

Department of Legislative Services  
Maryland General Assembly  
2008 Session

FISCAL AND POLICY NOTE  
Revised

House Bill 1159  
Ways and Means

(Delegate Manno, *et al.*)

Budget and Taxation

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Homeowners' Tax Fairness in Eminent Domain Proceedings Act

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This bill authorizes counties and Baltimore City to exempt, by law, from the local recordation and transfer tax an instrument of writing that transfers title to a displaced homeowner if the improved residential property conveyed to the displaced homeowner qualifies as a replacement dwelling.

A displaced homeowner is defined as an individual whose legal interest in a dwelling was terminated through either negotiation or condemnation, for public use, and in exchange for awarded compensation.

The bill takes effect July 1, 2008.

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Fiscal Summary

**State Effect:** None.

**Local Effect:** Potential decrease in local recordation and transfer tax revenues. Local expenditures would not be affected.

**Small Business Effect:** None.

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Analysis

**Current Law:** The counties and Baltimore City are authorized to impose locally established recordation tax rates on any business or person • conveying title to real property; or • creating or giving notice of a security interest (*i.e.*, a lien or encumbrance) in real or personal property, by means of an instrument of writing.

The State and most counties also impose a transfer tax. The State transfer tax rate is 0.5% of the consideration payable for an instrument of writing conveying title to, or a leasehold interest in, real property (0.25% for first-time Maryland home buyers). In some jurisdictions a local property transfer tax may be imposed on instruments transferring title to real property. A distinction is made in the local codes between instruments transferring title such as a deed and certain leaseholds and instruments securing real property such as a mortgage. Except in Prince George's County, mortgages are not subject to the tax.

**Background:** 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.

### *Possible Plaintiffs*

Possible plaintiffs to a condemnation action under Maryland law include the federal government, the State, a county, a municipal corporation, a corporation that transmits or supplies natural or artificial gas, an oil pipeline corporation, a telephone or telegraph company, a water company, and a railroad company.

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 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.

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 with the task of 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 in 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.

**Local Fiscal Effect:** Local recordation and transfer tax revenues could decrease to the extent that replacement dwellings are purchased by displaced homeowners and the exemption is granted. The amount of any decrease cannot be reliably estimated and depends on the number of replacement properties purchased and their value. **Exhibit 1** shows the effect to each county if one replacement home is purchased by a displaced homeowner in that county. **Exhibits 2 and 3** show the current county recordation tax and transfer tax rates and estimated revenues for fiscal 2005 through 2008.

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### Additional Information

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** State Department of Assessments and Taxation, Comptroller's Office, Maryland Department of Transportation, Charles County, Frederick County, Montgomery County, Department of Legislative Services

**Fiscal Note History:** First Reader - March 3, 2008  
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Analysis by: Michael Sanelli

Direct Inquiries to:  
(410) 946-5510  
(301) 970-5510

**Exhibit 1**  
**Transfer and Recordation Tax Exemption, by County**

<b>County</b>	<b>Average Assessment</b>	<b>Transfer Tax Rates FY 2008</b>	<b>Recordation Tax Rates FY 2008</b>	<b>Estimated Revenue Decrease</b>
Allegany	\$81,378	0.50%	\$3.25	(\$936)
Anne Arundel	331,888	1.00%	3.50	(5,642)
Baltimore City	113,460	1.50%	5.00	(2,837)
Baltimore	224,534	1.50%	2.50	(4,491)
Calvert	301,857	0.00%	5.00	(3,019)
Caroline	169,211	0.50%	5.00	(2,538)
Carroll	279,977	0.00%	5.00	(2,800)
Cecil	212,553	\$10/deed	4.10	(1,733)
Charles	269,286	0.00%	5.00	(2,693)
Dorchester	154,902	0.75%	5.00	(2,711)
Frederick	289,571	0.00%	6.00	(3,475)
Garrett	117,771	1.00%	3.50	(2,002)
Harford	235,475	1.00%	3.30	(3,909)
Howard	391,204	1.00%	2.50	(5,868)
Kent	215,923	0.50%	3.30	(2,505)
Montgomery	473,556	1.00%	3.45	(8,003)
Prince George's	246,690	1.40%	2.20	(4,539)
Queen Anne's	336,744	0.50%	3.30	(3,906)
St. Mary's	247,522	1.00%	4.00	(4,455)
Somerset	109,026	0.00%	3.30	(720)
Talbot	390,257	1.00%	3.30	(6,478)
Washington	186,897	0.50%	3.80	(2,355)
Wicomico	151,540	0.00%	3.50	(1,061)
Worcester	247,140	0.50%	3.30	(2,867)
<b>Total</b>				<b>(\$81,541)</b>

Source: Maryland Association of Counties; Department of Legislative Services

**Exhibit 2**  
**Local Transfer Taxes – Rates and Revenue Collections**

<b>County</b>	<b>Local</b>	<b>Revenue Collections</b>			
	<b>Tax Rates</b>	<b>FY 2005</b>	<b>FY 2006</b>	<b>FY 2007</b>	<b>FY 2008</b>
	<b>FY 2008</b>				
Allegany	0.50%	\$308,564	\$791,200	\$686,105	\$675,000
Anne Arundel	1.00%	56,885,486	61,819,230	52,030,890	48,000,000
Baltimore City	1.50%	46,423,968	61,124,000	51,756,000	46,035,000
Baltimore	1.50%	74,861,632	89,267,236	72,752,797	66,568,810
Calvert	0.00%	0	0	0	0
Caroline	0.50%	783,358	1,174,690	874,820	1,114,728
Carroll	0.00%	0	0	0	0
Cecil	\$10/deed	42,301	38,622	31,949	35,000
Charles	0.00%	0	0	0	0
Dorchester	0.75%	1,934,134	2,082,438	1,722,212	1,034,778
Frederick	0.00%	0	0	0	0
Garrett	1.00%	3,043,322	3,155,286	2,547,873	2,165,000
Harford	1.00%	19,602,014	22,610,227	17,452,339	14,565,994
Howard	1.00%	33,953,204	37,424,266	29,965,138	28,000,000
Kent	0.50%	944,558	958,977	1,034,300	730,000
Montgomery	1.00%	133,654,796	145,478,479	106,902,482	98,500,000
Prince George's	1.40%	124,313,988	167,882,826	158,093,206	124,196,100
Queen Anne's	0.50%	362,460	673,396	590,813	155,000
St. Mary's	1.00%	8,292,531	9,464,219	7,706,885	15,800,000
Somerset	0.00%	0	0	0	0
Talbot	1.00%	6,375,196	6,212,762	5,298,977	4,900,000
Washington	0.50%	4,182,273	4,326,445	3,444,730	3,000,000
Wicomico	0.00%	0	0	0	0
Worcester	0.50%	8,737,908	8,282,788	5,395,746	4,250,000
<b>Total</b>		<b>\$524,701,693</b>	<b>\$622,767,087</b>	<b>\$518,287,262</b>	<b>\$459,725,410</b>

Source: Maryland Association of Counties; Department of Legislative Services

**Exhibit 3**  
**Local Recordation Taxes – Rates and Revenue Collections**

<b>County</b>	<b>Local</b>	<b>Revenue Collections</b>			
	<b>Tax Rates</b>	<b>FY 2005</b>	<b>FY 2006</b>	<b>FY 2007</b>	<b>FY 2008</b>
	<b>FY 2008</b>				
Allegany	\$3.25	\$1,577,460	\$1,808,108	\$1,867,666	\$1,837,500
Anne Arundel	3.50	59,827,840	68,113,312	57,226,551	52,800,000
Baltimore City	5.00	36,599,163	55,628,000	46,550,000	48,700,000
Baltimore	2.50	41,628,848	49,960,828	40,718,075	37,257,038
Calvert	5.00	13,630,156	14,481,819	11,664,698	9,500,000
Caroline	5.00	2,952,177	3,941,174	3,114,738	3,000,000
Carroll	5.00	22,188,200	22,766,629	18,902,094	16,000,000
Cecil	4.10	7,539,241	9,603,661	8,441,301	8,200,000
Charles	5.00	24,998,742	29,759,035	26,559,471	20,306,400
Dorchester	5.00	4,060,939	4,792,334	3,790,983	3,927,359
Frederick	6.00	25,892,014	28,356,811	23,041,214	20,000,000
Garrett	3.50	3,706,081	3,877,203	3,436,399	3,200,000
Harford	3.30	20,424,258	23,662,735	19,283,896	19,422,470
Howard	2.50	24,876,072	27,870,355	22,531,964	21,857,855
Kent	3.30	1,848,101	2,023,589	2,148,600	1,530,000
Montgomery	3.45	127,300,257	141,100,857	105,988,139	92,020,000
Prince George's	2.20	49,995,036	70,203,010	63,668,099	51,556,700
Queen Anne's	3.30	5,841,060	6,845,259	6,039,956	5,500,000
St. Mary's	4.00	10,455,397	12,393,522	10,078,293	9,747,000
Somerset	3.30	1,301,235	1,509,071	1,139,878	880,000
Talbot	3.30	6,439,627	6,344,752	5,472,722	5,000,000
Washington	3.80	11,590,125	12,572,141	10,071,718	9,000,000
Wicomico	3.50	5,721,406	6,585,432	5,874,835	4,794,940
Worcester	3.30	14,982,660	14,788,218	10,905,366	8,500,000
<b>Total</b>		<b>\$525,376,095</b>	<b>\$618,987,855</b>	<b>\$508,516,656</b>	<b>\$454,537,262</b>

Source: Maryland Association of Counties; Department of Legislative Services