

Department of Legislative Services  
Maryland General Assembly  
2006 Session

**FISCAL AND POLICY NOTE**

House Bill 1042

(Delegate Impallaria, *et al.*)

Environmental Matters

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**Real Property - Baltimore County - Eminent Domain - Repurchase of  
Condemned Property**

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This bill provides that if the plaintiff in a condemnation action in Baltimore County at any time decides to sell the taken property, the plaintiff must first offer, in writing, to resell the property to the defendant or the defendant's heirs or assigns. If the defendant accepts the offer, the sale price for the property is the price paid by the plaintiff, regardless of any subsequent improvements made. The defendant has 90 days after the offer is made to accept it and repurchase the property. If the defendant does not repurchase the property within the 90 days, the plaintiff may sell the property to any other person.

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**Fiscal Summary**

**State Effect:** Potential significant decrease in State revenues from the sale of property condemned by the State. State expenditures would not be affected.

**Local Effect:** Potential significant decrease in local revenues from the sale of property condemned by a unit of local government in Baltimore County. Local expenditures would not be affected. **This bill imposes a mandate on a unit of local government.**

**Small Business Effect:** Potential meaningful.

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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.

### *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.

### *Disposal of Land by the State Highway Administration (SHA)*

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.

### *Possible Plaintiffs*

Possible plaintiffs to a condemnation action under Maryland law include the federal government, the State, a county, a municipal corporation, a corporation that transmits or supplies natural or artificial gas, an oil pipeline corporation, a telephone or telegraph company, a water company, and a railroad company.

**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 the subject matter of one 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.

**State Fiscal Effect:** In the event that the State decides to sell property taken through condemnation in Baltimore County, the State could lose the value of any improvements made on the property, as well as any increased equity in the property if the defendant or his/her heirs or assigns opt to repurchase the property at the price the State paid for it. For each parcel sold, revenues would decrease to the extent the property's current fair market value exceeds the fair market value of the property at the time it was obtained. The revenue loss could be significant, even with a relatively small number of affected properties. For example, SHA regularly disposes of properties (either entire parcels or remainders of parcels) that are no longer needed for transportation projects.

**Local Fiscal Effect:** In the event that Baltimore County decides to sell property taken through condemnation, the local government could lose the value of any improvements made on the property, as well as any increased equity in the property if the defendant or his/her heirs or assigns opt to repurchase the property at the price the local government paid for it. For each parcel sold, revenues would decrease to the extent the property's current fair market value exceeds the fair market value of the property at the time it was

obtained. The revenue loss could be significant, even with a relatively small number of affected properties.

Baltimore County advises, however, that it does not anticipate any fiscal impact as a result of the bill.

**Small Business Effect:** If the defendant in a condemnation action is a small business, and the small business opts to repurchase the property, as allowed by the bill, for the sale price paid by the plaintiff, and the property has increased in value, the small business could benefit to the extent that the property's value increased.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Department of Business and Economic Development, Maryland Department of Planning, Department of General Services, Maryland Department of Transportation, Maryland Municipal League, Baltimore County, Maryland Association of Counties, Department of Legislative Services

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