

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

Senate Bill 492

(Senator Teitelbaum, *et al.*)

Judicial Proceedings

Condemnation Proceedings - Compensation - Defendant's Legal Fees

This bill requires the plaintiff in a condemnation proceeding to pay reasonable legal fees of the defendant, as fixed by the court, if the judgment is for the plaintiff on the right to condemn and the damages awarded to the defendant are at least 10% greater than the amount offered by the plaintiff.

Fiscal Summary

State Effect: State expenditures related to acquisition of property and attorneys' fees in condemnation cases could increase under the bill.

Local Effect: Local government expenditures related to acquisition of property and attorneys' fees in condemnation cases could increase under the bill. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Small businesses that choose to go to trial in a condemnation case have the potential to receive legal fees fixed by the court, if their award is 10% greater than the plaintiff's highest offer.

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.

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.

Legal Costs

The plaintiff in a condemnation proceeding is required to pay all costs in the trial court, including:

- per diem for the jurors;
- the cost of transporting the trier of fact to view the property;
- the cost of meals for the jury if the court so orders;
- the cost of recording the inquisition among the land records and all documentary stamps necessary in the transfer of the property; and
- an allowance for the defendant, fixed by the court, for reasonable legal, appraisal, and engineering fees actually incurred by the defendant because of the condemnation proceeding, if the judgment is for the defendant on the right to condemn.

On appeal, if the decision is for the defendant, the plaintiff must pay a reasonable attorney’s fee fixed by the trial court. Costs on appeal are paid as directed by the appellate court.

Upon a finding that the plaintiff is entitled to condemn the defendant’s property, the plaintiff’s acquisition of title to the property is conditioned on payment of the judgment and costs.

Background: Twenty-three states provide for attorney's fees to be awarded to defendants in condemnation proceedings to some extent, generally requiring the defendant to have obtained a judgment greater than the highest offer by the condemning authority. Many require the judgment to be some percentage above the highest offer, generally between 10% and 30%.

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 does not reflect any 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: To avoid a trial, which can be more costly than a settlement, the State may increase its offer for a particular parcel, thereby increasing the cost of acquisition. To the extent the bill encourages defendants in a condemnation action to go to trial, costs related to the trial would also increase. In turn, if a trial results in an award of 10% higher than the State's offer, attorney's fees could be awarded. The cumulative effect of these increased costs could be substantial.

Local Effect: To avoid a trial, which can be more costly than a settlement, a local government may increase its offer for a particular parcel, thereby increasing the cost of acquisition. To the extent the bill encourages defendants in a condemnation action to go to trial, costs related to the trial would also increase. In turn, if a trial results in an award of 10% higher than the local government's offer, attorney's fees could be awarded. The cumulative effect of these increased costs could be substantial.

Additional Information

Prior Introductions: None.

Cross File: HB 740 (Delegate Mandel, *et al.*) – Environmental Matters.

Information Source(s): Cecil County, Harford County, Prince George's County, Washington Suburban Sanitary Commission, Maryland-National Capital Park and Planning Commission, Department of General Services, Board of Public Works, Maryland Department of Planning, Department of Business and Economic Development, Maryland Stadium Authority, University System of Maryland, Maryland Department of

Transportation, *Report of the State of Maryland Task Force on Business Owner Compensation in Condemnation Proceedings*, Department of Legislative Services

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