

UNOFFICIAL COPY OF SENATE BILL 173
CONSTITUTIONAL AMENDMENT

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By: **Senators Stoltzfus, Brinkley, Greenip, Hafer, Haines, Harris, Hooper,
Jacobs, Kittleman, Mooney, Munson, Pipkin, and Schrader**

Introduced and read first time: January 20, 2006

Assigned to: Judicial Proceedings

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, 40A, and 61

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"; and

24 WHEREAS, The founders of our nation understood the need to protect private
25 property from government seizure; and

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

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

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

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

13 **Article III - Legislative Department**

14 40.

15 (A) FOR PURPOSES OF THIS SECTION, "PUBLIC USE" DOES NOT INCLUDE USE
16 FOR ECONOMIC DEVELOPMENT PURPOSES, INCLUDING:

17 (1) URBAN RENEWAL;

18 (2) COMMUNITY REVITALIZATION OR REDEVELOPMENT;

19 (3) ATTRACTING NEW BUSINESS OR ENCOURAGING THE EXPANSION OR
20 RETENTION OF EXISTING BUSINESS;

21 (4) JOB CREATION; OR

22 (5) GENERATING TAX REVENUE.

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

27 40A.

28 (A) FOR PURPOSES OF THIS SECTION, "PUBLIC USE" DOES NOT INCLUDE USE
29 FOR ECONOMIC DEVELOPMENT PURPOSES, INCLUDING:

30 (1) URBAN RENEWAL;

31 (2) COMMUNITY REVITALIZATION OR REDEVELOPMENT;

32 (3) ATTRACTING NEW BUSINESS OR ENCOURAGING THE EXPANSION OR
33 RETENTION OF EXISTING BUSINESS;

1 (4) JOB CREATION; OR

2 (5) GENERATING TAX REVENUE.

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

7 (I) Baltimore City and is desired by this State or by the Mayor and
8 City Council of Baltimore, the General Assembly may provide that such property may
9 be taken immediately upon payment therefor to the owner or owners thereof by the
10 State or by the Mayor and City Council of Baltimore, or into court, such amount as
11 the State or the Mayor and City Council of Baltimore, as the case may be, shall
12 estimate to be the fair value of said property, provided such legislation also requires
13 the payment of any further sum that may subsequently be added by a jury; and
14 further provided that the authority and procedure for the immediate taking of
15 property as it applies to the Mayor and City Council of Baltimore on June 1, 1961,
16 shall remain in force and effect to and including June 1, 1963[, and where such
17 property is situated in];

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

24 (III) [where such property is situated in] Montgomery County and
25 in the judgment of and upon a finding by the County Council of said County that
26 there is immediate need therefor for right of way for County roads or streets, the
27 County Council may provide that such property may be taken immediately upon
28 payment therefor to the owner or owners thereof, or into court, such amount as a
29 licensed real estate broker or a licensed and certified real estate appraiser appointed
30 by the County Council shall estimate to be the fair market value of such property,
31 provided that the Council shall secure the payment of any further sum that may
32 subsequently be awarded by a jury.

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

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

5 61.

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

8 [(1)] (I) [To] EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS
9 SUBSECTION, TO carry out urban renewal projects which shall be limited to slum
10 clearance in slum or blighted areas and redevelopment or the rehabilitation of slum
11 or blighted areas, and to include the acquisition, within the boundary lines of such
12 county or municipal corporation, of land and property of every kind and any right,
13 interest, franchise, easement or privilege therein, by purchase, lease, gift[,
14 condemnation] or any other legal means. The term "slum area" shall mean any area
15 where dwellings predominate which, by reason of depreciation, overcrowding, faulty
16 arrangement or design, lack of ventilation, light or sanitary facilities, or any
17 combination of these factors, are detrimental to the public safety, health or morals.
18 The term "blighted area" shall mean an area in which a majority of buildings have
19 declined in productivity by reason of obsolescence, depreciation or other causes to an
20 extent they no longer justify fundamental repairs and adequate maintenance[.]; AND

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

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

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

40 (3) PRIVATE PROPERTY MAY NOT BE ACQUIRED BY CONDEMNATION TO
41 CARRY OUT AN URBAN RENEWAL PROJECT.

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

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

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

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

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

25 1.

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

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

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

39 (B) No land or property taken by the Mayor and City Council of Baltimore for
40 any of the aforementioned purposes or in connection with the exercise of any of the

1 powers which may be granted to the Mayor and City Council of Baltimore pursuant to
 2 this Article by exercising the power of eminent domain, shall be taken without just
 3 compensation, as agreed upon between the parties, or awarded by a jury, being first
 4 paid or tendered to the party entitled to such compensation.

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

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

12 (1) URBAN RENEWAL;

13 (2) COMMUNITY REVITALIZATION OR REDEVELOPMENT;

14 (3) ATTRACTING NEW BUSINESS OR ENCOURAGING THE EXPANSION OR
 15 RETENTION OF EXISTING BUSINESS;

16 (4) JOB CREATION; OR

17 (5) GENERATING TAX REVENUE.

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

19 1.

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

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

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

36 (B) No land or property taken by the Mayor and City Council of Baltimore for
 37 any of the aforementioned purposes or in connection with the exercise of any of the

1 powers which may be granted to the Mayor and City Council of Baltimore pursuant to
2 this Article by exercising the power of eminent domain, shall be taken without just
3 compensation, as agreed upon between the parties, or awarded by a jury, being first
4 paid or tendered to the party entitled to such compensation.

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

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

12 (1) URBAN RENEWAL;

13 (2) COMMUNITY REVITALIZATION OR REDEVELOPMENT;

14 (3) ATTRACTING NEW BUSINESS OR ENCOURAGING THE EXPANSION OR
15 RETENTION OF EXISTING BUSINESS;

16 (4) JOB CREATION; OR

17 (5) GENERATING TAX REVENUE.

18 **Article XI-D - Port Development**

19 1.

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

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

36 [(b)] (2) To sell, lease, convey, transfer or otherwise dispose of any of said land
37 or property, regardless of whether or not it is undeveloped or has been developed,
38 redeveloped, altered, or improved and irrespective of the manner or means in or by

1 which it may have been acquired, to any private, public or quasi public corporation,
2 partnership, association, person or other legal entity.

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

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

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

16 (1) URBAN RENEWAL;

17 (2) COMMUNITY REVITALIZATION OR REDEVELOPMENT;

18 (3) ATTRACTING NEW BUSINESS OR ENCOURAGING THE EXPANSION OR
19 RETENTION OF EXISTING BUSINESS;

20 (4) JOB CREATION; OR

21 (5) GENERATING TAX REVENUE.

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

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