

Department of Legislative Services
Maryland General Assembly
2023 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 1026

(Prince George's County Delegation)

Environment and Transportation

Education, Energy, and the Environment

Prince George's County - Land Use - Development of Neglected Property
PG 406-23

This bill gives Prince George's County specified authority to exercise the power of eminent domain on neglected property in an area that (1) has been designated as a transit-oriented development and (2) is located in a business improvement district.

Fiscal Summary

State Effect: The bill does not directly affect State finances.

Local Effect: The bill does not directly affect local government finances.

Small Business Effect: None.

Analysis

Bill Summary: The bill authorizes Prince George's County to exercise the power of eminent domain on neglected property (that is not State-owned property) in an area that (1) has been designated as a transit-oriented development and (2) is located in a business improvement district. Neglected property obtained pursuant to the bill is intended to be developed or redeveloped for an economic development purpose in the county. Land or property taken by the county through the exercise of eminent domain pursuant to the bill (1) may only be taken for a public purpose, including for private development that is consistent with a public purpose and (2) may not be taken without just compensation, as agreed on between the parties, or awarded by a jury, being first paid or tendered to the party entitled to the compensation pursuant to provisions of the Real Property Article of the Maryland Code governing the use of eminent domain.

“Neglected property” means improved or unimproved real property that (1) is zoned for commercial, industrial, or nonresidential use by the district council and (2) has been abandoned, blighted, or condemned.

“Transit-oriented development” means a mix of private or public parking facilities, commercial and residential structures, and uses, improvements, and facilities customarily appurtenant to such facilities and uses, that:

- is part of a deliberate development plan or strategy involving (1) property that is adjacent to the passenger boarding and alighting location of a planned or existing transit station or (2) property, any part of which is located within one-half mile of the passenger boarding and alighting location of a planned or existing transit station;
- is planned to maximize the use of transit, walking, and bicycling by residents and employees; and
- is designated as a transit-oriented development by the Secretary of Transportation, as specified, and the local government or multicounty agency with land use and planning responsibility for the relevant area.

“Transit-oriented development” includes light rail stops that are located on the Purple Line in Prince George’s County. “Purple Line” means the light rail transit line between Bethesda in Montgomery County and New Carrollton in Prince George’s County.

“Business improvement district” means a business improvement district established in the county pursuant to specified provisions of the Economic Development Article of the Maryland Code which have the purposes of (1) providing for the creation of business improvement districts and (2) promoting the general welfare of the residents, employers, employees, property owners, commercial tenants, consumers, and the general public within the geographic area of the business improvement districts.

Current Law:

Prince George’s County Redevelopment Authority

Chapter 266 of 1996, under the Public Local Laws of Prince George’s County, authorized the county to create the Prince George’s County Redevelopment Authority (a body corporate and politic and an instrumentality of the county), declaring that, in order to revitalize areas of the county in need of development or redevelopment for the public benefit, it is necessary that the county be authorized to acquire, by any legal means, including by the exercise of the power of eminent domain, land or property for residential, commercial, or industrial development or redevelopment.

Chapter 266 authorizes the county, as specified by local law, to acquire, within the boundary lines of the county, land and property of every kind, and any right, interest, franchise, easement, or privilege in the property, by purchase, lease, gift, condemnation, or any other legal means, for residential, commercial, or industrial development or redevelopment, including, but not limited to, the comprehensive renovation or rehabilitation thereof.

Chapter 266 establishes that:

- land or property taken by the county by exercising the power of eminent domain may not be taken without just compensation, as agreed upon between the parties, or awarded by a jury, being first paid or tendered to the party entitled to that compensation; and
- all land or property needed or taken by the exercise of the power of eminent domain, by the county, under Chapter 266, is declared to be needed or taken for a public use or a public benefit.

Chapter 266 authorizes the county to delegate its authority to the Prince George's County Redevelopment Authority; however, a decision of the redevelopment authority to take owner-occupied residential real property must have the prior approval of the county council after notice to the property owner.

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.

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 (now the Supreme Court of Maryland) 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.

Additional Information

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

Designated Cross File: None.

Information Source(s): Prince George's County; Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Maryland Department of Planning; Department of Legislative Services

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Analysis by: Joanne E. Tetlow

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