

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 874

(Senator Currie)

Budget and Taxation

Environmental Matters

**Transportation - State Highway Administration - Sale of Land Not Needed for
Public Purposes**

This bill alters the procedures by which the State Highway Administration (SHA) is authorized to dispose of land that is no longer needed for a State transportation project.

The bill takes effect July 1, 2004 and terminates June 30, 2006.

Fiscal Summary

State Effect: Transportation Trust Fund (TTF) revenues could decrease significantly in FY 2005 and 2006 from land parcels reacquired by their former owners under the bill.

Local Effect: None.

Small Business Effect: Minimal.

Analysis

Bill Summary: For either an abandoned project or a completed project, if there is a written contract or deed executed after January 1, 1978 and before January 1, 1980 between SHA or the State Roads Commission and the person from whom the property was acquired, or that person's successor in interest, that grants the right to reacquire the property, the terms and conditions of the contract or deed prevail with respect to the property in its entirety, or any residual or remainder portion, notwithstanding any subsequent contrary statutory law or rule of common law.

For a completed project, if the contract grants the right to reacquire the land on the payment of an amount equal to the consideration paid for the land, the person or successor may reacquire the residual or remainder of the land on payment of an amount equal to the lesser of: (1) the consideration originally paid; or (2) the land's current market value.

Residual land from a completed project is treated in the same manner as unused land from a completed project, and the person from whom the land was acquired, or that person's successor in interest, may reacquire the residual or remainder of the land in the same manner.

Current Law: Generally, SHA may acquire for the State any private property for any public purpose by condemnation, lease, agreement, gift, grant, purchase, or otherwise. The State Roads Commission, on behalf of and at SHA's request, may exercise its constitutional power of eminent domain and acquire for the State by condemnation any private property for any highway purpose.

Notwithstanding any other statute to the contrary, if land acquired for transportation or other public purposes will not be used, SHA must dispose of it as soon as practicable after the completion or abandonment of the project for which the land was acquired. If the Secretary of Transportation determines that land from an abandoned project is no longer needed for any State transportation purpose, a county or municipality may acquire it for a transportation purpose, with the Secretary's approval, on payment of the lesser of: (1) the land's appraised value; or (2) the consideration originally paid for the land, plus simple interest at the fair market rate calculated from the time of acquisition to the time of disposition, and administrative costs.

If the land is not needed for a county or municipal transportation purpose, the person from whom the land was acquired or that person's successor in interest has the right to reacquire it, on payment of an amount equal to the lesser of: (1) the land's appraised value; or (2) the consideration originally paid for the land, plus simple interest at the fair market rate calculated from the time of acquisition to the time of disposition, and administrative costs.

If neither of those rights is exercised, the land must be disposed of in the same manner as if it were from a project that has been completed or as otherwise permitted.

For land from a completed project, SHA must notify the person from whom the property was acquired, or that person's successor in interest, within 30 days after making a determination that the land is not needed and available for reacquisition. Within five years from the date the land was acquired, the person from whom it was acquired or that

person's successor may reacquire the land, on payment of an amount equal to the consideration originally paid. After five years from the date the land was acquired, the person or the successor has the right to reacquire the land at the current market value.

If the right to reacquire the land from a completed project is not exercised within eight months after SHA provides the required notice, SHA must sell the land at public auction.

Background: Generally, when land is taken in a condemnation proceeding, the condemning authority pays the fair market value of the land taken as damages to the former owner.

In a recent case brought against the Maryland Department of Transportation and SHA in the Circuit Court for Prince George's County, the plaintiff asserted that she was entitled to repurchase the remainder of a parcel of property under a clause in the contract executed on July 6, 1978 selling the property to SHA. The contract provided a limited right to repurchase the property if: (1) the highway project for which it was acquired was abandoned; and (2) the Secretary of Transportation determines that the property is no longer needed for any transportation purpose. The court dismissed the claim, finding two theories on which to dismiss.

First, the option violates the rule against perpetuities. Under the rule against perpetuities, a future interest (in this case, the option to repurchase the property) is void if it cannot vest within a life in being plus 21 years. Second, the court noted that even if the rule against perpetuities did not apply, the option failed because the contract of sale grants a fee simple determinable and the conditions are unable to vest because part of the land has already been used for transportation purposes.

State Revenues: SHA advises that it currently holds title to approximately 2,500 parcels. SHA further advises that it sells approximately 30 to 50 properties annually, including transactions in which part of the original parcel has been used for a transportation project. Most of these properties are sold at fair market value. Annual TTF revenues from sales of surplus land range from \$2 million to \$4 million.

For each parcel sold, TTF revenues would decrease to the extent the current fair market value exceeds the fair market value of the land at the time SHA obtained it. Because the number of properties affected by the bill is unknown, the total TTF revenue loss in FY 2005 and 2006 cannot be accurately estimated. However, the loss could be significant, even with a relatively small number of affected properties.

For illustrative purposes, if SHA obtained a parcel of land in 1978 for \$20,000 with a repurchase clause addressed under the bill, and the parcel's current fair market value was

\$90,000, the loss in TTF revenues would be \$70,000. If 10 parcels of this type were repurchased under the bill, total TTF revenues would decrease by \$700,000.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Transportation, Department of Legislative Services

Fiscal Note History: First Reader - March 22, 2004
mam/mdr Revised - Senate Third Reader - April 9, 2004

Analysis by: Ryan Wilson

Direct Inquiries to:
(410) 946-5510
(301) 970-5510