

UNOFFICIAL COPY OF HOUSE BILL 44
CONSTITUTIONAL AMENDMENT

N1

6lr0410

(PRE-FILED)

By: **Delegate Smigiel**
Requested: July 25, 2005
Introduced and read first time: January 11, 2006
Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Eminent Domain - Condemnation Proceedings and Limitation on**
3 **Condemnation Authority**

4 FOR the purpose of proposing an amendment to the Maryland Constitution to
5 prohibit the condemnation of private property for certain purposes if the
6 property is intended to be transferred to a private person; requiring that a
7 certain issue in a condemnation proceeding be tried by a jury under certain
8 circumstances; making stylistic changes; and submitting this amendment to the
9 qualified voters of the State of Maryland for their adoption or rejection.

10 BY proposing an amendment to the Maryland Constitution
11 Article III - Legislative Department
12 Section 40 through 40C and 61(a)

13 BY proposing an amendment to the Maryland Constitution
14 Article XI-B - City of Baltimore - Land Development and Redevelopment
15 Section 1

16 BY proposing an amendment to the Maryland Constitution
17 Article XI-C - Off-Street Parking
18 Section 1

19 BY proposing an amendment to the Maryland Constitution
20 Article XI-D - Port Development
21 Section 1

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

1

Article III - Legislative Department

2 40.

3 (A) The General Assembly shall enact no Law authorizing private property, to
4 be taken for public use, without just compensation, as agreed upon between the
5 parties, or awarded by a Jury, being first paid or tendered to the party entitled to such
6 compensation.

7 (B) PRIVATE PROPERTY MAY NOT BE TAKEN IF:

8 (1) THE PROPERTY IS TO BE USED FOR ECONOMIC DEVELOPMENT
9 PURPOSES; AND

10 (2) OWNERSHIP OR CONTROL OF THE PROPERTY IS INTENDED TO BE
11 TRANSFERRED TO A PRIVATE PERSON.

12 (C) IN A CONDEMNATION PROCEEDING, THE ISSUE OF THE CONDEMNOR'S
13 RIGHT TO CONDEMN SHALL BE TRIED BY A JURY UNLESS THE PARTIES FILE A
14 WRITTEN ELECTION SUBMITTING THE ISSUE TO THE COURT FOR DETERMINATION.

15 40A.

16 (A) The General Assembly shall enact no law authorizing private property to
17 be taken for public use without just compensation, to be agreed upon between the
18 parties, or awarded by a jury, being first paid or tendered to the party entitled to such
19 compensation, but where such property is situated in Baltimore City and is desired by
20 this State or by the Mayor and City Council of Baltimore, the General Assembly may
21 provide that such property may be taken immediately upon payment therefor to the
22 owner or owners thereof by the State or by the Mayor and City Council of Baltimore,
23 or into court, such amount as the State or the Mayor and City Council of Baltimore, as
24 the case may be, shall estimate to be the fair value of said property, provided such
25 legislation also requires the payment of any further sum that may subsequently be
26 added by a jury; and further provided that the authority and procedure for the
27 immediate taking of property as it applies to the Mayor and City Council of Baltimore
28 on June 1, 1961, shall remain in force and effect to and including June 1, 1963, and
29 where such property is situated in Baltimore County and is desired by Baltimore
30 County, Maryland, the County Council of Baltimore County, Maryland, may provide
31 for the appointment of an appraiser or appraisers by a Court of Record to value such
32 property and that upon payment of the amount of such evaluation, to the party
33 entitled to compensation, or into Court, and securing the payment of any further sum
34 that may be awarded by a jury, such property may be taken; and where such property
35 is situated in Montgomery County and in the judgment of and upon a finding by the
36 County Council of said County that there is immediate need therefor for right of way
37 for County roads or streets, the County Council may provide that such property may
38 be taken immediately upon payment therefor to the owner or owners thereof, or into
39 court, such amount as a licensed real estate broker or a licensed and certified real
40 estate appraiser appointed by the County Council shall estimate to be the fair market
41 value of such property, provided that the Council shall secure the payment of any
42 further sum that may subsequently be awarded by a jury. In the various municipal

1 corporations within Cecil County, where in the judgment of and upon a finding by the
2 governing body of said municipal corporation that there is immediate need therefor
3 for right of way for municipal roads, streets and extension of municipal water and
4 sewage facilities, the governing body may provide that such property may be taken
5 immediately upon payment therefor to the owner or owners thereof, or into court,
6 such amount as a licensed real estate broker appointed by the particular governing
7 body shall estimate to be a fair market value of such property, provided that the
8 municipal corporation shall secure the payment of any further sum that subsequently
9 may be awarded by a jury. This Section 40A shall not apply in Montgomery County or
10 any of the various municipal corporations within Cecil County, if the property
11 actually to be taken includes a building or buildings.

12 (B) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION, PRIVATE
13 PROPERTY MAY NOT BE TAKEN IF:

14 (1) THE PROPERTY IS TO BE USED FOR ECONOMIC DEVELOPMENT
15 PURPOSES; AND

16 (2) OWNERSHIP OR CONTROL OF THE PROPERTY IS INTENDED TO BE
17 TRANSFERRED TO A PRIVATE PERSON.

18 40B.

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

29 (B) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION, PRIVATE
30 PROPERTY MAY NOT BE TAKEN IF:

31 (1) THE PROPERTY IS TO BE USED FOR ECONOMIC DEVELOPMENT
32 PURPOSES; AND

33 (2) OWNERSHIP OR CONTROL OF THE PROPERTY IS INTENDED TO BE
34 TRANSFERRED TO A PRIVATE PERSON.

35 40C.

36 (A) The General Assembly shall enact no law authorizing private property to
37 be taken for public use without just compensation, to be agreed upon between the
38 parties or awarded by a jury, being first paid or tendered to the party entitled to such
39 compensation, except that where such property, located in Prince George's County in
40 this State, is in the judgment of the Washington Suburban Sanitary Commission

1 needed for water supply, sewerage and drainage systems to be extended or
2 constructed by the said Commission, the General Assembly may provide that such
3 property, except any building or buildings may be taken immediately upon payment
4 therefor by the condemning authority to the owner or owners thereof or into the Court
5 to the use of the person or persons entitled thereto, such amount as the condemning
6 authority shall estimate to be the fair value of said property, provided such legislation
7 requires that the condemning authority's estimate be not less than the appraised
8 value of the property being taken as evaluated by at least one qualified appraiser,
9 whose qualifications have been accepted by a Court of Record of this State, and also
10 requires the payment of any further sum that may subsequently be awarded by a jury,
11 and provided such legislation limits the condemning authority's utilization of the
12 acquisition procedures specified in this section to occasions where it has acquired or is
13 acquiring by purchase or other procedures one-half or more of the several takings of
14 land or interests in land necessary for any given water supply, sewerage or drainage
15 extension or construction project.

16 (B) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION, PRIVATE
17 PROPERTY MAY NOT BE TAKEN IF:

18 (1) THE PROPERTY IS TO BE USED FOR ECONOMIC DEVELOPMENT
19 PURPOSES; AND

20 (2) OWNERSHIP OR CONTROL OF THE PROPERTY IS INTENDED TO BE
21 TRANSFERRED TO A PRIVATE PERSON.

22 61.

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

25 [(1)] (I) To carry out urban renewal projects which shall be limited to
26 slum clearance in slum or blighted areas and redevelopment or the rehabilitation of
27 slum or blighted areas, and to include the acquisition, within the boundary lines of
28 such county or municipal corporation, of land and property of every kind and any
29 right, interest, franchise, easement or privilege therein, by purchase, lease, gift,
30 condemnation or any other legal means. The term "slum area" shall mean any area
31 where dwellings predominate which, by reason of depreciation, overcrowding, faulty
32 arrangement or design, lack of ventilation, light or sanitary facilities, or any
33 combination of these factors, are detrimental to the public safety, health or morals.
34 The term "blighted area" shall mean an area in which a majority of buildings have
35 declined in productivity by reason of obsolescence, depreciation or other causes to an
36 extent they no longer justify fundamental repairs and adequate maintenance[.]; AND

37 [(2)] (II) [To] EXCEPT AS PROVIDED IN PARAGRAPH (4) OF THIS
38 SUBSECTION, TO sell, lease, convey, transfer or otherwise dispose of any of said land
39 or property, regardless of whether or not it has been developed, redeveloped, altered
40 or improved and irrespective of the manner or means in or by which it may have been
41 acquired, to any private, public or quasi public corporation, partnership, association,
42 person or other legal entity.

1 (2) No land or property taken by any county or any municipal
2 corporation for any of the aforementioned purposes or in connection with the exercise
3 of any of the powers which may be granted to such county or municipal corporation
4 pursuant to this section by exercising the power of eminent domain shall be taken
5 without just compensation, as agreed upon between the parties, or awarded by a jury,
6 being first paid or tendered to the party entitled to such compensation.

7 (3) All land or property needed, or taken by the exercise of the power of
8 eminent domain, by any county or any municipal corporation for any of the
9 aforementioned purposes or in connection with the exercise of any of the powers
10 which may be granted pursuant to this Section is hereby declared to be needed or
11 taken for public uses and purposes. Any or all of the activities authorized pursuant to
12 this section shall constitute governmental functions undertaken for public uses and
13 purposes and the power of taxation may be exercised, public funds expended and
14 public credit extended in furtherance thereof.

15 (4) A COUNTY OR MUNICIPAL CORPORATION MAY NOT TRANSFER TO A
16 PRIVATE PERSON ANY PRIVATE PROPERTY CONDEMNED FOR AN URBAN RENEWAL
17 PROJECT AS AUTHORIZED UNDER PARAGRAPH (1) OF THIS SUBSECTION.

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

19 1.

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

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

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

33 (B) No land or property taken by the Mayor and City Council of Baltimore for
34 any of the aforementioned purposes or in connection with the exercise of any of the
35 powers which may be granted to the Mayor and City Council of Baltimore pursuant to
36 this Article by exercising the power of eminent domain, shall be taken without just
37 compensation, as agreed upon between the parties, or awarded by a jury, being first
38 paid or tendered to the party entitled to such compensation.

39 (C) All land or property needed, or taken by the exercise of the power of
40 eminent domain, by the Mayor and City Council of Baltimore for any of the

1 aforementioned purposes or in connection with the exercise of any of the powers
2 which may be granted to the Mayor and City Council of Baltimore pursuant to this
3 Article is hereby declared to be needed or taken for a public use.

4 (D) THE MAYOR AND CITY COUNCIL OF BALTIMORE MAY NOT TRANSFER TO A
5 PRIVATE PERSON ANY PRIVATE PROPERTY THAT IS CONDEMNED FOR ANY
6 ECONOMIC DEVELOPMENT PURPOSE AUTHORIZED UNDER SUBSECTION (A) OF THIS
7 SECTION.

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

9 1.

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

12 [(a)] (1) Within the City of Baltimore to acquire land and property of every
13 kind, and any right, interest, franchise, easement or privilege therein, by purchase,
14 lease, gift, condemnation or any other legal means, for storing, parking and servicing
15 self-propelled vehicles, provided, that no petroleum products shall be sold or offered
16 for sale at any entrance to or exit from, any land so acquired or at any entrance to, or
17 exit from, any structure erected thereon, when any entrance to, or exit from, any such
18 land or structure faces on a street or highway which is more than 25 feet wide from
19 curb to curb; and

20 [(b)] (2) [To] EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, TO
21 sell, lease, convey, transfer or otherwise dispose of any of said land or property,
22 regardless of whether or not it has been developed, redeveloped, altered, or improved
23 and irrespective of the manner or means in or by which it may have been acquired, to
24 any private, public or quasi public corporation, partnership, association, person or
25 other legal entity.

26 (B) No land or property taken by the Mayor and City Council of Baltimore for
27 any of the aforementioned purposes or in connection with the exercise of any of the
28 powers which may be granted to the Mayor and City Council of Baltimore pursuant to
29 this Article by exercising the power of eminent domain, shall be taken without just
30 compensation, as agreed upon between the parties, or awarded by a jury, being first
31 paid or tendered to the party entitled to such compensation.

32 (C) All land or property needed, or taken by the exercise of the power of
33 eminent domain, by the Mayor and City Council of Baltimore for any of the
34 aforementioned purposes or in connection with the exercise of any of the powers
35 which may be granted to the Mayor and City Council of Baltimore pursuant to this
36 Article is hereby declared to be needed or taken for a public use.

37 (D) THE MAYOR AND CITY COUNCIL OF BALTIMORE MAY NOT TRANSFER TO A
38 PRIVATE PERSON ANY PRIVATE PROPERTY THAT IS CONDEMNED FOR ANY
39 ECONOMIC DEVELOPMENT PURPOSE AUTHORIZED UNDER SUBSECTION (A) OF THIS
40 SECTION.

Article XI-D - Port Development1
2 1.

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

5 [(a)] (1) To acquire land and property of every kind, and any right, interest,
6 franchise, easement or privilege therein, in adjoining or in the vicinity of the Patapsco
7 River or its tributaries, by purchase, lease, gift, condemnation or any other legal
8 means, for or in connection with extending, developing or improving the harbor or
9 port of Baltimore and its facilities and the highways and approaches thereto; and
10 providing, further, that the Mayor and City Council of Baltimore shall not acquire any
11 such land or property, or any such right, interest, franchise, easement or privilege
12 therein, for any of said purposes, in any of the counties of this State without the prior
13 consent and approval by resolution duly passed after a public hearing, by the
14 governing body of the county in which such land or property, or such right, interest,
15 franchise, easement or privilege therein, is situate; and provided, further, that Anne
16 Arundel County shall retain jurisdiction and power to tax any land so acquired by the
17 Mayor and City Council of Baltimore under the provisions of this Act[.]; AND

18 [(b)] (2) [To] EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, TO
19 sell, lease, convey, transfer or otherwise dispose of any of said land or property,
20 regardless of whether or not it is undeveloped or has been developed, redeveloped,
21 altered, or improved and irrespective of the manner or means in or by which it may
22 have been acquired, to any private, public or quasi public corporation, partnership,
23 association, person or other legal entity.

24 (B) No land or property taken by the Mayor and City Council of Baltimore for
25 any of the aforementioned purposes or in connection with the exercise of any of the
26 powers which may be granted to the Mayor and City Council of Baltimore pursuant to
27 this Article by exercising the power of eminent domain, shall be taken without just
28 compensation, as agreed upon between the parties, or awarded by a jury, being first
29 paid or tendered to the party entitled to such compensation.

30 (C) All land or property needed, or taken by the exercise of the power of
31 eminent domain, by the Mayor and City Council of Baltimore for any of the
32 aforementioned purposes or in connection with the exercise of any of the powers
33 which may be granted to the Mayor and City Council of Baltimore pursuant to this
34 Article is hereby declared to be needed or taken for a public use.

35 (D) THE MAYOR AND CITY COUNCIL OF BALTIMORE MAY NOT TRANSFER TO A
36 PRIVATE PERSON ANY PRIVATE PROPERTY THAT IS CONDEMNED FOR ANY
37 ECONOMIC DEVELOPMENT PURPOSE AUTHORIZED UNDER SUBSECTION (A) OF THIS
38 SECTION.

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

1 Maryland Constitution concerning local approval of constitutional amendments do
2 not 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, 2006 for their adoption or rejection in pursuance of directions contained in
7 Article XIV of the Maryland Constitution. At that general election, the vote on this
8 proposed amendment to the Constitution shall be by ballot, and upon each ballot
9 there shall be printed the words "For the Constitutional Amendment" and "Against
10 the Constitutional Amendment," as now provided by law. Immediately after the
11 election, all returns shall be made to the Governor of the vote for and against the
12 proposed amendment, as directed by Article XIV of the Maryland Constitution, and
13 further proceedings had in accordance with Article XIV.