

HOUSE BILL 63

N1
HB 44/06 – ENV

CONSTITUTIONAL AMENDMENT
(PRE-FILED)

0lr0599

By: **Delegate Smigiel**

Requested: September 17, 2009

Introduced and read first time: January 13, 2010

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Eminent Domain – Condemnation Proceedings and Limitation on**
3 **Condemnation Authority**

4 FOR the purpose of proposing an amendment to the Maryland Constitution to prohibit
5 the condemnation of private property for certain purposes if the property is
6 intended to be transferred to a private person; requiring that a certain issue in
7 a condemnation proceeding be tried by a jury under certain circumstances;
8 making stylistic changes; and submitting this amendment to the qualified
9 voters of the State of Maryland for their adoption or rejection.

10 BY proposing an amendment to the Maryland Constitution
11 Article III – Legislative Department
12 Section 40 through 40C and 61(a)

13 BY proposing an amendment to the Maryland Constitution
14 Article XI–B – City of Baltimore – Land Development and Redevelopment
15 Section 1

16 BY proposing an amendment to the Maryland Constitution
17 Article XI–C – Off–Street Parking
18 Section 1

19 BY proposing an amendment to the Maryland Constitution
20 Article XI–D – Port Development
21 Section 1

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **Article III – Legislative Department**

2 40.

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

7 (B) **PRIVATE PROPERTY MAY NOT BE TAKEN IF:**

8 (1) **THE PROPERTY IS TO BE USED FOR ECONOMIC DEVELOPMENT**
9 **PURPOSES; AND**

10 (2) **OWNERSHIP OR CONTROL OF THE PROPERTY IS INTENDED TO**
11 **BE TRANSFERRED TO A PRIVATE PERSON.**

12 (C) **IN A CONDEMNATION PROCEEDING, THE ISSUE OF THE**
13 **CONDEMNOR'S RIGHT TO CONDEMN SHALL BE TRIED BY A JURY UNLESS THE**
14 **PARTIES FILE A WRITTEN ELECTION SUBMITTING THE ISSUE TO THE COURT FOR**
15 **DETERMINATION.**

16 40A.

17 (A) The General Assembly shall enact no law authorizing private property to
18 be taken for public use without just compensation, to be agreed upon between the
19 parties, or awarded by a jury, being first paid or tendered to the party entitled to such
20 compensation, but where such property is situated in Baltimore City and is desired by
21 this State or by the Mayor and City Council of Baltimore, the General Assembly may
22 provide that such property may be taken immediately upon payment therefor to the
23 owner or owners thereof by the State or by the Mayor and City Council of Baltimore,
24 or into court, such amount as the State or the Mayor and City Council of Baltimore, as
25 the case may be, shall estimate to be the fair value of said property, provided such
26 legislation also requires the payment of any further sum that may subsequently be
27 added by a jury; and further provided that the authority and procedure for the
28 immediate taking of property as it applies to the Mayor and City Council of Baltimore
29 on June 1, 1961, shall remain in force and effect to and including June 1, 1963, and
30 where such property is situated in Baltimore County and is desired by Baltimore
31 County, Maryland, the County Council of Baltimore County, Maryland, may provide
32 for the appointment of an appraiser or appraisers by a Court of Record to value such
33 property and that upon payment of the amount of such evaluation, to the party
34 entitled to compensation, or into Court, and securing the payment of any further sum
35 that may be awarded by a jury, such property may be taken; and where such property
36 is situated in Montgomery County and in the judgment of and upon a finding by the
37 County Council of said County that there is immediate need therefor for right of way
38 for County roads or streets, the County Council may provide that such property may

1 be taken immediately upon payment therefor to the owner or owners thereof, or into
2 court, such amount as a licensed real estate broker or a licensed and certified real
3 estate appraiser appointed by the County Council shall estimate to be the fair market
4 value of such property, provided that the Council shall secure the payment of any
5 further sum that may subsequently be awarded by a jury. In the various municipal
6 corporations within Cecil County, where in the judgment of and upon a finding by the
7 governing body of said municipal corporation that there is immediate need therefor for
8 right of way for municipal roads, streets and extension of municipal water and sewage
9 facilities, the governing body may provide that such property may be taken
10 immediately upon payment therefor to the owner or owners thereof, or into court, such
11 amount as a licensed real estate broker appointed by the particular governing body
12 shall estimate to be a fair market value of such property, provided that the municipal
13 corporation shall secure the payment of any further sum that subsequently may be
14 awarded by a jury. This Section 40A shall not apply in Montgomery County or any of
15 the various municipal corporations within Cecil County, if the property actually to be
16 taken includes a building or buildings.

17 **(B) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION, PRIVATE**
18 **PROPERTY MAY NOT BE TAKEN IF:**

19 **(1) THE PROPERTY IS TO BE USED FOR ECONOMIC DEVELOPMENT**
20 **PURPOSES; AND**

21 **(2) OWNERSHIP OR CONTROL OF THE PROPERTY IS INTENDED TO**
22 **BE TRANSFERRED TO A PRIVATE PERSON.**

23 40B.

24 **(A)** The General Assembly shall enact no law authorizing private property to
25 be taken for public use without just compensation, to be agreed upon between the
26 parties or awarded by a jury, being first paid or tendered to the party entitled to such
27 compensation, except that where such property in the judgment of the State Roads
28 Commission is needed by the State for highway purposes, the General Assembly may
29 provide that such property may be taken immediately upon payment therefor to the
30 owner or owners thereof by said State Roads Commission, or into Court, such amount
31 as said State Roads Commission shall estimate to be of the fair value of said property,
32 provided such legislation also requires the payment of any further sum that may
33 subsequently be awarded by a jury.

34 **(B) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION, PRIVATE**
35 **PROPERTY MAY NOT BE TAKEN IF:**

36 **(1) THE PROPERTY IS TO BE USED FOR ECONOMIC DEVELOPMENT**
37 **PURPOSES; AND**

1 **(2) OWNERSHIP OR CONTROL OF THE PROPERTY IS INTENDED TO**
2 **BE TRANSFERRED TO A PRIVATE PERSON.**

3 40C.

4 **(A)** The General Assembly shall enact no law authorizing private property to
5 be taken for public use without just compensation, to be agreed upon between the
6 parties or awarded by a jury, being first paid or tendered to the party entitled to such
7 compensation, except that where such property, located in Prince George's County in
8 this State, is in the judgment of the Washington Suburban Sanitary Commission
9 needed for water supply, sewerage and drainage systems to be extended or constructed
10 by the said Commission, the General Assembly may provide that such property, except
11 any building or buildings may be taken immediately upon payment therefor by the
12 condemning authority to the owner or owners thereof or into the Court to the use of
13 the person or persons entitled thereto, such amount as the condemning authority shall
14 estimate to be the fair value of said property, provided such legislation requires that
15 the condemning authority's estimate be not less than the appraised value of the
16 property being taken as evaluated by at least one qualified appraiser, whose
17 qualifications have been accepted by a Court of Record of this State, and also requires
18 the payment of any further sum that may subsequently be awarded by a jury, and
19 provided such legislation limits the condemning authority's utilization of the
20 acquisition procedures specified in this section to occasions where it has acquired or is
21 acquiring by purchase or other procedures one-half or more of the several takings of
22 land or interests in land necessary for any given water supply, sewerage or drainage
23 extension or construction project.

24 **(B) NOTWITHSTANDING SUBSECTION (A) OF THIS SECTION, PRIVATE**
25 **PROPERTY MAY NOT BE TAKEN IF:**

26 **(1) THE PROPERTY IS TO BE USED FOR ECONOMIC DEVELOPMENT**
27 **PURPOSES; AND**

28 **(2) OWNERSHIP OR CONTROL OF THE PROPERTY IS INTENDED TO**
29 **BE TRANSFERRED TO A PRIVATE PERSON.**

30 61.

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

33 **[(1)] (I)** To carry out urban renewal projects which shall be limited
34 to slum clearance in slum or blighted areas and redevelopment or the rehabilitation of
35 slum or blighted areas, and to include the acquisition, within the boundary lines of
36 such county or municipal corporation, of land and property of every kind and any
37 right, interest, franchise, easement or privilege therein, by purchase, lease, gift,
38 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] EXCEPT AS PROVIDED IN PARAGRAPH (4) OF THIS**
 8 **SUBSECTION, TO** sell, lease, convey, transfer or otherwise dispose of any of said land
 9 or property, regardless of whether or not it has been developed, redeveloped, altered or
 10 improved and irrespective of the manner or means in or by which it may have been
 11 acquired, to any private, public or quasi public corporation, partnership, association,
 12 person or other legal entity.

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

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

27 **(4) A COUNTY OR MUNICIPAL CORPORATION MAY NOT TRANSFER**
 28 **TO A PRIVATE PERSON ANY PRIVATE PROPERTY CONDEMNED FOR AN URBAN**
 29 **RENEWAL PROJECT AS AUTHORIZED UNDER PARAGRAPH (1) OF THIS**
 30 **SUBSECTION.**

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

32 1.

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

35 **[(a)] (1)** To acquire, within the boundary lines of Baltimore City, land and
 36 property of every kind, and any right, interest, franchise, easement or privilege
 37 therein, by purchase, lease, gift, condemnation or any other legal means, for
 38 development or redevelopment, including, but not limited to, the comprehensive
 39 renovation or rehabilitation thereof; and

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

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

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

18 **(D) THE MAYOR AND CITY COUNCIL OF BALTIMORE MAY NOT**
19 **TRANSFER TO A PRIVATE PERSON ANY PRIVATE PROPERTY THAT IS**
20 **CONDEMNED FOR ANY ECONOMIC DEVELOPMENT PURPOSE AUTHORIZED**
21 **UNDER SUBSECTION (A) OF THIS SECTION.**

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

23 1.

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

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

34 **[(b)] (2) [To] EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS**
35 **SECTION, TO** sell, lease, convey, transfer or otherwise dispose of any of said land or
36 property, regardless of whether or not it has been developed, redeveloped, altered, or
37 improved and irrespective of the manner or means in or by which it may have been

1 acquired, to any private, public or quasi public corporation, partnership, association,
2 person or other legal entity.

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

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

14 **(D) THE MAYOR AND CITY COUNCIL OF BALTIMORE MAY NOT**
15 **TRANSFER TO A PRIVATE PERSON ANY PRIVATE PROPERTY THAT IS**
16 **CONDEMNED FOR ANY ECONOMIC DEVELOPMENT PURPOSE AUTHORIZED**
17 **UNDER SUBSECTION (A) OF THIS SECTION.**

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

19 1.

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

22 **[(a)] (1)** To acquire land and property of every kind, and any right, interest,
23 franchise, easement or privilege therein, in adjoining or in the vicinity of the Patapsco
24 River or its tributaries, by purchase, lease, gift, condemnation or any other legal
25 means, for or in connection with extending, developing or improving the harbor or port
26 of Baltimore and its facilities and the highways and approaches thereto; and
27 providing, further, that the Mayor and City Council of Baltimore shall not acquire any
28 such land or property, or any such right, interest, franchise, easement or privilege
29 therein, for any of said purposes, in any of the counties of this State without the prior
30 consent and approval by resolution duly passed after a public hearing, by the
31 governing body of the county in which such land or property, or such right, interest,
32 franchise, easement or privilege therein, is situate; and provided, further, that Anne
33 Arundel County shall retain jurisdiction and power to tax any land so acquired by the
34 Mayor and City Council of Baltimore under the provisions of this Act[.]; AND

35 **[(b)] (2) [To] EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS**
36 **SECTION, TO** sell, lease, convey, transfer or otherwise dispose of any of said land or
37 property, regardless of whether or not it is undeveloped or has been developed,
38 redeveloped, altered, or improved and irrespective of the manner or means in or by

1 which it may have been acquired, to any private, public or quasi public corporation,
2 partnership, association, person or other legal entity.

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

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

14 **(D) THE MAYOR AND CITY COUNCIL OF BALTIMORE MAY NOT**
15 **TRANSFER TO A PRIVATE PERSON ANY PRIVATE PROPERTY THAT IS**
16 **CONDEMNED FOR ANY ECONOMIC DEVELOPMENT PURPOSE AUTHORIZED**
17 **UNDER SUBSECTION (A) OF THIS SECTION.**

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

23 SECTION 3. AND BE IT FURTHER ENACTED, That the foregoing section
24 proposed as an amendment to the Maryland Constitution shall be submitted to the
25 legal and qualified voters of this State at the next general election to be held in
26 November, 2010 for their adoption or rejection in pursuant to Article XIV of the
27 Maryland Constitution. At that general election, the vote on this proposed amendment
28 to the Constitution shall be by ballot, and upon each ballot there shall be printed the
29 words "For the Constitutional Amendment" and "Against the Constitutional
30 Amendment," as now provided by law. Immediately after the election, all returns shall
31 be made to the Governor of the vote for and against the proposed amendment, as
32 directed by Article XIV of the Maryland Constitution, and further proceedings had in
33 accordance with Article XIV.