

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 971 (Delegate Hogan, *et al.*)
Environmental Matters

Real Property - Condemnation Proceedings - Compensation for Business Owners

This bill limits a governmental unit's use of eminent domain and provides for enhanced compensation for businesses and farms displaced through the condemnation process.

Fiscal Summary

State Effect: State expenditures could increase significantly to pay enhanced damages to business and farm owners displaced by condemnation actions. The bill's other requirements could be handled with existing budgeted resources. Revenues would not be affected.

Local Effect: Local government expenditures could increase significantly to pay enhanced damages to business and farm owners displaced by condemnation actions. The bill's other requirements could be handled with existing resources. Local revenues would not be affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: A governmental unit may not condemn private property if the property will be sold, leased, transferred, or otherwise conveyed to or for the benefit of a private party for purposes of economic development unless the governmental unit finds that: (1) the property is part of (and necessary to carry out) a comprehensive development plan with substantial and direct public uses and benefits; (2) the property is not being taken solely or primarily to benefit a private party; (3) the development plan could not be

developed by private developers and condemnation is necessary to accomplish the plan; (4) the effect of condemnation on a business or farm operation and whether the plan could be restructured to avoid their condemnation have been considered; and (5) the displaced owner or tenant of a business or farm has been given a reasonable opportunity to be included in the plan.

When a business or farm is relocated because the property on which it is located is taken through condemnation, the damages in the action must include, for a period of up to three years, compensation for the present value and reasonably anticipated reductions in net operating income if the reductions are caused by the taking and relocation.

In addition to other compensation, a person displaced by a condemnation action must be compensated for the reasonable cost of: (1) a substitute item of tangible personal property if the item is necessary for continued operation of the business or farm; and (2) moving a business or farm to ensure uninterrupted operation if the owner can reasonably establish that continuous operation is necessary to remain viable.

The Governor's Office of Business Advocacy and Small Business Assistance in the Department of Business and Economic Development must help displaced small businesses identify State loan programs that may be available. The business advocacy office must also review the current limits on the amount of relocation assistance and report to the General Assembly by December 31, 2006.

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.

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.

Relocation Expenses

When land is acquired by condemnation, the condemning agency must pay a displaced person for: (1) actual reasonable moving expenses for moving the person, the person’s family, business, farm operation, or other personal property; (2) actual direct loss of tangible personal property as a result of moving or discontinuing a business or farm operation, up to the agency’s determination of the reasonable expenses that would have been required to relocate the personal property; (3) actual reasonable expenses in searching for a replacement business or farm; and (4) actual reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or small business at its new site, up to \$10,000.

In lieu of those allowable expenses, a person who is displaced from a place of business or farm operation and meets criteria established by the agency may elect to accept a fixed payment from the agency. Such payments range from \$1,000 to \$20,000, or the amount

provided under the federal Uniform Relocation Assistance Act, whichever is greater. The limits are the same under the federal Act.

A person at whose expense any personal property, dead body, grave marker, or monument must be removed as a reasonably necessary consequence of condemnation is generally entitled to an allowance for the cost of removing and placing the item or body in another location. The allowance does not include any compensation for loss of profit, goodwill, or for the acquisition of another location.

Background: 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.

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. Some of those recommendations are reflected in this bill. 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.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland-National Capital Park and Planning Commission, Maryland Municipal League, Maryland Association of Counties, Department of Business and Economic Development, Maryland Department of Transportation, Department of Legislative Services

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