
By: **The Minority Leader and Delegates Aumann, Bartlett, Bates, Boschert, Cluster, Costa, Cryor, Dwyer, Eckardt, Elliott, Elmore, Frank, Gilleland, Glassman, Haddaway, Hogan, Impallaria, Jennings, Kach, Kohl, Krebs, Leopold, Mayer, McComas, McConkey, McDonough, McKee, McMillan, Miller, Myers, O'Donnell, Parrott, Shank, Shewell, Smigiel, Sossi, Stocksdale, Stull, Walkup, and Weldon**

Introduced and read first time: February 10, 2006
Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Property Protection Act of 2006**

3 FOR the purpose of proposing amendments to the Maryland Constitution to limit the
4 condemnation of private property under certain circumstances; defining a
5 certain term; generally relating to the laws authorizing private property to be
6 taken for public use after payment of just compensation; and submitting this
7 amendment to the qualified voters of the State of Maryland for their adoption or
8 rejection.

9 BY proposing an amendment to the Maryland Constitution
10 Article III - Legislative Department
11 Section 40 and 40A

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

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

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

21 Preamble

22 WHEREAS, This constitutional amendment shall be known and may be cited
23 as the "Property Protection Act of 2006";

1 WHEREAS, The founders of our nation understood the need to protect private
2 property from government seizure;

3 WHEREAS, The Fifth Amendment to the United States Constitution was
4 enacted to limit the government's eminent domain power to instances where the
5 property taken, on payment of just compensation, would be for public use;

6 WHEREAS, Despite the language of the Fifth Amendment, the United States
7 Supreme Court, in *Kelo v. City of New London*, 125 S. Ct. 2655 (2005), has held that
8 the United States Constitution does not prevent the transfer of property, acquired
9 through eminent domain, to private entities for private profit; and

10 WHEREAS, The Maryland Constitution must protect the property rights of all
11 citizens of Maryland; now, therefore,

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

15 **Article III - Legislative Department**

16 40.

17 (A) (1) FOR PURPOSES OF THIS SECTION, "PUBLIC USE" MEANS:

18 (I) PUBLIC OWNERSHIP OR CONTROL;

19 (II) PHYSICAL USE OR ACCESS BY THE GENERAL PUBLIC; OR

20 (III) THE USE OF LAND FOR THE CREATION OR FUNCTIONING OF A
21 PUBLIC UTILITY OR COMMON CARRIER.

22 (2) "PUBLIC USE" DOES NOT INCLUDE USE FOR ECONOMIC
23 DEVELOPMENT PURPOSES, INCLUDING:

24 (I) COMMUNITY REVITALIZATION OR REDEVELOPMENT;

25 (II) ATTRACTING NEW BUSINESS OR ENCOURAGING THE
26 EXPANSION OR RETENTION OF EXISTING BUSINESS;

27 (III) JOB CREATION; OR

28 (IV) GENERATING TAX REVENUE.

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

1 40A.

2 (A) (1) FOR PURPOSES OF THIS SECTION, "PUBLIC USE" MEANS:

3 (I) PUBLIC OWNERSHIP OR CONTROL;

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

5 (III) THE USE OF LAND FOR THE CREATION OR FUNCTIONING OF A
6 PUBLIC UTILITY OR COMMON CARRIER.

7 (2) "PUBLIC USE" DOES NOT INCLUDE USE FOR ECONOMIC
8 DEVELOPMENT PURPOSES, INCLUDING:

9 (I) COMMUNITY REVITALIZATION OR REDEVELOPMENT;

10 (II) ATTRACTING NEW BUSINESS OR ENCOURAGING THE
11 EXPANSION OR RETENTION OF EXISTING BUSINESS;

12 (III) JOB CREATION; OR

13 (IV) GENERATING TAX REVENUE.

14 (B) (1) The General Assembly shall enact no law authorizing private
15 property to be taken for public use without just compensation, to be agreed upon
16 between the parties, or awarded by a jury, being first paid or tendered to the party
17 entitled to such compensation, but where such property is situated in:

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

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

35 (III) [where such property is situated in] Montgomery County and
36 in the judgment of and upon a finding by the County Council of said County that
37 there is immediate need therefor for right of way for County roads or streets, the

1 County Council may provide that such property may be taken immediately upon
2 payment therefor to the owner or owners thereof, or into court, such amount as a
3 licensed real estate broker or a licensed and certified real estate appraiser appointed
4 by the County Council shall estimate to be the fair market value of such property,
5 provided that the Council shall secure the payment of any further sum that may
6 subsequently be awarded by a jury.

7 (2) In the various municipal corporations within Cecil County, where in
8 the judgment of and upon a finding by the governing body of said municipal
9 corporation that there is immediate need therefor for right of way for municipal
10 roads, streets and extension of municipal water and sewage facilities, the governing
11 body may provide that such property may be taken immediately upon payment
12 therefor to the owner or owners thereof, or into court, such amount as a licensed real
13 estate broker appointed by the particular governing body shall estimate to be a fair
14 market value of such property, provided that the municipal corporation shall secure
15 the payment of any further sum that subsequently may be awarded by a jury.

16 (3) [This Section 40A] PARAGRAPHS (1)(III) AND (2) OF THIS
17 SUBSECTION shall not apply in Montgomery County or any of the various municipal
18 corporations within Cecil County, if the property actually to be taken includes a
19 building or buildings.

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

21 1.

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

24 [(a)] (1) [To] EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION, TO
25 acquire, within the boundary lines of Baltimore City, land and property of every kind,
26 and any right, interest, franchise, easement or privilege therein, by purchase, lease,
27 gift, condemnation or any other legal means, for development or redevelopment,
28 including, but not limited to, the comprehensive renovation or rehabilitation thereof;
29 and

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

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

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

6 (D) PRIVATE PROPERTY MAY NOT BE ACQUIRED BY CONDEMNATION FOR AN
7 ECONOMIC DEVELOPMENT PURPOSE, INCLUDING:

8 (1) COMMUNITY REVITALIZATION OR REDEVELOPMENT;

9 (2) ATTRACTING NEW BUSINESS OR ENCOURAGING THE EXPANSION OR
10 RETENTION OF EXISTING BUSINESS;

11 (3) JOB CREATION; OR

12 (4) GENERATING TAX REVENUE.

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

14 1.

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

17 [(a)] (1) [Within] EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS
18 SECTION, WITHIN the City of Baltimore to acquire land and property of every kind,
19 and any right, interest, franchise, easement or privilege therein, by purchase, lease,
20 gift, condemnation or any other legal means, for storing, parking and servicing
21 self-propelled vehicles, provided, that no petroleum products shall be sold or offered
22 for sale at any entrance to or exit from, any land so acquired or at any entrance to, or
23 exit from, any structure erected thereon, when any entrance to, or exit from, any such
24 land or structure faces on a street or highway which is more than 25 feet wide from
25 curb to curb; 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 has been developed, redeveloped, altered,
28 or improved and irrespective of the manner or means in or by which it may have been
29 acquired, to any private, public or quasi public corporation, partnership, association,
30 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 just
35 compensation, as agreed upon between the parties, or awarded by a jury, being first
36 paid or tendered to the party entitled to such compensation.

37 (C) All land or property needed, or taken by the exercise of the power of
38 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) PRIVATE PROPERTY MAY NOT BE ACQUIRED BY CONDEMNATION FOR AN
5 ECONOMIC DEVELOPMENT PURPOSE, INCLUDING:

6 (1) COMMUNITY REVITALIZATION OR REDEVELOPMENT;

7 (2) ATTRACTING NEW BUSINESS OR ENCOURAGING THE EXPANSION OR
8 RETENTION OF EXISTING BUSINESS;

9 (3) JOB CREATION; OR

10 (4) GENERATING TAX REVENUE.

11 **Article XI-D - Port Development**

12 1.

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

15 [(a)] (1) [To] EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION,
16 TO acquire land and property of every kind, and any right, interest, franchise,
17 easement or privilege therein, in adjoining or in the vicinity of the Patapsco River or
18 its tributaries, by purchase, lease, gift, condemnation or any other legal means, for or
19 in connection with extending, developing or improving the harbor or port of Baltimore
20 and its facilities and the highways and approaches thereto; and providing, further,
21 that the Mayor and City Council of Baltimore shall not acquire any such land or
22 property, or any such right, interest, franchise, easement or privilege therein, for any
23 of said purposes, in any of the counties of this State without the prior consent and
24 approval by resolution duly passed after a public hearing, by the governing body of
25 the county in which such land or property, or such right, interest, franchise, easement
26 or privilege therein, is situate; and provided, further, that Anne Arundel County shall
27 retain jurisdiction and power to tax any land so acquired by the Mayor and City
28 Council of Baltimore under the provisions of this Act.

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

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

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

6 (D) PRIVATE PROPERTY MAY NOT BE ACQUIRED BY CONDEMNATION FOR AN
7 ECONOMIC DEVELOPMENT PURPOSE, INCLUDING:

8 (1) COMMUNITY REVITALIZATION OR REDEVELOPMENT;

9 (2) ATTRACTING NEW BUSINESS OR ENCOURAGING THE EXPANSION OR
10 RETENTION OF EXISTING BUSINESS;

11 (3) JOB CREATION; OR

12 (4) GENERATING TAX REVENUE.

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

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