

Department of Legislative Services  
Maryland General Assembly  
2006 Session

FISCAL AND POLICY NOTE

Senate Bill 923

(Senator Hafer)

Judicial Proceedings

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Eminent Domain - Allegany County - Condemnation for Public Use and  
Repurchase of Condemned Property

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This bill restricts the use of eminent domain in Allegany County by defining the term “public use” for purposes of condemnation of private property within Allegany County and establishes a right to repurchase condemned property.

The bill applies only to Allegany County.

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Fiscal Summary

**State Effect:** State revenues from the sale of condemned property could decrease under the bill. Any such decreases cannot be accurately estimated but could be significant. Expenditures for land acquisition could increase to the extent the bill’s provisions dissuade potential defendants in a condemnation action from quickly settling.

**Local Effect:** Allegany County revenues from the sale of condemned property could decrease under the bill. Any such decreases cannot be accurately estimated but could be significant. Expenditures for land acquisition could increase to the extent the bill’s provisions dissuade potential defendants in a condemnation action from quickly settling.  
**This bill imposes a mandate on a unit of local government.**

**Small Business Effect:** Potential meaningful.

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Analysis

**Bill Summary:** As it applies to condemnation in Allegany County, “public use” is defined as: (1) the possession, occupation, and enjoyment of land by the general public

or a governmental entity; (2) the use of land for the creation or functioning of a public service company; or (3) the acquisition of land to improve the public health or safety by curing a concrete harmful effect of the current use of the land, including the removal of public nuisances, structures that are beyond repair, or structures that are unfit for human habitation or use, and the acquisition of abandoned property. However, the term public use does not include the public benefits of economic development, including an increase in tax base, tax revenue, employment or general economic health.

Generally, private property may not be acquired by condemnation unless it is necessary for public use. Property condemned in order to acquire land for the improvement of public health or safety, as described above, may be used in any manner authorized by local zoning ordinances.

If the plaintiff that acquired property in a condemnation action at any time decides to sell the 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.

**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.

### *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:** 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 (MACo), 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. It should be noted that the MACo survey reported no response from Allegany County.

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.

**State Fiscal Effect:** In the event that the State decides to sell property taken through condemnation in Allegany County, the State could lose the value of any improvements made on the property, as well as any increase 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.

Allegany County advises that it has not recently condemned property for economic development purposes and that it does not intend to do so in the near future. Because of this, the bill's effect on the county is not expected to affect State property, income, sales, recordation, and transfer taxes. If the State were to desire to take property in Allegany County for economic development purposes and could not because of the bill, future tax revenues from these sources could be affected. It should be noted that any tax revenue that might derive from economic development or urban renewal depends on the success of a particular project.

**Local Fiscal Effect:** In the event that a local government in Allegany County, including the county itself, 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.

Because Allegany County does not intend to use eminent domain for economic development purposes, the bill is not expected to affect local tax revenues.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 1224 (Delegate Edwards, *et al.*) – Environmental Matters.

**Information Source(s):** Allegany County, Maryland Association of Counties, Maryland Municipal League, Maryland Department of Transportation, Department of Legislative Services

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