

**Department of Legislative Services**  
Maryland General Assembly  
2006 Session

**FISCAL AND POLICY NOTE**

House Bill 961 (Delegate Holmes)  
Environmental Matters

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**Condemnation - Speedy Trial - Relocation of Businesses**

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This bill provides that upon the written request of any party, a condemnation action must be set for trial within 90 days after a case is at issue and must take precedence over all other civil cases. In any condemnation action, a representative of the displacing agency must contact affected business owners not less than 30 days before the filing of the action and negotiate in good faith to provide an effective plan to relocate the business.

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**Fiscal Summary**

**State Effect:** Any changes in the operations of the Judiciary could be handled with existing resources.

**Local Effect:** See above.

**Small Business Effect:** Minimal.

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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 and, through the State its political subdivisions. 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.” Secondly, 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.

### *Moving and Relocation Expenses*

A person displaced in a condemnation action is eligible to receive payment from the displacing agency for:

- reasonable expenses for moving the person, their family, business, farm operation, or other personal property;
- direct loss of tangible personal property as a result of moving or discontinuing a business or farm operation (not exceeding the amount required to relocate the property), as determined by the agency;
- reasonable expenses in searching for a replacement business or farm; and
- reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or small business, as determined by the agency, and not to exceed \$10,000.

A displaced person may also elect for other methods of determining relocation payments, established by the displacing agency.

### *Advisory Services*

When a program or project undertaken by a displacing agency in a condemnation action will result in the displacement of a person, the displacing agency must provide a relocation assistance advisory program for displaced persons. A relocation assistance advisory program must include measures, facilities, or services necessary or appropriate to:

- determine any need of displaced persons for relocation assistance;
- provide specified current and continuing information on sales and rental housing, as well as on suitable commercial properties and locations for displaced business and farm operations;
- assure that a person is not required to move from a dwelling under specified circumstances;
- assist a person displaced from a business or farm in obtaining and becoming established in a suitable replacement location;

- supply information concerning specified federal and State assistance programs; and
- provide other advisory services in order to minimize hardships in adjusting to relocation.

**Background:** Chapter 446 of 2004 established a Task Force on Business Owner Compensation in Condemnation Proceedings. The task force made several recommendations regarding business owner compensation; however, it did not develop comprehensive legislation containing those recommendations. This bill reflects some of those recommendations. The task force did not develop any estimates as to the cost of its recommendations or current payments to business owners displaced by condemnation actions.

Recently, the U.S. Supreme Court ruled in *Kelo v. City of New London*, 125 S. Ct. 2655 (2005) that New London, Connecticut's use of its condemnation authority under a state law to require several homeowners in an economically depressed area to vacate their properties to make way for mixed use development did not violate the U.S. Constitution. In essence, the *Kelo* decision left the determination to state law as to whether eminent domain may be used for economic development purposes. An earlier decision, *Berman v. Parker*, 75 S. Ct. 98 (1954), had already found that taking a nonblighted property in a blighted area as part of an overall economic development scheme does not violate the U.S. Constitution.

Several measures have been introduced in Congress that would limit the use of eminent domain. To date, only one has passed. The appropriation measure that funds the Department of Transportation, the Judiciary, and the Department of Housing and Urban Development for federal fiscal 2006, P.L. 109-115, prohibits funds provided under that Act being used for projects that seek to use eminent domain for economic development that primarily benefits private entities, under certain circumstances.

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.

According to responses to surveys conducted this interim by the Maryland Municipal League and the Maryland Association of Counties, local governments also 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.

In 2000, Baltimore County attempted to exercise eminent domain powers for revitalization in three aging residential areas; however, this project was petitioned to a local referendum and was rejected by the county voters at the general election that year by a margin of more than two to one and did not move forward.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** City of Laurel, Washington County, Montgomery County, Department of General Services, Maryland Department of Transportation, Department of Business and Economic Development, Judiciary (Administrative Office of the Courts), Department of Legislative Services

**Fiscal Note History:** First Reader - February 19, 2006  
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