

Department of Legislative Services
Maryland General Assembly
2001 Session

FISCAL NOTE

House Bill 314 (Delegate Rosenberg, *et al.*)
Economic Matters

Real Property - Eminent Domain - Loss of Goodwill

This bill requires a prevailing plaintiff in a condemnation proceeding to compensate the owner of a business conducted on the taken property for the loss of “goodwill” if the business owner can prove that the loss: (1) is caused by the taking; (2) cannot be reasonably prevented by relocating the business or taking steps and adopting procedures that a reasonably prudent person would take and adopt to preserve goodwill; (3) will not be included in the required relocation payments; and (4) will not be duplicated in the compensation awarded to the owner. The bill defines goodwill to mean “the benefits that accrue to a business as a result of its location, reputation for dependability, skill, or quality, and any other circumstances resulting in probable retention of old or acquisition of new patronage.” The bill provides that it is to be construed prospectively and does not apply to cases filed before October 1, 2001.

Fiscal Summary

State Effect: Increase in general and special fund expenditures to the extent goodwill becomes a measure of damages in condemnation cases. Any increase could be significant. Revenues would not be affected.

Local Effect: Increase in expenditures to the extent goodwill becomes a measure of damages in condemnation cases. Any increase could be significant. Revenues would not be affected.

Small Business Effect: Meaningful.

Analysis

Current Law: The damages to be awarded for a taking in condemnation is the fair market value of the property taken. Fair market value is the price as of the valuation date for the highest and best use of the property that a seller would willingly accept, and a buyer would willingly pay, for the property. A defendant in a condemnation case may introduce evidence of the assessed value if the assessed value is greater than the value at which the property is appraised by the condemning authority.

In addition to the fair market value, the condemning authority must pay all the costs in the trial court, including court costs, specified relocation expenses, and, if the defendant is successful, reasonable legal, appraisal, and engineering fees.

For the purpose of determining a tenant's interest in a condemnation proceeding, improvements or installations that would otherwise be deemed part of the land may not be excluded from the tenant's award unless the tenant exercises the right to remove the improvement or installation prior to the date when the tenant's answer is due.

Background: This bill is patterned after a provision in the Uniform Eminent Domain Code approved by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 1974. NCCUSL changed the uniform code to a Model Act in 1984. To date, only Alabama has adopted the Model Act; however, Alabama did not adopt the section of the model act pertaining to compensation for goodwill. Only California has adopted a statutory provision on compensation for goodwill in a condemnation case.

Goodwill has been recognized as property in many areas of the law. For example, goodwill has been held to be the subject matter of a sale and as an asset of a partnership to be divided when the partnership dissolves. The courts that have considered the issue, however, have generally held that with limited exceptions goodwill is not compensable in a condemnation proceeding in the absence of statutory authorization.

State and Local Expenditures: Valuation of goodwill under Maryland case law and under the definition contained in the bill is unique to the business being condemned. A goodwill valuation could range from a few thousand to several million dollars, depending on the nature and location of the business. For illustrative purposes, a well-reputed business whose success is location dependent could have a relatively high goodwill value, whereas a similarly located and reputed business that is not as dependent on its location would have a lower goodwill value.

Small Business Effect: Small businesses would experience an increase in revenues to the extent that they are compensated for their goodwill because of this bill.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Transportation (Maryland Aviation Administration, State Highway Administration), Montgomery County, Maryland Association of Counties, Maryland Chamber of Commerce, Department of Legislative Services

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