

Department of Legislative Services  
Maryland General Assembly  
2013 Session

FISCAL AND POLICY NOTE

House Bill 883 (Delegate Morhaim, *et al.*)  
Environmental Matters

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Courts and Judicial Proceedings - Jurisdiction over Eminent Domain Cases -  
Circuit Court

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This bill establishes that a circuit court has exclusive, original jurisdiction over all proceedings for the acquisition of private property for public use by condemnation. The bill specifies that this jurisdiction applies to property acquired for public use by a private company under federal law.

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Fiscal Summary

**State Effect:** The bill is procedural/technical and does not materially affect State finances.

**Local Effect:** The bill is procedural/technical and does not materially affect local finances.

**Small Business Effect:** None.

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Analysis

**Current Law:** 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. Both constitutions 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.

### *Public Use*

There is no clear cut 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. For example, 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.”

### *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.

### *Right to Condemn Determined by the Court*

At common law there was no right to a jury trial in a condemnation proceeding, which was considered a special proceeding “lacking the characteristics of [an] ordinary trial.” Therefore, while Article III, § 40 of the Maryland Constitution requires the issue of compensation to be tried by a jury, “the issue of the right to condemn is for the court’s determination.” *Bouton v. Potomac Edison Co.*, 28 Md. 305, 309 (1980).

Depending on the authority granted to a private company under federal law, State law may be preempted, and a federal court may have jurisdiction over a relevant eminent domain case. For example, condemnation actions by a gas company under the federal Natural Gas Act are heard in federal courts.

**Background:** 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.

The Maryland Municipal League and the Maryland Association of Counties have historically advised that local governments 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.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** SB 398 (Senator Zirkin) - Judicial Proceedings.

**Information Source(s):** Public Service Commission, Maryland Municipal League, Maryland Association of Counties, Department of Legislative Services

**Fiscal Note History:** First Reader - February 15, 2013  
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