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

Introduced and read first time: January 19, 2005

Rules suspended

Assigned to: Judicial Proceedings

Committee Report: Favorable

Senate action: Adopted

Read second time: February 8, 2005

CHAPTER _____

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:

1

Article - Real Property

2 12-111.

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

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

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

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

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

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

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

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

38 (f) In Anne Arundel County, Montgomery County, or Baltimore City, an agent
39 or employee, or one or more assistants of the jurisdiction, after real and bona fide
40 effort to notify the occupant or the owner, if the land is unoccupied or if the occupant

1 is not the owner, may enter on any private land to make test borings and soil tests
2 and obtain information related to such tests for the purpose of determining the
3 possibility of public use of the property. If an agent, employee, or assistant is refused
4 permission to enter or remain on any private land for the purposes set out in this
5 subsection, Anne Arundel County, Montgomery County, or Baltimore City may apply
6 to a law court of the jurisdiction where the property or any part of it is located for an
7 order directing that its agent, employee, or assistant be permitted to enter and
8 remain on the land to the extent necessary to carry out the purposes authorized by
9 this subsection. The court may require that the applying jurisdiction post a bond in an
10 amount sufficient to reimburse any person for damages reasonably estimated to be
11 caused by test borings, soil tests, and related activities. If any person enters on any
12 private land under the authority of this section or of any court order passed pursuant
13 to it and damages or destroys any land or personal property on it, the owner of the
14 property has a cause of action for damages against the jurisdiction that authorized
15 the entrance. Any person who knows of an order issued under this subsection and who
16 obstructs any agent, employee or any assistant acting under the authority of the order
17 may be punished for contempt of court.

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

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

