

Department of Legislative Services
Maryland General Assembly
2018 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1363
(Delegate Parrott)
Environment and Transportation

**State Roads Commission - Eminent Domain - "Quick Take" Process on Behalf of
the Department of Transportation**

This bill proposes a constitutional amendment that, if approved by the voters at the next general election, authorizes the General Assembly to enact a law authorizing the taking of property under specified circumstances by the State Roads Commission (SRC) for critical infrastructure projects. The bill (1) authorizes SRC to exercise the “quick take” authority for critical infrastructure projects and (2) to exercise the quick take authority on behalf of and at the request of the entire Maryland Department of Transportation (MDOT), rather than only the State Highway Administration (SHA). Property may not be acquired under the bill for pedestrian paths or trails. **The bill takes effect June 1, 2018; provisions related to the quick take process are contingent on the enactment of the constitutional amendment.**

Fiscal Summary

State Effect: The bill is not anticipated to materially impact State finances or operations.

Local Effect: None.

Small Business Effect: None.

Analysis

Current Law/Background: MDOT includes the Office of the Secretary and the modal administrations: (1) the Maryland Aviation Administration; (2) the Maryland Port Administration; (3) the Maryland Transit Administration; (4) SHA; and (5) the Motor Vehicle Administration. SRC is a part of SHA.

Eminent Domain and Condemnation

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 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 being 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.

Quick Take Condemnations

The Maryland Constitution authorizes quick take condemnations in limited circumstances prior to a court proceeding. Under the quick take authority, if property is to be condemned for a highway purpose, SHA must request SRC to condemn the necessary property using the quick take procedures specified in the Transportation Article. Only SHA has the authority to request that SRC condemn property using the quick take authority. If SRC considers the use of quick take procedures to be inappropriate, the property may be condemned by SRC under specified provisions of the Real Property Article related to eminent domain. Generally, unless statute provides otherwise, condemnation proceedings using quick take authority follow the same procedures used for eminent domain proceedings under the Real Property Article and the Maryland Rules.

State Fiscal Effect: MDOT advises that any changes to internal processes and structures can be handled with existing resources. Generally, MDOT advises that authorizing SRC to exercise quick take authority on behalf of and at the request of MDOT as a whole may accelerate the delivery of projects.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Transportation; Montgomery County; Judiciary (Administrative Office of the Courts); Department of Legislative Services

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