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By: **Senators Frosh and Forehand**

Introduced and read first time: February 1, 2006

Assigned to: Judicial Proceedings

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A BILL ENTITLED

1 AN ACT concerning

2 **Eminent Domain Reform Act**

3 FOR the purpose of prohibiting a condemning authority from condemning certain  
4 private property for certain purposes unless certain conditions are met;  
5 requiring the condemning authority to make certain findings and to make a  
6 written record of its findings; altering the standard of proof and the standard for  
7 judicial review in certain condemnation proceedings; establishing that certain  
8 business owners are entitled to compensation for certain losses; specifying that  
9 fair market value includes certain damages under certain circumstances;  
10 requiring certain condemnation actions to be filed within a certain time period  
11 after a certain date; requiring the plaintiff in a condemnation proceeding to pay  
12 certain costs incurred by the defendant under certain circumstances; repealing a  
13 certain limitation on certain payments to certain displaced persons by certain  
14 displacing agencies; defining certain terms; providing for the application of this  
15 Act; and generally relating to eminent domain.

16 BY adding to

17 Article - Real Property  
18 Section 12-101.1 and 12-105.1  
19 Annotated Code of Maryland  
20 (2003 Replacement Volume and 2005 Supplement)

21 BY repealing and reenacting, with amendments,

22 Article - Real Property  
23 Section 12-104, 12-105, 12-106, and 12-205  
24 Annotated Code of Maryland  
25 (2003 Replacement Volume and 2005 Supplement)

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

1

**Article - Real Property**

2 12-101.1.

3 (A) IN THIS SECTION, "ECONOMIC DEVELOPMENT" MEANS TAKING PRIVATE  
4 PROPERTY WITHOUT THE CONSENT OF THE OWNER FOR THE PURPOSE OF  
5 INCREASING TAX REVENUE, TAX BASE, EMPLOYMENT, OR GENERAL ECONOMIC  
6 HEALTH.

7 (B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A CONDEMNING  
8 AUTHORITY MAY NOT CONDEMN PRIVATE PROPERTY IF THE PROPERTY WILL BE  
9 SOLD, LEASED, TRANSFERRED, OR OTHERWISE CONVEYED TO OR FOR THE BENEFIT  
10 OF A PRIVATE PERSON FOR PRIVATE RETAIL, OFFICE, COMMERCIAL, INDUSTRIAL, OR  
11 RESIDENTIAL DEVELOPMENT, OR FOR COMMERCIAL ENTERPRISE CARRIED ON FOR  
12 PROFIT, FOR ECONOMIC DEVELOPMENT PURPOSES UNLESS:

13 (1) ACQUISITION OF THE PROPERTY IS NECESSARY TO CARRY OUT AN  
14 ECONOMIC DEVELOPMENT PLAN THAT HAS A PUBLIC PURPOSE AND WAS ADOPTED  
15 BY THE CONDEMNING AUTHORITY AFTER PUBLIC NOTICE AND HEARINGS;

16 (2) THE PUBLIC PURPOSE OF THE PROJECT FOR WHICH THE PROPERTY  
17 IS BEING ACQUIRED CANNOT BE ACHIEVED PRACTICABLY THROUGH PRIVATE  
18 MEANS OR BY A PUBLIC/PRIVATE PARTNERSHIP WITHOUT THE USE OF  
19 CONDEMNATION; AND

20 (3) THE CONDEMNING AUTHORITY WILL RETAIN CONTROL OR  
21 OVERSIGHT OVER THE PROJECT FOR WHICH THE PROPERTY IS BEING ACQUIRED TO  
22 ENSURE THAT THE ECONOMIC DEVELOPMENT PLAN IS CARRIED OUT.

23 (C) BEFORE MAKING A DETERMINATION TO ACQUIRE PRIVATE PROPERTY BY  
24 CONDEMNATION UNDER THIS SECTION, THE CONDEMNING AUTHORITY SHALL:

25 (1) MAKE FINDINGS THAT EACH CONDITION SPECIFIED UNDER  
26 SUBSECTION (B) OF THIS SECTION HAS BEEN MET; AND

27 (2) MAKE A WRITTEN RECORD OF ITS FINDINGS.

28 (D) IN A PROCEEDING FOR CONDEMNATION OF PROPERTY UNDER THIS  
29 SECTION:

30 (1) THE CONDEMNING AUTHORITY SHALL PROVE THE PUBLIC PURPOSE  
31 AND NECESSITY OF THE TAKING BY CLEAR AND CONVINCING EVIDENCE; AND

32 (2) THE DETERMINATION OF THE CONDEMNING AUTHORITY TO TAKE  
33 THE PROPERTY IS SUBJECT TO CLOSE SCRUTINY BY THE COURT.

34 12-104.

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

1 (b) The damages to be awarded where land, or any part of it, is taken is the  
2 fair market value of the part taken, but not less than the actual value of the part  
3 taken plus any severance or resulting damages to the remaining land by reason of the  
4 taking and of future use by the plaintiff of the part taken. The severance or resulting  
5 damages shall be diminished to the extent of the value of the special (particular)  
6 benefits to the remainder arising from the plaintiff's future use of the part taken.

7 (c) For the purpose of determining the extent of the taking and the valuation  
8 of the tenant's interest in a condemnation proceeding, no improvement or installation  
9 which otherwise would be deemed part of the land shall be deemed personal property  
10 so as to be excluded from the taking solely because of the private right of a tenant, as  
11 against the owner of any other interest in the land sought to be condemned, to remove  
12 the improvement or installation, unless the tenant exercises his right to remove it  
13 prior to the date when his answer is due, or states in his answer his election to  
14 exercise this right.

15 (d) The damages to be awarded for the taking of a structure, such as a church  
16 or place of religious worship, held in fee simple, or under a lease renewable forever, by  
17 or for the benefit of a religious body and regularly used by the religious body, are the  
18 cost of reproducing or replacing the improvements, adjusted for physical and  
19 functional depreciation, to which shall be added the fair market value of the land.

20 (e) (1) The damages to be awarded for the taking of all land owned and  
21 designated by a public body as park land, open space, or recreation area is the fair  
22 market value as of the valuation date, of other land substantially similar in size and  
23 character and of comparable quality for park, open space, or recreational purposes for  
24 the community which made use of the land to be taken. No damages may be awarded  
25 unless other land is acquired for park, open space, or recreational purposes. No  
26 awarded damages may be less than the fair market value of the land to be taken.

27 (2) The damages to be awarded for the taking of part of the park land,  
28 open space, or recreation area is the fair market value of the part taken, but not less  
29 than the actual value of the replacement land as defined in paragraph (1) of this  
30 subsection plus any severance or resulting damages to the remaining land by reason  
31 of the taking and of the future use by the plaintiff of the part taken. The severance or  
32 resulting damages are to be diminished to the extent of the value of the special  
33 (particular) benefits to the remainder arising from the plaintiff's future use of the  
34 land taken.

35 (3) Where the land, or any part of it, taken pursuant to this subsection  
36 contains improvements, the damages to be awarded, in addition to that provided for  
37 in paragraphs (1) and (2) of this subsection, shall include the reasonable cost as of the  
38 valuation date of providing new improvements of substantially the same size,  
39 comparable character, and for the same purpose as those taken.

40 (f) The damages to be awarded for the taking of land or an interest in land  
41 over which an easement in gross or other right to restrict its use has been granted  
42 pursuant to § 2-504 of the Agriculture Article shall be as provided for in this  
43 subsection:

1           (1)       The damages to be awarded for the taking of an entire tract is its fair  
2 market value after deducting the lesser of (a) the value of the easement granted, or  
3 (b) the excess of the aggregate amount of the property taxes that would have been due  
4 on the property if the easement had not been granted above the aggregate amount of  
5 property taxes actually paid on the property since the easement was granted.

6           (2)       The damages to be awarded where part of a tract of land is taken is  
7 the fair market value of the part taken less the deduction computed as described in  
8 paragraph (1) of this subsection, but not less than the actual value of the part taken  
9 less the deduction computed as described in paragraph (1) of this subsection, plus any  
10 severance or resulting damages to the remaining land by reason of the taking and of  
11 future use by the plaintiff of the part taken.

12       (g)       If any easement in gross or other right to restrict use of land or any  
13 interest in land has been donated to the Maryland Historical Trust or the Maryland  
14 Environmental Trust, damages shall be awarded in any condemnation proceedings  
15 under this title to the fee owner and leasehold owner, as their interests may appear,  
16 and shall be the fair market value of the land or interest in it, computed as though the  
17 easement or other right did not exist.

18       (H)       (1)       IN THIS SUBSECTION, "GOODWILL" MEANS THE BENEFITS THAT  
19 ACCRUE TO A BUSINESS AS A RESULT OF:

20                   (I)       ITS LOCATION;

21                   (II)       ITS REPUTATION FOR DEPENDABILITY, SKILL, OR QUALITY;

22 AND

23                   (III)       ANY OTHER CIRCUMSTANCES RESULTING IN PROBABLE  
24 RETENTION OF EXISTING CUSTOMERS OR ACQUISITION OF NEW CUSTOMERS.

25       (2)       IN ADDITION TO ANY OTHER DAMAGES ALLOWED UNDER THIS  
26 SECTION, THE OWNER OF A BUSINESS CONDUCTED ON THE PROPERTY TAKEN, OR ON  
27 THE REMAINDER IF THERE IS A PARTIAL TAKING, IS ENTITLED TO:

28                   (I)       COMPENSATION FOR LOSS OF GOODWILL, IF THE OWNER  
29 PROVES THAT THE LOSS:

30                               1.       IS CAUSED BY THE TAKING OF THE PROPERTY OR THE  
31 INJURY TO THE REMAINDER;

32                               2.       CANNOT REASONABLY BE PREVENTED BY A RELOCATION  
33 OF THE BUSINESS OR BY TAKING STEPS AND ADOPTING PROCEDURES THAT A  
34 REASONABLY PRUDENT PERSON WOULD TAKE AND ADOPT IN PRESERVING THE  
35 GOODWILL;

36                               3.       WILL NOT BE INCLUDED IN RELOCATION PAYMENTS  
37 UNDER SUBTITLE 2 OF THIS TITLE; AND

1 4. WILL NOT BE DUPLICATED IN THE COMPENSATION  
2 AWARDED TO THE OWNER; AND

3 (II) IF THE BUSINESS CANNOT BE CONTINUED ON THE PROPERTY  
4 AS A RESULT OF THE TAKING, BUT THE BUSINESS CAN BE RELOCATED,  
5 COMPENSATION FOR THE PRESENT VALUE OF REASONABLY ANTICIPATED  
6 REDUCTIONS IN NET OPERATING INCOME THAT ARE CAUSED BY THE TAKING AND  
7 THE RELOCATION OF THE BUSINESS FOR A PERIOD NOT EXCEEDING 3 YEARS FROM  
8 THE DATE OF THE RELOCATION.

9 12-105.

10 (a) In this section, the phrase "the effective date of legislative authority for the  
11 acquisition of the property," means, with respect to a condemnor vested with  
12 continuing power of condemnation, the date of specific administrative determination  
13 to acquire the property.

14 (b) (1) The fair market value of property in a condemnation proceeding is  
15 the price as of the valuation date for the highest and best use of the property which a  
16 vendor, willing but not obligated to sell, would accept for the property, and which a  
17 purchaser, willing but not obligated to buy, would pay, excluding any increment in  
18 value proximately caused by the public project for which the property condemned is  
19 needed.

20 (2) In addition, fair market value includes any amount by which the  
21 price reflects a diminution in value OR OTHER DAMAGES, INCLUDING LOST RENT AND  
22 CARRYING COSTS, occurring between THE EARLIER OF THE FIRST PUBLIC  
23 ANNOUNCEMENT OF THE PUBLIC PROJECT OR the effective date of legislative  
24 authority for the acquisition of the property and the date of actual taking if the trier  
25 of facts finds that the diminution in value [was] OR OTHER DAMAGES WERE  
26 proximately caused by the public project for which the property condemned is needed,  
27 or by announcements or acts of the plaintiff or its officials concerning the public  
28 project, and [was] WERE beyond the reasonable control of the property owner.

29 (c) The defendant property owner may elect to present as evidence in a  
30 condemnation proceeding, the assessed value of the property, as determined by the  
31 Department of Assessments and Taxation, if the assessed value is greater than the  
32 appraised value placed on the property by the condemning authority.

33 (d) If property is ever acquired by the exercise of the power of eminent domain,  
34 the fair market value of the property is not affected by the property having been  
35 qualified for a tax credit under § 9-208 of the Tax - Property Article. However, if the  
36 grantee of an easement purchased the easement for monetary consideration other  
37 than, or in addition to, the tax credit under § 9-208 of the Tax - Property Article, then  
38 the condemnation award shall be reduced by an amount equal to the additional  
39 consideration.

1 12-105.1.

2 (A) NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE STATE OR ANY  
3 OF ITS INSTRUMENTALITIES OR POLITICAL SUBDIVISIONS SHALL FILE AN ACTION TO  
4 ACQUIRE PRIVATE PROPERTY FOR PUBLIC USE BY CONDEMNATION WITHIN 3 YEARS  
5 AFTER THE DATE OF THE SPECIFIC ADMINISTRATIVE DETERMINATION TO ACQUIRE  
6 THE PROPERTY.

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

12 12-106.

13 (a) The plaintiff shall pay all the costs in the trial court.

14 (b) The costs in a condemnation proceeding include:

15 (1) The usual per diem to the jurors;

16 (2) The cost of transporting the trier of fact to view the property;

17 (3) The cost of meals for the jury if the court so orders;

18 (4) The cost of recording the inquisition among the land records and of  
19 all documentary stamps which may be required in the transfer of the property to the  
20 plaintiff; and

21 (5) An allowance to the defendant, as fixed by the court, for the  
22 reasonable legal, appraisal, and engineering fees actually incurred by the defendant  
23 because of the condemnation proceeding[, if]:

24 (I) IF the judgment is for the defendant on the right to condemn; OR

25 (II) IF THE JUDGMENT IS FOR THE PLAINTIFF ON THE RIGHT TO  
26 CONDEMN, THE AMOUNT OF DAMAGES AWARDED TO THE DEFENDANT IS AT LEAST  
27 20% MORE THAN:

28 1. IN A "QUICK-TAKE" PROCEEDING, THE AMOUNT OF  
29 MONEY PAID INTO COURT; OR

30 2. IN ANY OTHER PROCEEDING, THE AMOUNT OFFERED BY  
31 THE PLAINTIFF IN WRITING AT LEAST 30 DAYS BEFORE THE COMPLAINT WAS FILED.

32 (c) In proceeding under Article III of the Constitution of the State, or any  
33 amendment to it, the plaintiff shall pay interest at the rate of 6 percent per annum on  
34 any difference between the amount of money initially paid into court for the use of the  
35 defendant and the jury award as stated in the inquisition, from the date the money

1 was paid into court to the date of the inquisition or final judgment, whichever date is  
2 later.

3 (d) On taking possession, acquiring the right to take possession, or the actual  
4 transfer of title to the plaintiff, whichever occurs first, the plaintiff immediately shall  
5 file with the supervisor of assessments for the county involved a written notification  
6 or record setting forth in sufficient detail the area of the land and a description of any  
7 improvement being acquired. If the plaintiff is an agency or instrumentality of the  
8 State, the supervisor of assessments, on filing of the notification or record,  
9 immediately shall remove the property from the tax rolls.

10 12-205.

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

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

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

21 (3) Actual reasonable expenses in searching for a replacement business  
22 or farm; and

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

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

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

36 (2) Such payment shall consist of a fixed payment in an amount to be  
37 determined according to criteria established by the lead agency, except that such  
38 payment may not be less than \$1,000 [nor more than \$20,000 or the amount provided  
39 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     SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be  
5 construed to apply only prospectively and may not be applied or interpreted to have  
6 any effect on or application to any determination made by a condemning authority to  
7 acquire property by condemnation before the effective date of this Act.

8     SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
9 October 1, 2006.