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

# FISCAL AND POLICY NOTE

Senate Bill 155 (Senator Harris, *et al.*)
Judicial Proceedings

**Harford County - Eminent Domain - Limitation on Condemnation Authority**

This constitutional amendment prohibits private property from being acquired by condemnation to carry out an urban renewal project in Harford County. The bill also redefines the term "public use" in Harford County to mean public ownership or control, or physical use or access by the general public. In Harford County, under the bill, public use does not include use for economic development purposes, including (1) urban renewal; (2) community revitalization or redevelopment; (3) commercial or industrial development; (4) job creation; or (5) generation of tax revenue.

## Fiscal Summary

**State Effect:** The bill would not materially 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 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.

**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:** Although the bill would not directly impact State or Harford County finances, in the event that the State or a local government in Harford County would have used its condemnation authority for economic development purposes in the future, restricting condemnation authority in the county could indirectly impact State and county finances. To the extent that this economic development would have attracted businesses or more affluent residents to the targeted area, future State and

county 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 the State or local governments in Harford County would have exercised its condemnation authority for economic development purposes in the future, as well as to the extent that this area might have attracted more businesses and more affluent residents. It should be noted that any tax revenue that might derive from economic development depends on the success of a particular project.

Harford County advises that since 1975 it has filed 19 condemnation cases, none of which have been for urban renewal or economic development purposes. The county also advises that it does not plan to use its condemnation authority for these purposes. As such, the county advises that the amendment would likely not have an impact on county finances.

## Additional Information

**Prior Introductions:** None.

**Cross File:** HB 619 (Harford County Delegation) – Environmental Matters.

**Information Source(s):** Harford County, Maryland Department of Planning, Department of Business and Economic Development, Department of General Services, Maryland Department of Transportation, Maryland Stadium Authority, Board of Public Works, Department of Budget and Management, Maryland Association of Counties, Maryland Municipal League, Department of Legislative Services

**Fiscal Note History:** First Reader - February 20, 2006
ncs/hlb

Analysis by: Joshua A. Watters

Direct Inquiries to:
(410) 946-5510
(301) 970-5510