

SENATE BILL 397

N1

3lr1358
CF 3lr2543

By: **Senator Zirkin**

Introduced and read first time: January 28, 2013

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Condemnation Proceedings – Compensation and Payment of Fees**

3 FOR the purpose of establishing that damages to be awarded when land, or any part of
4 it, is taken in a certain condemnation proceeding by a certain entity is three
5 times the fair market value of the part taken; authorizing the fair market value
6 of property in condemnation proceedings by certain entities to be determined in
7 a certain manner; requiring the condemnation authority to pay all costs of a
8 certain appraisal; requiring the plaintiff in a condemnation proceeding to pay
9 reasonable legal, expert, appraisal, and engineering fees actually incurred by
10 the defendant; defining a certain term; and generally relating to compensation
11 and payment of fees by certain private companies and public service companies
12 in condemnation proceedings.

13 BY repealing and reenacting, with amendments,
14 Article – Real Property
15 Section 12–104, 12–105, and 12–106
16 Annotated Code of Maryland
17 (2010 Replacement Volume and 2012 Supplement)

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

20 **Article – Real Property**

21 12–104.

22 (a) [The] **EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION, THE**
23 damages to be awarded for the taking of land is its fair market value.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (b) The damages to be awarded where land, or any part of it, is taken is the
2 fair market value of the part taken, but not less than the actual value of the part
3 taken plus any severance or resulting damages to the remaining land by reason of the
4 taking and of future use by the plaintiff of the part taken. The severance or resulting
5 damages shall be diminished to the extent of the value of the special (particular)
6 benefits to the remainder arising from the plaintiff's future use of the part taken.

7 (c) For the purpose of determining the extent of the taking and the valuation
8 of the tenant's interest in a condemnation proceeding, no improvement or installation
9 which otherwise would be deemed part of the land shall be deemed personal property
10 so as to be excluded from the taking solely because of the private right of a tenant, as
11 against the owner of any other interest in the land sought to be condemned, to remove
12 the improvement or installation, unless the tenant exercises his right to remove it
13 prior to the date when his answer is due, or states in his answer his election to
14 exercise this right.

15 (d) The damages to be awarded for the taking of a structure, such as a
16 church or place of religious worship, held in fee simple, or under a lease renewable
17 forever, by or for the benefit of a religious body and regularly used by the religious
18 body, are the cost of reproducing or replacing the improvements, adjusted for physical
19 and functional depreciation, to which shall be added the fair market value of the land.

20 (e) (1) The damages to be awarded for the taking of all land owned and
21 designated by a public body as park land, open space, or recreation area is the fair
22 market value as of the valuation date, of other land substantially similar in size and
23 character and of comparable quality for park, open space, or recreational purposes for
24 the community which made use of the land to be taken. No damages may be awarded
25 unless other land is acquired for park, open space, or recreational purposes. No
26 awarded damages may be less than the fair market value of the land to be taken.

27 (2) The damages to be awarded for the taking of part of the park land,
28 open space, or recreation area is the fair market value of the part taken, but not less
29 than the actual value of the replacement land as defined in paragraph (1) of this
30 subsection plus any severance or resulting damages to the remaining land by reason of
31 the taking and of the future use by the plaintiff of the part taken. The severance or
32 resulting damages are to be diminished to the extent of the value of the special
33 (particular) benefits to the remainder arising from the plaintiff's future use of the land
34 taken.

35 (3) Where the land, or any part of it, taken pursuant to this subsection
36 contains improvements, the damages to be awarded, in addition to that provided for in
37 paragraphs (1) and (2) of this subsection, shall include the reasonable cost as of the
38 valuation date of providing new improvements of substantially the same size,
39 comparable character, and for the same purpose as those taken.

40 (f) The damages to be awarded for the taking of land or an interest in land
41 over which an easement in gross or other right to restrict its use has been granted

1 pursuant to § 2-504 of the Agriculture Article shall be as provided for in this
2 subsection:

3 (1) The damages to be awarded for the taking of an entire tract is its
4 fair market value after deducting the lesser of (a) the value of the easement granted,
5 or (b) the excess of the aggregate amount of the property taxes that would have been
6 due on the property if the easement had not been granted above the aggregate amount
7 of property taxes actually paid on the property since the easement was granted.

8 (2) The damages to be awarded where part of a tract of land is taken is
9 the fair market value of the part taken less the deduction computed as described in
10 paragraph (1) of this subsection, but not less than the actual value of the part taken
11 less the deduction computed as described in paragraph (1) of this subsection, plus any
12 severance or resulting damages to the remaining land by reason of the taking and of
13 future use by the plaintiff of the part taken.

14 (g) If any easement in gross or other right to restrict use of land or any
15 interest in land has been donated to the Maryland Historical Trust or the Maryland
16 Environmental Trust, damages shall be awarded in any condemnation proceedings
17 under this title to the fee owner and leasehold owner, as their interests may appear,
18 and shall be the fair market value of the land or interest in it, computed as though the
19 easement or other right did not exist.

20 (H) (1) IN THIS SUBSECTION, "FAIR MARKET VALUE" INCLUDES:

21 (I) THE ACTUAL VALUE OF THE PART TAKEN PLUS ANY
22 SEVERANCE OR RESULTING DAMAGES TO THE REMAINING LAND BY REASON OF
23 THE TAKING AND OF FUTURE USE BY THE PLAINTIFF OF THE PART TAKEN; AND

24 (II) THE VALUE OF ANY VEGETATION ON THE LAND,
25 WHETHER OR NOT THE VEGETATION WAS PLANTED BY THE LAND OWNER.

26 (2) THIS SUBSECTION APPLIES ONLY TO PRIVATE PROPERTY
27 ACQUIRED FOR PUBLIC USE BY:

28 (I) A PRIVATE COMPANY BY THE EXERCISE OF AUTHORITY
29 GRANTED TO THE PRIVATE COMPANY UNDER THE NATURAL GAS ACT; OR

30 (II) A PUBLIC SERVICE COMPANY BY THE EXERCISE OF
31 AUTHORITY GRANTED TO THE PUBLIC SERVICE COMPANY UNDER STATE LAW.

32 (3) THE DAMAGES TO BE AWARDED WHEN LAND, OR ANY PART OF
33 IT, IS TAKEN BY AN ENTITY DESCRIBED IN PARAGRAPH (2) OF THIS SUBSECTION
34 IS THREE TIMES THE FAIR MARKET VALUE OF THE PART TAKEN.

1 12-105.

2 (a) In this section, the phrase “the effective date of legislative authority for
3 the acquisition of the property,” means, with respect to a condemnor vested with
4 continuing power of condemnation, the date of specific administrative determination
5 to acquire the property.

6 (b) **[The] EXCEPT AS PROVIDED IN SUBSECTION (B-1) OF THIS SECTION,**
7 **THE** fair market value of property in a condemnation proceeding is the price as of the
8 valuation date for the highest and best use of the property which a vendor, willing but
9 not obligated to sell, would accept for the property, and which a purchaser, willing but
10 not obligated to buy, would pay, excluding any increment in value proximately caused
11 by the public project for which the property condemned is needed. In addition, fair
12 market value includes any amount by which the price reflects a diminution in value
13 occurring between the effective date of legislative authority for the acquisition of the
14 property and the date of actual taking if the trier of facts finds that the diminution in
15 value was proximately caused by the public project for which the property condemned
16 is needed, or by announcements or acts of the plaintiff or its officials concerning the
17 public project, and was beyond the reasonable control of the property owner.

18 **(B-1) (1) THIS SUBSECTION APPLIES ONLY TO A CONDEMNATION**
19 **PROCEEDING BROUGHT BY:**

20 **(I) A PRIVATE COMPANY BY THE EXERCISE OF AUTHORITY**
21 **GRANTED TO THE PRIVATE COMPANY UNDER THE NATURAL GAS ACT; OR**

22 **(II) A PUBLIC SERVICE COMPANY BY THE EXERCISE OF**
23 **AUTHORITY GRANTED TO THE PUBLIC SERVICE COMPANY UNDER STATE LAW.**

24 **(2) THE FAIR MARKET VALUE OF PROPERTY IN A CONDEMNATION**
25 **PROCEEDING BROUGHT UNDER THIS SUBSECTION IS THE HIGHER OF:**

26 **(I) THE FAIR MARKET VALUE DETERMINED UNDER**
27 **SUBSECTION (B) OF THIS SECTION; OR**

28 **(II) THE VALUE OF THE PROPERTY AS DETERMINED BY AN**
29 **APPRAISER CHOSEN BY THE PROPERTY OWNER.**

30 **(3) IF A PROPERTY OWNER ELECTS TO HAVE AN APPRAISAL DONE**
31 **UNDER PARAGRAPH (2)(II) OF THIS SUBSECTION, THE CONDEMNING**
32 **AUTHORITY SHALL PAY ALL COSTS OF THE APPRAISAL.**

33 (c) The defendant property owner may elect to present as evidence in a
34 condemnation proceeding, the assessed value of the property, as determined by the

1 Department of Assessments and Taxation, if the assessed value is greater than the
2 appraised value placed on the property by the condemning authority.

3 (d) If property is ever acquired by the exercise of the power of eminent
4 domain, the fair market value of the property is not affected by the property having
5 been qualified for a tax credit under § 9–208 of the Tax – Property Article. However, if
6 the grantee of an easement purchased the easement for monetary consideration other
7 than, or in addition to, the tax credit under § 9–208 of the Tax – Property Article, then
8 the condemnation award shall be reduced by an amount equal to the additional
9 consideration.

10 12–106.

11 (a) The plaintiff shall pay all the costs in the trial court.

12 (b) The costs in a condemnation proceeding include:

13 (1) The usual per diem to the jurors;

14 (2) The cost of transporting the trier of fact to view the property;

15 (3) The cost of meals for the jury if the court so orders;

16 (4) The cost of recording the inquisition among the land records and of
17 all documentary stamps which may be required in the transfer of the property to the
18 plaintiff; and

19 (5) [An allowance to the defendant, as fixed by the court, for the] **THE**
20 reasonable legal, **EXPERT**, appraisal, and engineering fees actually incurred by the
21 defendant because of the condemnation proceeding[, if the judgment is for the
22 defendant on the right to condemn].

23 (c) In proceeding under Article III of the Constitution of the State, or any
24 amendment to it, the plaintiff shall pay interest at the rate of 6 percent per annum on
25 any difference between the amount of money initially paid into court for the use of the
26 defendant and the jury award as stated in the inquisition, from the date the money
27 was paid into court to the date of the inquisition or final judgment, whichever date is
28 later.

29 (d) On taking possession, acquiring the right to take possession, or the actual
30 transfer of title to the plaintiff, whichever occurs first, the plaintiff immediately shall
31 file with the supervisor of assessments for the county involved a written notification or
32 record setting forth in sufficient detail the area of the land and a description of any
33 improvement being acquired. If the plaintiff is an agency or instrumentality of the
34 State, the supervisor of assessments, on filing of the notification or record,
35 immediately shall remove the property from the tax rolls.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2013.