\$80,200)	(\$83,900)	(\$87,800)

*Note: ( ) = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect*

**Local Effect:** Local expenditures may increase to the extent the bill makes it more difficult to implement environmental mitigation; however, any impact is likely minimal.

**Small Business Effect:** Minimal.

## **Analysis**

**Bill Summary:** The board consists of five members appointed by the Secretary of Agriculture for specified terms. The bill establishes operational requirements of the board and authorizes the Secretary of Agriculture to remove a board member for incompetence or misconduct. Board members may not receive compensation but are entitled to reimbursement for expenses under the standard State travel regulations, as provided in the State budget.

An “environmental mitigation purpose” is a project undertaken to comply with the Forest Conservation Act (FCA), the Nontidal Wetlands Protection Act, or a State or county Watershed Implementation Plan (WIP) activity intended to meet the goals of the Chesapeake Bay Total Maximum Daily Load (TMDL).

A “local entity” is a county, municipal corporation, bicounty or multicounty agency, public authority, special taxing district, or any other political subdivision or unit of a political subdivision of the State.

The State or a local entity must provide specified information to the board about a proposed condemnation. A property owner of a proposed condemnation site may provide information to the board. The State or a local entity is not required to present information about a proposed condemnation to the board if the government entity and the property owner agree to reasonable terms for compensation in exchange for the property and the board determines the terms of the agreement are reasonable. Reasonable terms for compensation include (1) sale price; (2) effective date of the condemnation; (3) reissuance of permits for alternative irrigation wells; and (4) reissuance of any other permit for which the permitted activity will be impacted by the condemnation and is essential to the remainder of the farm operation.

The board must approve a proposed condemnation if it determines there is no reasonable and prudent alternative.

### **Current Law:**

#### *Eminent Domain*

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.

### *State Highway Administration*

The State Highway Administration (SHA) 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. On behalf of SHA, the State Roads Commission may acquire for the State, by condemnation, any private property for any highway purpose.

### *Forest Conservation Act*

Enacted in 1991, FCA provides a set of minimum standards that developers must follow when designing a new project that affects forest land. Local governments are responsible for making sure these standards are met, but they may choose to implement even more stringent criteria. If there is no local agency in place to review development plans, the Department of Natural Resources does so. The intent of FCA is to minimize the loss of forest due to development and to ensure that priority areas for forest retention and forestation are identified and protected before development. Priority areas include nontidal floodplains, streams and accompanying buffers, steep slopes, and critical habitats.

### *Nontidal Wetlands Protection Act*

The Nontidal Wetlands Protection Act seeks to ensure no overall net loss of nontidal wetland acreage and function. The Maryland Department of the Environment oversees a permit process for construction projects (e.g., grading or filling) affecting nontidal wetlands.

## **Background:**

### *Condemnation of Land*

Historically, the State has used its condemnation authority primarily for the construction of roads and highways. For example, recently SHA used its land condemnation authority to take approximately 20 acres of farmland located in Caroline County for wetlands mitigation associated with a nearby bridge construction project. However, the State has also used its condemnation authority for nonroad purposes, such as to construct the Maryland Stadium Authority of Oriole Park at Camden Yards, M&T Bank Stadium, and the Hippodrome Theater in Baltimore City.

Local governments exercise the power of eminent domain primarily for small, targeted public projects such as construction of an airport, a fire station, or a parking lot. On a larger scale, Baltimore City 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.

*Chesapeake Bay Total Maximum Daily Load*

In December 2010, the U.S. Environmental Protection Agency established a Chesapeake Bay TMDL, as required under the federal Clean Water Act and in response to consent decrees in Virginia and the District of Columbia. The Chesapeake Bay TMDL sets the maximum amount of nutrient and sediment pollution the bay can receive and still attain water quality standards. It also identifies specific pollution reduction requirements; all reduction measures must be in place by 2025, with at least 60% of the actions completed by 2017. As part of the Chesapeake Bay TMDL, bay jurisdictions must develop WIPs that identify the measures being put in place to reduce pollution and restore the bay.

**State Expenditures:** MDA general fund expenditures increase by \$59,868 in fiscal 2014, which accounts for the bill’s October 1, 2013 effective date. This estimate reflects the cost of hiring a program coordinator to staff the board and coordinate public meetings and materials on proposed State and local condemnations. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1
Salary and Fringe Benefits	\$53,022
Computer and Other Equipment	4,615
Other Operating Expenses	<u>2,231</u>
<b>Total FY 2014 MDA Expenditures</b>	<b>\$59,868</b>

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

State agency workloads may increase to the extent farmland condemnations are proposed and a State agency must develop materials for, and seek the approval of, the board. Also, to the extent the bill makes it more difficult to find mitigation sites to comply with certain environmental mitigation requirements, State expenditures may increase; however, any impact is likely minimal.

**Local Fiscal Effect:** Local government workloads may increase to the extent farmland condemnations are proposed and local governments must develop materials for, and seek the approval of, the board. Also, to the extent the bill makes it more difficult to find mitigation sites to comply with certain environmental mitigation requirements, local expenditures may increase; however, any increase is likely minimal.

The Maryland Association of Counties (MACO) advises that local government expenditures may increase due to the additional administrative steps required to process condemnation proceedings for farmland. MACO also notes that costs to comply with FCA, WIPs, and wetlands requirements may also increase to the extent the board denies condemnations and alternatives to condemnation must be pursued.

**Additional Comments:** While the bill requires the board to review proposed condemnations of prime and productive farmland for environmental mitigation purposes, this requirement is difficult to interpret because the bill does not define “prime and productive farmland.”

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Allegany, Harford, Montgomery, and Wicomico counties; cities of Frederick and Havre de Grace; Baltimore City; Maryland Department of Agriculture; Board of Public Works; Department of Natural Resources; Maryland Department of the Environment; Department of General Services; Maryland Association of Counties; Maryland Municipal League; Washington Suburban Sanitary Commission; Department of Legislative Services

**Fiscal Note History:** First Reader - February 28, 2013

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