

HOUSE BILL 87

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HB 187/06 – ENV

71r0693

By: **Delegates Shewell, Aumann, Beitzel, Boteler, Dwyer, Eckardt, Elliott, Frank, Impallaria, Jennings, Kach, Kipke, Krebs, McComas, Miller, Minnick, O'Donnell, Shank, Stocksdale, Stull, and Weldon**

Introduced and read first time: January 22, 2007

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Real Property – Condemnation Proceedings – Valuation of Property**

3 FOR the purpose of establishing that damages awarded for the taking of property used
4 for a business may include certain damages for the loss of goodwill under
5 certain circumstances; including certain costs in calculating diminution of value
6 for certain property; altering the payment for relocation costs in a condemnation
7 proceeding by eliminating certain monetary limitations; making stylistic
8 changes; altering a certain definition; defining a certain term; and generally
9 relating to the valuation of property in a condemnation proceeding.

10 BY repealing and reenacting, without amendments,
11 Article – Real Property
12 Section 12–104(a) and 12–105(c)
13 Annotated Code of Maryland
14 (2003 Replacement Volume and 2006 Supplement)

15 BY adding to
16 Article – Real Property
17 Section 12–104(h)
18 Annotated Code of Maryland
19 (2003 Replacement Volume and 2006 Supplement)

20 BY repealing and reenacting, with amendments,
21 Article – Real Property

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 12-105(a) and (b) and 12-205(a)
2 Annotated Code of Maryland
3 (2003 Replacement Volume and 2006 Supplement)

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

6 **Article - Real Property**

7 12-104.

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

9 (H) (1) IN THIS SUBSECTION, "GOODWILL" MEANS BENEFITS THAT
10 ACCRUE TO A BUSINESS AS A RESULT OF ITS LOCATION, REPUTATION FOR
11 DEPENDABILITY, SKILL, OR QUALITY, AND ANY OTHER CIRCUMSTANCES
12 RESULTING IN PROBABLE RETENTION OF OLD OR ACQUISITION OF NEW
13 PATRONAGE.

14 (2) THE DAMAGES TO BE AWARDED FOR THE TAKING WHERE
15 LAND, OR ANY PART OF IT, IS USED FOR A BUSINESS SHALL INCLUDE THE LOSS
16 OF GOODWILL IF THE OWNER OF THE BUSINESS PROVES THAT:

17 (I) THE LOSS:

18 1. IS CAUSED BY THE TAKING OF THE PROPERTY OR
19 INJURY TO THE REMAINDER; AND

20 2. MAY NOT REASONABLY BE PREVENTED BY
21 RELOCATING THE BUSINESS OR BY TAKING STEPS AND ADOPTING PROCEDURES
22 THAT A REASONABLY PRUDENT PERSON WOULD TAKE AND ADOPT IN
23 PRESERVING GOODWILL; AND

24 (II) COMPENSATION FOR THE LOSS WILL NOT BE INCLUDED
25 IN RELOCATION PAYMENTS UNDER SUBTITLE 2 OF THIS TITLE OR DUPLICATED
26 IN ANY OTHER COMPENSATION AWARDED TO THE OWNER.

27 12-105.

28 (a) In this section, the phrase "the effective date of legislative authority for
29 the acquisition of the property," means, with respect to a condemnor vested with

1 continuing power of condemnation, the **EARLIER OF THE DATE OF THE FIRST**
2 **PUBLIC ANNOUNCEMENT OF A PUBLIC PROJECT INVOLVING THE PROPERTY OR**
3 **THE** date of specific administrative determination to acquire the property.

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

10 (2) (I) [In addition, fair] **FAIR** market value includes any amount
11 by which the price reflects a diminution in value occurring between the effective date
12 of legislative authority for the acquisition of the property and the date of actual taking
13 if the trier of facts finds that the diminution in value was **BEYOND THE REASONABLE**
14 **CONTROL OF THE PROPERTY OWNER AND WAS** proximately caused by:

15 1. [the] **THE** public project for which the property
16 condemned is needed[, or by]; **OR**

17 2. [announcements] **ANNOUNCEMENTS** or acts of the
18 plaintiff or its officials concerning the public project[, and was beyond the reasonable
19 control of the property owner].

20 (II) **DIMINUTION IN VALUE INCLUDES LOSS OF RENTAL**
21 **INCOME, PAYMENT OF PROPERTY TAXES, MORTGAGE INTEREST, INSURANCE,**
22 **AND OTHER COSTS ASSOCIATED WITH MAINTAINING THE PROPERTY.**

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

27 12-205.

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

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

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

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

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

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
13 October 1, 2007.