

Department of Legislative Services  
Maryland General Assembly  
2006 Session

FISCAL AND POLICY NOTE

House Bill 1377 (Delegate Trueschler)  
Environmental Matters

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**Real Property - Condemnation for Public Purpose - Requirements and Compensation**

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This bill restricts the acquisition of property by condemnation for public purpose, unless the acquisition is consistent with a plan for economic or community development, preservation, or revitalization, and provided that the plan is adopted as law by a governmental unit. The bill distinguishes public use from “public purpose.”

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**Fiscal Summary**

**State Effect:** Potential significant increase in expenditures related to paying a defendant the difference between the damages awarded for public use versus public purpose and from awarding additional operating income damages to businesses and farm operations. Revenues would not be affected.

**Local Effect:** Potential significant increase in expenditures related to paying a defendant the difference between the damages awarded for public use versus public purpose and from awarding additional operating income damages to businesses and farm operations. Revenues would not be affected. **This bill imposes a mandate on a unit of local government.**

**Small Business Effect:** Potential meaningful.

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**Analysis**

**Bill Summary:** “Public purpose” means a public use other than the possession, occupation, and enjoyment of the land by the general public or a governmental unit, including the public use of land for: (1) roads; (2) schools, colleges, and universities; (3)

parks, open space, and recreational facilities; and (4) courthouses, libraries, police or fire stations, correctional facilities, landfills, maintenance and storage facilities, or other buildings and site improvements. Public purpose also means a public use other than for the creation or functioning of a public service company.

In an action for condemnation of land for a public purpose, the damages to be awarded for the taking of the land must be (1) 110% of the fair market value of the land; or (2) if the land is one property in a consolidated parcel of condemned land, the defendant may choose either 110% of the fair market value of the land or the fair market value of the prorated portion of the consolidated parcel.

The damages to be awarded for the taking of land where a business or farm operation is located must include compensation for the loss of business equal to six months of its net operating income.

If land is first acquired by condemnation for a public use but later the use of the land is changed to a public purpose, the damages of the land must be recalculated at the time the use of the land is changed to reflect the damages awarded for a public purpose, less the amount already awarded.

**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.

### *Relocation Expenses*

When land is acquired by condemnation, the condemning agency must pay a displaced person for: (1) actual reasonable moving expenses for moving the person, the person's family, business, farm operation, or other personal property; (2) actual direct loss of tangible personal property as a result of moving or discontinuing a business or farm operation, up to the agency's determination of the reasonable expenses that would have been required to relocate the personal property; (3) actual reasonable expenses in searching for a replacement business or farm; and (4) actual reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or small business at its new site, up to \$10,000.

In lieu of those allowable expenses, a person who is displaced from a place of business or farm operation and meets criteria established by the agency may elect to accept a fixed payment from the agency. Such payments range from \$1,000 to \$20,000, or the amount provided under the federal Uniform Relocation Assistance Act, whichever is greater. The limits are the same under the federal Act.

A person at whose expense any personal property, dead body, grave marker, or monument must be removed as a reasonably necessary consequence of condemnation is generally entitled to an allowance for the cost of removing and placing the item or body

in another location. The allowance does not include any compensation for loss of profit, goodwill, or for the acquisition of another location.

**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.

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. Some of the provisions of the bill reflect several of 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 and Local Fiscal Effect:** To the extent a governmental unit acquires land through condemnation for a public purpose, damages awarded to the defendant could increase by 10%. *For illustrative purposes only*, if the fair market value of the land acquired for public purpose is \$1 million, the governmental unit would have to award \$1.1 million for the land, an increase of \$100,000. Furthermore, if a governmental unit acquired land for public use and at a later date, decided to change the use to public purpose, the governmental unit would have to award damages equal to 110% of the fair market value of the land at the time the use was changed minus the damages already awarded. *For illustrative purposes only*, if the governmental unit awarded \$1 million for land taken for public use and in the future decides to change the use to public purpose, if the fair market value of the land at the time the use changes is \$1.1 million, the governmental unit would have to award the defendant \$210,000 – the difference between 110% of the fair market value of the land at the time the use changes (\$1.21 million) and the previously awarded amount (\$1 million). Additionally, there could be a significant increase in expenditures associated with the governmental unit paying six months net operating expenses of a relocated business or farm operation.

To the extent that land acquired for public purpose necessitated the implementation of a law detailing a plan for economic and community development, preservation, or revitalization, there could be a delay in acquiring this land.

The precise fiscal impact associated with the bill cannot be reliably quantified at this time, as it would depend on future land acquisitions, the use for which the land was acquired, the fair market value of the land, and whether the acquisitions necessitated the relocation of a business or farm operation. In any event, the impact is likely to vary by governmental unit.

**Small Business Effect:** To the extent that a small business is relocated, it could receive six months net operating expenses. Additionally, if the small business is located on land acquired for public purpose, it could receive 110% of the fair market value of the land.

## Additional Information

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** City of Laurel, Charles County, Somerset County, Maryland Municipal League, Maryland Association of Counties, Department of Business and Economic Development, Department of General Services, Maryland Department of Planning, Maryland Department of Transportation, Department of Legislative Services

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