

UNOFFICIAL COPY OF HOUSE BILL 79
CONSTITUTIONAL AMENDMENT

N1

6lr0316

(PRE-FILED)

By: **Delegates Boteler and Cluster**

Requested: July 20, 2005

Introduced and read first time: January 11, 2006

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

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

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

Article III - Legislative Department

1 40.

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

3 (I) PUBLIC OWNERSHIP OR CONTROL; OR

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

5 (2) "PUBLIC USE" INCLUDES THE:

6 (I) POSSESSION, USE, AND ENJOYMENT OF PROPERTY BY THE
7 PUBLIC, THE STATE, AN INSTRUMENTALITY OF THE STATE, OR A POLITICAL
8 SUBDIVISION;

9 (II) USE OF PROPERTY FOR THE CREATION OR OPERATION OF A
10 PUBLIC UTILITY OR COMMON CARRIER;

11 (III) USE OF PROPERTY FOR A PUBLIC EMERGENCY OR DISASTER
12 RELIEF; OR

13 (IV) DESTRUCTION OF PROPERTY TO PREVENT A PUBLIC
14 CATASTROPHE.

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

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

19 (I) REQUIRING THE CONDEMNING AUTHORITY TO ISSUE A
20 STATEMENT OF THE PUBLIC NECESSITY FOR THE TAKING; AND

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

24 40A.

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

26 (I) PUBLIC OWNERSHIP OR CONTROL; OR

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

28 (2) "PUBLIC USE" INCLUDES THE:

29 (I) POSSESSION, USE, AND ENJOYMENT OF PROPERTY BY THE
30 PUBLIC, THE STATE, AN INSTRUMENTALITY OF THE STATE, OR A POLITICAL
31 SUBDIVISION;

1 (II) USE OF PROPERTY FOR THE CREATION OR OPERATION OF A
2 PUBLIC UTILITY OR A COMMON CARRIER;

3 (III) USE OF PROPERTY FOR A PUBLIC EMERGENCY OR DISASTER
4 RELIEF; OR

5 (IV) DESTRUCTION OF PROPERTY TO PREVENT A PUBLIC
6 CATASTROPHE.

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

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

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

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

17 (II) 1. [but where such] WHERE THE PRIVATE property is
18 situated in:

19 A. Baltimore City and is desired by this State or by the
20 Mayor and City Council of Baltimore, the General Assembly may provide that such
21 property may be taken immediately upon payment therefor to the owner or owners
22 thereof by the State or by the Mayor and City Council of Baltimore, or into court, such
23 amount as the State or the Mayor and City Council of Baltimore, as the case may be,
24 shall estimate to be the fair value of said property, provided such legislation also
25 requires the payment of any further sum that may subsequently be added by a jury;
26 and further provided that the authority and procedure for the immediate taking of
27 property as it applies to the Mayor and City Council of Baltimore on June 1, 1961,
28 shall remain in force and effect to and including June 1, 1963[, and where such
29 property is situated in];

30 B. Baltimore County and is desired by Baltimore County,
31 Maryland, the County Council of Baltimore County, Maryland, may provide for the
32 appointment of an appraiser or appraisers by a Court of Record to value such property
33 and that upon payment of the amount of such evaluation, to the party entitled to
34 compensation, or into Court, and securing the payment of any further sum that may
35 be awarded by a jury, such property may be taken; and

36 C. [where such property is situated in] Montgomery County
37 and in the judgment of and upon a finding by the County Council of said County that
38 there is immediate need therefor for right of way for County roads or streets, the
39 County Council may provide that such property may be taken immediately upon
40 payment therefor to the owner or owners thereof, or into court, such amount as a

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

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

6 (II) [except that where such] WHERE THE PRIVATE property in the
7 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 THE
19 PUBLIC, THE STATE, AN INSTRUMENTALITY OF THE STATE, OR A POLITICAL
20 SUBDIVISION;

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

23 (III) USE OF PROPERTY FOR A PUBLIC EMERGENCY OR DISASTER
24 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.

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

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

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

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

19 61.

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

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

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

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

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

9 (3) PROPERTY MAY NOT BE ACQUIRED BY CONDEMNATION TO CARRY
10 OUT AN URBAN RENEWAL PROJECT.

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

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

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

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

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

35 1.

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

38 [(a)] (1) [To] EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, TO
39 acquire, within the boundary lines of Baltimore City, land and property of every kind,
40 and any right, interest, franchise, easement or privilege therein, by purchase, lease,

1 gift, condemnation or any other legal means, for development or redevelopment,
 2 including, but not limited to, the comprehensive renovation or rehabilitation thereof;
 3 and

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

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

16 (C) (1) (I) IN THIS SUBSECTION, "PUBLIC USE" MEANS:

- 17 1. PUBLIC OWNERSHIP OR CONTROL; OR
- 18 2. PHYSICAL USE OR ACCESS BY THE GENERAL PUBLIC.

19 (II) "PUBLIC USE" INCLUDES THE:

- 20 1. POSSESSION, USE, AND ENJOYMENT OF PROPERTY BY
 21 THE PUBLIC, THE STATE, AN INSTRUMENTALITY OF THE STATE, OR A POLITICAL
 22 SUBDIVISION;
- 23 2. USE OF PROPERTY FOR THE CREATION OR OPERATION OF
 24 A PUBLIC UTILITY OR A COMMON CARRIER;
- 25 3. USE OF PROPERTY FOR A PUBLIC EMERGENCY OR
 26 DISASTER RELIEF; OR
- 27 4. DESTRUCTION OF PROPERTY TO PREVENT A PUBLIC
 28 CATASTROPHE.

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

Article XI-C - Off-Street Parking

1. 2

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

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

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

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

(C) (1) (I) IN THIS SUBSECTION, "PUBLIC USE" MEANS:

- 1. PUBLIC OWNERSHIP OR CONTROL; OR
2. PHYSICAL USE OR ACCESS BY THE GENERAL PUBLIC.

(II) "PUBLIC USE" INCLUDES THE:

- 1. POSSESSION, USE, AND ENJOYMENT OF PROPERTY BY THE PUBLIC, THE STATE, AN INSTRUMENTALITY OF THE STATE, OR A POLITICAL SUBDIVISION;
2. USE OF PROPERTY FOR THE CREATION OR OPERATION OF A PUBLIC UTILITY OR A COMMON CARRIER;
3. USE OF PROPERTY FOR A PUBLIC EMERGENCY OR DISASTER RELIEF; OR

1 4. DESTRUCTION OF PROPERTY TO PREVENT A PUBLIC
2 CATASTROPHE.

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

8 **Article XI-D - Port Development**

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) [To] EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, TO
13 acquire land and property of every kind, and any right, interest, franchise, easement
14 or privilege therein, in adjoining or in the vicinity of the Patapsco River or its
15 tributaries, by purchase, lease, gift, condemnation or any other legal means, for or in
16 connection with extending, developing or improving the harbor or port of Baltimore
17 and its facilities and the highways and approaches thereto; and providing, further,
18 that the Mayor and City Council of Baltimore shall not acquire any such land or
19 property, or any such right, interest, franchise, easement or privilege therein, for any
20 of said purposes, in any of the counties of this State without the prior consent and
21 approval by resolution duly passed after a public hearing, by the governing body of
22 the county in which such land or property, or such right, interest, franchise, easement
23 or privilege therein, is situate; and provided, further, that Anne Arundel County shall
24 retain jurisdiction and power to tax any land so acquired by the Mayor and City
25 Council of Baltimore under the provisions of this Act[.]; AND

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

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

38 (C) (1) (I) IN THIS SUBSECTION, "PUBLIC USE" MEANS:

- 39 1. PUBLIC OWNERSHIP OR CONTROL; OR
- 40 2. PHYSICAL USE OR ACCESS BY THE GENERAL PUBLIC.

- 1 (II) "PUBLIC USE" INCLUDES THE:
- 2 1. POSSESSION, USE, AND ENJOYMENT OF PROPERTY BY
3 THE PUBLIC, THE STATE, AN INSTRUMENTALITY OF THE STATE, OR A POLITICAL
4 SUBDIVISION;
- 5 2. USE OF PROPERTY FOR THE CREATION OR OPERATION OF
6 A PUBLIC UTILITY OR A COMMON CARRIER;
- 7 3. USE OF PROPERTY FOR A PUBLIC EMERGENCY OR
8 DISASTER RELIEF; OR
- 9 4. DESTRUCTION OF PROPERTY TO PREVENT A PUBLIC
10 CATASTROPHE.

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

16 SECTION 2. AND BE IT FURTHER ENACTED, That the General Assembly
17 determines that the amendment to the Maryland Constitution proposed by this Act
18 affects multiple jurisdictions and that the provisions of Article XIV, § 1 of the
19 Maryland Constitution concerning local approval of constitutional amendments do
20 not apply.

21 SECTION 3. AND BE IT FURTHER ENACTED, That the foregoing section
22 proposed as an amendment to the Maryland Constitution shall be submitted to the
23 legal and qualified voters of this State at the next general election to be held in
24 November, 2006 for their adoption or rejection in pursuance of directions contained in
25 Article XIV of the Maryland Constitution. At that general election, the vote on this
26 proposed amendment to the Constitution shall be by ballot, and upon each ballot
27 there shall be printed the words "For the Constitutional Amendment" and "Against
28 the Constitutional Amendment," as now provided by law. Immediately after the
29 election, all returns shall be made to the Governor of the vote for and against the
30 proposed amendment, as directed by Article XIV of the Maryland Constitution, and
31 further proceedings had in accordance with Article XIV.