HB 825

Department of Legislative Services

Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 825 (Prince George's County Delegation)
Environment and Transportation Finance

Town of Forest Heights (Prince George's County) - Urban Renewal Authority for Blight Clearance
PG 410-23

This bill authorizes the Town of Forest Heights in Prince George's County to undertake urban renewal projects for blight clearance by exercising the power of eminent domain to acquire properties in blighted areas that are zoned for commercial purposes. The town may not initiate an urban renewal project unless its legislative body adopts a resolution that defines the area and finds that rehabilitation or redevelopment is necessary and in the public's interest. Condemnation of land or property under the bill must be in accordance with the procedure set forth in State law. Further, the bill sets forth procedures for taking the property, funds that may be used to do so, and disposition of the property, including authorization to dispose of it to private persons. Property may not be taken without just compensation, either as agreed upon by the parties or awarded by a jury.

Fiscal Summary

State Effect: No direct effect; however, the bill could result in a minimal increase in State tax revenues, as discussed below. Expenditures are not affected.

Local Effect: If the bill's authority is used, the Town of Forest Heights expenditures may increase to acquire land and conduct urban renewal projects, and town revenues may increase from the sale of land and properties acquired. While not a direct effect, the bill could result in a minimal increase in tax revenues for the Town of Forest Heights and Prince George's County.

Small Business Effect: Minimal overall, but potential meaningful if a property targeted for urban renewal is a small business or if any urban renewal projects lead to additional economic activity for small businesses in the town.

Analysis

Current Law:

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 constitutions limit the condemnation authority. Both constitutions establish two requirements for taking property through the power of eminent domain: (1) the property taken must be for a "public use"; and (2) the party whose property is taken must receive "just compensation," which may not be less than the fair market value of the real property. 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.

Other entities have been given express statutory authority by the State to exercise condemnation powers under specified circumstances, including the major subdivisions of the State, municipalities, and specified utilities such as gas, oil pipeline, railroad, telephone and telegraph, and water companies.

Public Use

There is no clear cut 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 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. For example, 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.

U.S. Supreme Court Ruling

The U.S. Supreme Court ruled in *Kelo v. City of New London, 125 S. Ct. 2655 (2005*) that New London, Connecticut's use of its condemnation authority under a state law to require several homeowners in an economically depressed area to vacate their properties to make way for mixed use development did not violate the U.S. Constitution. In essence, the *Kelo* decision left the determination to state law as to whether eminent domain may be used for economic development purposes. An earlier decision, B*erman v. Parker, 75 S. Ct. 98 (1954),* had already found that taking a nonblighted property in a blighted area as part of an overall economic development scheme does not violate the U.S. Constitution.

Urban Renewal Authority

Article XI-E of the Maryland Constitution grants municipalities broad power to amend their existing charters or local laws and to adopt a new charter without the approval of the General Assembly. In addition, Article XI-E generally prohibits the General Assembly from enacting local laws for particular municipalities. However, this general prohibition is expressly qualified by Article III, Section 61 of the Constitution (the Urban Renewal Amendment). This amendment provides that the General Assembly's power to enact local laws regarding local urban renewal projects for slum clearance prevails over the restrictions contained in Article XI-E. The General Assembly has enacted more than 60 separate public local laws authorizing individual municipalities to carry out urban renewal projects for the rehabilitation of slum or blighted areas. Chapter 519 of 1995 amended the home rule powers of municipalities as expressed in Article 23A of the Code by adding the power to acquire land or property for development or redevelopment and to sell or otherwise dispose of the land or property to any private, public, or quasi-public entity. The law, however, specifies that this power may be exercised only by a municipality that has urban renewal authority for slum clearance under Article III, Section 61 of the Maryland Constitution.

The Town of Forest Heights does not have the power to use eminent domain for blight clearance.

State Fiscal Effect: If a blighted area in the Town of Forest Heights that is zoned for commercial purposes is rehabilitated and the real property assessable base increases, property tax revenues increase. Similarly, if an area is revitalized and additional businesses move to these areas, income tax and sales tax revenues could increase. It is noted that any tax revenue that might derive from economic development depends on the success of a particular project. As of July 1, 2021, the population of the Town of Forest Heights was 2,620. Given the population of the town, it is assumed that any such impact is minimal.

Local Fiscal Effect: The fiscal impact of the bill depends on whether the Town of Forest Heights exercises eminent domain authority, how many times this authority is used, and the value of any property taken, none of which can be quantified at this time. If the town undertakes urban renewal projects, expenditures related to legal fees and land and property acquisition also increase. However, the town could recoup some or all of these expenditures if a property taken is sold to a developer.

In addition to the direct fiscal effect of the bill, there is an indirect effect that urban renewal could have on local tax revenues. If a blighted area in the town is rehabilitated and the real property assessable base increases, property tax revenues increase. Similarly, if an area is revitalized and additional businesses move to these areas, income tax and sales tax revenues could increase. It is noted that any tax revenue that might derive from economic development depends on the success of a particular project.

Additional Information

Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 506 (Senator Muse) - Finance.

Information Source(s): Prince George's County; Department of Housing and Community Development; Maryland Department of Planning; Department of Legislative Services

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Analysis by: Valarie Munroe

Direct Inquiries to:
(410) 946-5510
(301) 970-5510