

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

Senate Bill 397

(Senator Zirkin)

Judicial Proceedings

Condemnation Proceedings - Compensation and Payment of Fees

This bill establishes the damages to be awarded when land is taken by a private company pursuant to the federal Natural Gas Act (NGA) or a public service company pursuant to State law as three times the fair market value, as defined by the bill, of the land taken. The bill also establishes the fair market value, as defined by the bill, of the property taken in a condemnation proceeding under the same circumstances. The bill requires the condemning authority to reimburse the reasonable legal, expert, appraisal, and engineering fees actually incurred by the defendant because of the condemnation proceeding, regardless of whether the judgment in the proceeding is for the defendant.

Fiscal Summary

State Effect: The bill does not directly affect State governmental operations or finances.

Local Effect: To the extent that a local government operates as a public service company, expenditures increase to account for significantly higher amounts paid to property owners in condemnation proceedings. No impact on local revenues.

Small Business Effect: None.

Analysis

Bill Summary: For purposes of the damages to be awarded when land is taken in the specified circumstances, the bill defines “fair market value” as (1) the actual value of the part taken plus any severance or resulting damages to the remaining land by reason of the taking and of future use by the plaintiff of the part taken and (2) the value of any vegetation on the land, whether or not the vegetation was planted by the land owner.

For purposes of a condemnation proceeding, the bill defines “fair market value” as the higher of (1) the fair market value already defined by statute for a condemnation proceeding or (2) the value of the property as determined by an appraiser chosen by the property owner. The bill requires the condemning authority to pay all costs of the appraisal, if the property owner elects to have an appraisal done.

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.” *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.

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.” *Bouton v. Potomac Edison Co.*, 28 Md. 305, 309 (1980). 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.” *Id.* at 310.

Background: According to the Attorney General of Maryland, NGA governs eminent domain exercised to construct a pipeline that transverses state lines. Under NGA, gas companies have the power to exercise eminent domain in these circumstances. However, before doing so, the Federal Energy Regulatory Commission must issue a certificate of public convenience and necessity for the project. Upon the issuance of the certificate, the U.S. District Court’s responsibility is to determine the amount to be paid as just compensation to the property owner.

Local Fiscal Effect: To the extent that a local government is a public service company, expenditures increase to account for significantly higher amounts paid to property owners in condemnation proceedings. The bill has several provisions which may significantly increase the expenses incurred by a condemning authority during a condemnation proceeding, including an increase in the amount of just compensation paid to a property owner and the requirement to pay for an appraiser in specified situations and reimburse the property owner for other costs, regardless of the judgment issued in the proceeding.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State Department of Assessments and Taxation, Judiciary (Administrative Office of the Courts), Maryland Association of Counties, Maryland Municipal League, Office of People’s Counsel, Office of the Attorney General, Public Service Commission, Department of Legislative Services

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