

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1337
Economic Matters

(Delegate Mangione, *et al.*)

Real Property - Condemnation - Damages Awarded for Lost Profits

This bill, under Title 12 (“Eminent Domain”) of the Real Property Article, expands the damages to be awarded for the taking of land by including compensation for loss of profit for the owner of a business or farm operation if specified requirements are met.

Fiscal Summary

State Effect: Potential significant increase in State expenditures due to the potential increase in damages awarded to an owner of a business or farm operation for the loss of profit, as discussed below. Revenues are not affected.

Local Effect: Potential significant increase in local expenditures due to the potential increase in damages awarded to an owner of a business or farm operation for the loss of profit, as discussed below. Revenues are not affected.

Small Business Effect: Meaningful.

Analysis

Bill Summary: Under the bill, in addition to any other damages allowed under § 12-104 of the Real Property Article, the owner of a business or farm operation conducted on the property taken is entitled to compensation for loss of profit if the owner proves:

- the amount of the profit loss; and
- that the loss of profit (1) is directly and proximately caused by the taking or damaging of the property; (2) cannot reasonably be prevented by relocation of the business or farm operation or by taking steps and adopting procedures that a

reasonably prudent person would take and adopt in preserving any lost profit; (3) will not be included in relocation payments under Title 12, Subtitle 2 of the Real Property Article; and (4) will not be duplicated in the compensation awarded to the owner.

Damages awarded must be determined in accordance with generally accepted accounting principles applied on a consistent basis.

“Business” means any lawful activity, except a farm operation, conducted primarily (1) for the purchase, sale, lease, and rental of personal property and of real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property; (2) for the sale of services to the public; or (3) by a nonprofit organization.

“Farm operation” means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber for sale or home use, and customarily producing these products or commodities in sufficient quantity to be capable of contributing materially to the operator’s support.

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’s courts have given great deference to a legislative determination as to whether property should be taken for a particular public purpose.

Damages Awarded

Title 12 of the Real Property Article specifies that the damages to be awarded for the taking of land is the land’s fair market value.

For the taking of a part of land, damages awarded is the fair market value of the part taken, but not less than the actual value of the part taken plus any severance or resulting damages to the remaining land by reason of the taking and of future use by the plaintiff of the part taken. The severance or resulting damages must be diminished to the extent of the value of the special (particular) benefits to the remainder arising from the plaintiff’s future use of the part taken.

In addition, statute specifies that moving, relocation expenses, and other compensation may be paid to the displaced person by the displacing agency as a result of a condemnation.

Fair Market Value

Pursuant to Title 12, the fair market value of property in a condemnation proceeding is the price as of the valuation date for the highest and best use of the property which a vendor, willing but not obligated to sell, would accept for the property, and which a purchaser, willing but not obligated to buy, would pay, excluding any increment in value proximately caused by the public project for which the property condemned is needed. In addition, fair market value includes any amount by which the price reflects a diminution in value occurring between the effective date of legislative authority for the acquisition of the property and the date of actual taking if the trier of facts finds that the diminution in value was proximately caused by the public project for which the property condemned is needed, or by announcements or acts of the plaintiff or its officials concerning the public project, and was beyond the reasonable control of the property owner.

Relocation Assistance

Under Title 12, Subtitle 2, when land is acquired by condemnation, the displacing agency, after receiving an application, must pay a displaced person for:

- actual reasonable moving expenses for moving the person, the person's family, business, farm operation, or other personal property;
- actual direct loss of tangible personal property as a result of moving or discontinuing a business or farm operation, up to the agency's determination of the reasonable expenses that would have been required to relocate the personal property;
- actual reasonable expenses in searching for a replacement business or farm; and
- actual reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or small business at its new site as determined by the displacing agency, up to \$60,000.

In lieu of those allowable expenses, a person who is displaced from a place of business or farm operation and meets criteria established by the agency may elect to accept a fixed payment from the agency. Such payments range from \$1,000 to \$60,000, or the amount provided under the federal Uniform Relocation Assistance Act, whichever is greater.

Negotiation for Relocation Plan

In any condemnation proceeding for the acquisition of private property for public use in which land or any part of it is being used for a business or farm operation, a representative of the displacing agency must contact the owner of the business or farm operation at least 30 days before the filing of the action and negotiate in good faith regarding a plan to relocate the business or farm operation.

State and Local Expenditures: Expanding the damages awarded a business or farm operation to include the loss of profit may significantly increase State and local expenditures in condemnation actions that would otherwise not be incurred, in the absence of the bill. The magnitude of any potential increase in expenditures cannot be reliably estimated without a precise method of how the lost profits are determined, and actual experience under the bill.

Small Business Effect: Small businesses and farm operations that own property on which property rights are condemned for public use are meaningfully impacted by the receipt of higher compensation than under current law, due to compensation for loss of profit.

Additional Information

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

Designated Cross File: None.

Information Source(s): Baltimore, Carroll, Howard, and Queen Anne's counties; Judiciary (Administrative Office of the Courts); Office of the Attorney General (Consumer Protection Division) Maryland Association of Counties; Maryland Department of Transportation; Department of Legislative Services

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