

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1362 (Delegate Mangione, *et al.*)
Environment and Transportation and
Economic Matters

Eminent Domain - Just Compensation - Fees and Costs

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 any legal, expert, or other fees or costs of the condemnation proceeding incurred by the defendant.

Fiscal Summary

State Effect: Potential significant increase in State expenditures due to a property owner’s incentive to (1) negotiate a higher amount of compensation with the condemning authority, and (2) challenge the condemnation in a court proceeding, resulting in additional costs relating to the delay or canceling of State capital projects. Revenues are not affected.

Local Effect: Potential significant increase in local expenditures for capital improvement projects. Revenues are not affected.

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 – In General

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.

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). States vary on what circumstances and amount a defendant may be reimbursed for legal, expert, and other fees and costs in a condemnation proceeding. State law specifies the following circumstances in which a defendant may receive compensation for legal and other associated costs or fees:

- *Jury Trial* – An action for condemnation must be tried by a jury unless all parties file a written election submitting the case to the court for determination. The plaintiff in a condemnation proceeding must pay all the costs in the trial court, including costs related to the jury, and an allowance to the defendant, as fixed by the court, for the reasonable legal, appraisal, and engineering fees actually incurred by the defendant because of the condemnation proceeding, if the judgment is for the defendant on the right to condemn.
- *Appeals* – Any party to a condemnation case may appeal a final judgment or determination as prescribed by Maryland Rule 12-209. If the final decision on appeal is that the plaintiff is not entitled to condemn the property, a reasonable counsel fee fixed by the trial court must be awarded to counsel for the defendant and charged against the plaintiff together with the other costs of the case.
- *Abandonment* – If a plaintiff abandons an action for condemnation, the defendant is entitled to recover from the plaintiff the reasonable legal, appraisal, and engineering fees actually incurred by the defendant because of the condemnation proceeding. The clerk must enter the amount agreed upon by the parties, or as determined by the court if the parties cannot agree, as part of the costs.

State and Local Expenditures: Expanding the damages awarded a defendant to include legal, expert, and other associated fees or costs may significantly increase State and local expenditures in initiating a condemnation action that would otherwise not be incurred, in the absence of the bill. Specifically, the bill likely creates incentives for a defendant (1) to

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negotiate a higher amount of compensation with the condemning authority prior to a condemnation proceeding (which may account for a significant majority of cases) and (2) to challenge the condemning authority in a condemnation proceeding, because the defendant is no longer required to prevail in order to receive payment for legal and other associated costs, including reasonable attorney's fees on appeal.

Further, the bill may incentivize attorneys to litigate condemnation actions, thereby, increasing the number of court proceedings. In addition to additional compensation awarded (including legal and associated fees or costs) in a condemnation proceeding, the costs to State or local governments increase to the extent projects are delayed or canceled, because of challenges by defendants in a condemnation proceeding. The potential significant increase in State or local expenditures cannot be reliably estimated without actual experience under the bill.

Small Business Effect: Small businesses that own property on which property rights are condemned (or granted, through negotiation) for public use are meaningfully impacted by the receipt of higher compensation (legal and other associated fees or costs, in a condemnation proceeding) than under current law. Also, law firms that are small businesses may be meaningfully impacted by payment of attorney's fees in a condemnation proceeding regardless of the outcome and a rise in litigation of condemnation actions.

Additional Information

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

Designated Cross File: SB 657 (Senator Ready, *et al.*) - Judicial Proceedings.

Information Source(s): Charles, Dorchester, and Garrett counties; Judiciary (Administrative Office of the Courts); Maryland Department of the Environment; Maryland Department of Planning; Maryland Department of Transportation; Department of Legislative Services

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