

Department of Legislative Services
Maryland General Assembly
2007 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1043

(Delegate Rosenberg, *et al.*)

Environmental Matters

Judicial Proceedings

Real Property - Condemnation - Procedures and Compensation

This bill increases compensation for homeowners, tenants, and business and farm owners who are displaced as a result of a condemnation action.

The bill takes effect July 1, 2007 and has prospective application. However, any specific administrative or legislative authorization to acquire property initiated before the effective date of the Act must be completed within four years; otherwise, a new authorization must be obtained.

Fiscal Summary

State Effect: State expenditures could increase significantly in condemnation actions involving relocations due to additional compensation of displaced persons or businesses. Revenues would not be affected.

Local Effect: Local government expenditures could increase significantly in condemnation actions involving relocations due to additional compensation of displaced persons and businesses. Revenues would not be affected. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill increases the cap on the amount the displacing agency in a condemnation action must pay:

- a displaced homeowner from \$22,500 to \$45,000;
- a displaced tenant to enable the person to rent a comparable replacement dwelling from \$5,250 to \$10,500;
- a displaced farm, nonprofit, or small business for actual reasonable reestablishment expenses from \$10,000 to \$60,000; and
- as an alternative payment from \$20,000 to \$60,000.

When any part of the private property to be acquired in a condemnation action is used for a business or farm operation, a representative of the displacing agency must contact the owner of the business or farm at least 30 days before filing the action and negotiate in good faith regarding a plan under which the business or farm may be relocated.

The State, its instrumentalities, or its political subdivisions must file a condemnation action within four years after the date of the specific administrative or legislative authorization to acquire the property. If an action is not filed within that four-year period, the governmental unit may not proceed until it first obtains a new authorization to acquire the property.

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. Goodwill is not generally compensable.

Relocation Assistance

When land is acquired by condemnation, the displacing agency must pay a displaced person who is displaced from an owner-occupied dwelling an additional payment of up to \$22,500, if the dwelling was owned and occupied for at least 180 days prior to the negotiations for the property’s acquisition. The limit may be exceeded on a case-by-case basis under specified circumstances.

The displacing agency must pay a displaced person not eligible for the payment mentioned above the amount necessary to enable that person to lease or rent a comparable replacement dwelling, limited to \$5,250, for up to 42 months. The limit may be exceeded on a case-by-case basis under specified circumstances. To be eligible, the displaced person must have occupied the dwelling for at least 90 days before the initiation of negotiations for the acquisition of the dwelling or in any case in which displacement is not a direct result of acquisition, other criteria prescribed by the lead agency.

When land is acquired by condemnation, the displacing agency, after receiving an application, must pay a displaced person for:

- actual reasonable moving expenses for moving the person, the person's family, business, farm operation, or other personal property;
- 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;
- actual reasonable expenses in searching for a replacement business or farm; and
- 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 were introduced during the 109th Congress that would have limited the use of eminent domain; however, only one passed. Under the appropriation that funds the Department of Transportation, the Judiciary, and the Department of Housing and Urban Development for federal fiscal 2006, P.L. 109-115, funds provided under that Act may not be used for projects that seek to use eminent domain that primarily benefit private entities, under certain circumstances. The continuing resolution that funds most of the federal government through federal fiscal 2007, P.L. 110-5, continues the prohibition through September 30, 2007.

According to the National Conference of State Legislatures (NCSL), eminent domain legislation in response to the *Kelo* decision was considered in each of the 44 states that went into session in 2006. From January 2006 to date, legislatures have passed eminent domain bills in 28 of those states: in 24 states, the legislation was enacted; in 2 states, the measures passed were constitutional amendments that went on the November ballot for voter approval; and in 2 states, the legislation was vetoed by the Governor.

NCSL has identified the following seven categories of state legislation that deal with eminent domain:

- prohibiting eminent domain for economic development purposes, to generate tax revenue, or to transfer private property to another private entity;
- defining what constitutes “public use,” generally the possession, occupation, or enjoyment of the property by the public at large, public agencies, or public utilities;
- restricting eminent domain to blighted properties and redefining what constitutes blight to emphasize detriment to public health or safety;
- requiring greater public notice, more public hearings, negotiation in good faith with landowners, and approval by elected governing bodies;
- requiring compensation greater than fair market value where property condemned is the principal residence;
- placing a moratorium on eminent domain for economic development; and
- establishing legislative study committees or stakeholder task forces to study and report back to the legislature with findings.

Historically, the State has used its condemnation authority primarily for the construction of roads and highways, although 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, charged 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 during 2006 by the Maryland Municipal League and the Maryland Association of Counties, local governments 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. The project was petitioned to 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 those recommendations are reflected in this bill. 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.

The State Highway Administration (SHA) advises that the limits on relocation expenses have been at their current levels for at least 20 years.

State Fiscal Effect: State expenditures would generally increase to the extent condemnation actions necessitate relocation of individuals or businesses. The number of condemnation cases in each fiscal year and the costs associated with relocation in each case cannot be predicted. Expenditures related to relocations could be significant, even with a relatively small number of affected properties. **Exhibit 1** shows the increase in maximum relocation assistance under the bill, including the amount and percentage increase.

Exhibit 1				
Increased Maximum Relocation Assistance				
	<u>Current Law</u>	<u>HB 1043</u>	<u>Amount Increase</u>	<u>Percentage Increase</u>
Homeowner	\$22,500	\$45,000	\$22,500	100%
Tenant	5,250	10,500	5,250	100%
Farm, Nonprofit Organization or Small Business	10,000	60,000	50,000	500%
Alternative Payment	20,000	60,000	40,000	200%

For illustrative purposes only, SHA estimates that it relocates approximately 10 businesses and 10 dwellings annually. Of the business relocations, five involve actual relocation expenses and five opt for the alternative fixed payment. Of the dwelling relocations, SHA would pay the owners in six instances and pay the tenants in four instances. Assuming all relocations receive the maximum amount, Transportation Trust Fund expenditures related to relocations could increase by \$606,000 annually beginning in fiscal 2008.

Over the past six fiscal years, the amount spent by SHA on business relocation ranged from a low of \$130,000 in fiscal 2003 to a high of \$601,000 in fiscal 2001. The precise amount attributable to business reestablishment costs is unknown. The Federal Highway Administration, by regulation, may pay a proportional share of relocation costs in the same proportion as its share of the project costs. Any increase in the State's payments for relocation and reestablishment costs would be lessened by the amount paid by the federal government. The federal share for an eligible highway project may vary but is generally 80% of the project's costs.

Local Fiscal Effect: To the extent local governments need to acquire private property on which dwellings, businesses, or farm operations are located, costs of condemning the property would increase. Expenditures related to these additional costs could be significant, even with a relatively small number of affected properties.

Small Business Effect: Small businesses subject to condemnation actions would potentially receive additional compensation for their relocation expenses, the amount of which would be unique to each business.

Additional Information

Prior Introductions: Over 40 bills combined were introduced in the 2006 session that would have restricted or otherwise altered the use of eminent domain; all the bills failed.

Cross File: None.

Information Source(s): Town of Berlin, Town of Bladensburg, City of Rockville, City of Frostburg, City of College Park, Washington County, Montgomery County, Prince George's County, Kent County, Worcester County, Department of General Services, Board of Public Works, Washington Suburban Sanitary Commission, Maryland Department of Planning, Department of Business and Economic Development, Maryland Stadium Authority, University System of Maryland, Maryland-National Capital Park and

Planning Commission, Maryland Association of Counties, Maryland Department of
Transportation, Department of Legislative Services

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