

Department of Legislative Services  
Maryland General Assembly  
2016 Session

FISCAL AND POLICY NOTE  
First Reader

Senate Bill 718  
Finance

(Senator Young)

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State Highway Administration - Acquisition of Property - Real Estate Appraisers

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This bill requires any real estate appraiser engaged by the State Highway Administration (SHA) when it condemns a property to be (1) licensed and certified by the Department of Labor, Licensing, and Regulation (DLLR) and (2) a resident of the State, with preference being given to an appraiser who resides in the area where the property being appraised is located.

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Fiscal Summary

**State Effect:** Although the bill is not expected to materially affect State finances, it may affect SHA's condemnation appraisal process in Western Maryland and the Eastern Shore to the extent that there are fewer qualified appraisers for SHA to engage in those areas.

**Local Effect:** None.

**Small Business Effect:** Minimal overall, but potential meaningful for any small business real estate appraiser who resides in the State and experiences more business from SHA as a result of the bill. Likewise, those real estate appraisers who are licensed in Maryland but are not State residents are negatively affected.

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## Analysis

### Current Law:

#### *Eminent Domain – Generally*

The power to take, or condemn, private property for public use is one of the inherent powers of state government. 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.” 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 and payment of just compensation in specified jurisdictions.

#### *State Highway Administration – Condemnation of Property*

Before SHA may condemn a property, it must complete the appropriate studies for its plans for the property. First, SHA must prepare a construction plan that shows the location of the highway to be constructed, improved, or reconstructed; the length of the construction; and the width of the right-of-way necessary for the construction. After the construction plan is complete, SHA must prepare detailed maps (commonly known as plats) that include the construction plan, the fee simple and easement area to be acquired, and the property lines for properties affected by the acquisition. After the plats are prepared, SHA must perform the research necessary to determine the fair value of the property that must be acquired, prepare an estimate, and provide payment to the property owner in a specified manner that involves the court for the county in which the property to be acquired is located.

#### *Real Estate Appraisers*

Generally, an individual must be licensed by the State Commission of Real Estate Appraisers, Appraisal Management Companies, and Home Inspectors before the individual may provide real estate appraisal services in the State. “Provide real estate appraisal services” means to make for consideration an appraisal of real estate or prepare or sign an appraisal report in connection with a federally related transaction, as defined in the federal Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

**Background:** DLLR advises that there are 2,521 real estate appraisers licensed to do business in Maryland, and 1,805 of those licensees are State residents.

SHA advises that any appraiser it engages is required to be licensed and registered to do business in the State; however, some of the appraisers it engages in Western Maryland and the Eastern Shore are out-of-state residents. SHA engages out-of-state residents in those areas because there is a limited number of licensed appraisers with experience in valuing right-of-way acquisition residing in those areas. Furthermore, SHA advises that, even if an appraiser does not live in Maryland, he or she may have the knowledge and experience necessary to appraise property in the State. For example, an appraiser residing in Delmar, Delaware, is likely to be knowledgeable about property valuation in Salisbury, Maryland, due to the geographic proximity and similarities of the areas.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Maryland Department of Transportation; Department of Labor, Licensing, and Regulation; Judiciary (Administrative Office of the Courts); Department of Legislative Services

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