

**Department of Legislative Services**  
Maryland General Assembly  
2015 Session

**FISCAL AND POLICY NOTE**

House Bill 711 (Charles County Delegation)  
Environment and Transportation

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**Charles County - Eminent Domain - "Quick Take" Authority**

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This proposed constitutional amendment authorizes the Charles County Commissioners to immediately take private property located in Charles County following payment for the property to the owner, or into court, the amount that a licensed real estate appraiser appointed by the county commissioners estimates to be the fair market value. The Charles County Commissioners must first find that there is immediate need for the property for right of way for county roads, streets, water, sewer, stormwater management, or drainage. The county must also pay any additional amount subsequently awarded by a jury. The authority authorized by the constitutional amendment does not apply to properties in Charles County that include a building or buildings.

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**Fiscal Summary**

**State Effect:** None. It is assumed that the potential for increased costs to include any constitutional amendments proposed by the General Assembly on the ballot at the next general election will have been anticipated in the State Board of Elections' budget.

**Local Effect:** Decrease in Charles County expenditures to the extent that the constitutional amendment accelerates the process of acquiring property, as discussed below. It is assumed that the potential for increased costs to notify voters of any constitutional amendments proposed by the General Assembly, and to include any proposed constitutional amendments on the ballot at the next general election, will have been anticipated in local boards of elections' budgets.

**Small Business Effect:** Minimal.

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## Analysis

**Current Law:** The power to take, or condemn, private property for public use is one of the inherent powers of state government. 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. First, the property taken must be for a “public use.” Second, the party whose property is taken must receive “just compensation.” 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 and payment of just compensation in specified jurisdictions. The geographic scope of the authority was repeatedly broadened throughout the 1960s. However, recent attempts to extend quick-take powers to additional jurisdictions have been rejected by voters, including in Prince George’s County (Chapter 205 of 2000, rejected by voters in November 2000), Harford County (Chapter 83 of 1996, rejected by voters in November 1996), and Anne Arundel County (Chapter 674 of 1988, rejected by voters in November 1988).

### *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.

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.”

The Supreme Court ruled in *Kelo v. City of New London*, 125 S. Ct. 2655 (2005), that New London, Connecticut’s use of its condemnation authority to require several homeowners

in an economically depressed area to vacate their properties to make way for mixed use development did not violate the U.S. Constitution. The *Kelo* decision left to state law the determination as to whether eminent domain may be used for economic development purposes. Legislative efforts to respond to the *Kelo* decision began in the 2006 session and continued for several years. Although 13 bills related to eminent domain were introduced in the 2007 session, only one measure was successful, Chapter 305, which increased compensation for homeowners, tenants, and business or farm owners who are displaced as a result of a condemnation action.

### *Just Compensation*

The damages to be awarded for the taking of land are determined by the land's "fair market value." By statute, fair market value of the condemned property (property taken through eminent domain) is the price as of the valuation date for the highest and best use of the property that a willing seller would accept from a willing buyer, excluding any change in value proximately caused by the public project for which the property is needed. In some cases, a business can have market value that exceeds the real property and tangible personal property utilized in the business; however, this concept, referred to as "goodwill," is not generally compensable. In addition, when land is acquired by condemnation, the condemning agency must pay a displaced person for specified moving expenses and other expenses associated with moving or discontinuing a business.

### *Right to Condemn Determined by the Court*

At common law there was no right to a jury trial in a condemnation proceeding, which was considered a special proceeding "lacking the characteristics of [an] ordinary trial." Therefore, while Article III, § 40 of the Maryland Constitution requires the issue of compensation to be tried by a jury, "the issue of the right to condemn is for the court's determination." *Bouton v. Potomac Edison Co.*, 28 Md. 305, 309 (1980).

Depending on the authority granted to a private company under federal law, State law may be preempted, and a federal court may have jurisdiction over a relevant eminent domain case. For example, condemnation actions by a gas company under the federal Natural Gas Act are heard in federal courts.

**Background:** Historically, Maryland has used its condemnation authority primarily for the construction of roads and highways. However, this has not always been the case. More recent examples include the construction by the Maryland Stadium Authority of Oriole Park at Camden Yards, M&T Bank Stadium, and the Hippodrome Theater in Baltimore City. The Maryland Economic Development Corporation, even though charged with the task of encouraging increased business activity and commerce and promoting

economic development in the State and authorized by law to condemn property, reports that it has not exercised the eminent domain power.

The Maryland Municipal League and the Maryland Association of Counties have historically advised that local governments have seldom exercised the power of eminent domain. When used, the purposes have been primarily for small, targeted public projects – for example, to construct an airport, a fire station, or a parking lot. On a larger scale, Baltimore City has exercised its condemnation powers for the redevelopment of the Inner Harbor and the Charles Center. Montgomery County used its condemnation authority as part of the downtown Silver Spring redevelopment.

Charles County advises that it has two projects in its Capital Improvement Plan that would be affected by the amendment's provisions. The constitutional amendment would accelerate the purchase portions of approximately 138 properties along the approximately three-mile stretch of road affected by the projects.

**State Fiscal Effect:** State costs of printing ballots may increase to the extent inclusion of the proposed constitutional amendment on the ballot at the next general election would result in a need for a larger ballot card size or an additional ballot card for a given ballot (the content of ballots varies across the State, depending on the offices, candidates, and questions being voted on). However, it is assumed that the potential for such increased costs will have been anticipated in the State Board of Elections' budget. Pursuant to Chapter 564 of 2001, the State Board of Elections shares the costs of printing paper ballots with the local boards of elections.

**Local Fiscal Effect:** Charles County advises that the proposed constitutional amendment may reduce county expenditures to the extent that the acceleration of a project's timeline can reduce or eliminate additional costs due to inflation. Charles County advises that the process of settling a property owner's claim can take as long as five years. *For illustrative purposes only*, if a project is projected to cost \$8 million, assuming an annual inflation rate of 2.0%, a delay of five years could increase the project cost by approximately \$835,000.

Local boards of elections' printing and mailing costs may increase to include information on the proposed constitutional amendment with specimen ballots mailed to voters prior to the next general election and to include the proposed amendment on ballots. It is assumed, however, that the potential for such increased costs will have been anticipated in local boards of elections' budgets.

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## Additional Information

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Charles County, Maryland Department of the Environment, Judiciary (Administrative Office of the Courts), Maryland Association of Counties, Maryland Department of Transportation, Department of Legislative Services

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Analysis by: Nathan W. McCurdy

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