
By: **Delegates Holmes, Rosenberg, and Pugh**
Introduced and read first time: February 10, 2006
Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Real Property - Condemnation - Procedures and Compensation**

3 FOR the purpose of requiring a certain government unit to make certain findings
4 before condemning and transferring private property to a private party for
5 economic development purposes; requiring the government unit to make a
6 certain written record of its findings; establishing a certain standard for judicial
7 review of a government unit's findings; establishing that damages awarded for
8 the taking of property used for a business or farm operation may include certain
9 damages for the loss of "goodwill" under certain circumstances and certain
10 damages for loss of net operating income for a certain period of time; requiring
11 an owner of a business or farm operation or a tenant operating a business or
12 farm operation on the property that is taken to prove certain elements of a loss
13 of "goodwill" in order to receive certain payments; prohibiting an owner of a
14 business or farm operation or a tenant from receiving compensation for
15 "goodwill" if that compensation is included in other compensation received;
16 establishing that certain compensation paid a tenant may not diminish
17 compensation paid an owner; requiring the State, its instrumentality, or a
18 political subdivision to file a condemnation action for certain property within a
19 certain period of time after a certain administrative or legislative determination
20 to take the property; requiring the State, its instrumentality, or a political
21 subdivision to obtain a new authorization to condemn certain property if it does
22 not file a condemnation action within a certain period of time; requiring the
23 court to give certain condemnation actions precedence over other civil actions
24 set for trial; requiring the court to set the trial of a condemnation action within
25 a certain period of time after the action is at issue; requiring a representative of
26 a displacing agency to contact the owner of a certain business or farm operation
27 within a certain period of time before the filing of a condemnation action to
28 negotiate regarding relocation plans for the business or farm operation; altering
29 the payment for relocation costs in a condemnation proceeding by adding certain
30 payments for substitute tangible personal property under certain circumstances
31 and by altering certain monetary limitations; expressing the intent of the
32 General Assembly; defining certain terms; making stylistic changes; and
33 generally relating to procedures and compensation in condemnation
34 proceedings.

35 BY repealing and reenacting, with amendments,

1 Article - Real Property
 2 Section 12-101 and 12-205
 3 Annotated Code of Maryland
 4 (2003 Replacement Volume and 2005 Supplement)

5 BY adding to
 6 Article - Real Property
 7 Section 12-102.1, 12-104(h), 12-105.1, 12-105.2, and 12-205.1
 8 Annotated Code of Maryland
 9 (2003 Replacement Volume and 2005 Supplement)

10 BY repealing and reenacting, without amendments,
 11 Article - Real Property
 12 Section 12-104(a) and 12-201(a), (c), (f), and (g)
 13 Annotated Code of Maryland
 14 (2003 Replacement Volume and 2005 Supplement)

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

17 **Article - Real Property**

18 12-101.

19 (A) All proceedings for the acquisition of private property for public use by
 20 condemnation are governed by the provisions of this title and of Title 12, Chapter 200
 21 of the Maryland Rules.

22 (B) [Nothing in this] THIS title [prevents] DOES NOT PREVENT:

23 (1) [this] THIS State or any of its instrumentalities or political
 24 subdivisions, acting under statute or ordinance passed pursuant to Article III of the
 25 Maryland Constitution, from taking private property for public use immediately on
 26 making the required payment and giving any required security[. In addition, this
 27 title does not prevent];

28 (2) [the] THE State Roads Commission from using the procedures set
 29 forth in Title 8, Subtitle 3 of the Transportation Article[, or prevent]; OR

30 (3) 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 12-102.1.

34 (A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
 35 INDICATED.

1 (2) "BUSINESS" HAS THE MEANING STATED IN § 12-201 OF THIS TITLE.

2 (3) "FARM OPERATION" HAS THE MEANING STATED IN § 12-201 OF THIS
3 TITLE.

4 (4) "GOVERNMENT UNIT" MEANS THE STATE, AN AGENCY, AUTHORITY,
5 BOARD, COMMISSION, COUNCIL, OFFICE, PUBLIC OR QUASI-PUBLIC CORPORATION,
6 OR OTHER UNIT OR INSTRUMENTALITY OF THE STATE OR A COUNTY, POLITICAL
7 SUBDIVISION, OR MUNICIPAL CORPORATION.

8 (B) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT:

9 (1) A VIABLE BUSINESS OR FARM OPERATION SHOULD BE PRESERVED
10 WHENEVER REASONABLY PRACTICABLE AND SHOULD NOT BE ACQUIRED BY
11 CONDEMNATION FOR URBAN RENEWAL OR ECONOMIC DEVELOPMENT PURPOSES
12 UNLESS OTHER ALTERNATIVES ARE SHOWN NOT TO BE REASONABLY PRACTICABLE;
13 AND

14 (2) WHEN IT IS NECESSARY TO ACQUIRE AN EXISTING BUSINESS OR
15 FARM OPERATION BY CONDEMNATION, THE GOVERNMENT UNIT SHALL MAKE EVERY
16 REASONABLE EFFORT TO ENSURE THAT THE BUSINESS OR FARM OPERATION IS
17 INCORPORATED IN THE URBAN RENEWAL OR ECONOMIC DEVELOPMENT PROJECT
18 AT ITS EXISTING LOCATION OR AT A NEARBY LOCATION.

19 (C) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A GOVERNMENT
20 UNIT MAY NOT CONDEMN PRIVATE PROPERTY IF THE PROPERTY WILL BE SOLD,
21 LEASED, TRANSFERRED, OR OTHERWISE CONVEYED TO OR FOR THE BENEFIT OF A
22 PRIVATE PARTY FOR PURPOSES OF ECONOMIC DEVELOPMENT UNLESS THE
23 GOVERNMENT UNIT FINDS THAT:

24 (1) THE PROPERTY IS:

25 (I) PART OF A COMPREHENSIVE DEVELOPMENT PLAN THAT HAS
26 SUBSTANTIAL AND DIRECT PUBLIC USES AND BENEFITS;

27 (II) NECESSARY TO CARRY OUT THE COMPREHENSIVE
28 DEVELOPMENT PLAN; AND

29 (III) NOT BEING CONDEMNED SOLELY OR PRIMARILY TO BENEFIT A
30 PRIVATE PARTY;

31 (2) (I) THE COMPREHENSIVE DEVELOPMENT PLAN COULD NOT BE
32 CARRIED OUT BY PRIVATE DEVELOPERS; AND

33 (II) CONDEMNATION IS NECESSARY TO ACCOMPLISH THE
34 COMPREHENSIVE DEVELOPMENT PLAN; AND

35 (3) WITH RESPECT TO A BUSINESS OR FARM OPERATION THAT WILL BE
36 AFFECTED BY THE COMPREHENSIVE DEVELOPMENT PLAN;

1 (I) THE EFFECT OF CONDEMNATION ON A BUSINESS OR FARM
2 OPERATION AND WHETHER THE COMPREHENSIVE DEVELOPMENT PLAN COULD BE
3 RESTRUCTURED TO AVOID THE CONDEMNATION OF THE BUSINESS OR FARM
4 OPERATION HAVE BEEN CONSIDERED; AND

5 (II) THE DISPLACED OWNER OR TENANT OF A BUSINESS OR FARM
6 OPERATION HAS BEEN GIVEN A REASONABLE OPPORTUNITY TO BE INCLUDED IN
7 THE COMPREHENSIVE DEVELOPMENT PLAN.

8 (D) THE GOVERNMENT UNIT SHALL MAKE A WRITTEN RECORD OF ITS
9 FINDINGS UNDER SUBSECTION (C) OF THIS SECTION.

10 (E) (1) THE STANDARD OF JUDICIAL REVIEW APPLICABLE TO
11 ADMINISTRATIVE DECISIONS SHALL APPLY TO THE FINDINGS OF THE GOVERNMENT
12 UNIT UNDER SUBSECTION (C) OF THIS SECTION.

13 (2) IN ITS REVIEW, THE COURT SHALL DETERMINE IF:

14 (I) THE GOVERNMENT UNIT EMPLOYED THE CORRECT LEGAL
15 STANDARDS;

16 (II) A REASONING MIND COULD HAVE REASONABLY REACHED THE
17 CONCLUSIONS OF THE GOVERNMENT UNIT ON MIXED QUESTIONS OF LAW AND
18 FACT; AND

19 (III) THE FACTUAL FINDINGS OF THE GOVERNMENT UNIT ARE
20 SUPPORTED BY SUBSTANTIAL EVIDENCE.

21 12-104.

22 (a) The damages to be awarded for the taking of land is its fair market value.

23 (H) (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE
24 MEANINGS INDICATED.

25 (II) "BUSINESS" HAS THE MEANING STATED IN § 12-201 OF THIS
26 TITLE.

27 (III) "FARM OPERATION" HAS THE MEANING STATED IN § 12-201 OF
28 THIS TITLE.

29 (IV) 1. "GOODWILL" MEANS THE AMOUNT BY WHICH THE FAIR
30 MARKET VALUE OF THE TOTAL ASSETS OF A BUSINESS OR FARM OPERATION
31 EXCEEDS THE FAIR MARKET VALUE OF ANY INTEREST OR INTERESTS IN LAND USED
32 BY THE OWNER OR THE TENANT IN THE OPERATION OF THE BUSINESS OR FARM
33 OPERATION FOR WHICH THE OWNER OR THE TENANT IS ENTITLED TO
34 COMPENSATION IN THE CONDEMNATION PROCEEDING.

35 2. "GOODWILL" INCLUDES BENEFITS THAT ACCRUE TO A
36 BUSINESS OR FARM OPERATION AS A RESULT OF ITS LOCATION, REPUTATION FOR

1 DEPENDABILITY, SKILL, OR QUALITY, AND ANY OTHER CIRCUMSTANCES RESULTING
2 IN PROBABLE RETENTION OF OLD PATRONAGE OR ACQUISITION OF NEW
3 PATRONAGE.

4 (2) (I) THE DAMAGES TO BE AWARDED FOR THE TAKING OF LAND
5 WHERE THE LAND OR ANY PART OF IT IS USED FOR A BUSINESS OR FARM OPERATION
6 SHALL INCLUDE THE LOSS OF GOODWILL IF THE OWNER OF THE BUSINESS OR FARM
7 OPERATION OR THE TENANT OPERATING A BUSINESS OR FARM OPERATION ON THE
8 LAND AT THE TIME OF THE TAKING PROVES THAT:

9 1. THE LOSS:

10 A. IS CAUSED BY THE TAKING OF THE PROPERTY OR INJURY
11 TO THE REMAINDER; AND

12 B. MAY NOT REASONABLY BE PREVENTED BY RELOCATING
13 THE BUSINESS OR FARM OPERATION OR BY TAKING STEPS AND ADOPTING
14 PROCEDURES THAT A REASONABLY PRUDENT PERSON WOULD TAKE AND ADOPT IN
15 PRESERVING GOODWILL; AND

16 2. COMPENSATION FOR THE LOSS WILL NOT BE INCLUDED
17 IN RELOCATION PAYMENTS UNDER SUBTITLE 2 OF THIS TITLE OR DUPLICATED IN
18 ANY OTHER COMPENSATION AWARDED TO THE OWNER OR THE TENANT.

19 (II) THE DAMAGES TO BE AWARDED FOR THE TAKING UNDER THIS
20 SUBSECTION WHERE A BUSINESS OR FARM OPERATION IS RELOCATED SHALL
21 INCLUDE, FOR A PERIOD NOT TO EXCEED 3 YEARS FOLLOWING THE DATE OF THE
22 TAKING, COMPENSATION FOR THE PRESENT VALUE OF REASONABLY ANTICIPATED
23 REDUCTIONS IN NET OPERATING INCOME THAT ARE CAUSED BY THE TAKING OF THE
24 PROPERTY AND RELOCATION OF THE BUSINESS OR FARM OPERATION.

25 (3) A TENANT OPERATING A BUSINESS OR FARM OPERATION ON LAND
26 THAT IS TAKEN SHALL BE ENTITLED TO DAMAGES UNDER THIS SUBSECTION
27 NOTWITHSTANDING THE FACT THAT THE TENANCY MAY BE TERMINATED AS A
28 RESULT OF THE TAKING.

29 (4) DAMAGES AWARDED TO A TENANT UNDER THIS SUBSECTION MAY
30 NOT DIMINISH ANY COMPENSATION AWARDED TO THE OWNER OF THE LAND THAT IS
31 TAKEN.

32 12-105.1.

33 (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE STATE OR ANY
34 OF ITS INSTRUMENTALITIES OR POLITICAL SUBDIVISIONS SHALL FILE AN ACTION TO
35 ACQUIRE PRIVATE PROPERTY FOR PUBLIC USE BY CONDEMNATION WITHIN 3 YEARS
36 OF THE DATE OF THE SPECIFIC ADMINISTRATIVE OR LEGISLATIVE DETERMINATION
37 TO ACQUIRE THE PROPERTY.

38 (B) IF AN ACTION FOR CONDEMNATION IS NOT FILED WITHIN 3 YEARS OF THE
39 DATE DESCRIBED IN SUBSECTION (A) OF THIS SECTION, THE STATE OR ANY OF ITS

1 INSTRUMENTALITIES OR POLITICAL SUBDIVISIONS MAY NOT PROCEED WITH
2 CONDEMNATION UNTIL IT FIRST OBTAINS A NEW AUTHORIZATION TO CONDEMN
3 THE PROPERTY.

4 12-105.2.

5 (A) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE REQUIREMENTS
6 OF THIS SECTION ARE MANDATORY AND NOT DIRECTORY.

7 (B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW OR RULE OF COURT,
8 IF ANY PARTY TO AN ACTION FOR CONDEMNATION MAKES A WRITTEN REQUEST, THE
9 ACTION SHALL BE TRIED AS SOON AS THE ACTION IS AT ISSUE AND SHALL TAKE
10 PRECEDENCE OVER ALL OTHER CIVIL CASES.

11 (C) IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION, THE COURT
12 SHALL SET A DATE FOR THE TRIAL OF THE CONDEMNATION ACTION WITHIN 90 DAYS
13 OF THE DATE THE ACTION IS AT ISSUE.

14 12-201.

15 (a) In this subtitle the following words have the meanings indicated unless
16 otherwise apparent from context.

17 (c) "Business" means any lawful activity, except a farm operation, conducted
18 primarily:

19 (1) For the purchase, sale, lease, and rental of personal property and of
20 real property, and for the manufacture, processing, or marketing of products,
21 commodities, or any other personal property;

22 (2) For the sale of services to the public; or

23 (3) By a nonprofit organization.

24 (f) "Displacing agency" means any public or private agency or person carrying
25 out:

26 (1) A program or project with federal financial assistance;

27 (2) A public works program or project with State financial assistance; or

28 (3) Acquisition by eminent domain or by negotiation.

29 (g) "Farm operation" means any activity conducted solely or primarily for the
30 production of one or more agricultural products or commodities, including timber for
31 sale or home use, and customarily producing these products or commodities in
32 sufficient quantity to be capable of contributing materially to the operator's support.

1 12-205.

2 (a) Whenever a program or project undertaken by a displacing agency will
3 result in the displacement of any person, the displacing agency shall make a payment
4 to the displaced person, on proper application as approved by the displacing agency
5 for:

6 (1) Actual reasonable expenses in moving himself, his family, business,
7 farm operation, or other personal property;

8 (2) Actual direct loss of tangible personal property as a result of moving
9 or discontinuing a business or farm operation, but not exceeding an amount equal to
10 the reasonable expenses that would have been required to relocate the personal
11 property, as determined by the agency;

12 (3) Actual reasonable expenses in searching for a replacement business
13 or farm; [and]

14 (4) Actual reasonable expenses necessary to reestablish a displaced
15 farm, nonprofit organization, or small business at its new site as determined by the
16 displacing agency[, but not to exceed \$10,000];

17 (5) THE REASONABLE COST OF A SUBSTITUTE ITEM OF TANGIBLE
18 PERSONAL PROPERTY IF THE DISPLACED PERSON PROVES THAT THE SUBSTITUTE
19 ITEM IS NECESSARY FOR CONTINUED OPERATION OF THE BUSINESS OR FARM
20 OPERATION; AND

21 (6) THE REASONABLE COST OF MOVING A BUSINESS OR FARM
22 OPERATION TO ENSURE THE UNINTERRUPTED OPERATION OF THE DISPLACED
23 BUSINESS OR FARM OPERATION IF THE OWNER OF THE DISPLACED BUSINESS OR
24 FARM OPERATION CAN REASONABLY ESTABLISH THAT THE CONTINUOUS
25 OPERATION OF THE BUSINESS OR FARM OPERATION IS NECESSARY FOR THE
26 BUSINESS OR FARM OPERATION TO REMAIN VIABLE.

27 (b) Any displaced person eligible for payments under subsection (a) of this
28 section, who is displaced from a dwelling and who elects to accept the payments
29 authorized by this subsection in lieu of the payments authorized by subsection (a) of
30 this section, may receive a moving expense allowance, determined according to a
31 schedule established by the lead agency.

32 (c) (1) Any displaced person eligible for payments under subsection (a) of
33 this section who is displaced from the person's place of business or farm operation and
34 who is eligible under criteria established by the lead agency may elect to accept the
35 payment authorized by this subsection in lieu of the payment authorized by
36 subsection (a) of this section.

37 (2) Such payment shall consist of a fixed payment in an amount to be
38 determined according to criteria established by the lead agency, except that such
39 payment may not be less than \$1,000 nor more than [\$20,000] \$50,000 or the amount
40 provided under the federal Uniform Relocation Assistance Act, whichever is greater.

1 (3) A person whose sole business at the displacement dwelling is the
2 rental of such property to others shall not qualify for a payment under this
3 subsection.

4 12-205.1.

5 (A) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THE REQUIREMENTS
6 OF THIS SECTION ARE MANDATORY AND NOT DIRECTORY.

7 (B) IN ANY PROCEEDING FOR THE ACQUISITION OF PRIVATE PROPERTY FOR
8 PUBLIC USE BY CONDEMNATION IN WHICH LAND OR ANY PART OF IT IS BEING USED
9 FOR A BUSINESS OR FARM OPERATION, A REPRESENTATIVE OF THE DISPLACING
10 AGENCY SHALL CONTACT THE OWNER OF THE BUSINESS OR FARM OPERATION NOT
11 LESS THAN 30 DAYS BEFORE THE FILING OF THE ACTION AND NEGOTIATE IN GOOD
12 FAITH REGARDING A PLAN UNDER WHICH THE BUSINESS OR FARM OPERATION MAY
13 BE RELOCATED.

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 July 1, 2006.