

March 6, 2025

The Honorable C.T. Wilson
Chair, Economic Matters Committee
230 Taylor House Office Building
Annapolis, MD 21401

RE: Letter of Opposition – HB 1337 – Real Property – Condemnation – Damages Awarded for Lost Profits

Dear Chair Wilson and Committee Members:

The Maryland Department of Transportation (MDOT) respectfully opposes House Bill 1337, which provides that the owner of a business or farming operation on certain property that is taken is entitled to damages for the loss of profit if the owner can prove certain conditions exist.¹

Currently, lost profits are only compensable to the extent they diminish the fair market value of the land, typically based on an appraisal using the income approach. HB 1337 would allow lost profits under certain circumstances. Quantifying the exact amount is difficult, especially because of the conditions included in the bill that *only* allow lost profits that are not already covered by relocation.

HB 1337 introduces uncertainty to the valuation process and would escalate right-of-way acquisition costs for State agencies. SHA currently follows 49 CFR Part 24 – The Uniform Act — in determining the value of damages to the remaining property consistent with the Uniform Standards of Professional Appraisal Practice (USPAP) for SHA’s real estate actions. Valuing damages to the remaining parcel already takes into consideration all factors that reduce the value through the appraisal methodologies. Indeed, considering loss of profits as damages constitutes a duplicate payment. Therefore, we anticipate that this would present challenges with federal reimbursement of SHA’s real estate costs. Furthermore, there is little or no confidence that the acquiring State agency will have timely access to business financial records. Finally, it is difficult to attribute whether the loss of profits is due to the operating business environment (e.g. competition) or the partial taking.

For these reasons, the Maryland Department of Transportation respectfully requests the Committee grant House Bill 1337 an unfavorable report.

¹ Damages awarded under HB 1337 shall be determined in accordance with generally accepted accounting principles applied on a consistent basis.

In order to be eligible for loss of profit, the owner must prove: 1) the amount of profit loss; and 2) that the loss of profit a) is directly and proximately caused by the taking or damaging of the property; b) cannot reasonably be prevented by relocation of the business or farm operation or by taking certain steps a reasonably prudent person would take; c) will not be included in relocation payments under Title 2, Subtitle 2 of the Real Property Article; and d) will not be duplicated in the compensation awarded to the owner.

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Respectfully submitted,

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