

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE

House Bill 1365

(Dorchester County Delegation) (By Request)

Environmental Matters

Education, Health, and Environmental
Affairs

**Town of Brookview (Dorchester County) - Urban Renewal Authority for Slum
Clearance**

This bill authorizes the Town of Brookview to undertake urban renewal projects for slum clearance by exercising the power of eminent domain to acquire properties in blighted areas. Brookview may not initiate an urban renewal project unless its legislative body adopts a resolution defining the area and finds that rehabilitation or redevelopment is necessary and in the public interest. Condemnation of land or property under the bill must be in accordance with the procedure set forth in State law. Further, the bill sets forth procedures for taking the property, funds which may be used to do so, and disposition of the property, including authorization to dispose of it to private persons. Property may not be taken under the bill without just compensation, either as agreed upon by the parties or awarded by a jury.

Fiscal Summary

State Effect: Potential minimal increase in State tax revenues. Expenditures would not be affected.

Local Effect: The Town of Brookview's expenditures could increase related to costs associated with land acquisition and urban renewal projects. Potential increase in town revenues from the sale of land and properties acquired. Potential minimal increase in tax revenues for both Dorchester County and Brookview.

Small Business Effect: Overall minimal, potential meaningful if a property targeted for urban renewal is a small business.

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.

Urban Renewal Authority for Slum Clearance

Article XI-E of the Maryland Constitution grants municipal corporations broad power to amend their existing charters or local laws and to adopt a new charter without the approval of the General Assembly. In addition, Article XI-E generally prohibits the General Assembly from enacting local laws for particular municipal corporations. However, this general prohibition is expressly qualified by Article III, Section 61 of the Constitution (the Urban Renewal Amendment). This amendment provides that the General Assembly's power to enact local laws regarding local urban renewal projects for slum clearance prevails over the restrictions contained in Article XI-E. The General Assembly has enacted over 60 separate public local laws authorizing individual municipal corporations to carry out urban renewal projects for slum clearance.

Chapter 519 of 1995 amended the home rule powers of municipal corporations as expressed in Article 23A of the Code by adding the power to acquire land or property for development or redevelopment and to sell or otherwise dispose of the land or property to any private, public, or quasi-public entity. The law, however, specifies that this power may be exercised only by a municipal corporation that has urban renewal authority for slum clearance under Article III, Section 61 of the Maryland Constitution.

The Town of Brookview does not have the power to use eminent domain for slum clearance.

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.

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.

Chapter 73 of 2005 authorized Boonsboro (Washington County) to undertake urban renewal projects for slum clearance by exercising the power of eminent domain. This was the last such measure enacted by the General Assembly. To date, over 60 municipalities have this authority.

As of July 1, 2005, the population of Brookview was 64.

State Fiscal Effect: If a blighted area in this municipality is rehabilitated and real property assessable base increases, property tax revenues would increase. Similarly, if an area is revitalized and additional residents move to these areas, income tax and sales tax revenues could increase. It is noted that any tax revenue that might derive from economic development depends on the success of a particular project. Given the population of the town, it is assumed that any such impact would be minimal.

Local Fiscal Effect: The fiscal impact of the bill depends on whether the town exercises eminent domain authority for urban renewal purposes, how many times this authority is used, and the value of any property taken, none of which can be quantified at this time. If the town exercises this authority, expenditures would increase related to legal fees and land and property acquisition costs. However, the town could recoup some or all of these expenditures if a property taken is sold to a developer.

In addition to the direct fiscal effect of the bill, there is an indirect effect that urban renewal could have on local tax revenues. If a blighted area in this municipality is rehabilitated and real property assessable base increases, property tax revenues would increase. Similarly, if an area is revitalized and additional residents move to these areas, income tax and sales tax revenues could increase. It is noted that any tax revenue that might derive from economic development depends on the success of a particular project. Given the population of the town, it is assumed that any such impact would be minimal.

The town advises that it has not currently targeted an area for which the bill's authority would be used, but that it would be a tool it could use to compel land owners to take better care of their property.

Additional Information

Prior Introductions: None.

Cross File: SB 1008 (Senator Colburn) – Education, Health, and Environmental Affairs.

Information Source(s): Town of Brookview, Maryland Municipal League, Maryland Association of Counties, U.S. Census Bureau, Department of Legislative Services

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