

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

House Bill 1541 (Delegates James and Riley)
Environmental Matters

Real Property - Prohibition Against Entering

This emergency bill prohibits specified employees of the State or a local government from entering the property located at 1104 Old Philadelphia Road in Aberdeen, Maryland beginning June 1, 2010 through June 1, 2013.

Fiscal Summary

State Effect: None. The bill does not directly affect State finances or operations.

Local Effect: None. The bill does not directly affect local finances or operations.

Small Business Effect: Potential meaningful impact on the respective property owner.

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 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 (SHA) 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.

Background: This legislation stems from a property dispute arising between a private citizen and SHA concerning land intended for development. More specific information containing the property dispute can be found in the SHA report entitled, *Delineation of Wetlands, Waters, and Survey of Specimen Trees, Vicinity of US 40 and MD 715, December 2008.*

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Harford County, Maryland Department of the Environment, Maryland Association of Counties, Maryland Stadium Authority, University System of Maryland, Department of Legislative Services

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mpc/hlb

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