

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

House Bill 79 (Delegates Boteler and Cluster)
Environmental Matters

Real Property - Eminent Domain - Limitations on Condemnation Authority

This bill proposes to amend the Maryland Constitution to define the term “public use” in the context of the State’s or a local government’s exercise of the power of eminent domain and prohibits the use of eminent domain for urban renewal projects.

Fiscal Summary

State Effect: The bill’s changes could affect the State’s decision making and planning with regard to economic development and urban renewal projects as well as its level of involvement in and responsibility for the projects. Because the bill limits the State’s condemnation authority, the State’s ability to acquire property for those projects could be affected. The overall costs associated with the bill’s changes cannot be reliably estimated, but could be significant.

Local Effect: To the extent local governments utilize condemnation to pursue economic development and urban renewal projects, their decision making and planning could be affected as well as their level of involvement in and responsibility for those projects. Local governments’ ability to acquire property for the projects could be affected. The overall costs associated with the bill’s changes cannot be reliably estimated, but could be significant for some local governments. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Minimal.

Analysis

Bill Summary: “Public use” is defined as: (1) public ownership or control; or (2) physical use or access by the general public. The bill also provides that the General Assembly may not authorize private property to be taken for private use, and may not authorize private property to be taken for public use without requiring the condemning authority to issue a statement of public necessity for the taking, in addition to just compensation being paid to the owner. The bill repeals the General Assembly’s authority to authorize and empower a county or municipal corporation to acquire land by condemnation for urban renewal projects in slum or blighted areas. The bill then specifically prohibits property from being acquired to carry out an urban renewal project.

“Public use” includes:

- possession, use, and enjoyment of property by the public, the State, an instrumentality of the State, or a political subdivision;
- use of property for the creation or operation of a public utility or common carrier;
- use of property for a public emergency or disaster relief; or
- destruction of property to prevent a public catastrophe.

The bill repeals declarations that property is needed or taken for a public use when acquired by condemnation pursuant to sections allowing the General Assembly to authorize and empower the Mayor and City Council of Baltimore to acquire land, by condemnation or other means, for specified purposes (development or redevelopment, off-street parking, port development) and instead mandates that such property may only be taken for a public use.

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.

Local Urban Renewal Projects

Under the Maryland Constitution, the General Assembly may authorize and empower any county or municipal corporation to acquire land, by condemnation or other means, to carry out urban renewal projects in slum or blighted areas, and may authorize the Mayor and City Council of Baltimore to acquire, by condemnation or other means, land:

- for development or redevelopment, including, but not limited to, the comprehensive renovation or rehabilitation thereof;
- for storing, parking, and servicing self-propelled vehicles; and

- for or in connection with extending, developing, or improving the harbor or Port of Baltimore and its facilities and the highways and approaches thereto.

The acquisition of land pursuant to these provisions is declared to be needed or taken for a public use.

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 Fiscal Effect: Because the bill limits the State's authority to acquire land through condemnation, it could affect the State's decision making and planning regarding economic development or revitalization projects as well as its level of involvement in and responsibility for those projects. Public ownership, control, physical use, or access would be required of a project if condemnation was to be used to acquire property for it. Depending on the nature and character of economic development projects, the bill's changes, could affect the State's ability to acquire land for and pursue those projects. The overall costs attributable to the bill's changes cannot be reliably estimated, but could potentially be significant.

Local Fiscal Effect: The effect on local governments would vary from jurisdiction to jurisdiction. To the extent local governments engage in economic development or revitalization, the bill's changes could affect decision making, planning, and the local governments' level of involvement in and responsibility for economic development projects. Public ownership, control, physical use, or access would be required of a project if condemnation was to be used to acquire property for it. Depending on the nature and character of economic development projects, the bill's changes, could affect the local governments' ability to acquire land for those projects. The overall costs attributable to the bill's changes cannot be reliably estimated, but could be significant for some local governments.

The Maryland Constitution requires that proposed amendments to the constitution be publicized either: (1) in at least two newspapers in each county, if available, and in at least three newspapers in Baltimore City once a week for four weeks immediately preceding the general election; or (2) by order of the Governor in a manner provided by law. State law requires local boards of elections to publicize proposed amendments to the constitution either in newspapers or on specimen ballots; local boards of elections are responsible for the costs associated with these requirements. It is anticipated that the fiscal 2007 budgets of local election boards will contain funding for notifying qualified voters about proposed constitutional amendments for the 2006 general election in newspapers or on specimen ballots.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Judiciary (Administrative Office of the Courts), Baltimore City, Department of General Services, Maryland Department of Planning, Department of Business and Economic Development, Maryland Department of Transportation, Department of Budget and Management, Maryland Municipal League, Maryland-National Capital Park and Planning Commission, University System of Maryland, Office of the Attorney General, Department of Legislative Services

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