

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 409 (Senator Della)
Judicial Proceedings

**Real Property - Agricultural and Historic Property - Prohibition on
Condemnation**

This bill prohibits the State or any of its instrumentalities or political subdivisions from acquiring any part of private property by condemnation if the property is (1) subject to an easement held by the Maryland Agricultural Land Preservation Foundation, or an easement under the Maryland Rural Legacy Program; (2) listed in the National Register of Historic Places; and (3) designated as a National Historic Landmark.

The bill takes effect July 1, 2008.

Fiscal Summary

State Effect: Legislative Services is aware of only one property that would be affected by the bill's prohibition. However, if other properties were also affected, general fund, special fund, or Transportation Trust Fund expenditures could increase due to the potential increase in the cost of land acquisition. Revenues would not be affected.

Local Effect: Local expenditures could increase due to the potential increase in the cost of land acquisition. Revenues would not be affected.

Small Business Effect: None.

Analysis

Current Law/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.

The Maryland Agricultural Land Preservation Foundation (MALPF) was created by the Maryland General Assembly in 1977 to preserve productive agricultural land and woodland. Agricultural preservation districts are formed when qualifying landowners sign voluntary agreements to keep their land in agricultural or woodland use for at least five years. Landowners who agree to place their farms within an agricultural preservation district may sell a development rights easement on that property to MALPF. Subject to some limitations, once an easement has been sold, the property is protected from further development. As of June 30, 2005, MALPF had protected approximately 242,822 acres through the purchase of 1,757 easements. The proposed fiscal 2009 State budget includes \$45.7 million in special and federal funds for MALPF.

The purpose of the Rural Legacy Program, established in 1997 and administered by the Department of Natural Resources, is to supplement State land preservation programs in order to preserve key areas before escalating land values render protection impossible or before the land is lost to development. The program provides funding to local governments and conservation organizations to purchase property and conservation easements within designated Rural Legacy Areas. There are 29 Rural Legacy Areas in 21 counties. As of 2006, the program had preserved 51,772 acres. The proposed fiscal 2009 State budget includes \$18.5 million in special funds and general obligation bonds for the Rural Legacy Program.

The National Register of Historic Places was authorized by Congress under the National Historic Preservation Act of 1966. The National Register is part of a national program to coordinate and support public and private efforts to identify, evaluate, and protect historic and archeological resources. National Historic Landmarks are nationally significant historic places designated by the Secretary of the Interior for their exceptional value or quality in illustrating or interpreting the heritage of the United States. Today, fewer than 2,500 historic places bear this national distinction.

State and Local Fiscal Effect: The Department of Legislative Services is aware of only one property that would be affected by this bill. It is located in Carroll County near the City of Westminster. The county reports that it has planned to condemn a small portion of the property necessary for the construction of a reservoir, but that this project is unlikely to occur.

Several State agencies and local jurisdictions expressed concern regarding the potential for this bill to substantially increase the cost of land acquisition through the exercise of their eminent domain authority. However, Legislative Services advises that much of this concern could be related to a misreading of the bill. The bill only prohibits the condemnation of a property that is protected by either MALPF or the Rural Legacy Program, and is also designated as both a Historical Landmark and a Historic Place in the National Register of Historic Places. If the provisions of the bill were connected disjunctively, then the State and local jurisdictions would be prohibited from condemning a property that is protected by any of these programs.

A reliable estimate cannot be made as to the extent of the increase in land acquisition costs that the State and local jurisdictions would incur. In the event that a governmental entity's authority to exercise their power of eminent domain was restricted under this bill, that entity would have to negotiate with the property owner. It is likely that the governmental entity would be required to expend more than the value of the property as it would be determined by a court in condemnation proceedings. Further, it is possible that the property owner would refuse to transfer its interest in the property. Several agencies have advised that should this occur, the cost of developing an alternative to the original project could substantially increase the capital costs involved with the project or make the project prohibitively expensive.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Allegany County, Baltimore City, Montgomery County, Prince George's County, Talbot County, Wicomico County, Maryland Department of Planning, Board of Public Works, Department of Business and Economic Development, Maryland Stadium Authority, University System of Maryland, Maryland Department of Transportation, Maryland-National Capital Park and Planning Commission, Washington Suburban Sanitary Commission, Department of Legislative Services

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