



House of Representatives

File No. 757

General Assembly

January Session, 2001

(Reprint of File No. 7)

Substitute House Bill No. 5916
As Amended by House Amendment
Schedules "A" and "B"

Approved by the Legislative Commissioner
May 10, 2001

**AN ACT CONCERNING CONSIDERATION OF ENVIRONMENTAL
REMEDATION COSTS.**

Be it enacted by the Senate and House of Representatives in General
Assembly convened:

1 Section 1. Section 13a-76 of the general statutes is repealed and the
2 following is substituted in lieu thereof:

3 Any person claiming to be aggrieved by the assessment of such
4 special damages or such special benefits by the commissioner may, at
5 any time within six months after the same has been so filed, apply to
6 the superior court for the judicial district within which such land is
7 situated or, if said court is not in session, to any judge thereof for a
8 reassessment of such damages or such benefits so far as the same affect
9 such applicant, and said court or such judge, after causing notice of the
10 pendency of such application to be given to said commissioner, shall
11 appoint a judge trial referee to make such reassessment of such
12 damages or such benefits. Such trial referee, having given at least ten
13 days' notice to the parties interested of the time and place of hearing,
14 shall hear the applicant and said commissioner, shall view the land
15 and take such testimony as such trial referee deems material and shall

16 thereupon reassess such damages and benefits so far as they affect
17 such applicant. The reassessment of such trial referee shall take into
18 account any evidence relevant to the fair market value of the property,
19 including evidence of required environmental remediation by the
20 Department of Transportation. Such trial referee shall make a separate
21 finding for remediation costs, and the property owner shall be entitled
22 to a set-off of such costs in any pending or subsequent legal action to
23 recover remediation costs for the property. If the amount of the
24 reassessment of such damages awarded to any such property owner
25 exceeds the amount of the assessment of such damages by the
26 commissioner for such land, such trial referee shall award to such
27 property owner such appraisal fees as such trial referee determines to
28 be reasonable. If no appeal to the Appellate Court is filed within the
29 time allowed by law, or if one is filed and the proceedings have
30 terminated in a final judgment finding the amount due the landowner,
31 the clerk shall send a certified copy of the assessment of the
32 commissioner and of the judgment to the Comptroller, who shall,
33 upon receipt thereof, draw [his] an order upon the Treasurer in favor
34 of the landowner for the amount due [him] the landowner as damages.
35 The pendency of any such application for reassessment shall not
36 prevent or delay the layout, extension, alteration, widening, change of
37 grade or other improvement of any such highway. As used in this
38 section, a trial referee means a referee appointed pursuant to
39 subdivision (1) or (2) of subsection (a) of section 52-434 and designated
40 a trial referee pursuant to subsection (b) of said section.

41 Sec. 2. (NEW) In all condemnation proceedings, environmental
42 remediation costs shall be considered in assessing fair market value.

43 Sec. 3. This act shall take effect from its passage.

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: Potential Significant Cost Savings (Bond Funds)

Affected Agencies: Department of Transportation and Other State Agencies

Municipal Impact: Potential Significant Cost Savings

Explanation

State and Municipal Impact:

This legislation requires a state trial referee to take into consideration required environmental remediation costs in determining the fair market value of property in all condemnation proceedings. These situations mostly occur when the appeal involves industrial or commercial property such as a gas station, a dry cleaning business, etc. and the property has been acquired by eminent domain.

It is difficult to state exact cost savings to the department, since the cost savings would largely depend on: 1) the type and size of the business, 2) the location of the business, 3) the extent of contamination and 4) the cost of the remediation. For instance, remediation costs involving a dry cleaning business could cost between \$100,000 to \$200,000; whereas remediation costs involving a land development project could run into the millions. It is most likely that any cost savings would primarily impact capital bond funds and associated

debt service costs.

Please note that PA 00-89, which amended Section 8-132 of the general statutes, offers similar protection to redevelopment agencies. (Redevelopment agencies are created by municipalities with responsibilities over large projects such as housing authorities.)

House "A" expands the intent of the bill to all condemnation proceedings. As such the potential significant cost savings, which is at present indeterminate, would extend to any affected state agencies and to municipalities.

House "B" makes technical changes and would have no fiscal impact.

OLR AMENDED BILL ANALYSIS

sHB 5916 (as amended by House "A" and "B")*

AN ACT CONCERNING CONSIDERATION OF ENVIRONMENTAL REMEDIATION COSTS IN DETERMINING FAIR MARKET VALUE OF PROPERTY ACQUIRED BY THE COMMISSIONER OF TRANSPORTATION.**SUMMARY:**

This bill requires environment remediation costs to be considered in assessing fair-market value in all Department of Transportation (DOT) condemnation proceedings.

The bill also requires a state trial referee making a final assessment of damages pursuant to a property owner's appeal of a DOT damages award for property it acquired through condemnation to consider any required environmental remediation by the DOT along with other relevant evidence of the property's fair-market value. It requires the referee to make a separate finding for remediation costs and entitles the property owner to a set-off of these costs in any pending or subsequent legal action to recover environmental remediation costs.

The later requirements are similar to those PA 00-89, which applies to eminent domain property acquisitions by redevelopment agencies.

*House Amendment "A" adds the requirement to consider environmental remediation costs in determining fair-market value in all condemnation proceedings.

*House Amendment "B" makes it clear that remediation costs the referee must consider are those required for mediation by the DOT and that the cost set-off applies only to the property owner's pending or subsequent legal actions to recover these costs.

EFFECTIVE DATE: Upon passage

BACKGROUND

DOT Property Acquisition Through Condemnation

DOT has a separate statutory authority to acquire property through eminent domain. If it requires someone's property for transportation purposes and cannot reach a voluntary purchase agreement with the owner, it can take the property through this special condemnation process. DOT must file a certificate of taking with the court that identifies the property and assesses the damages due the property owner as a result. Once the certificate is filed, title to the property passes to the state. The former property owner cannot challenge the taking, but, if aggrieved by the damages assessed, he has six months to appeal to the Superior Court for a reassessment. Once an appeal is properly filed, the court must appoint a trial referee to perform the reassessment.

Legislative History

The House referred the bill to the Judiciary Committee on March 8, and the committee favorably reported it unchanged on March 26.

COMMITTEE ACTION

Transportation Committee

Joint Favorable Substitute

Yea 28 Nay 0

Judiciary Committee

Joint Favorable Report

Yea 28 Nay 7