

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 1072

(The President, *et al.*) (By Request - Administration)

Budget and Taxation

Environmental Matters

Pimlico and Laurel Park Racetracks, Bowie Race Course Training Center, and
Preakness Stakes - State Purchase or Condemnation

This emergency Administration bill authorizes the State to acquire by purchase or condemnation, for public use and with just compensation, private property relating to Pimlico Race Course, Laurel Park Race Course, the Bowie Race Course Training Center, and other tangible and intangible property related to the Preakness Stakes.

Fiscal Summary

State Effect: No direct State effect as bonds issued by the Maryland Economic Development Corporation (MEDCO) are not State debt, and there is no implied State guaranty or State obligation to protect bondholders from losses. To the extent MEDCO issues bonds or borrows money, MEDCO is liable for repayment to lenders and/or bond holders.

Local Effect: None.

Small Business Effect: A small business impact statement was not provided by the Administration in time for inclusion in this fiscal note. A revised fiscal note will be issued when the Administration's assessment becomes available.

Analysis

Bill Summary: The State may acquire by purchase or condemnation, for public use and with just compensation, some or all of the following real, tangible, and intangible private property, including any contractual interests or intellectual property: (1) the Pimlico Race Course in Baltimore City, including any and all property or property rights

associated with it, wherever located, whether tangible, intangible, real, personal, or mixed; (2) Laurel Park Race Course in Anne Arundel County, including any and all property or property rights associated with it, wherever located, whether tangible, intangible, real, personal, or mixed; (3) Bowie Race Course Training Center in Prince George's County, including any and all property or property rights associated with it, wherever located, whether tangible, intangible, real, personal, or mixed; (4) the Preakness Stakes trophy that is known as the Woodlawn Vase; (5) the name, common law and statutory copyrights, service marks, trademarks, trade names, contracts, horse racing events, and other intangible and intellectual property that are associated with the Preakness Stakes and the Woodlawn Vase; (6) all property of the Maryland Jockey Club of Baltimore City, Inc., or its successors and assigns, including stock and equity interests associated with it, and including all property or property rights associated with it, whether tangible, intangible, real, personal, or mixed; and (7) all property of the Laurel Racing Assoc., Inc., the Laurel Racing Association Limited Partnership, or their successors and assigns, including stock and equity interests associated with them, and including all property or property rights associated with it, whether tangible, intangible, real, personal, or mixed.

Pursuant to provisions of the Maryland Constitution, the private property may be taken immediately on payment for the property consistent with State Highway Administration procedures for quick-take condemnation in the Transportation Article. All condemnation proceedings must be conducted in accordance with Title 12 of the Real Property Article and Title 12, Chapter 200 of the Maryland Rules.

MEDCO is authorized to borrow money and issue bonds to finance the cost of acquiring by purchase or completing the condemnation process by the State for public use of the properties authorized in the bill, in accordance with applicable legal standards. If MEDCO acquires property under the bill, it must consult with specified State elected officials before disposing of the property. MEDCO must report monthly to specified legislative committees on the status of the State's business plan for the management and disposition of any assets acquired under the bill.

Current Law:

The Preakness Stakes

The Preakness Stakes may be transferred to another track in the State only as a result of a disaster or emergency. If the Preakness Stakes is transferred out of state, the Maryland Racing Commission may revoke any racing days awarded to the Maryland Jockey Club of Baltimore City or its successor, and award the racing days to another licensee.

If the Preakness Stakes is offered for sale, the State has the option to buy the Preakness Stakes for the amount of any offer the licensee wishes to accept. The racetrack licensee must notify the State of the offer within 30 days of receiving the offer. The State must notify the licensee within 60 days if it wishes to exercise the option to purchase the Preakness Stakes.

In addition, if a racetrack licensee holds a video lottery operation license for Laurel Park, the licensee must promote and conduct the Preakness Stakes at Pimlico each year or transfer it to another track in the State only in the case of a disaster or emergency.

Eminent Domain

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 constitution limit the condemnation authority and establish two requirements for taking property through the power of eminent domain. First, the property taken must be for a “public use.” Second, 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.

In order to condemn property for a highway purpose on an accelerated schedule, the State Roads Commission must file a petition for condemnation in the court for the county in which the property to be acquired is located; and pay the property owner, or pay the court for the owner’s benefit, the amount the Commission estimates to be the fair value of the property to be acquired and fair compensation for any damage resulting to the remaining property of the owner. After the petition is filed and payment is made, the Commission may take possession of the property (“quick-take”) and the State Highway Administration may proceed with construction without interference by the owner. At the conclusion of the condemnation proceedings, the Commission must pay to the property owner any excess of the final award over the amount originally paid to the property owner.

Public Use

There is no clear 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. 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.

Date of Actual Taking

Property is deemed to be taken:

- in the case of a “quick-take” action – where certain governmental entities are authorized to take property immediately upon payment of fair value to the property owner or to a court – if the plaintiff is lawfully authorized to take the property, has made payment, and has taken possession of the property and actually and lawfully appropriated the property to the public purposes of the defendant; and
- in every other case, if the plaintiff pays the judgment and costs to the court.

Background: The Preakness Stakes is the second jewel in horse racing’s Triple Crown and is held annually at Pimlico Race Course on the third Saturday of May. The race has been run at Pimlico every year since 1909. The Preakness Stakes attracts more than 100,000 people to Pimlico each year and earns enough revenue to support the thoroughbred industry in Maryland for the rest of the year. The 2007 Preakness drew a crowd of 121,263 to Pimlico Race Course. Preakness day wagering was \$87.2 million on the entire racing card, with \$6.8 million bet in State. Race day expenditures totaled \$8.6 million.

Maryland has two mile-thoroughbred racetracks: Laurel Park in Anne Arundel County and Pimlico Race Course in Baltimore City. Both thoroughbred tracks are owned by the Maryland Jockey Club (MJC), a subsidiary of Magna Entertainment Corporation (MEC). Magna Entertainment acquired a controlling interest in MJC in 2002 and exercised an option to acquire the remaining interest in MJC in November 2007. The purchase price was approximately \$117 million, and also included the Bowie Training Facility. The Preakness trademark is owned by MJC.

Citing increasing financial pressures, Maryland racetracks recently have taken measures to cut operating expenses. Rosecroft Raceway, in June 2008, received approval from the State Racing Commission to temporarily cancel live harness racing at the track. Though the plan calls for the track to remain open for simulcast wagering, cancellation of live racing days eliminates the need to pay purses and allows the track to reduce overhead costs.

MJC, in August 2008, announced the cancellation of its graded stakes races at Laurel Park for the 2008 fall meet. MJC also announced the closure of the backstretch facilities at Pimlico (which include stables and dormitories for stable employees). MJC will relocate displaced horses and stable employees to facilities at Laurel Park and the Bowie Training Center. For the 2009 spring meet at Pimlico Race Course, MJC plans to temporarily open the backstretch facilities before and after the running of the Preakness Stakes.

Chapter 11 Bankruptcy

On March 5, 2009, MEC filed for Chapter 11 bankruptcy protection in U.S. Bankruptcy Court in Delaware (*In re: Magna Entertainment Corp., et al.*, Case No. 09-10720). In the filings, MEC indicated it plans on selling a group of its horse racing assets, including Pimlico, Laurel, and the Bowie training facility in a “free and clear” auction. If the auction request is approved by the court, the bids (including the Maryland tracks) would be due on July 7 and the auction winners would be announced on August 8. However, several of MEC’s creditors have filed objections in federal bankruptcy court regarding the auction process requested by MEC. Among these objections, is the State’s motion asking the court to recognize and affirm the State’s statutory right of first refusal to purchase the Preakness Stakes. The court has not yet ruled on MEC’s request or any of the objections.

The role of a federal bankruptcy court is first and foremost to preserve the value of a company’s assets for its creditors. During a bankruptcy proceeding an automatic stay is issued by the court to protect the debtor from being sued.

Currently, at least three Maryland groups – Cordish Cos, Heritage Racing LLC, and America’s Realty LLC – have publicly expressed interest in buying at least a portion of MEC’s Maryland assets including the racetracks and the rights to the Preakness Stakes.

MEDCO

MEDCO is a nonbudgeted entity that allows the State to own or develop property for economic development purposes. MEDCO was created in 1984 with the mission to help expand, modernize, and retain existing Maryland business and to attract new business to the State. It is governed by a board of directors that must pass a resolution to participate in a project.

MEDCO purchases or develops property that is leased to others under favorable terms. MEDCO also makes direct loans to companies throughout the State to maintain or develop facilities, and it often serves as the conduit for loans administered by the Department of Business and Economic Development (DBED). MEDCO issues bonds to raise funds for its loans. The bond debt consists primarily of revenue bonds and notes payable to government agencies such as DBED. The debt represents nonrecourse obligations because MEDCO is not liable to bondholders and lenders in the event of a project or borrower default. Each project must have self-supporting revenues, and no projects are cross-collateralized. As a result, MEDCO debt is not debt of the State, and there is no implied State guaranty or State obligation to protect bondholders from losses.

MEDCO has been involved in 213 projects through fiscal 2008. Of these, MEDCO currently owns and operates 13 as operating facilities, meaning the agency is involved in management decisions and has an interest in ensuring successful daily operations. For all other projects, MEDCO serves as an arms length financing entity.

State Fiscal Effect: In order to exercise the rights under the bill, the State would have to ask the U.S. Bankruptcy Court to lift the “stay” currently issued by the court. Whether or not MEDCO borrows money or issues bonds for either the purchase of MEC’s assets or to provide just compensation in a condemnation procedure depends on whether the State determines it is necessary to keep the Preakness Stakes in the State. To the extent MEDCO issues bonds or borrows money for the purpose specified by the bill, MEDCO is liable for repayment to lenders or bond holders.

The actual amount of money borrowed or bonds to be issued depends on the actual value of the assets for sale and which of those assets the State ultimately chooses to acquire. At present the actual value of these assets are indeterminable except as provided by the debtor (MEC) in federal bankruptcy court. The value of these assets would be determined by either bidders at auction or a jury if a condemnation proceeding occurs. In a filing in federal bankruptcy court dated April 5, the real property assets of MJC in

Baltimore are valued at \$17.7 million (\$6.9 million for land and \$10.7 million for the track facility) and personal property assets are reported as \$3.4 million. In addition, the value of Laurel Racing Association's real property assets are valued at \$42.4 million (\$7.1 million for the land and \$35.3 million for the track facility) and personal property assets are listed as \$4.5 million. These court filings do not include values for either the Bowie Training Center or the rights to the Preakness name.

If MEDCO acquires any of these assets, it could retain ownership and operate the facilities or it could sell the properties to repay its lenders or bondholders.

Additional Information

Prior Introductions: None.

Cross File: HB 1578 (The Speaker, *et al.*) (By Request - Administration) - Environmental Matters.

Information Source(s): Office of the Attorney General; Baltimore City; Department of Business and Economic Development; Maryland Economic Development Corporation; Governor's Office; Department of Labor, Licensing, and Regulation; Department of Legislative Services

Fiscal Note History: First Reader - April 8, 2009
ncs/rhh Revised - Senate Third Reader - April 11, 2009

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