

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

**FISCAL AND POLICY NOTE**

House Bill 964 (Delegate Holmes)  
Environmental Matters

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**Condemnation - Time Period for Filing Action**

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This bill provides that the State or any of its instrumentalities or political subdivisions must file a condemnation action within three years of the specific administrative determination to acquire the property. If the action is not filed within three years of the date of the determination, the condemnation may not proceed without a new authorization to condemn the property.

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**Fiscal Summary**

**State Effect:** None. The bill's changes would not directly affect State finances.

**Local Effect:** None.

**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.

*Diminution in Value after Administrative Decision to Condemn*

The amount of any diminution of value is included in the fair market value of the property if it: (1) occurs between the date of the specific administrative determination to acquire the property and the date the actual taking occurs; (2) was proximately caused by the public project for which the property being taken is needed or by announcements or acts of the plaintiff or its officials concerning the public project; and (3) was beyond the reasonable control of the property owner.

**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.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Charles County, Frederick County, Department of General Services, Department of Business and Economic Development, Maryland Department of Transportation, Department of Legislative Services

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