

# SENATE BILL 294

N1  
SB 173/06 – JPR

CONSTITUTIONAL AMENDMENT

71r2402

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

Introduced and read first time: January 31, 2007

Assigned to: Judicial Proceedings

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## 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; 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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



## 1 Preamble

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

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

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

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

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

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

18 **Article III – Legislative Department**

19 40.

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

22 (1) URBAN RENEWAL;

23 (2) COMMUNITY REVITALIZATION OR REDEVELOPMENT;

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

26 (4) JOB CREATION; OR

27 (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 self-  
24 propelled vehicles, provided, that no petroleum products shall be sold or offered for  
25 sale at any entrance to or exit from, any land so acquired or at any entrance to, or exit  
26 from, any structure erected thereon, when any entrance to, or exit from, any such land  
27 or structure faces on a street or highway which is more than 25 feet wide from curb to  
28 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 in pursuance of directions contained in  
14 Article XIV of the Maryland Constitution. At that general election, the vote on this  
15 proposed amendment to the Constitution shall be by ballot, and upon each ballot there  
16 shall be printed the words "For the Constitutional Amendment" and "Against the  
17 Constitutional Amendment," as now provided by law. Immediately after the election,  
18 all returns shall be made to the Governor of the vote for and against the proposed  
19 amendment, as directed by Article XIV of the Maryland Constitution, and further  
20 proceedings had in accordance with Article XIV.