

HOUSE BILL 257

N1
SB 173/06 – JPR

CONSTITUTIONAL AMENDMENT

7lr1513

By: **Delegates Impallaria, McDonough, Boteler, Kach, Glassman, Costa, Dwyer, J. King, Kipke, McComas, Miller, Riley, Schuh, Shank, Shewell, and Stifler**

Introduced and read first time: January 29, 2007

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Property Protection Act of 2007**

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; making stylistic changes; generally relating to the laws
6 authorizing private property to be taken for public use after payment of just
7 compensation; and submitting this amendment to the qualified voters of the
8 State of Maryland for their adoption or 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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Preamble

WHEREAS, This constitutional amendment shall be known and may be cited as the “Property Protection Act of 2007”; and

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

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

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

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

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

Article III – Legislative Department

40.

(A) FOR PURPOSES OF THIS SECTION, “PUBLIC USE” DOES NOT INCLUDE USE FOR ECONOMIC DEVELOPMENT PURPOSES, INCLUDING:

(1) URBAN RENEWAL;

(2) COMMUNITY REVITALIZATION OR REDEVELOPMENT;

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

(4) JOB CREATION; OR

(5) GENERATING TAX REVENUE.

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

5 40A.

6 **(A) FOR PURPOSES OF THIS SECTION, "PUBLIC USE" DOES NOT**
7 **INCLUDE USE FOR ECONOMIC DEVELOPMENT PURPOSES, INCLUDING:**

8 **(1) URBAN RENEWAL;**

9 **(2) COMMUNITY REVITALIZATION OR REDEVELOPMENT;**

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

12 **(4) JOB CREATION; OR**

13 **(5) 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
19 and City Council of Baltimore, the General Assembly may provide that such property
20 may be taken immediately upon payment therefor to the owner or owners thereof by
21 the 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

1 appointment of an appraiser or appraisers by a Court of Record to value such property
2 and that upon payment of the amount of such evaluation, to the party entitled to
3 compensation, or into Court, and securing the payment of any further sum that may
4 be awarded by a jury, such property may be taken; [and] **OR**

5 **(III)** [where such property is situated in] Montgomery County
6 and in the judgment of and upon a finding by the County Council of said County that
7 there is immediate need therefor for right of way for County roads or streets, the
8 County Council may provide that such property may be taken immediately upon
9 payment therefor to the owner or owners thereof, or into court, such amount as a
10 licensed real estate broker or a licensed and certified real estate appraiser appointed
11 by the County Council shall estimate to be the fair market value of such property,
12 provided that the Council shall secure the payment of any further sum that may
13 subsequently be awarded by a jury.

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

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

27 61.

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

30 **[(1)] (I) [To] EXCEPT AS PROVIDED IN PARAGRAPH (3) OF THIS**
31 **SUBSECTION, TO** carry out urban renewal projects which shall be limited to slum
32 clearance in slum or blighted areas and redevelopment or the rehabilitation of slum or
33 blighted areas, and to include the acquisition, within the boundary lines of such
34 county or municipal corporation, of land and property of every kind and any right,
35 interest, franchise, easement or privilege therein, by purchase, lease, gift[,
36 condemnation] or any other legal means. The term "slum area" shall mean any area

1 where dwellings predominate which, by reason of depreciation, overcrowding, faulty
2 arrangement or design, lack of ventilation, light or sanitary facilities, or any
3 combination of these factors, are detrimental to the public safety, health or morals.
4 The term "blighted area" shall mean an area in which a majority of buildings have
5 declined in productivity by reason of obsolescence, depreciation or other causes to an
6 extent they no longer justify fundamental repairs and adequate maintenance[.]; AND

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

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

18 (2) [All land or property needed, or taken by the exercise of the power
19 of eminent domain, by any county or any municipal corporation for any of the
20 aforementioned purposes or in connection with the exercise of any of the powers which
21 may be granted pursuant to this section is hereby declared to be needed or taken for
22 public uses and purposes.] Any or all of the activities authorized pursuant to this
23 section shall constitute governmental functions undertaken for public uses and
24 purposes and the power of taxation may be exercised, public funds expended and
25 public credit extended in furtherance thereof.

26 (3) **PRIVATE PROPERTY MAY NOT BE ACQUIRED BY**
27 **CONDEMNATION TO CARRY OUT AN URBAN RENEWAL PROJECT.**

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

35 (c) The General Assembly of Maryland, by public local law, may establish or
36 authorize the establishment of a public body or agency to undertake in a county or

1 municipal corporation (other than Baltimore City) the activities authorized by this
2 section, and may provide that any or all of the powers, except the power of taxation,
3 herein authorized to be granted to such county or municipal corporation shall be
4 vested in such public body or agency or in any existing public body or agency.

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

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

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

16 1.

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

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

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

30 (B) No land or property taken by the Mayor and City Council of Baltimore for
31 any of the aforementioned purposes or in connection with the exercise of any of the
32 powers which may be granted to the Mayor and City Council of Baltimore pursuant to
33 this Article by exercising the power of eminent domain, shall be taken without just

1 compensation, as agreed upon between the parties, or awarded by a jury, being first
2 paid or tendered to the party entitled to such compensation.

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

8 (D) **PRIVATE PROPERTY MAY NOT BE ACQUIRED BY CONDEMNATION**
9 **FOR AN ECONOMIC DEVELOPMENT PURPOSE, INCLUDING:**

10 (1) **URBAN RENEWAL;**

11 (2) **COMMUNITY REVITALIZATION OR REDEVELOPMENT;**

12 (3) **ATTRACTING NEW BUSINESS OR ENCOURAGING THE**
13 **EXPANSION OR RETENTION OF EXISTING BUSINESS;**

14 (4) **JOB CREATION; OR**

15 (5) **GENERATING TAX REVENUE.**

16 **Article XI-C – Off-Street Parking**

17 1.

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

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

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

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

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

17 (D) **PRIVATE PROPERTY MAY NOT BE ACQUIRED BY CONDEMNATION**
18 **FOR AN ECONOMIC DEVELOPMENT PURPOSE, INCLUDING:**

19 (1) **URBAN RENEWAL;**

20 (2) **COMMUNITY REVITALIZATION OR REDEVELOPMENT;**

21 (3) **ATTRACTING NEW BUSINESS OR ENCOURAGING THE**
22 **EXPANSION OR RETENTION OF EXISTING BUSINESS;**

23 (4) **JOB CREATION; OR**

24 (5) **GENERATING TAX REVENUE.**

25 **Article XI-D – Port Development**

26 1.

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

1 **[(a)] (1) [To] EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS**
2 **SECTION, TO** acquire land and property of every kind, and any right, interest,
3 franchise, easement or privilege therein, in adjoining or in the vicinity of the Patapsco
4 River or its tributaries, by purchase, lease, gift, condemnation or any other legal
5 means, for or in connection with extending, developing or improving the harbor or port
6 of Baltimore and its facilities and the highways and approaches thereto; and
7 providing, further, that the Mayor and City Council of Baltimore shall not acquire any
8 such land or property, or any such right, interest, franchise, easement or privilege
9 therein, for any of said purposes, in any of the counties of this State without the prior
10 consent and approval by resolution duly passed after a public hearing, by the
11 governing body of the county in which such land or property, or such right, interest,
12 franchise, easement or privilege therein, is situate; and provided, further, that Anne
13 Arundel County shall retain jurisdiction and power to tax any land so acquired by the
14 Mayor and City Council of Baltimore under the provisions of this Act.

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

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

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

31 **(D) PRIVATE PROPERTY MAY NOT BE ACQUIRED BY CONDEMNATION**
32 **FOR AN ECONOMIC DEVELOPMENT PURPOSE, INCLUDING:**

33 **(1) URBAN RENEWAL;**

34 **(2) COMMUNITY REVITALIZATION OR REDEVELOPMENT;**

1 **(3) ATTRACTING NEW BUSINESS OR ENCOURAGING THE**
2 **EXPANSION OR RETENTION OF EXISTING BUSINESS;**

3 **(4) JOB CREATION; OR**

4 **(5) GENERATING TAX REVENUE.**

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

10 SECTION 3. AND BE IT FURTHER ENACTED, That the foregoing section
11 proposed as an amendment to the Maryland Constitution shall be submitted to the
12 legal and qualified voters of this State at the next general election to be held in
13 November, 2008 for their adoption or rejection pursuant to Article XIV of the
14 Maryland Constitution. At that general election, the vote on this proposed amendment
15 to the Constitution shall be by ballot, and upon each ballot there shall be printed the
16 words "For the Constitutional Amendment" and "Against the Constitutional
17 Amendment," as now provided by law. Immediately after the election, all returns shall
18 be made to the Governor of the vote for and against the proposed amendment, as
19 directed by Article XIV of the Maryland Constitution, and further proceedings had in
20 accordance with Article XIV.