

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

Senate Bill 704

(Senator Kittleman, *et al.*)

Judicial Proceedings

Condemnation - Slum Area and Blighted Area - Definitions

This constitutional amendment alters the definition of “slum area” for the purposes of provisions authorizing local governments to carry out urban renewal projects, to mean an area in which 90% of the dwellings by reason of depreciation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitary facilities, or any combination of these factors, are detrimental to the public safety, health, or morals. Additionally, the amendment alters the definition of “blighted area” to mean an area in which 90% of the buildings have declined in productivity by reason of obsolescence, depreciation, or other causes to an extent they no longer justify fundamental repairs and adequate maintenance.

Fiscal Summary

State Effect: Limiting the definition of a slum or blighted area for urban renewal purposes would not directly affect State finances.

Local Effect: If approved by the General Assembly, this constitutional amendment will be submitted to the voters at the 2006 general election. It should not result in additional costs for the local election boards.

Small Business Effect: Potential meaningful.

Analysis

Current Law: The General Assembly may authorize any county or municipal corporation, by public local law, to carry out urban renewal projects. This authority is limited to slum clearance in slum or blighted areas and redevelopment or rehabilitation of

slum or blighted areas. To carry out an urban renewal project the county or municipal corporation may acquire land within its boundaries by purchase, lease, gift, condemnation, or any other legal means.

Currently, “slum area” is defined as an area where dwellings predominate which by reason of depreciation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitary facilities, or any combination of these factors, are detrimental to the public safety, health, or morals. “Blighted area” is defined as an area in which a majority of buildings have declined in productivity by reason of obsolescence, depreciation, or other causes to an extent they no longer justify fundamental repairs and adequate maintenance.

Power of Eminent Domain

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.

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.

State and Local Fiscal Effect: Assuming passage of the constitutional amendment, in the event that a unit of local government would have used its condemnation authority for urban renewal in the future in a slum area or blighted area as currently defined, limiting the definition of slum area or blighted area could indirectly impact State and local government finances. It is unknown how many areas would meet the current definition of slum area or blighted area that would fail to meet the bill's definition. To the extent that urban renewal in an area that would not fit the new definition of slum or blighted area would have attracted businesses or more affluent residents to the targeted area, future State and local tax revenues might have increased, including property, income, sales, recordation, and transfer taxes. The precise fiscal impact, however, is unknown, as it would depend on the extent to which a unit of local government would have exercised its condemnation authority for urban renewal in slum or blighted areas not conforming to the new definition. It should be noted that any tax revenue that might derive from economic development depends on the success of a particular project.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Board of Public Works, Department of General Services, Maryland Department of Planning, Maryland Department of Transportation, University System of Maryland, Town of Bel Air, Town of Leonardtown, City of Salisbury, Anne Arundel County, Baltimore County, Garrett County, Montgomery County, Prince George's County, Washington Suburban Sanitary Commission, Maryland Association of Counties, Department of Legislative Services

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