

(PRE-FILED)

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By: **Senator DeGrange**

Requested: August 12, 2005

Introduced and read first time: January 11, 2006

Assigned to: Judicial Proceedings

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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 to prove certain elements of a loss of  
12 "goodwill" in order to receive certain payments; prohibiting an owner of a  
13 business or farm operation from receiving compensation for "goodwill" if that  
14 compensation is included in other compensation received; requiring the State,  
15 its instrumentality, or a political subdivision to file a condemnation action for  
16 certain property within a certain period of time after a certain administrative  
17 determination to take the property; requiring the State, its instrumentality, or a  
18 political subdivision to obtain a new authorization to condemn certain property  
19 if it does not file a condemnation action within a certain period of time;  
20 requiring the court to give certain condemnation actions precedence over other  
21 civil actions set for trial; requiring the court to set the trial of a condemnation  
22 action within a certain period of time after the action is at issue; requiring a  
23 representative of a displacing agency to contact the owner of a certain business  
24 or farm operation within a certain period of time before the filing of a  
25 condemnation action to negotiate regarding relocation plans for the business or  
26 farm operation; altering the payment for relocation costs in a condemnation  
27 proceeding by adding certain payments for substitute tangible personal property  
28 under certain circumstances and by altering certain monetary limitations;  
29 expressing the intent of the General Assembly; defining certain terms; making  
30 stylistic changes; and generally relating to procedures and compensation in  
31 condemnation proceedings.

32 BY repealing and reenacting, with amendments,  
33 Article - Real Property

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

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

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

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

16 **Article - Real Property**

17 12-101.

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

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

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

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

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

32 12-102.1.

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

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

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

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

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

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

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

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

23 (1) THE PROPERTY IS:

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

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

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

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

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

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

36 (I) THE EFFECT OF CONDEMNATION ON A BUSINESS OR FARM  
37 OPERATION AND WHETHER THE COMPREHENSIVE DEVELOPMENT PLAN COULD BE

1 RESTRUCTURED TO AVOID THE CONDEMNATION OF THE BUSINESS OR FARM  
2 OPERATION HAVE BEEN CONSIDERED; AND

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

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

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

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

12 (I) THE GOVERNMENT UNIT EMPLOYED THE CORRECT LEGAL  
13 STANDARDS;

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

17 (III) THE FACTUAL FINDINGS OF THE GOVERNMENT UNIT ARE  
18 SUPPORTED BY SUBSTANTIAL EVIDENCE.

19 12-104.

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

21 (H) (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE  
22 MEANINGS INDICATED.

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

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

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

33 2. "GOODWILL" INCLUDES BENEFITS THAT ACCRUE TO A  
34 BUSINESS OR FARM OPERATION AS A RESULT OF ITS LOCATION, REPUTATION FOR  
35 DEPENDABILITY, SKILL, OR QUALITY, AND ANY OTHER CIRCUMSTANCES RESULTING

1 IN PROBABLE RETENTION OF OLD PATRONAGE OR ACQUISITION OF NEW  
2 PATRONAGE.

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

7                           1.    THE LOSS:

8                           A.    IS CAUSED BY THE TAKING OF THE PROPERTY OR INJURY  
9 TO THE REMAINDER; AND

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

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

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

23 12-105.1.

24    (A)    NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE STATE OR ANY  
25 OF ITS INSTRUMENTALITIES OR POLITICAL SUBDIVISIONS SHALL FILE AN ACTION TO  
26 ACQUIRE PRIVATE PROPERTY FOR PUBLIC USE BY CONDEMNATION WITHIN 3 YEARS  
27 OF THE DATE OF THE SPECIFIC ADMINISTRATIVE DETERMINATION TO ACQUIRE THE  
28 PROPERTY.

29    (B)    IF AN ACTION FOR CONDEMNATION IS NOT FILED WITHIN 3 YEARS OF THE  
30 DATE DESCRIBED IN SUBSECTION (A) OF THIS SECTION, THE STATE OR ANY OF ITS  
31 INSTRUMENTALITIES OR POLITICAL SUBDIVISIONS MAY NOT PROCEED WITH  
32 CONDEMNATION UNTIL IT FIRST OBTAINS A NEW AUTHORIZATION TO CONDEMN  
33 THE PROPERTY.

34 12-105.2.

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

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

4 12-201.

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

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

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

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

13 (3) By a nonprofit organization.

14 (f) "Displacing agency" means any public or private agency or person carrying  
15 out:

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

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

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

19 (g) "Farm operation" means any activity conducted solely or primarily for the  
20 production of one or more agricultural products or commodities, including timber for  
21 sale or home use, and customarily producing these products or commodities in  
22 sufficient quantity to be capable of contributing materially to the operator's support.  
23 12-205.

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

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

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

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

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

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

8 (6) THE REASONABLE COST OF MOVING A BUSINESS OR FARM  
9 OPERATION TO ENSURE THE UNINTERRUPTED OPERATION OF THE DISPLACED  
10 BUSINESS OR FARM OPERATION IF THE OWNER OF THE DISPLACED BUSINESS OR  
11 FARM OPERATION CAN REASONABLY ESTABLISH THAT THE CONTINUOUS  
12 OPERATION OF THE BUSINESS OR FARM OPERATION IS NECESSARY FOR THE  
13 BUSINESS OR FARM OPERATION TO REMAIN VIABLE.

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

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

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

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

31 12-205.1.

32 IN ANY PROCEEDING FOR THE ACQUISITION OF PRIVATE PROPERTY FOR  
33 PUBLIC USE BY CONDEMNATION IN WHICH LAND OR ANY PART OF IT IS BEING USED  
34 FOR A BUSINESS OR FARM OPERATION, A REPRESENTATIVE OF THE DISPLACING  
35 AGENCY SHALL CONTACT THE OWNER OF THE BUSINESS OR FARM OPERATION NOT  
36 LESS THAN 30 DAYS BEFORE THE FILING OF THE ACTION AND NEGOTIATE IN GOOD  
37 FAITH REGARDING A PLAN UNDER WHICH THE BUSINESS OR FARM OPERATION MAY  
38 BE RELOCATED.

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