

Department of Legislative Services
Maryland General Assembly
2026 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1550 (Delegate Grammer)
Economic Matters

Eminent Domain and Condemnation Authority - Repeal (Property Rights
Protection Act)

This proposed constitutional amendment, if approved by the voters at the next general election, repeals the authority of the State and local governments to take, or condemn, private property for public use as authorized under the Maryland Constitution and numerous provisions of the Maryland Code. **The bill takes effect June 1, 2026.**

Fiscal Summary

State Effect: Potential significant increase in State expenditures due to the repeal of condemnation authority, resulting in additional costs associated with the delay/canceling of State capital projects, as discussed below. Revenues are not affected.

Local Effect: Potential significant increase in local expenditures due to the repeal of condemnation authority, resulting in additional costs associated with the delay/canceling of local government capital projects, as discussed below. Revenues are not affected. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Meaningful.

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’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.

Condemnation Proceeding

Fair Market Value

Pursuant to the Real Property Article, 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.

Maryland Code – State and Local Condemnation Authority

Numerous provisions in the Maryland Code grant State and local governments condemnation authority to take private property for a public use if the party whose property is taken receives “just compensation,” which may not be less than the fair market value of the real property. For illustrative purposes, examples of State condemnation authority, include:

State Highway Administration – Condemnation Proceedings

The State Highway Administration, within the Maryland Department of Transportation, has the general power to acquire for the State, by condemnation under Title 12 of the Real Property Article, or by other specified means, any private property for any public purpose it considers necessary or desirable to perform its duties or for any other purpose authorized under Title 8 of the Transportation Article.

Maryland Agricultural Land Preservation Foundation

The Maryland Agricultural Land Preservation Foundation (MALPF) was created by the Maryland General Assembly to preserve productive agricultural land and woodland, limit the extent of urban development, and protect agricultural land and woodland as open space. MALPF, with the assistance and cooperation of landowners and local governments, purchases development rights easements as a means of protecting agricultural land and woodland production activities.

Statute specifies that State law provisions governing MALPF do not prohibit an agency of the State or of a county or other governmental authority from acquiring by condemnation land, which is under an agricultural preservation easement held by MALPF or a county agricultural land preservation program if such acquisition is for a public purpose.

MALPF regulations establish that an owner of land subject to a MALPF easement may not grant or permit another easement, right-of-way, or other servitude in that land without MALPF’s written permission. MALPF may grant permission, subject to conditions it

deems necessary to protect and maintain the agricultural integrity of the farm, under specified circumstances, including:

- if the overlay easement enhances a public road or bridge for the public health, safety, or welfare, where a minimal amount of land is required for the project and the grantee of the proposed overlay easement has condemning authority; and
- if the overlay easement is used to install a utility easement for electricity, telephone, cable, oil, gas, or similar utility and the grantee of the proposed overlay easement has condemning authority.

State and Local Expenditures: Costs of State and/or local capital projects increase, to the extent projects require access or other property rights (*e.g.*, an easement for utility infrastructure and transportation improvements) on privately owned property due to:

- a need to pay a higher cost to obtain those property rights, through negotiation, than is otherwise paid, in the absence of the bill, through condemnation; or
- a need to modify and relocate the project.

Any such increased costs either increase overall State and/or local capital expenditures or result in delay or canceling of other capital projects. The extent of any impact on State or local capital expenditures or other capital projects cannot be reliably estimated.

Small Business Effect: Small businesses meaningfully benefit from protection of private property due to the repeal of State and local government condemnation authority.

Additional Information

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

Designated Cross File: None.

Information Source(s): Maryland Municipal League; Judiciary (Administrative Office of the Courts); Maryland Department of Planning; Maryland Department of Transportation; Maryland State Board of Elections; Department of Legislative Services

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jg/hlb

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