

HOUSE BILL 842

N1
HB 79/06 – ENV

CONSTITUTIONAL AMENDMENT

71r1303

By: **Delegates Boteler, Aumann, Bates, Beitzel, Frank, George, Impallaria, Kach, Krebs, McConkey, McDonough, McKee, Miller, Riley, Schuler, Shewell, Sossi, Stifler, Stocksdale, Stull, and Weir**

Introduced and read first time: February 9, 2007

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Real Property – Eminent Domain – Limitations on Condemnation Authority**

3 FOR the purpose of proposing amendments to the Maryland Constitution to limit the
4 condemnation of private property to public uses under certain circumstances;
5 requiring certain enactments relating to the taking of private property to
6 include a requirement for the issuance of a certain statement; repealing the
7 authority of a county or municipal corporation to condemn property for urban
8 renewal projects; defining a certain term; generally relating to the authority for
9 private property to be taken by eminent domain; and submitting this
10 amendment to the qualified voters of the State of Maryland for their adoption or
11 rejection.

12 BY proposing an amendment to the Maryland Constitution
13 Article III – Legislative Department
14 Section 40, 40A, 40B, 40C, and 61

15 BY proposing an amendment to the Maryland Constitution
16 Article XI–B – City of Baltimore – Land Development and Redevelopment
17 Section 1

18 BY proposing an amendment to the Maryland Constitution
19 Article XI–C – Off–Street Parking
20 Section 1

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY proposing an amendment to the Maryland Constitution
2 Article XI-D – Port Development
3 Section 1

4 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
5 MARYLAND, (Three-fifths of all the members elected to each of the two Houses
6 concurring), That it be proposed that the Maryland Constitution read as follows:

7 **Article III – Legislative Department**

8 40.

9 (A) (1) **IN THIS SECTION, “PUBLIC USE” MEANS:**

10 (I) **PUBLIC OWNERSHIP OR CONTROL; OR**

11 (II) **PHYSICAL USE OR ACCESS BY THE GENERAL PUBLIC.**

12 (2) **“PUBLIC USE” INCLUDES THE:**

13 (I) **POSSESSION, USE, AND ENJOYMENT OF PROPERTY BY**
14 **THE PUBLIC, THE STATE, AN INSTRUMENTALITY OF THE STATE, OR A POLITICAL**
15 **SUBDIVISION;**

16 (II) **USE OF PROPERTY FOR THE CREATION OR OPERATION**
17 **OF A PUBLIC UTILITY OR COMMON CARRIER;**

18 (III) **USE OF PROPERTY FOR A PUBLIC EMERGENCY OR**
19 **DISASTER RELIEF; OR**

20 (IV) **DESTRUCTION OF PROPERTY TO PREVENT A PUBLIC**
21 **CATASTROPHE.**

22 (B) (1) The General Assembly shall enact no Law authorizing private
23 [property,] **PROPERTY TO BE TAKEN FOR PRIVATE USE.**

24 (2) **THE GENERAL ASSEMBLY SHALL ENACT NO LAW**
25 **AUTHORIZING PRIVATE PROPERTY** to be taken for public use, without:

1 **(I) REQUIRING THE CONDEMNING AUTHORITY TO ISSUE A**
2 **STATEMENT OF THE PUBLIC NECESSITY FOR THE TAKING; AND**

3 **(II) [just] JUST** compensation, as agreed upon between the
4 parties, or awarded by a Jury, being first paid or tendered to the party entitled to
5 [such] **THE** compensation.

6 40A.

7 **(A) (1) IN THIS SECTION, “PUBLIC USE” MEANS:**

8 **(I) PUBLIC OWNERSHIP OR CONTROL; OR**

9 **(II) PHYSICAL USE OR ACCESS BY THE GENERAL PUBLIC.**

10 **(2) “PUBLIC USE” INCLUDES THE:**

11 **(I) POSSESSION, USE, AND ENJOYMENT OF PROPERTY BY**
12 **THE PUBLIC, THE STATE, AN INSTRUMENTALITY OF THE STATE, OR A POLITICAL**
13 **SUBDIVISION;**

14 **(II) USE OF PROPERTY FOR THE CREATION OR OPERATION**
15 **OF A PUBLIC UTILITY OR A COMMON CARRIER;**

16 **(III) USE OF PROPERTY FOR A PUBLIC EMERGENCY OR**
17 **DISASTER RELIEF; OR**

18 **(IV) DESTRUCTION OF PROPERTY TO PREVENT A PUBLIC**
19 **CATASTROPHE.**

20 **(B) (1) The General Assembly shall enact no law authorizing private**
21 **property TO BE TAKEN FOR PRIVATE USE.**

22 **(2) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH,**
23 **THE GENERAL ASSEMBLY SHALL ENACT NO LAW AUTHORIZING PRIVATE**
24 **PROPERTY** to be taken for public use without:

25 **1. REQUIRING THE CONDEMNING AUTHORITY TO**
26 **ISSUE A STATEMENT OF THE PUBLIC NECESSITY FOR THE TAKING; AND**

1 **2.** [just] **JUST** compensation, to be agreed upon between
2 the parties, or awarded by a jury, being first paid or tendered to the party entitled to
3 [such compensation,] **THE COMPENSATION.**

4 **(II) 1.** [but where such] **WHERE THE PRIVATE** property is
5 situated in:

6 **A.** Baltimore City and is desired by this State or by the
7 Mayor and City Council of Baltimore, the General Assembly may provide that such
8 property may be taken immediately upon payment therefor to the owner or owners
9 thereof by the State or by the Mayor and City Council of Baltimore, or into court, such
10 amount as the State or the Mayor and City Council of Baltimore, as the case may be,
11 shall estimate to be the fair value of said property, provided such legislation also
12 requires the payment of any further sum that may subsequently be added by a jury;
13 and further provided that the authority and procedure for the immediate taking of
14 property as it applies to the Mayor and City Council of Baltimore on June 1, 1961,
15 shall remain in force and effect to and including June 1, 1963[, and where such
16 property is situated in];

17 **B.** Baltimore County and is desired by Baltimore
18 County, Maryland, the County Council of Baltimore County, Maryland, may provide
19 for the appointment of an appraiser or appraisers by a Court of Record to value such
20 property and that upon payment of the amount of such evaluation, to the party
21 entitled to compensation, or into Court, and securing the payment of any further sum
22 that may be awarded by a jury, such property may be taken; and

23 **C.** [where such property is situated in] Montgomery
24 County and in the judgment of and upon a finding by the County Council of said
25 County that there is immediate need therefor for right of way for County roads or
26 streets, the County Council may provide that such property may be taken immediately
27 upon payment therefor to the owner or owners thereof, or into court, such amount as a
28 licensed real estate broker or a licensed and certified real estate appraiser appointed
29 by the County Council shall estimate to be the fair market value of such property,
30 provided that the Council shall secure the payment of any further sum that may
31 subsequently be awarded by a jury.

32 **2.** In the various municipal corporations within Cecil
33 County, where in the judgment of and upon a finding by the governing body of said
34 municipal corporation that there is immediate need therefor for right of way for
35 municipal roads, streets and extension of municipal water and sewage facilities, the
36 governing body may provide that such property may be taken immediately upon
37 payment therefor to the owner or owners thereof, or into court, such amount as a

1 licensed real estate broker appointed by the particular governing body shall estimate
2 to be a fair market value of such property, provided that the municipal corporation
3 shall secure the payment of any further sum that subsequently may be awarded by a
4 jury.

5 **(3)** This Section 40A shall not apply in Montgomery County or any of
6 the various municipal corporations within Cecil County, if the property actually to be
7 taken includes a building or buildings.

8 40B.

9 **(A) (1) IN THIS SECTION, "PUBLIC USE" MEANS:**

10 **(I) PUBLIC OWNERSHIP OR CONTROL; OR**

11 **(II) PHYSICAL USE OR ACCESS BY THE GENERAL PUBLIC.**

12 **(2) "PUBLIC USE" INCLUDES THE:**

13 **(I) POSSESSION, USE, AND ENJOYMENT OF PROPERTY BY**
14 **THE PUBLIC, THE STATE, AN INSTRUMENTALITY OF THE STATE, OR A POLITICAL**
15 **SUBDIVISION;**

16 **(II) USE OF PROPERTY FOR THE CREATION OR OPERATION**
17 **OF A PUBLIC UTILITY OR COMMON CARRIER;**

18 **(III) USE OF PROPERTY FOR A PUBLIC EMERGENCY OR**
19 **DISASTER RELIEF; OR**

20 **(IV) DESTRUCTION OF PROPERTY TO PREVENT A PUBLIC**
21 **CATASTROPHE.**

22 **(B) (1)** The General Assembly shall enact no law authorizing private
23 property **TO BE TAKEN FOR PRIVATE USE.**

24 **(2) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH,**
25 **THE GENERAL ASSEMBLY SHALL ENACT NO LAW AUTHORIZING PRIVATE**
26 **PROPERTY** to be taken for public use without:

1 **1. REQUIRING THE CONDEMNING AUTHORITY TO**
2 **ISSUE A STATEMENT OF THE PUBLIC NECESSITY FOR THE TAKING; AND**

3 **2. [just] JUST compensation, to be agreed upon between**
4 **the parties or awarded by a jury, being first paid or tendered to the party entitled to**
5 **[such compensation,] THE COMPENSATION.**

6 **(II) [except that where such] WHERE THE PRIVATE** property in
7 **the judgment of the State Roads Commission is needed by the State for highway**
8 **purposes, the General Assembly may provide that such property may be taken**
9 **immediately upon payment therefor to the owner or owners thereof by said State**
10 **Roads Commission, or into Court, such amount as said State Roads Commission shall**
11 **estimate to be of the fair value of said property, provided such legislation also requires**
12 **the payment of any further sum that may subsequently be awarded by a jury.**

13 40C.

14 **(A) (1) IN THIS SECTION, "PUBLIC USE" MEANS:**

15 **(I) PUBLIC OWNERSHIP OR CONTROL; OR**

16 **(II) PHYSICAL USE OR ACCESS BY THE GENERAL PUBLIC.**

17 **(2) "PUBLIC USE" INCLUDES THE:**

18 **(I) POSSESSION, USE, AND ENJOYMENT OF PROPERTY BY**
19 **THE PUBLIC, THE STATE, AN INSTRUMENTALITY OF THE STATE, OR A POLITICAL**
20 **SUBDIVISION;**

21 **(II) USE OF PROPERTY FOR THE CREATION OR OPERATION**
22 **OF A PUBLIC UTILITY OR A COMMON CARRIER;**

23 **(III) USE OF PROPERTY FOR A PUBLIC EMERGENCY OR**
24 **DISASTER RELIEF; OR**

25 **(IV) DESTRUCTION OF PROPERTY TO PREVENT A PUBLIC**
26 **CATASTROPHE.**

27 **(B) (1) The General Assembly shall enact no law authorizing private**
28 **property TO BE TAKEN FOR PRIVATE USE.**

1 **(2) (I) SUBJECT TO SUBPARAGRAPH (II) OF THIS PARAGRAPH,**
2 **THE GENERAL ASSEMBLY SHALL ENACT NO LAW AUTHORIZING PRIVATE**
3 **PROPERTY** to be taken for public use without:

4 **1. REQUIRING THE CONDEMNING AUTHORITY TO**
5 **ISSUE A STATEMENT OF THE PUBLIC NECESSITY FOR THE TAKING; AND**

6 **2. [just] JUST compensation, to be agreed upon between**
7 **the parties or awarded by a jury, being first paid or tendered to the party entitled to**
8 **[such compensation,] THE COMPENSATION.**

9 **(II) [except that where such] WHERE THE PRIVATE** property,
10 located in Prince George's County in this State, is in the judgment of the Washington
11 Suburban Sanitary Commission needed for water supply, sewerage and drainage
12 systems to be extended or constructed by the said Commission, the General Assembly
13 may provide that such property, except any building or buildings may be taken
14 immediately upon payment therefor by the condemning authority to the owner or
15 owners thereof or into the Court to the use of the person or persons entitled thereto,
16 such amount as the condemning authority shall estimate to be the fair value of said
17 property, provided such legislation requires that the condemning authority's estimate
18 be not less than the appraised value of the property being taken as evaluated by at
19 least one qualified appraiser, whose qualifications have been accepted by a Court of
20 Record of this State, and also requires the payment of any further sum that may
21 subsequently be awarded by a jury, and provided such legislation limits the
22 condemning authority's utilization of the acquisition procedures specified in this
23 section to occasions where it has acquired or is acquiring by purchase or other
24 procedures one-half or more of the several takings of land or interests in land
25 necessary for any given water supply, sewerage or drainage extension or construction
26 project.

27 61.

28 **(a) (1) The General Assembly may authorize and empower any county or**
29 **any municipal corporation, by public local law:**

30 **[(1)] (I) To carry out urban renewal projects which shall be limited**
31 **to slum clearance in slum or blighted areas and redevelopment or the rehabilitation of**
32 **slum or blighted areas, and to include the acquisition, within the boundary lines of**
33 **such county or municipal corporation, of land and property of every kind and any**
34 **right, interest, franchise, easement or privilege therein, by purchase, lease, gift[,**

1 condemnation] or any other legal means. The term “slum area” shall mean any area
2 where dwellings predominate which, by reason of depreciation, overcrowding, faulty
3 arrangement or design, lack of ventilation, light or sanitary facilities, or any
4 combination of these factors, are detrimental to the public safety, health or morals.
5 The term “blighted area” shall mean an area in which a majority of buildings have
6 declined in productivity by reason of obsolescence, depreciation or other causes to an
7 extent they no longer justify fundamental repairs and adequate maintenance[.]; **AND**

8 **[(2)] (II)** To sell, lease, convey, transfer or otherwise dispose of any of
9 said land or property, regardless of whether or not it has been developed, redeveloped,
10 altered or improved and irrespective of the manner or means in or by which it may
11 have been acquired, to any private, public or quasi public corporation, partnership,
12 association, person or other legal entity.

13 [No land or property taken by any county or any municipal corporation for any
14 of the aforementioned purposes or in connection with the exercise of any of the powers
15 which may be granted to such county or municipal corporation pursuant to this section
16 by exercising the power of eminent domain shall be taken without just compensation,
17 as agreed upon between the parties, or awarded by a jury, being first paid or tendered
18 to the party entitled to such compensation.]

19 **(2)** [All land or property needed, or taken by the exercise of the power
20 of eminent domain, by any county or any municipal corporation for any of the
21 aforementioned purposes or in connection with the exercise of any of the powers which
22 may be granted pursuant to this section is hereby declared to be needed or taken for
23 public uses and purposes.] Any or all of the activities authorized pursuant to this
24 section shall constitute governmental functions undertaken for public uses and
25 purposes and the power of taxation may be exercised, public funds expended and
26 public credit extended in furtherance thereof.

27 **(3) PROPERTY MAY NOT BE ACQUIRED BY CONDEMNATION TO**
28 **CARRY OUT AN URBAN RENEWAL PROJECT.**

29 (b) The General Assembly may grant to any county or any municipal
30 corporation, by public local law, any and all additional power and authority necessary
31 or proper to carry into full force and effect any and all of the specific powers authorized
32 by this section and to fully accomplish any and all of the purposes and objects
33 contemplated by the provisions of this section, provided such additional power or
34 authority is not inconsistent with the terms and provisions of this section or with any
35 other provision or provisions of the Constitution of Maryland.

1 (c) The General Assembly of Maryland, by public local law, may establish or
2 authorize the establishment of a public body or agency to undertake in a county or
3 municipal corporation (other than Baltimore City) the activities authorized by this
4 section, and may provide that any or all of the powers, except the power of taxation,
5 herein authorized to be granted to such county or municipal corporation shall be
6 vested in such public body or agency or in any existing public body or agency.

7 (d) The General Assembly may place such other and further restrictions or
8 limitations on the exercise of any of the powers provided for in this section, as it may
9 deem proper and expedient.

10 (e) The provisions of this section are independent of, and shall in no way
11 affect, the powers granted under Article XIB of the Constitution of Maryland, title
12 "City of Baltimore – Land Development and Redevelopment." Also, the power provided
13 in this section for the General Assembly to enact public local laws authorizing any
14 municipal corporation or any county to carry out urban renewal projects prevails over
15 the restrictions contained in Article 11A "Local Legislation" and in Article 11E
16 "Municipal Corporations" of this Constitution.

17 **Article XI-B – City of Baltimore – Land Development and Redevelopment**

18 1.

19 (A) The General Assembly of Maryland, by public local law, may authorize
20 and empower the Mayor and City Council of Baltimore:

21 [(a)] (1) [To] **EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS**
22 **SECTION, TO** acquire, within the boundary lines of Baltimore City, land and property
23 of every kind, and any right, interest, franchise, easement or privilege therein, by
24 purchase, lease, gift, condemnation or any other legal means, for development or
25 redevelopment, including, but not limited to, the comprehensive renovation or
26 rehabilitation thereof; and

27 [(b)] (2) To sell, lease, convey, transfer or otherwise dispose of any of said
28 land or property, regardless of whether or not it has been developed, redeveloped,
29 altered or improved and irrespective of the manner or means in or by which it may
30 have been acquired, to any private, public or quasi public corporation, partnership,
31 association, person or other legal entity.

32 (B) No land or property taken by the Mayor and City Council of Baltimore for
33 any of the aforementioned purposes or in connection with the exercise of any of the
34 powers which may be granted to the Mayor and City Council of Baltimore pursuant to

1 this Article by exercising the power of eminent domain, shall be taken without **THE**
2 **ISSUANCE OF A STATEMENT OF THE PUBLIC NECESSITY FOR THE TAKING AND**
3 just compensation, as agreed upon between the parties, or awarded by a jury, being
4 first paid or tendered to the party entitled to such compensation.

5 (C) (1) (I) **IN THIS SUBSECTION, “PUBLIC USE” MEANS:**

6 1. **PUBLIC OWNERSHIP OR CONTROL; OR**

7 2. **PHYSICAL USE OR ACCESS BY THE GENERAL**
8 **PUBLIC.**

9 (II) **“PUBLIC USE” INCLUDES THE:**

10 1. **POSSESSION, USE, AND ENJOYMENT OF**
11 **PROPERTY BY THE PUBLIC, THE STATE, AN INSTRUMENTALITY OF THE STATE,**
12 **OR A POLITICAL SUBDIVISION;**

13 2. **USE OF PROPERTY FOR THE CREATION OR**
14 **OPERATION OF A PUBLIC UTILITY OR A COMMON CARRIER;**

15 3. **USE OF PROPERTY FOR A PUBLIC EMERGENCY OR**
16 **DISASTER RELIEF; OR**

17 4. **DESTRUCTION OF PROPERTY TO PREVENT A**
18 **PUBLIC CATASTROPHE.**

19 (2) All land or property needed, or taken by the exercise of the power
20 of eminent domain, by the Mayor and City Council of Baltimore for any of the
21 aforementioned purposes or in connection with the exercise of any of the powers which
22 may be granted to the Mayor and City Council of Baltimore pursuant to this Article [is
23 hereby declared to be needed or] **MAY ONLY BE** taken for a public use.

24 **Article XI-C - Off-Street Parking**

25 1.

26 (A) The General Assembly of Maryland, by public local law, may authorize
27 the Mayor and City Council of Baltimore:

1 **(B)** No land or property taken by the Mayor and City Council of Baltimore for
 2 any of the aforementioned purposes or in connection with the exercise of any of the
 3 powers which may be granted to the Mayor and City Council of Baltimore pursuant to
 4 this Article by exercising the power of eminent domain, shall be taken without **THE**
 5 **ISSUANCE OF A STATEMENT OF THE PUBLIC NECESSITY FOR THE TAKING AND**
 6 just compensation, as agreed upon between the parties, or awarded by a jury, being
 7 first paid or tendered to the party entitled to such compensation.

8 **(C) (1) (I) IN THIS SUBSECTION, “PUBLIC USE” MEANS:**

9 **1. PUBLIC OWNERSHIP OR CONTROL; OR**

10 **2. PHYSICAL USE OR ACCESS BY THE GENERAL**
 11 **PUBLIC.**

12 **(II) “PUBLIC USE” INCLUDES THE:**

13 **1. POSSESSION, USE, AND ENJOYMENT OF**
 14 **PROPERTY BY THE PUBLIC, THE STATE, AN INSTRUMENTALITY OF THE STATE,**
 15 **OR A POLITICAL SUBDIVISION;**

16 **2. USE OF PROPERTY FOR THE CREATION OR**
 17 **OPERATION OF A PUBLIC UTILITY OR A COMMON CARRIER;**

18 **3. USE OF PROPERTY FOR A PUBLIC EMERGENCY OR**
 19 **DISASTER RELIEF; OR**

20 **4. DESTRUCTION OF PROPERTY TO PREVENT A**
 21 **PUBLIC CATASTROPHE.**

22 **(2)** All land or property needed, or taken by the exercise of the power
 23 of eminent domain, by the Mayor and City Council of Baltimore for any of the
 24 aforementioned purposes or in connection with the exercise of any of the powers which
 25 may be granted to the Mayor and City Council of Baltimore pursuant to this Article [is
 26 hereby declared to be needed or] **MAY ONLY BE** taken for a public use.

27 **SECTION 2. AND BE IT FURTHER ENACTED,** That the General Assembly
 28 determines that the amendment to the Maryland Constitution proposed by this Act
 29 affects multiple jurisdictions and that the provisions of Article XIV, § 1 of the

1 Maryland Constitution concerning local approval of constitutional amendments do not
2 apply.

3 SECTION 3. AND BE IT FURTHER ENACTED, That the foregoing section
4 proposed as an amendment to the Maryland Constitution shall be submitted to the
5 legal and qualified voters of this State at the next general election to be held in
6 November, 2008 for their adoption or rejection pursuant to Article XIV of the
7 Maryland Constitution. At that general election, the vote on this proposed amendment
8 to the Constitution shall be by ballot, and upon each ballot there shall be printed the
9 words "For the Constitutional Amendment" and "Against the Constitutional
10 Amendment," as now provided by law. Immediately after the election, all returns shall
11 be made to the Governor of the vote for and against the proposed amendment, as
12 directed by Article XIV of the Maryland Constitution, and further proceedings had in
13 accordance with Article XIV.