

# HOUSE BILL 1363

R2, N1

CONSTITUTIONAL AMENDMENT

8lr1493

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By: **Delegate Parrott**

Introduced and read first time: February 9, 2018

Assigned to: Environment and Transportation

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## A BILL ENTITLED

1 AN ACT concerning

2 **State Roads Commission – Eminent Domain – “Quick Take” Process on Behalf of**  
3 **the Department of Transportation**

4 FOR the purpose of proposing an amendment to the Maryland Constitution to authorize  
5 the General Assembly to enact a law authorizing the taking of certain property under  
6 certain circumstances by the State Roads Commission for the Department of  
7 Transportation; authorizing property to be condemned for certain projects;  
8 prohibiting property from being condemned for certain paths or trails; making  
9 certain conforming changes; submitting this amendment to the qualified voters of  
10 the State for their adoption or rejection; making certain provisions of this Act subject  
11 to a certain contingency; and generally relating to eminent domain and the State  
12 Roads Commission and the Department of Transportation.

13 BY renumbering

14 Article – Transportation

15 Section 8–318 through 8–331, respectively, and the part “Part III. “Quick–Take”  
16 Condemnation by Commission – Board of Property Review Procedure”; and  
17 8–334 through 8–339, respectively, and the part “Part IV. “Quick–Take”  
18 Condemnation by Commission – Accelerated Procedure”

19 to be Section 2–802 through 2–815, respectively, and the part “Part I. “Quick–Take”  
20 Condemnation by the State Roads Commission – Board of Property Review  
21 Procedure”; and 2–818 through 2–823, respectively, and the part “Part II.  
22 “Quick–Take” Condemnation by the State Roads Commission – Accelerated  
23 Procedure”

24 Annotated Code of Maryland

25 (2015 Replacement Volume and 2017 Supplement)

26 BY proposing an amendment to the Maryland Constitution

27 Article III – Legislative Department

28 Section 40B

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



- 1 BY repealing and reenacting, with amendments,  
2 Article – Real Property  
3 Section 12–101(c)  
4 Annotated Code of Maryland  
5 (2015 Replacement Volume and 2017 Supplement)
- 6 BY repealing and reenacting, with amendments,  
7 Article – State Government  
8 Section 9–1011(c)  
9 Annotated Code of Maryland  
10 (2014 Replacement Volume and 2017 Supplement)
- 11 BY repealing and reenacting, without amendments,  
12 Article – Transportation  
13 Section 1–101(a), (f), and (i)  
14 Annotated Code of Maryland  
15 (2015 Replacement Volume and 2017 Supplement)
- 16 BY adding to  
17 Article – Transportation  
18 Section 2–112; and 2–801 to be under the new subtitle “Subtitle 8. Acquisition of  
19 Property by “Quick–Take” Condemnation”  
20 Annotated Code of Maryland  
21 (2015 Replacement Volume and 2017 Supplement)
- 22 BY repealing and reenacting, with amendments,  
23 Article – Transportation  
24 Section 8–302  
25 Annotated Code of Maryland  
26 (2015 Replacement Volume and 2017 Supplement)
- 27 BY repealing and reenacting, with amendments,  
28 Article – Transportation  
29 Section 2–802 through 2–806, 2–808, 2–809, 2–811 through 2–815, 2–818, 2–820,  
30 2–822, and 2–823  
31 Annotated Code of Maryland  
32 (2015 Replacement Volume and 2017 Supplement)  
33 (As enacted by Section 1 of this Act)
- 34 BY repealing and reenacting, without amendments,  
35 Article – Transportation  
36 Section 2–807, 2–810, 2–819, and 2–821  
37 Annotated Code of Maryland  
38 (2015 Replacement Volume and 2017 Supplement)  
39 (As enacted by Section 1 of this Act)

40 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,

1 That Section(s) 8–318 through 8–331, respectively, and the part “Part III. “Quick–Take”  
2 Condemnation by Commission – Board of Property Review Procedure”; and 8–334 through  
3 8–339, respectively, and the part “Part IV. “Quick–Take” Condemnation by Commission –  
4 Accelerated Procedure” of Article – Transportation of the Annotated Code of Maryland be  
5 renumbered to be Section(s) 2–802 through 2–815, respectively, and the part “Part I.  
6 “Quick–Take” Condemnation by the State Roads Commission – Board of Property Review  
7 Procedure”; and 2–818 through 2–823, respectively, and the part “Part II. “Quick–Take”  
8 Condemnation by the State Roads Commission – Accelerated Procedure”.

9 SECTION 2. AND BE IT FURTHER ENACTED, (Three–fifths of all the members  
10 elected to each of the two Houses concurring), That it be proposed that the Maryland  
11 Constitution read as follows:

### 12 Article III – Legislative Department

13 40B.

14 The General Assembly shall enact no law authorizing private property to be taken  
15 for public use without just compensation, to be agreed upon between the parties or awarded  
16 by a jury, being first paid or tendered to the party entitled to such compensation, except  
17 that where such property in the judgment of the State Roads Commission is needed by the  
18 State for highway purposes **OR CRITICAL INFRASTRUCTURE PROJECTS**, the General  
19 Assembly may provide that such property may be taken immediately upon payment  
20 therefor to the owner or owners thereof by said State Roads Commission, or into Court,  
21 such amount as said State Roads Commission shall estimate to be of the fair value of said  
22 property, provided such legislation also requires the payment of any further sum that may  
23 subsequently be awarded by a jury.

24 SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland read  
25 as follows:

### 26 Article – Real Property

27 12–101.

28 (c) This title does not prevent the State Roads Commission from using the  
29 procedures set forth in [Title 8, Subtitle 3] **TITLE 2, SUBTITLE 8** of the Transportation  
30 Article, or prevent Baltimore City from using the procedure set forth in the Charter of  
31 Baltimore City and §§ 21–12 through 21–22, inclusive, of the Public Local Laws of  
32 Baltimore City.

### 33 Article – State Government

34 9–1011.

35 (c) (1) The Archives shall receive, index, and file durable–backed, microfilm  
36 aperture card copies or electronic images of plats showing property or rights–of–way

1 acquired or conveyed by the State Roads Commission and the State Highway  
2 Administration.

3 (2) (i) The Archives electronically shall post an image of each plat on  
4 the Archives Web site (<http://www.plats.net>) for the county where the property or  
5 right-of-way is located.

6 (ii) The posted image shall conform to a generally accepted archival  
7 standard in quality and permanence.

8 (iii) The image shall include or be linked to a certification by the State  
9 Archivist that the image is an authentic representation of the plat received by the Archives.

10 (iv) Such certification by the State Archivist shall constitute a  
11 recordation of the plat.

12 (v) The Archives may charge a reasonable fee to the State Roads  
13 Commission, [the State Highway Administration,] **OR THE DEPARTMENT OF**  
14 **TRANSPORTATION**, and the courts to recover the cost of electronically posting and  
15 maintaining the images of plats.

16 (vi) The Archives may charge a reasonable fee, not to exceed \$3, to  
17 the public for the cost of reproducing a copy of a plat under this subsection.

## 18 Article – Transportation

19 1–101.

20 (a) In this article the following words have the meanings indicated.

21 (f) “Department” means the State Department of Transportation and includes  
22 the Office of the Secretary and the modal administrations.

23 (i) “Modal administration” means any of the following:

24 (1) The State Aviation Administration;

25 (2) The Maryland Port Administration;

26 (3) The Maryland Transit Administration;

27 (4) The State Highway Administration; or

28 (5) The Motor Vehicle Administration.

29 **2–112.**

1           ON BEHALF OF AND AT THE REQUEST OF THE DEPARTMENT, THE STATE  
2 ROADS COMMISSION MAY EXERCISE THE AUTHORITY VESTED IN IT BY ARTICLE III,  
3 § 40B OF THE MARYLAND CONSTITUTION AND ACQUIRE FOR THE STATE, BY  
4 CONDEMNATION UNDER SUBTITLE 8 OF THIS TITLE, ANY PRIVATE PROPERTY FOR  
5 ANY HIGHWAY PURPOSE OR CRITICAL INFRASTRUCTURE PROJECT.

6           **SUBTITLE 8. ACQUISITION OF PROPERTY BY “QUICK-TAKE” CONDEMNATION.**

7           **2-801.**

8           (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
9 INDICATED.

10           (B) “COURT” HAS THE MEANING STATED IN § 8-301 OF THIS ARTICLE.

11           (C) “HIGHWAY” HAS THE MEANING STATED IN § 8-101 OF THIS ARTICLE.

12           (D) “LAND” HAS THE MEANING STATED IN § 8-301 OF THIS ARTICLE.

13           (E) “PLAT” HAS THE MEANING STATED IN § 8-301 OF THIS ARTICLE.

14           (F) “STATE HIGHWAY” HAS THE MEANING STATED IN § 8-101 OF THIS  
15 ARTICLE.

16           **2-802.**

17           (a) (1) If property is to be condemned under this subtitle [for a highway  
18 purpose], the [administration] DEPARTMENT shall request the Commission to condemn  
19 the necessary property under this part.

20           (2) However, if the Commission considers the procedures of this part  
21 inappropriate, the property may be condemned by the Commission under [Part IV] PART  
22 II of this subtitle or by the [Administration] DEPARTMENT under Title 12 of the Real  
23 Property Article.

24           (b) Except as provided in this part, condemnation proceedings under this part  
25 shall follow the procedures set forth in Title 12 of the Real Property Article and the  
26 Maryland Rules.

27           **2-803.**

28           (A) Property may be acquired under this part for [a]:

29           (1) A State highway [only] if the highway has:



1 (ii) The length and termini of the construction; and

2 (iii) The width of the necessary right-of-way on either side of the  
3 centerline; and

4 (3) According to information obtained by the [Administration]  
5 **DEPARTMENT**, the property lines of the property owners whose property will be affected  
6 by the acquisition.

7 (c) After the plats are prepared, the [Administration] **DEPARTMENT** shall:

8 (1) Make the engineering and real estate studies, evaluations, and  
9 investigations necessary to determine, in its opinion:

10 (i) The fair value of the property to be acquired; and

11 (ii) The fair compensation for any resulting damages to the  
12 remaining property of the owner;

13 (2) Prepare an estimate of this fair value and fair compensation; and

14 (3) Provide for payment of these estimated amounts as required by §  
15 [8-323] **2-807** of this subtitle.

16 2-805.

17 (a) The plats and estimates prepared by the [Administration] **DEPARTMENT**  
18 require approval by a resolution of the Commission.

19 (b) If the plats and estimates are approved by the Commission:

20 (1) The Chairman of the Commission shall sign the cover sheet of each set  
21 of plats; and

22 (2) A set of plats and its signed cover sheet shall be filed for record with:

23 (i) The secretary of the Commission; and

24 (ii) The State Archives.

25 (c) (1) The secretary of the Commission shall record the plats filed with him.

26 (2) Plats filed with the State Archives shall be electronically recorded as  
27 provided in § 9-1011 of the State Government Article.

28 2-806.

1 (a) The plats and estimates approved by the Commission shall be kept as part of  
2 the permanent records of the Commission.

3 (b) Notwithstanding any other [statute to the contrary] **PROVISION OF LAW:**

4 (1) Except as permitted by the Commission, the plats prepared by the  
5 [Administration] **DEPARTMENT** are not public information or open to public inspection  
6 until they have been recorded; and

7 (2) Except when filed with a board of property review or a court, the  
8 estimates prepared by the [Administration] **DEPARTMENT** are not public information or  
9 open to public inspection until all the property shown on the plats has been acquired or its  
10 price determined.

11 2–807.

12 (a) After the plats are filed for record, the Commission immediately shall:

13 (1) File, in the court for the county in which the property to be acquired is  
14 located, a petition for condemnation that includes:

15 (i) The name and address of the property owner;

16 (ii) The location of the property to be acquired; and

17 (iii) The estimated fair value of the property to be acquired and  
18 estimated fair compensation for any damage resulting to the remaining property of the  
19 owner; and

20 (2) Pay to the owner of the property or into the court for the owner's benefit,  
21 the estimated fair value and fair compensation specified in the petition.

22 (b) On written request to the clerk of the court, the property owner is entitled to  
23 receive any amount paid into the court for the property owner's benefit, within 10 business  
24 days of the request, without prejudice to any of the property owner's rights, if the property  
25 owner agrees to repay to the Commission any excess of that amount over the final award  
26 that is allowed in the subsequent condemnation proceedings.

27 (c) A payment made under this section does not limit in any way the amount of  
28 the final award that may be allowed in the subsequent condemnation proceedings.

29 2–808.

30 (a) Except as provided in subsection (b) of this section, after the petition is filed  
31 and payment is made under § [8–323] **2–807** of this subtitle:

1           (1)    The Commission may take possession of the property to be acquired, as  
2 shown on the recorded plats;

3           (2)    The [Administration] **DEPARTMENT** may proceed with construction  
4 without interference by the owner; and

5           (3)    With the permission of the [Administration] **DEPARTMENT** and under  
6 its supervision, any public or private utility may install its facilities on any land being  
7 acquired by the Commission in fee simple.

8           (b)    Unless the owner agrees otherwise, if a dwelling or place of business is taken,  
9 the resident or occupant need not vacate the dwelling or place of business until the title to  
10 the property has been acquired by deed or condemnation.

11 2–809.

12           (a)    After the petition is filed and payment is made under § [8–323] **2–807** of this  
13 subtitle, the Commission shall seek to acquire the property by amicable negotiation.

14           (b)    For purposes of these negotiations, the Commission shall determine the value  
15 of the property to be acquired as of the date the payment is made to the property owner or  
16 into court under § [8–323] **2–807** of this subtitle.

17 2–810.

18           (a)    Except as provided in subsection (b) of this section, if the Commission is  
19 unable to acquire the property by negotiation, it shall certify the case to the board of  
20 property review for the county in which the property is located, as provided in the Maryland  
21 Rules.

22           (b)    A case shall be filed as a condemnation case in the court for the county in  
23 which the property is located and may not be heard by a board of property review if:

24           (1)    The Commission determines that valid, marketable title is  
25 unobtainable without a court proceeding; or

26           (2)    A nonresident has an interest in the property and will not accept service  
27 of process and agree to the board's jurisdiction.

28 2–811.

29           (a)    (1)    There is a board of property review in each county.

30           (2)    If necessary, additional boards may be appointed in any county.

31           (b)    (1)    Each board of property review of a county has three members who are  
32 appointed by the judges of the circuit court for the county.

1 (2) Of the members of each board:

2 (i) One shall be a lawyer;

3 (ii) One shall be a farmer engaged in some agricultural pursuit; and

4 (iii) One shall be an engineer or a person with an engineering  
5 background and knowledge.

6 (3) A member of the General Assembly may not be a member of a board  
7 during his term of office.

8 (c) (1) Each board member serves for a term of 2 years and until his successor  
9 is appointed and qualifies.

10 (2) A member appointed to fill a vacancy in an unexpired term serves only  
11 for the remainder of that term.

12 (d) (1) A board member is entitled to the per diem compensation set by the  
13 Court of Appeals.

14 (2) The compensation shall be uniform statewide and shall be paid monthly  
15 by the Commission, on vouchers approved by the clerk of the court.

16 (e) Each board shall appoint its chairman and may adopt rules not inconsistent  
17 with this [title] **SUBTITLE, TITLE 8 OF THIS ARTICLE**, or the Maryland Rules.

18 (f) (1) Each county shall provide a suitable place for its board to meet and,  
19 whenever possible, the clerk of the court shall provide suitable clerical assistance.

20 (2) If the clerk fails to provide clerical assistance, the [Administration]  
21 **DEPARTMENT** shall provide it on request of the board.

22 (g) Each board is under the jurisdiction of the court and each member of the board  
23 is an officer of the court.

24 2-812.

25 (a) Each board of property review:

26 (1) Shall hear promptly all cases certified to it by the Commission;

27 (2) Shall determine the total amount of the award to be paid by the  
28 Commission; and

1           (3)    May determine the portion of an award to be paid to persons, other than  
2 the fee owner, who have an interest in the property.

3           (b)    **(1)**    Unless all parties in a case certified to a board agree otherwise, the full  
4 board shall hear and decide the case.

5           **(2)**    If a member of the board is absent or disqualified from hearing or  
6 deciding any case, the judges of the court that appointed the board shall designate another  
7 individual with qualifications similar to those of the absent or disqualified member to serve  
8 instead.

9           (c)    The board shall determine the fair value of the property to be acquired as of  
10 the date payment is made under § [8-323] **2-807** of this subtitle.

11 2-813.

12           **(A)**    If any party is dissatisfied with the findings or award of a board of property  
13 review, the case may be appealed to the court.

14           **(B)**    On appeal, the court shall hear and determine the case de novo, as provided  
15 by law and the Maryland Rules.

16 2-814.

17           If, within 1 year after payment is made under § [8-323] **2-807** of this subtitle, the  
18 Commission fails to ascertain the entire amount to be paid for the property and acquire  
19 title to it by deed or condemnation or, within that same 1-year period, fails to file timely a  
20 petition for condemnation as required by the Maryland Rules, then the fair value of the  
21 property shall be the greater of the values determined as of:

22           (1)    The date the title to the property is acquired; and

23           (2)    The date the payment was made under § [8-323] **2-807** of this subtitle.

24 2-815.

25           At the conclusion of all proceedings, the Commission shall pay to the property owner:

26           (1)    Any excess of the final award over the amount paid under § [8-323]  
27 **2-807** of this subtitle; and

28           (2)    Interest on the excess from the date of payment under § [8-323] **2-807**  
29 of this subtitle at the rate of 6 percent a year.

30 2-818.

1 (a) If the Commission determines that condemnation under [Part III] **PART I** of  
2 this subtitle is inappropriate, the Commission may acquire property by condemnation  
3 under this part, after making every reasonable and good faith effort to negotiate.

4 (b) Except as provided in this part, condemnation proceedings under this part  
5 shall follow the procedures set forth in Title 12 of the Real Property Article and the  
6 Maryland Rules.

7 2-819.

8 To condemn property under this part, the Commission shall:

9 (1) File a petition for condemnation in the court for the county in which the  
10 property to be acquired is located; and

11 (2) Pay to the owner of the property or into the court for the owner's benefit,  
12 the amount that the Commission estimates to be the fair value of the property to be  
13 acquired and fair compensation for any damage resulting to the remaining property of the  
14 owner.

15 2-820.

16 After the petition is filed and payment is made under § [8-335] **2-819** of this  
17 subtitle:

18 (1) The Commission may take possession of the property to be acquired;  
19 and

20 (2) The [Administration] **DEPARTMENT** may proceed with construction  
21 without interference by the owner.

22 2-821.

23 On written request to the clerk of the court, the property owner is entitled to receive  
24 any amount paid into the court for the property owner's benefit within 10 business days of  
25 the request, without prejudice to any of the property owner's rights, if the property owner  
26 agrees to repay to the Commission any excess of that amount over the final award that is  
27 allowed in the subsequent condemnation proceedings.

28 2-822.

29 A payment made under § [8-335] **2-819** of this subtitle does not limit in any way  
30 the amount of the final award that may be allowed in the subsequent condemnation  
31 proceedings.

32 2-823.

1 At the conclusion of all proceedings, the Commission shall pay to the property owner  
2 any excess of the final award over the amount paid under § [8-335] **2-819** of this subtitle.

3 8-302.

4 [(a)] The Administration may acquire for this State, by condemnation under Title  
5 12 of the Real Property Article or by lease, agreement, gift, grant, purchase, or otherwise,  
6 any private property for any public purpose that it considers necessary or desirable to  
7 perform the duties imposed by this title or for any other purpose authorized under this title.

8 [(b)] On behalf of and at the request of the Administration, the State Roads  
9 Commission may exercise the authority vested in it by Article III, § 40B of the Maryland  
10 Constitution and acquire for this State, by condemnation under Part III or Part IV of this  
11 subtitle, any private property for any highway purpose.]

12 SECTION 4. AND BE IT FURTHER ENACTED, That the General Assembly  
13 determines that the amendment to the Maryland Constitution proposed by Section 2 of this  
14 Act affects multiple jurisdictions and that the provisions of Article XIV, § 1 of the Maryland  
15 Constitution concerning local approval of constitutional amendments do not apply.

16 SECTION 5. AND BE IT FURTHER ENACTED, That the amendment to the  
17 Maryland Constitution proposed by Section 2 of this Act shall be submitted to the qualified  
18 voters of the State at the next general election to be held in November 2018 for adoption or  
19 rejection pursuant to Article XIV of the Maryland Constitution. At that general election,  
20 the vote on the proposed amendment to the Constitution shall be by ballot, and on each  
21 ballot there shall be printed the words “For the Constitutional Amendment” and “Against  
22 the Constitutional Amendment”, as now provided by law. Immediately after the election,  
23 all returns shall be made to the Governor of the vote for and against the proposed  
24 amendment, as directed by Article XIV of the Maryland Constitution, and further  
25 proceedings had in accordance with Article XIV.

26 SECTION 6. AND BE IT FURTHER ENACTED, That Sections 1 and 3 of this Act  
27 shall take effect on the taking effect of Section 2 of this Act. If Section 2 of this Act does not  
28 take effect, Sections 1 and 3 of this Act shall be abrogated and of no further force and effect.

29 SECTION 7. AND BE IT FURTHER ENACTED, That, except as provided in  
30 Sections 5 and 6 of this Act, this Act shall take effect June 1, 2018.