

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

Senate Bill 130

(Chairman, Judicial Proceedings Committee)
(By Request – Departmental – Transportation)

Judicial Proceedings

Environmental Matters

Maryland Transit Administration - Eminent Domain - Environmental and Engineering Studies

This departmental bill allows the Maryland Transit Administration (MTA), its agents, employees, and consultants onto private property to conduct environmental and engineering studies to determine whether the land is suitable for MTA use. The bill authorizes MTA to apply for a court order to enter private property if the property owner's consent cannot be obtained. If property is damaged while conducting these studies, MTA must reimburse the property owner or lessee.

Fiscal Summary

State Effect: Potential minimal decrease in TTF expenditures due to a shortened land acquisition process for MTA.

Local Effect: None.

Small Business Effect: The Maryland Department of Transportation has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Current Law: The State Highway Administration (SHA), its agents, employees, and consultants are allowed onto private property to conduct environmental and engineering studies to determine whether the land is suitable for SHA use. SHA may also apply for a court order to enter private property if the consent of the owner cannot be obtained after

making a bona fide effort. SHA must provide reimbursement to the property owner or lessee if the property is damaged.

Background: Entry onto private property that the State intends for public use falls under the power of eminent domain and the process of condemnation of land for public use. 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. Fair market value takes into account any environmental contamination on the property that must be remediated.

According to MTA, since the enactment of the Comprehensive Environmental Response, Compensation, and Liability Act (more commonly known as Superfund) in 1980, testing for possible environmental issues has become a necessary part of land acquisition. Some private land owners do not wish to permit MTA onto their land to conduct environmental studies. While MTA advises that the power to enter land to conduct environmental and engineering studies will be useful in eminent domain proceedings, it also intends to use the power to establish the suitability of land for public use prior to negotiations to purchase the land. When land is purchased for public use by MTA, MTA negotiates with the property owner to purchase the land at fair market value.

MTA advises that, in at least one instance, the inability to conduct environmental studies has caused the land acquisition process to be prolonged, resulting in delays in a planned construction project. MTA advises that this project, the Cold Spring Light Rail Station Park and Ride, along with two other projects now in the planning stage, the new Red Line transit system and the expansion of Green Line transit line, could be helped by this legislation.

Prior to SHA land acquisition, especially for projects involving federal funds, SHA must get National Environmental Protection Act approval. In order to do this, SHA must determine whether there are environmental problems with the property, especially when a property has been deemed environmentally sensitive.

When such a situation arises, SHA sends a letter to the property owner requesting permission to enter the land to perform testing. If the land owner refuses to grant permission, SHA sends another letter, informing the owner that, if permission to enter the land is not given in 30 days, it will go to court to obtain a court order. If permission is still not granted, SHA applies to the court for an order directing the land owner to permit access. The order is usually granted. SHA advises that it rarely has to send a second letter, perhaps once every few years, and even more rarely has to apply to the court for access.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - January 26, 2005
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