

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 1119 (Delegate Holmes)
Environmental Matters

**Condemnation - Urban Renewal or Economic Development - Required Findings
- Judicial Review**

This bill prohibits the condemnation of private property for urban renewal or economic development unless the government unit makes a finding with respect to each affected business for which the property is being condemned as to (1) the condemnation's effect on the business and whether the project could be restructured to avoid the condemnation of the business; and (2) whether the displaced business owner or tenant has been given a reasonable opportunity to be included in the project at its existing location or a nearby location. The government unit must make a written record of these findings. The bill requires that the standard of judicial review applicable to administrative decisions apply to the findings of the government unit.

Fiscal Summary

State Effect: Any change in State activities would not materially affect State finances.

Local Effect: Any change in local government activities would not materially affect local government finances.

Small Business Effect: Potential meaningful to the extent that a small business would be involved in the condemnation for urban renewal or economic development.

Analysis

Bill Summary: The bill expresses that it is the intent of the General Assembly that (1) a viable business should be preserved whenever reasonably practicable and should not be

acquired through condemnation for urban renewal or economic purposes unless other alternatives are shown not to be reasonably practicable; and (2) when it is necessary to acquire an existing business through condemnation, the government unit must make every reasonable effort to ensure that the business is incorporated in the urban renewal or economic development project at its existing location or at a nearby location.

In its review, the court must determine whether (1) the government unit employed the correct legal standards; (2) a reasoning mind could have reasonably reached the unit's conclusions on mixed questions of law and fact; and (3) the factual findings are supported by substantial evidence.

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. No specific findings are required prior to taking a property.

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.

Standard of Review for Administrative Decisions

The Court of Appeals voiced a comprehensive standard of review for administrative decisions in *Ramsay, Scarlett, & Co. v. Comptroller*, 302 Md. 825 (1985). If the agency decision resolved a question of law, the reviewing court must apply a “substitution of judgment standard” under which the court may substitute its judgment. *Id.* at 833, 837-39. In reviewing an agency decision about a fact, the court must determine whether the finding is supported by “substantial evidence,” which means “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” *Id.* at 834. When a court is reviewing an application of law to a fact, the court must determine whether “a reasoning mind could reasonably arrive at the [agency’s] conclusion.” *Id.* at 837-39.

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.

Prince George's County advises that the county has traditionally used its condemnation authority for urban renewal or economic development purposes in slum or blighted areas and few if any viable businesses were involved. The county further advises that it and the developers have traditionally engaged in efforts similar to those proposed by the bill in order to accommodate affected businesses.

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 reflects the subject matter of one 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.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Business and Economic Development, Department of General Services, Maryland Department of Transportation, Town of Bel Air, City of Salisbury, Allegany County, Prince George's County, Maryland Association of Counties, Maryland Municipal League, Maryland-National Capital Park and Planning Commission, Judiciary (Administrative Office of the Courts), Department of Legislative Services

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