

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 106 (Delegate Conroy, *et al.*)
Environmental Matters

Eminent Domain - Condemnation Costs - Fees Incurred

This bill requires the plaintiff in a condemnation proceeding to pay the cost of the legal, appraisal, and expert fees actually incurred by the defendant because of the proceeding, regardless of the outcome.

Fiscal Summary

State Effect: State expenditures could increase significantly to pay defendants' legal, appraisal, and expert fees for condemnation cases that go to trial. More cases may end up at trial due to the bill's changes, increasing litigation costs and potentially requiring additional assistant Attorneys General. Revenues would not be affected.

Local Effect: To the extent local governments acquire private property for public use, local expenditures would increase to pay defendants' legal, appraisal, and expert fees for condemnation cases that go to trial. These costs could be significant. More cases could go to trial, increasing litigation costs. Local government revenues would not be affected.
This bill imposes a mandate on a unit of local government.

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.

Legal Costs

A 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 plaintiff’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 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: State expenditures would increase to pay defendants' legal, appraisal, and expert fees for those cases that go to trial. The bill's changes could also result in more defendants' choosing to go to trial, increasing litigation costs to the State. The State Highway Administration advises that it handles approximately 220 condemnation cases annually. The total expenses related to the fees for these cases could be significant. Depending on the complexity of the case, the number of parcels involved in a particular acquisition, and whether a trial is required, the fees for appraisals, experts, and opposing counsel could be in the range of \$6,000 to \$20,000, with some going even higher. Depending on the extent to which the number of condemnation cases that go to trial increases, additional assistant Attorneys General may be needed. It is unknown how many condemnation cases currently go to trial.

Local Fiscal Effect: The expanded fees that can be recovered by a defendant, regardless of the case outcome, at a minimum, would increase local expenditures to the extent local governments go to trial over condemnation actions.

For illustrative purposes only, Frederick County's Capital Improvement Program requires the acquisition of 86 easements and fee simple properties each year from fiscal 2007 to 2010. The county estimates legal, appraisal, and expert fees incurred by a property owner would be between \$6,000 and \$10,000 per condemnation proceeding, depending on the complexity of the case. Assuming half of the acquisitions require condemnation proceedings, the increase in costs to the county would be between \$258,000 and \$430,000.

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.

The bill's changes could result in more defendants choosing to go to trial, increasing litigation costs.

Small Business Effect: Small businesses subject to an administrative decision to acquire their property would recover expanded fees if they went to trial and would recover them regardless of the court's decision on the plaintiff's right to condemn.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): City of Hagerstown, Charles County, Frederick County, *Report of the State of Maryland Task Force on Business Owner Compensation in Condemnation Proceedings*, Prince George's County, Somerset County, Maryland Municipal League, Maryland Department of Planning, Judiciary (Administrative Office of the Courts), Department of Business and Economic Development, Department of General Services, Board of Public Works, Maryland Stadium Authority, University System of Maryland, Washington Suburban Sanitary Commission, Maryland Department of Transportation, Department of Legislative Services

Fiscal Note History: First Reader - February 19, 2006
ncs/hlb

Analysis by: Scott D. Kennedy

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