
By: **Delegate Trueschler**

Introduced and read first time: February 10, 2006

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Real Property - Condemnation for Public Purpose - Requirements and**
3 **Compensation**

4 FOR the purpose of prohibiting the taking of private property by condemnation for a
5 public purpose unless the taking is consistent with a certain development plan
6 that is passed as law by a governmental unit; altering the damages to be
7 awarded and the calculation of fair market value of the property in an action for
8 condemnation of land for a public purpose; providing for the recalculation of
9 damages if property that is condemned for a public use is later used for a public
10 purpose; establishing that the damages awarded for the taking of property used
11 for a business or farm operation where the business or farm operation is
12 relocated shall include certain damages for loss of net income; defining certain
13 terms; making stylistic changes; and generally relating to the taking of private
14 property for public purpose.

15 BY repealing and reenacting, without amendments,
16 Article - Public Utility Companies
17 Section 1-101(a) and (w)
18 Annotated Code of Maryland
19 (1998 Replacement Volume and 2005 Supplement)

20 BY adding to
21 Article - Real Property
22 Section 12-101, 12-101.2, and 12-104(h), (i), and (j)
23 Annotated Code of Maryland
24 (2003 Replacement Volume and 2005 Supplement)

25 BY repealing and reenacting, with amendments,
26 Article - Real Property
27 Section 12-101 and 12-105(b)
28 Annotated Code of Maryland
29 (2003 Replacement Volume and 2005 Supplement)

1 BY repealing and reenacting, without amendments,
2 Article - Real Property
3 Section 12-104(a) and 12-201(a), (c), and (g)
4 Annotated Code of Maryland
5 (2003 Replacement Volume and 2005 Supplement)

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

8 **Article - Public Utility Companies**

9 1-101.

10 (a) In this article the following words have the meanings indicated.

11 (w) "Public service company" means a common carrier company, electric
12 company, gas company, sewage disposal company, telegraph company, telephone
13 company, water company, or any combination of public service companies.

14 **Article - Real Property**

15 12-101.

16 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
17 INDICATED.

18 (B) "GOVERNMENTAL UNIT" MEANS THE STATE, AN AGENCY, AUTHORITY,
19 BOARD, COMMISSION, COUNCIL, OFFICE, PUBLIC OR QUASI-PUBLIC CORPORATION,
20 OR OTHER UNIT OR INSTRUMENTALITY OF THE STATE OR OF A COUNTY, POLITICAL
21 SUBDIVISION, OR MUNICIPAL CORPORATION.

22 (C) "PUBLIC PURPOSE" MEANS A PUBLIC USE OTHER THAN:

23 (1) THE POSSESSION, OCCUPATION, AND ENJOYMENT OF LAND BY THE
24 GENERAL PUBLIC OR A GOVERNMENTAL UNIT, INCLUDING THE PUBLIC USE OF
25 LAND FOR:

26 (I) ROADS;

27 (II) SCHOOLS, COLLEGES, AND UNIVERSITIES;

28 (III) PARKS, OPEN SPACE, AND RECREATIONAL FACILITIES; AND

29 (IV) COURTHOUSES, LIBRARIES, POLICE OR FIRE STATIONS,
30 CORRECTIONAL FACILITIES, LANDFILLS, MAINTENANCE AND STORAGE FACILITIES,
31 OR OTHER BUILDINGS AND SITE IMPROVEMENTS; OR

1 (2) THE USE OF LAND FOR THE CREATION OR FUNCTIONING OF A
2 PUBLIC SERVICE COMPANY AS DEFINED IN § 1-101 OF THE PUBLIC UTILITIES
3 ARTICLE.

4 [12-101.] 12-101.1.

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

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

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

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

16 (3) Baltimore City from using the procedure set forth in the Charter of
17 Baltimore City and §§ 21-12 through 21-22, inclusive, of the Public Local Laws of
18 Baltimore City.

19 12-101.2.

20 NOTWITHSTANDING ANY OTHER PROVISION OF LAW, PRIVATE PROPERTY MAY
21 NOT BE ACQUIRED BY CONDEMNATION FOR A PUBLIC PURPOSE UNLESS:

22 (1) THE TAKING IS CONSISTENT WITH A PLAN FOR ECONOMIC OR
23 COMMUNITY DEVELOPMENT, PRESERVATION, OR REVITALIZATION; AND

24 (2) THE PLAN IS ADOPTED AS LAW BY A GOVERNMENTAL UNIT.

25 12-104.

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

27 (H) IN AN ACTION FOR CONDEMNATION OF LAND FOR A PUBLIC PURPOSE
28 UNDER § 12-101.2 OF THIS SUBTITLE, THE DAMAGES TO BE AWARDED FOR THE
29 TAKING OF THE LAND SHALL BE:

30 (1) 110% OF THE FAIR MARKET VALUE OF THE LAND; OR

31 (2) AT THE DEFENDANT'S ELECTION, IF THE LAND IS ONE PROPERTY IN
32 A CONSOLIDATED PARCEL OF CONDEMNED LANDS:

33 (I) 110% OF THE FAIR MARKET VALUE OF THE LAND; OR

1 (II) THE FAIR MARKET VALUE OF THE PRORATED PORTION OF THE
2 CONSOLIDATED PARCEL AS DETERMINED UNDER § 12-105(B)(2) OF THIS SUBTITLE.

3 (I) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, IF LAND IS FIRST
4 ACQUIRED BY CONDEMNATION FOR A PUBLIC USE BUT AT A LATER TIME THE USE OF
5 THE LAND IS CHANGED TO A PUBLIC PURPOSE, THE DAMAGES AWARDED FOR THE
6 TAKING OF THE LAND SHALL BE RECALCULATED AT THE TIME THE USE OF THE
7 LAND IS CHANGED TO REFLECT THE DAMAGES REQUIRED TO BE AWARDED UNDER
8 SUBSECTION (H) OF THIS SECTION FOR A TAKING OF LAND FOR A PUBLIC PURPOSE
9 LESS THE AMOUNT ALREADY AWARDED.

10 (J) (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE
11 MEANINGS INDICATED.

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

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

16 (2) THE DAMAGES TO BE AWARDED FOR THE TAKING OF LAND WHERE A
17 BUSINESS OR FARM OPERATION IS RELOCATED SHALL INCLUDE COMPENSATION
18 FOR THE LOSS OF BUSINESS EQUAL TO 6 MONTHS OF THE NET OPERATING INCOME
19 OF THE BUSINESS OR FARM OPERATION.

20 12-105.

21 (b) (1) [The] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
22 SUBSECTION, THE fair market value of property in a condemnation proceeding is the
23 price as of the valuation date for the highest and best use of the property which a
24 vendor, willing but not obligated to sell, would accept for the property, and which a
25 purchaser, willing but not obligated to buy, would pay, excluding any increment in
26 value proximately caused by the public project for which the property condemned is
27 needed. In addition, fair market value includes any amount by which the price
28 reflects a diminution in value occurring between the effective date of legislative
29 authority for the acquisition of the property and the date of actual taking if the trier
30 of facts finds that the diminution in value was proximately caused by the public
31 project for which the property condemned is needed, or by announcements or acts of
32 the plaintiff or its officials concerning the public project, and was beyond the
33 reasonable control of the property owner.

34 (2) IN AN ACTION FOR CONDEMNATION OF PROPERTY FOR A PUBLIC
35 PURPOSE UNDER § 12-101.2 OF THIS SUBTITLE, THE FAIR MARKET VALUE OF ONE
36 PROPERTY IN A CONSOLIDATED PARCEL OF PROPERTIES IS THE PRORATED PRICE
37 FOR THE ONE PROPERTY AS OF THE VALUATION DATE FOR THE HIGHEST AND BEST
38 USE OF THE CONSOLIDATED PARCEL OF PROPERTIES THAT A VENDOR, WILLING BUT
39 NOT OBLIGATED TO SELL, WOULD ACCEPT FOR THE PARCEL, AND THAT A
40 PURCHASER, WILLING BUT NOT OBLIGATED TO BUY, WOULD PAY, INCLUDING ANY
41 INCREMENT IN VALUE PROXIMATELY CAUSE BY THE PUBLIC PROJECT FOR WHICH
42 THE CONDEMNED PARCEL IS NEEDED.

1 12-201.

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

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

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

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

10 (3) By a nonprofit organization.

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

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