

HOUSE BILL 1043

N1

7lr1620

By: ~~Delegates Rosenberg and Sophocleus~~, Sophocleus, Ali, Beidle, V. Clagett, Glenn, Healey, Holmes, Hucker, Lafferty, Lawton, Malone, Shewell, Stein, and Weir

Introduced and read first time: February 9, 2007

Assigned to: Environmental Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: April 3, 2007

CHAPTER _____

1 AN ACT concerning

2 **Real Property – Condemnation – Procedures and Compensation**

3 FOR the purpose of ~~eliminating certain monetary limitations on payments made to~~
4 ~~certain displaced residential owners and renters to secure replacement~~
5 ~~dwellings in certain condemnation proceedings; eliminating certain monetary~~
6 ~~limitations for reestablishing certain farms, nonprofit organizations, or~~
7 ~~businesses at new sites; establishing that damages awarded for the taking of~~
8 ~~property used for a business or farm operation may include certain damages for~~
9 ~~loss of net operating income for a certain period of time; establishing that~~
10 ~~damages in a condemnation proceeding may be paid to a business or farm~~
11 ~~operation for moving the business or farm operation under certain~~
12 ~~circumstances; altering the payment for relocation costs in a condemnation~~
13 ~~proceeding by adding certain payments for substitute tangible personal~~
14 ~~property under certain circumstances and by altering certain monetary~~
15 ~~limitations; expressing the intent of the General Assembly; defining certain~~
16 ~~terms; making stylistic changes; requiring the State, its instrumentality, or a~~
17 political subdivision to file a condemnation action for certain property within a
18 certain period of time after a certain administrative or legislative determination
19 to take the property; requiring the State, its instrumentality, or a political

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



subdivision to obtain a new authorization to condemn certain property if it does not file a condemnation action within a certain period of time; altering certain monetary limitations on payments made to certain displaced residential owners and renters to secure replacement dwellings in certain condemnation proceedings; altering certain monetary limitations for reestablishing certain farms, nonprofit organizations, or small businesses at new sites; altering certain monetary limitations on certain fixed fee payments paid to certain displaced farm or business owners in lieu of certain reestablishment expenses; requiring a representative of a displacing agency to contact the owner of a certain business or farm operation within a certain period of time before the filing of a condemnation action to negotiate regarding relocation plans for the business or farm operation; providing for the application of a certain provision of this Act; requiring the State or any of its instrumentalities or political subdivisions to file an action of condemnation within a certain time period under certain circumstances; and generally relating to procedures and compensation in condemnation proceedings.

~~BY repealing and reenacting, with amendments,
Article – Real Property
Section ~~12-101, 12-202, 12-204, and 12-205~~
Annotated Code of Maryland
(2003 Replacement Volume and 2006 Supplement)~~

BY adding to
Article – Real Property
Section ~~12-102.1~~ 12-105.1 and 12-205.1
Annotated Code of Maryland
(2003 Replacement Volume and 2006 Supplement)

BY repealing and reenacting, ~~without~~ with amendments,
Article – Real Property
Section ~~12-201(a), (e), (f), and (g)~~ 12-202, 12-204, and 12-205
Annotated Code of Maryland
(2003 Replacement Volume and 2006 Supplement)

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

Article – Real Property

~~12-101.~~

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

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

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

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

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

~~**12-102.1.**~~

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

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

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

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

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

~~(1) A VIABLE BUSINESS, DWELLING, OR FARM OPERATION SHOULD BE PRESERVED WHENEVER REASONABLY PRACTICABLE AND SHOULD NOT BE ACQUIRED BY CONDEMNATION FOR URBAN RENEWAL OR ECONOMIC~~

~~DEVELOPMENT PURPOSES UNLESS OTHER ALTERNATIVES ARE SHOWN NOT TO
BE REASONABLY PRACTICABLE; AND~~

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

~~12-201.~~

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

~~(e) "Business" means any lawful activity, except a farm operation, conducted
primarily:~~

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

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

~~(3) By a nonprofit organization.~~

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

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

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

~~or~~

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

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

12-105.1.

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

6 **(B) IF AN ACTION FOR CONDEMNATION IS NOT FILED WITHIN 4 YEARS**
7 **OF THE DATE DESCRIBED IN SUBSECTION (A) OF THIS SECTION, THE STATE OR**
8 **ANY OF ITS INSTRUMENTALITIES OR POLITICAL SUBDIVISIONS MAY NOT**
9 **PROCEED WITH CONDEMNATION UNTIL IT FIRST OBTAINS A NEW**
10 **AUTHORIZATION TO ACQUIRE THE PROPERTY.**

11 12-202.

12 (a) (1) In addition to payment otherwise authorized, a displacing agency
13 shall make an additional payment ~~[not in excess of \$22,500] AS DETERMINED BY~~
14 ~~THE DISPLACING AGENCY~~ **\$45,000** to any displaced person who is displaced from a
15 dwelling actually owned and occupied by the displaced person for not less than 180
16 days prior to the initiation of negotiations for the acquisition of the real property.

17 (2) ~~¶~~(i) The displacing agency may exceed the monetary limit stated
18 in paragraph (1) of this subsection on a case-by-case basis if it determines that
19 comparable housing cannot otherwise be made available within the limit; or

20 (ii)~~¶~~ The displacing agency may use any other measures
21 necessary to remedy the unavailability of comparable housing.

22 (b) The additional payments shall include the following elements:

23 (1) Any amount which when added to the acquisition cost of the
24 dwelling acquired by the displacing agency, equals the reasonable cost of a comparable
25 replacement dwelling as defined in § 12-201(d) of this subtitle.

26 (2) Any amount which will compensate the displaced person for any
27 increased interest costs and other debt service costs which the person is required to
28 pay for financing the acquisition of any comparable replacement dwelling. The amount
29 shall be paid only if the dwelling acquired by the displacing agency was encumbered
30 by a bona fide mortgage which was a valid lien on the dwelling for not less than 180
31 days prior to the initiation of negotiations for the acquisition of the dwelling. The
32 method of calculation shall be determined by the lead agency.

(3) Reasonable expenses incurred by the displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.

12-204.

(a) In addition to amounts otherwise authorized by this title and Title 8 of the Transportation Article, the displacing agency shall make a payment to or for any displaced person displaced from any dwelling and not eligible to receive a payment under § 12-202 of this subtitle, if the dwelling actually and lawfully was occupied by the displaced person for not less than 90 days before the initiation of negotiations for acquisition of the dwelling or in any case in which displacement is not a direct result of acquisition, such other activity as the lead agency shall prescribe.

(b) (1) (i) The payment shall be the amount necessary to enable the person to lease or rent for a period not to exceed 42 months, a comparable replacement dwelling, but not to exceed ~~\$5,250~~ ~~AS DETERMINED BY THE DISPLACING AGENCY~~ **\$10,500**.

(ii) At the discretion of the displacing agency, a payment under this subsection may be made in periodic installments.

(iii) Computation of a payment under this subsection to a low income displaced person for a comparable replacement dwelling shall take into account such person's income.

(2) ~~¶~~(i) If the displacing agency determines that comparable housing cannot otherwise be made available within this limit, the monetary limit stated in paragraph (1) of this subsection may be exceeded on a case-by-case basis.

~~¶~~(ii) The displacing agency may use any other measures necessary to remedy unavailability of comparable housing as prescribed by the lead agency.

(c) (1) Any person eligible for a payment under subsection (a) of this section may elect to apply the payment to a down payment on, and other incidental expenses applicable to, the purchase of a decent, safe, and sanitary replacement dwelling.

(2) At the discretion of the displacing agency, that person may be eligible under this subsection for the maximum payment allowed under subsection (a)

of this section, except that, in the case of a displaced homeowner who has owned and occupied the displacement dwelling for at least 90 days but not more than 180 days immediately before the initiation of negotiations for the acquisition of the dwelling, the payment may not exceed the payment the person would otherwise have received under § 12-202 of this subtitle had the person owned and occupied the displacement dwelling 180 days immediately before the initiation of the negotiations.

12-205.

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

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

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

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

(4) Actual reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or small business at its new site as determined by the displacing agency, ~~but not to exceed \$10,000~~ \$60,000.

~~(5) AS DETERMINED BY AND SUBJECT TO THE APPROVAL OF THE DISPLACING AGENCY, FOR A PERIOD OF 3 YEARS FOLLOWING THE DATE OF RELOCATION THE PRESENT VALUE OF REASONABLY ANTICIPATED REDUCTION IN NET INCOME OF A SMALL BUSINESS THAT IS CAUSED BY THE RELOCATION;~~

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

~~(7) THE REASONABLE COST OF MOVING A BUSINESS OR FARM OPERATION TO ENSURE THE UNINTERRUPTED OPERATION OF THE DISPLACED~~

~~BUSINESS OR FARM OPERATION IF THE OWNER OF THE DISPLACED BUSINESS OR FARM OPERATION CAN REASONABLY ESTABLISH THAT THE CONTINUOUS OPERATION OF THE BUSINESS OR FARM OPERATION IS NECESSARY FOR THE BUSINESS OR FARM OPERATION TO REMAIN VIABLE.~~

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

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

(2) Such payment shall consist of a fixed payment in an amount to be determined according to criteria established by the lead agency, except that such payment may not be less than \$1,000 nor more than [\$20,000] ~~\$50,000~~ **\$60,000** or the amount provided under the federal Uniform Relocation Assistance Act, whichever is greater.

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

12-205.1.

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

SECTION 2. AND BE IT FURTHER ENACTED, That § 12-105.1 of the Real Property Article as enacted by Section 1 of this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any specific administrative or legislative authorization to acquire property granted by the State or any of its instrumentalities or political subdivisions before the effective date of this Act.

1 SECTION 3. AND BE IT FURTHER ENACTED, That with regard to any
2 specific administrative or legislative authorization to acquire property granted by the
3 State or any of its instrumentalities or political subdivisions before the effective date
4 of this Act, the State or any of its instrumentalities or political subdivisions shall file
5 an action of condemnation within 4 years from the effective date of this Act, and if an
6 action of condemnation is not filed within 4 years from the effective date of this Act,
7 the State or any of its instrumentalities or political subdivisions shall obtain a new
8 authorization to acquire property before proceeding with the condemnation.

9 SECTION ~~2~~ 4. AND BE IT FURTHER ENACTED, That this Act shall take
10 effect July 1, 2007.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.