

APPENDIX A

STATE CONSTITUTIONAL PROVISIONS

A. STATE CONSTITUTIONS WITH TAKING PROVISIONS

CONNECTICUT

CONNECTICUT CONST., art. I, sec. 11 (“The property of no person shall be taken for public use without just compensation therefor.”)

FLORIDA

FLORIDA CONST., art. X, sec. 6.

(a) No private property shall be taken except for a public purpose and with full compensation therefor paid to each owner or secured by deposit in the registry of the court and available to the owner.

(b) Provision may be made by law for the taking of easements, by like proceedings, for the drainage of the land of one person over or through the land of another.

(c) Private property taken by eminent domain pursuant to a petition to initiate condemnation proceedings filed on or after January 2, 2007, may not be conveyed to a natural person or private entity except as provided by general law passed by a three-fifths vote of the membership of each house of the Legislature.

IDAHO

IDAHO CONST., art. I, sec. 14 (“Private property may be taken for public use, but not until a just compensation, to be ascertained in the manner prescribed by law, shall be paid therefor.”)

INDIANA

INDIANA CONST., art. I, sec. 21 (“No person's property shall be taken by law, without just compensation; nor, except in case of the State, without such compensation first assessed and tendered.”)

IOWA

IOWA CONST., art. I, sec. 18.

Private property shall not be taken for public use without just compensation first being made, or secured to be made to the owner thereof, as soon as the damages shall be assessed by a jury, who shall not take into consideration any advantages that may result to said owner on account of the improvement for which it is taken.

KANSAS

As stated in *Butler County Rural Water Dist. No. 8 v. Yates*, 275 Kan. 291, 297, 64 P.3d 357, 363 (2003) (citations omitted) (internal quotation marks omitted):

The Fifth Amendment to the United States Constitution prohibits private property being taken for public use without just compensation. While the Kansas Constitution does not contain an identical provision, with the exception of Art. 12, § 4, governing corporations, the Fifth Amendment prohibition is applicable to the states by way of the Fourteenth Amendment. ...Further, the constitutional prohibition is codified in Kansas in K.S.A. 26-513(a), which provides private property shall not be taken or damaged for public use without just compensation.

MAINE

MAINE CONST., art. I, sec. 21 (“Private property shall not be taken for public uses without just compensation; nor unless the public exigencies require it.”)

MARYLAND

MARYLAND CONST., arts. 40, 40A, 40B, 40C, and 40D.

SEC. 40. The General Assembly shall enact no Law authorizing private property to be taken for public use without just compensation, as agreed upon between the parties, or awarded by a jury, being first paid or tendered to the party entitled to such compensation.

SEC. 40A. The General Assembly shall enact no law authorizing private property to be taken for public use without just compensation, to be agreed upon between the parties, or awarded by a jury, being first paid or tendered to the party entitled to such compensation, but where such property is situated in Baltimore City and is desired by this State or by the Mayor and City Council of Baltimore, the General Assembly may provide that such property may be taken immediately upon payment therefor to the owner or owners thereof by the State or by the Mayor and City Council of Baltimore, or into court, such amount as the State or the Mayor and City Council of Baltimore, as the case may be, shall estimate to be the fair value of said property, provided such legislation also requires the payment of any further sum that may subsequently be added by a jury; and further provided that the authority and procedure for the immediate taking of property as it applies to the Mayor and City Council of Baltimore on June 1, 1961, shall remain in force and effect to and including June 1, 1963, and where such property is situated in Baltimore County and is desired by Baltimore County, Maryland, the County Council of Baltimore County, Maryland, may provide for the appointment of an appraiser or appraisers by a Court of Record to value such property and that upon payment of the amount of such evaluation, to the party entitled to compensation, or into Court, and securing the payment of any further sum that may be awarded by a jury, such property may be taken; and where such property is situated in Montgomery County and in the judgment of and upon a finding by the County Council of said County that there is immediate need therefor for right of way for County roads or streets, the County Council may provide that such property may be taken immediately upon payment therefor to the owner or owners thereof, or into court, such amount as a licensed real estate broker or a licensed and certified real estate appraiser appointed by the County Council shall estimate to be the fair market value of such property, provided that the Council shall secure the payment of any further sum that may subsequently be awarded by a jury. In the various municipal corporations within Cecil County, where in the judgment of and upon a finding by the governing body of said municipal corporation that there is immediate need therefor for right of way for municipal roads, streets and extension of municipal water and sewage facilities, the governing body may provide that such property may be taken immediately upon payment therefor to the owner or owners thereof, or into court, such amount as a licensed real estate broker appointed by the particular governing body shall estimate to be a fair market value of such property, provided that the municipal corporation shall secure the payment of any further sum that subsequently may be awarded by a jury. This Section 40A shall not apply in Montgomery County or any of the various municipal corporations within Cecil County, if the property actually to be taken includes a building or buildings (*amended by Chapter 402, Acts of 1912, ratified Nov. 4, 1913; Chapters 224 and 604, Acts of 1959, ratified Nov. 8, 1960; Chapter 329, Acts of 1961, ratified Nov. 6, 1962; Chapter 100, Acts of 1962, ratified Nov. 6, 1962; Chapter 304, Acts of 1966, ratified Nov. 8, 1966; Chapter 589, Acts of 2002, ratified Nov. 5, 2002*).

SEC. 40B. The General Assembly shall enact no law authorizing private property to be taken for public use without just compensation, to be agreed upon between the parties or awarded by a jury, being first paid or tendered to the party entitled to such compensation, except that where such property in the judgment of the State Roads Commission is needed by the State for highway purposes, the General Assembly may provide that such property may be taken immediately upon payment therefor to the owner or owners thereof by said State Roads Commission, or into Court, such amount as said State Roads Commission shall estimate to be of the fair value of said property, provided such

legislation also requires the payment of any further sum that may subsequently be awarded by a jury (*added by Chapter 607, Acts of 1941, ratified Nov. 3, 1942*).

SEC. 40C. The General Assembly shall enact no law authorizing private property to be taken for public use without just compensation, to be agreed upon between the parties or awarded by a jury, being first paid or tendered to the party entitled to such compensation, except that where such property, located in Prince George's County in this State, is in the judgment of the Washington Suburban Sanitary Commission needed for water supply, sewerage and drainage systems to be extended or constructed by the said Commission, the General Assembly may provide that such property, except any building or buildings may be taken immediately upon payment therefor by the condemning authority to the owner or owners thereof or into the Court to the use of the person or persons entitled thereto, such amount as the condemning authority shall estimate to be the fair value of said property, provided such legislation requires that the condemning authority's estimate be not less than the appraised value of the property being taken as evaluated by at least one qualified appraiser, whose qualifications have been accepted by a Court of Record of this State, and also requires the payment of any further sum that may subsequently be awarded by a jury, and provided such legislation limits the condemning authority's utilization of the acquisition procedures specified in this section to occasions where it has acquired or is acquiring by purchase or other procedures one-half or more of the several takings of land or interests in land necessary for any given water supply, sewerage or drainage extension or construction project (*added by Chapter 781, Acts of 1965, ratified Nov. 8, 1966*).

MICHIGAN

MICHIGAN CONST., art. 10, sec. 2.

Private property shall not be taken for public use without just compensation therefore being first made or secured in a manner prescribed by law. If private property consisting of an individual's principal residence is taken for public use, the amount of compensation made and determined for that taking shall be not less than 125% of that property's fair market value, in addition to any other reimbursement allowed by law. Compensation shall be determined in proceedings in a court of record.

"Public use" does not include the taking of private property for transfer to a private entity for the purpose of economic development or enhancement of tax revenues. Private property otherwise may be taken for reasons of public use as that term is understood on the effective date of the amendment to this constitution that added this paragraph.

In a condemnation action, the burden of proof is on the condemning authority to demonstrate, by the preponderance of the evidence, that the taking of a private property is for a public use, unless the condemnation action involves a taking for the eradication of blight, in which case the burden of proof is on the condemning authority to demonstrate, by clear and convincing evidence, that the taking of that property is for a public use. (146)

Any existing right, grant, or benefit afforded to property owners as of November 1, 2005, whether provided by this section, by statute, or otherwise, shall be preserved and shall not be abrogated or impaired by the constitutional amendment that added this paragraph.

NEVADA

NEVADA CONST., art. I, sec. 8 (two versions).

Sec. 8.

5. No person shall be deprived of life, liberty, or property, without due process of law.
6. Private property shall not be taken for public use without just compensation having been first made, or secured, except in cases of war, riot, fire, or great public peril, in which case compensation shall be afterward made.

Sec. 8. ...[Effective November 23, 2010, if the proposed amendment is agreed to and passed by the 2009 Legislature and approved and ratified by the voters at the 2010 General Election.]

6. Private property shall not be taken for public use without just compensation having been first made, or secured, except in cases of war, riot, fire, or great public peril, in which case compensation shall be afterward made.

7. Except as otherwise provided in paragraphs (a) to (e), inclusive, the public uses for which private property may be taken do not include the direct or indirect transfer of any interest in the property to another private person or entity. A transfer of property taken by the exercise of eminent domain to another private person or entity is a public use in the following circumstances:

(a) The entity that took the property transfers the property to a private person or entity and the private person or entity uses the property primarily to benefit a public service, including, without limitation, a utility, railroad, public transportation project, pipeline, road, bridge, airport or facility that is owned by a governmental entity.

(b) The entity that took the property leases the property to a private person or entity that occupies an incidental part of an airport or a facility that is owned by a governmental entity and, before leasing the property:

(1) Uses its best efforts to notify the person from whom the property was taken that the property will be leased to a private person or entity that will occupy an incidental part of an airport or a facility that is owned by a governmental entity; and

(2) Provides the person from whom the property was taken with an opportunity to bid or propose on any such lease.

(c) The entity:

(1) Took the property in order to acquire property that was abandoned by the owner, abate an immediate threat to the safety of the public or remediate hazardous waste; and

(2) Grants a right of first refusal to the person from whom the property was taken that allows that person to reacquire the property on the same terms and conditions that are offered to the other private person or entity.

(d) The entity that took the property exchanges it for other property acquired or being acquired by eminent domain or under the threat of eminent domain for roadway or highway purposes, to relocate public or private structures or to avoid payment of excessive compensation or damages.

(e) The person from whom the property is taken consents to the taking.

8. In all actions in eminent domain:

(a) Before the entity that is taking property obtains possession of the property, the entity shall give to the owner of the property a copy of all appraisals of the property obtained by the entity.

(b) At the occupancy hearing, the owner of the property that is the subject of the action is entitled, at the property owner's election, to a separate and distinct determination as to whether the property is being taken for a public use.

(c) The entity that is taking property has the burden of proving that the taking is for a public use.

(d) Except as otherwise provided in this paragraph, neither the entity that is taking property nor the owner of the property is liable for the attorney's fees of the other party. This paragraph does not apply in an inverse condemnation action if the owner of the property that is the subject of the action makes a request for attorney's fees from the other party to the action.

9. Except as otherwise provided in this subsection, if a court determines that a taking of property is for public use, the taken or damaged property must be valued at its highest and best use without considering any future dedication requirements imposed by the entity that is taking the property. If property is taken primarily for a profit-making purpose, the property must be valued at the use to which the entity that is taking the property intends to put the property, if such use results in a higher value for the property.

10. In all actions in eminent domain, fair market value is the highest price, on the date of valuation, that would be agreed to by a seller, who is willing to sell on the open market and has reasonable time to find a purchaser, and a buyer, who is ready, willing and able to buy, if both the seller and the buyer had full knowledge of all the uses and purposes for which the property is reasonably adaptable and available.

11. In all actions in eminent domain, just compensation is that sum of money necessary to place the property owner in the same position monetarily as if the property had never been taken, excluding any governmental offsets except special benefits. Special benefits may only offset severance damages and may not offset the value for the property. Just compensation for the property taken by the exercise of eminent domain must include, without limitation, interest and reasonable costs and expenses, except attorney's fees, incurred by the owner of the property that is the subject of the action. The district court shall determine, in a posttrial hearing, the award of interest and award as interest the amount of money which will put the person from whom the property is taken in as good a position monetarily as if the property had not been taken. The district court shall enter an order concerning:

(a) The date on which the computation of interest will commence;

(b) The rate of interest to be used to compute the award of interest, which must not be less than the prime rate of interest plus 2 percent; and

(c) Whether the interest will be compounded annually.

12. Property taken by the exercise of eminent domain must be offered to and reverts to the person from whom the property was taken upon repayment of the original purchase price if, within 15 years after obtaining possession of the property, the entity that took the property:

(a) Fails to use the property for the public use for which the property was taken or for any public use reasonably related to the public use for which the property was taken; or

(b) Seeks to convey any right, title or interest in all or part of the property to any other person and the conveyance is not occurring pursuant to subsection 7.

The entity that has taken the property does not fail to use the property under paragraph (a) if the entity has begun active planning for or design of the public use, the assembling of land in furtherance of planning for or design of the public use or construction related to the public use.

13. If any provision of subsections 7 to 12, inclusive, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the provisions or application of subsections 7 to 12, inclusive, which can be given effect without the invalid provision or application, and to this end the provisions of subsections 7 to 12, inclusive, are declared to be severable.

14. The provisions of subsections 7 to 12, inclusive, apply to an action in eminent domain that is filed on or after January 1, 2011.

NEW JERSEY

NEW JERSEY CONST., art I, sec. 20 ("Private property shall not be taken for public use without just compensation. Individuals or private corporations shall not be authorized to take private property for public use without just compensation first made to the owners.")

NEW YORK

NEW YORK CONST., art. I, sec. 7(a) ("Private property shall not be taken for public use without just compensation.")

NORTH CAROLINA

As stated in *Department of Transportation v. Rowe*, 353 N.C. 671, 676, 549 S.E.2d 203, 208 (2001):

Just compensation is clearly a fundamental right under both the United States and North Carolina Constitution. It is specifically enumerated in the Fifth Amendment to the United States Constitution and has been applied to the states through the 14th. ...The right to just compensation is not expressly mentioned in the North Carolina Constitution, but "this Court has inferred such a provision as a fundamental right integral to the 'law of the land' clause." ...("When private property is taken for public use, just compensation must be paid.... While this principle is not stated in express terms in the North Carolina Constitution, it is regarded as an integral part of the 'law of the land' ...").

OHIO

OHIO CONST., art. I, sec. 19.

Private property shall ever be held inviolate, but subservient to the public welfare. When taken in time of war or other public exigency, imperatively requiring its immediate seizure or for the purpose of making or repairing roads, which shall be open to the public, without charge, a compensation shall be made to the owner, in money, and in all other cases, where private property shall be taken for public use, a compensation therefor shall first be made in money, or first secured by a deposit of money; and such compensation shall be assessed by a jury, without deduction for benefits to any property of the owner.

OREGON

OREGON CONST., art. I, sec. 18.

Private property shall not be taken for public use, nor the particular services of any man be demanded, without just compensation; nor except in the case of the state, without such compensation first assessed and tendered; provided, that the use of all roads, ways and waterways necessary to promote the transportation of the raw products of mine or farm or forest or water for beneficial use or drainage is necessary to the development and welfare of the state and is declared a public use.

RHODE ISLAND

RHODE ISLAND CONST., art. I, sec. 16 ("Private property shall not be taken for public uses, without just compensation.")

SOUTH CAROLINA

SOUTH CAROLINA CONST., art. I, sec. 13(A).

Except as otherwise provided in this Constitution, private property shall not be taken for private use without the consent of the owner, nor for public use without just compensation being first made for the property. Private property must not be condemned by eminent domain for any purpose or benefit including, but not limited to, the purpose or benefit of economic development, unless the condemnation is for public use.

WISCONSIN

WISCONSIN CONST. art. I, sec. 13 ("The property of no person shall be taken for public use without just compensation therefor.")

B. STATE CONSTITUTIONS WITH TAKING OR DAMAGING PROVISIONS

ALASKA

ALASKA CONST. art. I, sec. 18 ("Private property shall not be taken or damaged for public use without just compensation.")

ARIZONA

ARIZONA CONST. art. II, sec. 17 ("No private property shall be taken or damaged for public or private use without just compensation having first been made....")

ARKANSAS

ARKANSAS CONST. art. II, sec. 22 ("[A]nd private property shall not be taken, appropriated or damaged for public use, without just compensation therefor.")

CALIFORNIA

CALIFORNIA CONST. art. I, sec. 19 ("Private property may be taken or damaged for public use only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner.")

COLORADO

COLORADO CONST. art. II, sec. 15 ("Private property shall not be taken or damaged, for public or private use, without just compensation.")

GEORGIA

GEORGIA CONST. art. I, sec. 3, para. 1 ("[P]rivate property shall not be taken or damaged for public purposes without just and adequate compensation being first paid.")

HAWAII

HAWAII CONST. art I, sec. 20 ("Private property shall not be taken or damaged for public use without just compensation.")

ILLINOIS

ILLINOIS CONST. art. I, sec. 15 ("Private property shall not be taken or damaged for public use without just compensation as provided by law.")

LOUISIANA

LOUISIANA CONST. art. I, sec. 4 ("Property shall not be taken or damaged by the state or its political subdivisions except for public purposes and with just compensation")

MINNESOTA

MINNESOTA CONST. art. I, sec. 13 ("Private property shall not be taken, destroyed or damaged for public use without just compensation therefor, first paid or secured.")

MISSISSIPPI

MISSISSIPPI CONST. art. III, sec. 17 ("Private property shall not be taken or damaged for public use, except on due compensation being first made to the owner or owners thereof....")

MISSOURI

MISSOURI CONST. art. I, sec. 26 ("[P]rivate property shall not be taken or damaged for public use without just compensation.")

MONTANA

MONTANA CONST. art. II, sec. 29 ("Private property shall not be taken or damaged for public use without just compensation to the full extent of the loss....")

NEBRASKA

NEBRASKA CONST. art. I, sec. 21 ("The property of no person shall be taken or damaged for public use without just compensation therefor.")

NEW MEXICO

NEW MEXICO CONST. art. II, sec. 20 ("Private property shall not be taken or damaged for public use without just compensation.")

NORTH DAKOTA

NORTH DAKOTA CONST. art. I, sec. 16 ("Private property shall not be taken or damaged for public use without just compensation....")

OKLAHOMA

OKLAHOMA CONST. art. II, sec. 24 ("Private property shall not be taken or damaged for public use without just compensation.")

SOUTH DAKOTA

SOUTH DAKOTA CONST. art. VI, sec. 13 ("Private property shall not be taken for public use, or damaged, without just compensation....")

UTAH

UTAH CONST., art. I, sec. 22 ("Private property shall not be taken or damaged for public use without just compensation.")

VIRGINIA

VIRGINIA CONST. art. I, sec. 11 ("[N]or any law whereby private property shall be taken or damaged for public uses, without just compensation....")

WASHINGTON

WASHINGTON CONST. art. I, sec. 16 ("No private property shall be taken or damaged for public or private use without just compensation having been first made....")

WEST VIRGINIA

WEST VIRGINIA CONST. art. III, sec. 9 ("Private property shall not be taken or damaged for public use, without just compensation....")

WYOMING

WYOMING CONST. art. I, sec. 33 ("Private property shall not be taken or damaged for public or private use without just compensation.")

C. STATES WITH SOMEWHAT DIFFERENT CONSTITUTIONAL LANGUAGE

ALABAMA

ALABAMA CONST. art. I, sec. 23 ("[B]ut private property shall not be taken for, or applied to public use, unless just compensation be first made therefore....")

DELAWARE

DELAWARE CONST. art. I, sec. 8 ("[N]or shall any man's property be taken or applied to public use ... without compensation being made.")

KENTUCKY

KENTUCKY CONST., Bill of Rights, sec. 13 ("[N]or shall any man's property be taken or applied to public use without the consent of his representatives and without just compensation being previously made to him.")

MASSACHUSETTS

MASSACHUSETTS CONST., pt. I, art. X.

...[B]ut no part of the property of any individual can, with justice, be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people. In fine, the people of this commonwealth are not controllable by any other laws than those to which their constitutional representative body have given their consent. And whenever the public exigencies require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor. [See Amendments, Arts. XXXIX, XLIII, XLVII, XLVIII, The Initiative, II, sec. 2, XLIX, L, LI and XCVII.]

NEW HAMPSHIRE

NEW HAMPSHIRE CONST. arts. 12 and 12a.

[Art.] 12. ...But no part of a man's property shall be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people. Nor are the inhabitants of this state controllable by any other laws than those to which they, or their representative body, have given their consent.

[Art.] 12-a. [Power to Take Property Limited.] No part of a person's property shall be taken by eminent domain and transferred, directly or indirectly, to another person if the taking is for the purpose of private development or other private use of the property.

PENNSYLVANIA

PENNSYLVANIA CONST., art. I, sec. 10 ("[N]or shall private property be taken or applied to public use, without authority of law and without just compensation being first made or secured.")

TENNESSEE

TENNESSEE CONST., art. I, sec. 21 ("That no man's particular services shall be demanded, or property taken, or applied to public use, without the consent of his representatives, or without just compensation being made therefor.")

TEXAS

TEXAS CONST., art. I, sec. 17 ("No person's property shall be taken, damaged or destroyed for or applied to public use without adequate compensation being made....")

VERMONT

VERMONT CONST., ch. I, art. II (“That private property ought to be subservient to public uses when necessity requires it, nevertheless, whenever any person's property is taken for the use of the public, the owner ought to receive an equivalent in money.”)