

Department of Legislative Services
Maryland General Assembly
2026 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 234

(Senator Salling)

Finance

Business Regulation - Abandoned Cemeteries - Acquisition and Disposition

This bill authorizes a governmental unit to bring a condemnation proceeding to acquire property on which an abandoned cemetery is located, with the intent to transfer the property to (1) the descendants of the deceased persons interred in the cemetery; (2) a descendant community organization; or (3) a nonprofit organization. Any such condemnation proceeding must be carried out in accordance with the relevant Maryland Rule. The bill requires these specified individuals or organizations (or the governmental unit if a transfer after acquisition cannot occur) that acquire an abandoned cemetery through such a transfer to maintain and preserve the abandoned cemetery on the property.

Fiscal Summary

State Effect: State expenditures may increase, at the discretion of a State entity, to the extent a condemnation proceeding is initiated under the bill, as discussed below. Revenues are not affected.

Local Effect: Local government expenditures may increase, at the discretion of a local governmental entity, to the extent a condemnation proceeding is initiated under the bill, as discussed below. Revenues are not affected.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: “Abandoned cemetery” means a cemetery for which (1) the organization established to engage in the operation of the cemetery has been terminated, has been subject to administrative dissolution by the State, or has otherwise ceased to exist, and title has not

been conveyed; (2) there is no property owner listed in the records of the State Department of Assessments and Taxation; (3) the property has been condemned; or (4) no person who is legally responsible for the property can be found and legal ownership of the property cannot be determined.

“Cultural affiliation” means a relationship of shared group identity that can be reasonably traced historically between a present-day group, tribe, band, or clan and an identifiable earlier group.

“Descendant community organization” means an organization whose members have ancestors who are interred in a particular cemetery or who have a cultural affiliation or a racial or ethnic affinity with the deceased person interred in a particular cemetery.

After acquisition of an abandoned cemetery by condemnation, a governmental unit must make timely and reasonable efforts to contact descendants of the deceased persons interred in the abandoned cemetery in order to identify descendants, a descendant community organization, or a nonprofit organization to which the property may be transferred. However, if a governmental unit is unable to transfer the property within a reasonable period, the unit must maintain and preserve the abandoned cemetery and may facilitate the reinterment of any human remains or pet remains from the cemetery on the property to an operational cemetery.

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 (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.

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.

Condemnation Proceeding – Procedures for Acquisition of a Cemetery

Notice by Publication Before Filing a Complaint

Maryland Rule 12-204 requires that, before filing a complaint for condemnation of property used as a cemetery (see below), the plaintiff must give notice by publication in a newspaper of general circulation in each county where any part of the property is located. The notice must contain the following information:

- the name of the plaintiff;
- an identification of the cemetery and a description of the part that is sought to be condemned;
- the purpose for which the property is sought to be condemned; and
- the name of the court in which the complaint is to be filed.

The notice must be published at least once a week for three successive weeks, and the last publication must be made at least seven days before the filing of a complaint. The plaintiff must file a certificate of publication as an exhibit to the original complaint.

If it appears to the court before entry of judgment that the plaintiff has failed to comply with the provisions of this rule, the court must suspend further proceedings in the action until publication is made and may order any other means of notice it deems appropriate in the circumstances.

Filing of a Complaint

Under Title 12, Chapter 200, of the Maryland Rules, which governs court actions for acquisition of property by condemnation under the power of eminent domain, a complaint filed in an action for condemnation must contain, among other things:

- the names of all persons whose interest in the property is sought to be condemned;
- a description of the property;
- a statement of the nature of the interest the plaintiff seeks to acquire by the proposed condemnation;
- a statement that there is a public necessity for the proposed condemnation; and
- a statement that the parties are unable to agree or that a defendant is unable to agree because the defendant is unknown or under legal disability.

Four-year Time Period

Title 12 of the Real Property Article requires that – notwithstanding any other provision of law – the State or any of its instrumentalities or political subdivisions must file an action to acquire private property for public use by condemnation within four years of the date of the specific administrative or legislative authorization to acquire the property. If an action for condemnation is not filed within four years, a new authorization to acquire the property must be obtained by the State or any of its instrumentalities or political subdivisions.

Condemnation Proceeding – Fees and Costs

The U.S. Supreme Court in *United States v. Bodcaw Co.*, held that compensating a landowner for all the costs incurred as a result of a condemnation action is “a matter of legislative grace rather than constitutional command” 440 U.S. 202, 204 (1979).

Maryland Rule 12-209 specifies the following damages, fees, and costs awarded in a condemnation proceeding:

- if the court enters a judgment for plaintiff, the judgment must include the amount of damages and costs to each defendant or class of defendants;
- if the court enters a judgment against the plaintiff, the judgment must include costs to each defendant or class of defendants specified in § 12-106 of the Real Property Article, if there is a jury trial; and
- if the final decision on appeal is against the plaintiff, the trial court must award a reasonable attorney’s fee to the defendant and assess the fee against the plaintiff together with the other costs of the action.

Office of Cemetery Oversight

The primary objective of the Office of Cemetery Oversight (OCO), within the Maryland Department of Labor, is to register and monitor individuals and businesses engaged in the operation of cemeteries and burial goods businesses in Maryland. This includes individuals and companies that sell funerary monuments and memorials on a retail basis. OCO also regulates and provides registration for crematories and reduction facilities under its jurisdiction in the State.

Responsibilities of OCO include the investigation and mediation of consumer complaints involving registrants and permit holders. To protect Maryland citizens from unfair and unscrupulous practices, OCO determines and enforces the ethical standards related to the operation of cemeteries and those related to the provision of burial goods and services within the State. OCO also regulates and monitors the funds held in perpetual care and preneed trusts by its licensees.

Abandoned and Neglected Cemeteries Fund

Chapters 409 and 410 of 2025 established the Abandoned and Neglected Cemeteries Fund to provide for the care, preservation, maintenance, and restoration of abandoned and neglected cemeteries in the State. The Governor may include in the annual budget bill an appropriation of \$250,000 to the fund. The fiscal 2027 budget as introduced does not include an appropriation to the fund.

Money in the fund may be used only for the costs of (1) care, preservation, maintenance, and restoration of abandoned and neglected cemeteries; (2) administering the fund; and (3) promoting donations to the fund, provided that no more than 5% of the net proceeds of the fund are used for this purpose. Money expended from the fund for the preservation, care, and maintenance of abandoned and neglected cemeteries is supplementary to and not intended to take the place of funding that otherwise would be appropriated for OCO.

State and Local Expenditures: State and local government expenditures increase to the extent a condemnation proceeding is brought to acquire property on which an abandoned cemetery is located, and the property is transferred to specified individuals or organizations under the bill. As indicated above, the damages, fees, and costs that may be incurred by the State or local governments in a condemnation proceeding depend upon whether the court (and on appeal) enters a judgment for or against the plaintiff. Any such costs are at the discretion of a State or local governmental entity that chooses to initiate a condemnation proceeding.

Additionally, State and local government expenditures increase for costs associated with the (1) transfer of title of the condemned property to the specified individuals or

organizations under the bill; (2) maintenance and preservation of the abandoned cemetery if a transfer of title of the condemned property cannot occur; these costs may be potentially offset in any year that an appropriation is included for the Abandoned and Neglected Cemeteries Fund (see above), that is established for the care, preservation, maintenance, and restoration of abandoned and neglected cemeteries; and (3) facilitation of the reinterment of any human remains or pet remains from the abandoned cemetery to an operational cemetery, to the extent the State or local government chooses to do so.

Small Business Effect: Small businesses that own abandoned cemeteries may meaningfully benefit from the damages awarded in a condemnation proceeding, and any contract for maintenance and preservation services of an abandoned cemetery, if a governmental unit is unable to transfer title of the property to the specified individuals or organizations under the bill.

Additional Information

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

Designated Cross File: None.

Information Source(s): Anne Arundel, Baltimore, Charles, Dorchester, and Garrett counties; Maryland Municipal League; Judiciary (Administrative Office of the Courts); Maryland Department of Labor; Maryland Department of Planning; Maryland State Archives; Department of Legislative Services

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Analysis by: Joanne E. Tetlow

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