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By: **Chairman, Judicial Proceedings Committee (By Request -  
Departmental - Transportation)**

Introduced and read first time: January 19, 2005

Rules suspended

Assigned to: Judicial Proceedings

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A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Transit Administration - Eminent Domain - Environmental and**  
3 **Engineering Studies**

4 FOR the purpose of allowing the Maryland Transit Administration, its agents,  
5 employees, and consultants to enter upon private property to conduct certain  
6 environmental and engineering studies for certain purposes; authorizing the  
7 Administration to apply for a court order directing that entry onto private  
8 property be permitted under certain circumstances; requiring the  
9 Administration to take certain remedial actions regarding the condition of the  
10 property; requiring the Administration to reimburse the landowner or lessee for  
11 certain damages and providing that the Administration is liable for certain  
12 other damages; clarifying language; making conforming changes; and generally  
13 relating to the rights and liabilities of the Maryland Transit Administration in  
14 evaluating property when exercising the power of eminent domain.

15 BY repealing and reenacting, with amendments,  
16 Article - Real Property  
17 Section 12-111  
18 Annotated Code of Maryland  
19 (2003 Replacement Volume and 2004 Supplement)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
21 MARYLAND, That the Laws of Maryland read as follows:

22 **Article - Real Property**

23 12-111.

24 (a) Civil engineers, land surveyors, real estate appraisers, and their assistants  
25 acting on behalf of the State or of any of its instrumentalities or any body politic or  
26 corporate having the power of eminent domain after every real and bona fide effort to  
27 notify the owner or occupant in writing with respect to the proposed entry may:

1           (1)     Enter on any private land to make surveys, run lines or levels, or  
2 obtain information relating to the acquisition or future public use of the property or  
3 for any governmental report, undertaking, or improvement;

4           (2)     Set stakes, markers, monuments, or other suitable landmarks or  
5 reference points where necessary; and

6           (3)     Enter on any private land and perform any function necessary to  
7 appraise the property.

8       (b)     If any civil engineer, surveyor, real estate appraisers, or any of their  
9 assistants is refused permission to enter or remain on any private land for the  
10 purposes set out in subsection (a), the person, the State, its instrumentality, or the  
11 body politic or corporate on whose behalf the person is acting may apply to a law court  
12 of the county where the property, or any part of it, is located for an order directing  
13 that the person be permitted to enter on and remain on the land to the extent  
14 necessary to carry out the purposes authorized by this section.

15       (c)     If a civil engineer, surveyor, real estate appraiser, or any of their assistants  
16 enters on any private land under the authority of this section or any court order  
17 passed pursuant to it, and damages or destroys any land or personal property on it,  
18 the owner of the property has a cause of action for damages against the civil engineer,  
19 surveyor, real estate appraiser, or assistant and against the State, its instrumentality,  
20 or the body politic or corporate on whose behalf the person inflicting the damage was  
21 acting.

22       (d)     Any landowner or other person who willfully obliterates, damages, or  
23 removes any stake, marker, monument, or other landmark set by any civil engineer,  
24 surveyor, or real estate appraiser or any of their assistants acting pursuant to this  
25 section, except if the stake, marker, monument, or other landmark interferes with the  
26 proper use of the property, is guilty of a misdemeanor and on conviction shall be fined  
27 not more than \$500.

28       (e)     Any person who has knowledge of an order issued pursuant to subsection  
29 (b) and who obstructs any civil engineer, surveyor, real estate appraiser, or any of  
30 their assistants acting under the authority of the order may be punished as for  
31 contempt of court.

32       (f)     In Anne Arundel County, Montgomery County, or Baltimore City, an agent  
33 or employee, or one or more assistants of the jurisdiction, after real and bona fide  
34 effort to notify the occupant or the owner, if the land is unoccupied or if the occupant  
35 is not the owner, may enter on any private land to make test borings and soil tests  
36 and obtain information related to such tests for the purpose of determining the  
37 possibility of public use of the property. If an agent, employee, or assistant is refused  
38 permission to enter or remain on any private land for the purposes set out in this  
39 subsection, Anne Arundel County, Montgomery County, or Baltimore City may apply  
40 to a law court of the jurisdiction where the property or any part of it is located for an  
41 order directing that its agent, employee, or assistant be permitted to enter and  
42 remain on the land to the extent necessary to carry out the purposes authorized by

1 this subsection. The court may require that the applying jurisdiction post a bond in an  
2 amount sufficient to reimburse any person for damages reasonably estimated to be  
3 caused by test borings, soil tests, and related activities. If any person enters on any  
4 private land under the authority of this section or of any court order passed pursuant  
5 to it and damages or destroys any land or personal property on it, the owner of the  
6 property has a cause of action for damages against the jurisdiction that authorized  
7 the entrance. Any person who knows of an order issued under this subsection and who  
8 obstructs any agent, employee or any assistant acting under the authority of the order  
9 may be punished for contempt of court.

10 (g) The State Highway Administration, [its] THE MARYLAND TRANSIT  
11 ADMINISTRATION, AND THE agents, employees, and consultants OF THE STATE  
12 HIGHWAY ADMINISTRATION AND THE MARYLAND TRANSIT ADMINISTRATION may  
13 enter upon private property to conduct environmental and engineering studies,  
14 including soil boring and excavation, necessary to determine the suitability of the  
15 property for [Administration] use BY THE ADMINISTRATION ENTERING THE  
16 PROPERTY. Entry onto private property for these purposes shall not be undertaken  
17 without prior consent of the property owner. If, after real and bona fide effort, the  
18 consent of the property owner cannot be secured, the Administration SEEKING ENTRY  
19 may apply to a law or equity court where the property or any part of it is located for  
20 an order directing that entry be permitted. "Bona fide effort" shall include either 30  
21 days advance notice in writing by certified mail return receipt requested to the last  
22 known address of the property owner or posting notice on the property not less than  
23 30 days in advance, and such other requirements as the court may deem appropriate.  
24 The Administration ENTERING THE PROPERTY, when removing, displacing, boring, or  
25 excavating soil under the provisions of this section, shall replace the topsoil in a  
26 manner which will approach the level of compaction and contour as when removed.  
27 [The] AN Administration ENTERING PRIVATE PROPERTY UNDER THE AUTHORITY OF  
28 THIS SUBSECTION shall reimburse the landowner or lessee who is farming the  
29 property for agricultural products destroyed or damaged by [its] THE  
30 ADMINISTRATION'S agents, employees, or consultants[. The Administration] AND  
31 shall be responsible for any other damages that may be incurred as a result of such  
32 entry on private property.

33 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take  
34 effect October 1, 2005.