
By: Senators Colburn, Baker, Ferguson, Haines, Middlebrooks, and Stoltzfus

Introduced and read first time: February 1, 1996

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Private Property Rights - Infringement - Compensation**

3 FOR the purpose of giving an owner of private property a cause of action against certain
4 State agencies if the application of a statute, regulation, guideline, or policy
5 infringes on the owner's right to private property and reduces the fair market value
6 of the property by a certain amount; providing that a private property owner may
7 recover a certain sum of money to compensate for the reduction in fair market value
8 of the property from the State agency or agencies responsible for the reduction in
9 the fair market value of the property; providing an exception to having a cause of
10 action when the use of the private property results in a public nuisance; providing
11 for the recovery of court costs and attorney fees to a prevailing plaintiff; providing
12 for a statute of limitations of 6 years for a cause of action under this Act; providing
13 proper venue for a cause of action under this Act; and generally relating to the
14 rights of private property owners.

15 BY adding to

16 Article - State Government
17 Section 12-601 through 12-604 to be under the new subtitle "Subtitle6.
18 Infringement of Private Property Rights"
19 Annotated Code of Maryland
20 (1995 Replacement Volume)

21 BY adding to

22 Article - Courts and Judicial Proceedings
23 Section 5-103.1
24 Annotated Code of Maryland
25 (1995 Replacement Volume and 1995 Supplement)

26 BY repealing and reenacting, with amendments,

27 Article - Courts and Judicial Proceedings
28 Section 6-203(b)
29 Annotated Code of Maryland
30 (1995 Replacement Volume and 1995 Supplement)

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

3 **Article - State Government**

4 SUBTITLE 6. INFRINGEMENT OF PRIVATE PROPERTY RIGHTS.

5 12-601.

6 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
7 INDICATED.

8 (B) "PRIVATE PROPERTY" MEANS ANY REAL PROPERTY IN THE STATE OTHER
9 THAN REAL PROPERTY TO WHICH TITLE IS HELD BY A UNIT OF FEDERAL, STATE, OR
10 LOCAL GOVERNMENT.

11 (C) "PUBLIC NUISANCE" INCLUDES THE MEANINGS USED IN:

12 (1) THE HEALTH - GENERAL ARTICLE, TITLE 20, SUBTITLE 3; AND

13 (2) THE ENVIRONMENT ARTICLE, TITLE 10.

14 12-602.

15 (A) THIS SUBTITLE DOES NOT APPLY IF THE OWNER'S USE OR PROPOSED USE
16 OF THE PRIVATE PROPERTY AMOUNTS TO A PUBLIC NUISANCE.

17 (B) TO BAR AN ACTION UNDER THIS SUBTITLE, THE STATE HAS THE BURDEN
18 OF PROOF TO ESTABLISH THAT THE USE OF THE PRIVATE PROPERTY IS A PUBLIC
19 NUISANCE.

20 12-603.

21 (A) THE OWNER OF ANY PRIVATE PROPERTY HAS A CAUSE OF ACTION
22 AGAINST THE STATE IF:

23 (1) THE APPLICATION OF A STATUTE, REGULATION, GUIDELINE, OR
24 POLICY OF THE STATE RESTRICTS, LIMITS, OR OTHERWISE INFRINGES ON A RIGHT
25 TO PRIVATE PROPERTY THAT WOULD OTHERWISE EXIST IN THE ABSENCE OF SUCH
26 APPLICATION; AND

27 (2) THE APPLICATION DESCRIBED UNDER PARAGRAPH (1) OF THIS
28 SUBSECTION WOULD RESULT IN A DISCRETE AND NONNEGLIGIBLE REDUCTION OF
29 75% OR MORE IN THE FAIR MARKET VALUE OF THE AFFECTED PORTION OF THE
30 PRIVATE PROPERTY.

31 (B) AN ACTION UNDER THIS SUBTITLE SHALL BE FILED IN CIRCUIT COURT AS
32 PROVIDED IN § 6-203 OF THE COURTS AND JUDICIAL PROCEEDINGS ARTICLE.

33 (C) IN ANY ACTION FILED UNDER THIS SUBTITLE, THE OWNER MAY ELECT
34 TO:

35 (1) (I) RECOVER A SUM EQUAL TO THE DIMINUTION IN THE FAIR
36 MARKET VALUE OF THE PORTION OF THE PROPERTY AFFECTED BY THE
37 APPLICATION OF THE STATUTE, REGULATION, GUIDELINE, OR POLICY; AND

3

1 (II) RETAIN TITLE TO THE PROPERTY; OR

2 (2) (I) RECOVER THE FAIR MARKET VALUE OF THE PORTION OF THE
3 PROPERTY AFFECTED BY THE APPLICATION OF THE STATUTE, REGULATION,
4 GUIDELINE, OR POLICY; AND

5 (II) RELINQUISH TITLE TO THE AFFECTED PORTION OF THE
6 PROPERTY.

7 (D) IN ISSUING ANY FINAL ORDER IN ANY ACTION BROUGHT UNDER THIS
8 SUBTITLE, THE CIRCUIT COURT SHALL AWARD TO ANY PREVAILING PLAINTIFF THE
9 COURT COSTS, REASONABLE ATTORNEY FEES, AND REASONABLE EXPENSES OF THE
10 LITIGATION.

11 12-604.

12 (A) ALL AWARDS OR JUDGMENTS FOR A PLAINTIFF, INCLUDING THE
13 RECOVERY FOR COURT COSTS, REASONABLE ATTORNEY FEES, AND REASONABLE
14 EXPENSES, SHALL BE PAID OUT OF FUNDS OF THE AGENCY OR AGENCIES
15 RESPONSIBLE FOR ISSUING THE STATUTE, REGULATION, GUIDELINE, OR POLICY
16 AFFECTING THE REDUCTION IN THE FAIR MARKET VALUE OF THE AFFECTED
17 PORTION OF THE PRIVATE PROPERTY.

18 (B) PAYMENTS MAY NOT BE MADE FROM THE GENERAL FUND OF THE STATE.

19 **Article - Courts and Judicial Proceedings**

20 5-103.1.

21 AN ACTION UNDER TITLE 12, SUBTITLE 6 OF THE STATE GOVERNMENT
22 ARTICLE SHALL BE FILED WITHIN 6 YEARS OF THE DATE THAT THE APPLICATION OF
23 A STATUTE, REGULATION, GUIDELINE, OR POLICY REDUCED THE FAIR MARKET
24 VALUE OF THE PRIVATE PROPERTY, AS PROVIDED IN § 12-603 OF THE STATE
25 GOVERNMENT ARTICLE.

26 6-203.

27 (b) The venue of the following actions is in the county where all or any portion of
28 the subject matter of the action is located:

29 (1) Partition of real estate;

30 (2) Enforcement of a charge or lien on land;

31 (3) Eminent domain;

32 (4) Trespass to land;

33 (5) Waste; AND

34 (6) ANY ACTION UNDER TITLE 12, SUBTITLE 6 OF THE STATE
35 GOVERNMENT ARTICLE.

36 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
37 October 1, 1996.

