

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 1346 (Delegate Bromwell)
Environmental Matters

Real Property - Condemnation - Computation of Damages for the Taking of Residential Real Property

This bill provides that the damages to be awarded for the taking of the property in a condemnation proceeding must be 150% of the fair market value of residential real property if the property is acquired for (1) possession, occupation, and enjoyment by the public, the State, an instrumentality of the State, or a political subdivision; (2) creation or operation of public utilities or common carriers; or (3) rehabilitation of a slum or blighted area. If residential real property is taken for any other public use, then the damages to be awarded for the taking of the property must be 200% of its fair market value. For the purposes of the bill, "residential real property" means owner-occupied real property having a dwelling on it that is the principal residence of the homeowner. This bill may only be construed to apply only prospectively, and may not be applied or interpreted to have any effect on or application to any residential real property taken before October 1, 2006.

Fiscal Summary

State Effect: Potential significant increase in State expenditures related to the acquisition of residential real property for public use. Revenues would not be affected.

Local Effect: Potential significant increase in local government expenditures related to the acquisition of residential real property for public use. Local revenues would not be affected. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Minimal.

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.

Exhibit 1 shows the median home price by county for fiscal 2005, as well as both 150% and 200% of the median home price.

State and Local Fiscal Effect: In the event that residential real property is acquired for (1) possession, occupation, and enjoyment by the public, the State, an instrumentality of the State, or a political subdivision; (2) creation or operation of public utilities or common carriers; or (3) rehabilitation of a slum or blighted area, then the damages to be awarded for the taking of the property must be 150% of its fair market value. Acquiring the residential property for one of the purposes listed above could increase State or local government expenditures by 50% over the fair market value of the property. *For illustrative purposes only*, using the fiscal 2005 median home price for the State, the difference between the median home price and 150% of the median home price is \$132,750.

Acquiring residential real property for any other public use would increase the damages to be awarded by 100% over its fair market value. *For illustrative purposes only*, using the fiscal 2005 median home price for the State, the difference between the median home price and 200% of the median home price is \$265,500.

In any event, expenditures could increase significantly, even when a small number of properties are involved. To the extent that the fair market value of the acquired residential real property deviates from the State's median home price, expenditures would adjust accordingly. The precise fiscal impact would depend on the value of the residential real property acquired as well as the number of properties acquired through condemnation.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Planning, Department of General Services, Department of Business and Economic Development, Maryland Department of Transportation, State Department of Assessments and Taxation, Maryland Association of Counties, Maryland Municipal League, Washington County, Prince George's County, Department of Legislative Services

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Exhibit 1
Fiscal 2005 Median Home Price

<u>County</u>	<u>Median Home Price</u>	<u>150% Median Home Price</u>	<u>200% Median Home Price</u>
Allegany	\$76,750	\$115,125	\$153,500
Anne Arundel	289,900	434,850	579,800
Baltimore City	123,500	185,250	247,000
Baltimore	209,900	314,850	419,800
Calvert	288,900	433,350	577,800
Caroline	178,000	267,000	356,000
Carroll	295,000	442,500	590,000
Cecil	225,000	337,500	450,000
Charles	282,000	423,000	564,000
Dorchester	175,000	262,500	350,000
Frederick	282,000	423,000	564,000
Garrett	131,000	196,500	262,000
Harford	230,000	345,000	460,000
Howard	339,883	509,825	679,766
Kent	240,092	360,138	480,184
Montgomery	375,000	562,500	750,000
Prince George's	245,000	367,500	490,000
Queen Anne's	326,493	489,740	652,986
St. Mary's	250,000	375,000	500,000
Somerset	128,000	192,000	256,000
Talbot	298,400	447,600	596,800
Washington	205,000	307,500	410,000
Wicomico	172,000	258,000	344,000
Worcester	290,000	435,000	580,000
Maryland	\$265,500	\$398,250	\$531,000

Source: State Department of Assessments and Taxation
