
By: Senators Colburn, Baker, Haines, Derr, Hafer, Munson, Stoltzfus, and Ferguson

Introduced and read first time: January 31, 1997

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Property Rights Protection Act of 1997**

3 FOR the purpose of requiring a certain private property taking impact analysis to be
4 written by certain agencies regarding the private property taking impact of certain
5 proposed bills and regulations under certain circumstances; requiring the analyses
6 to be delivered to certain persons; requiring the analysis to include consideration of
7 certain factors; requiring the agency writing the analysis to consult with certain
8 persons under certain circumstances; requiring certain agencies to aid the writing of
9 an analysis; requiring a certain analysis to be kept on file for a certain amount of
10 time, made available for public inspection, and published in the Maryland Register;
11 providing for the validity of a bill or regulation under certain circumstances;
12 clarifying that an agency of the State may not take private property except under
13 certain circumstances; authorizing a certain property owner to maintain an action
14 for a certain taking of private property under certain circumstances; enumerating
15 certain takings of private property that are and are not compensable acts under
16 certain circumstances; placing certain burdens of proof on certain persons under
17 certain circumstances; providing a statute of limitations for certain actions under
18 certain circumstances; providing for the amount of compensation under certain
19 circumstances; authorizing the agency to take title to private property under certain
20 circumstances; providing for arbitration of certain disputes under certain
21 circumstances; prohibiting an agency from entering private property except under
22 certain circumstances; providing for the payment of certain compensation under
23 certain circumstances; defining certain terms; and generally relating to the
24 compensation of a property owner for the taking of private property.

25 BY adding to

26 Article - Courts and Judicial Proceedings
27 Section 5-103.1
28 Annotated Code of Maryland
29 (1995 Replacement Volume and 1996 Supplement)

30 BY adding to

31 Article - State Government
32 Section 2-1505.3, 2-1505.4; and 12-601 through 12-611, inclusive, to be under the
33 new subtitle "Subtitle 6. Protection of Private Property Rights"
34 Annotated Code of Maryland

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1 (1995 Replacement Volume and 1996 Supplement)

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

4 **Article - Courts and Judicial Proceedings**

5 5-103.1.

6 AN ACTION UNDER TITLE 12, SUBTITLE 6, PART II OF THE STATE GOVERNMENT
7 ARTICLE SHALL BE FILED WITHIN 6 YEARS OF THE DATE THAT THE APPLICATION OF
8 A STATUTE, REGULATION, GUIDELINE OR POLICY REDUCED THE VALUE OF THE
9 PRIVATE PROPERTY AS PROVIDED IN TITLE 12, SUBTITLE 6, PART II OF THE STATE
10 GOVERNMENT ARTICLE.

11 **Article - State Government**

12 2-1505.3.

13 (A) (1) FOR PURPOSES OF THIS SECTION, THE STANDARDS AND
14 MEASUREMENTS REQUIRED FOR DETERMINING WHETHER A TAKING OF PRIVATE
15 PROPERTY MAY OCCUR AS A RESULT OF PROPOSED LEGISLATION ARE THOSE
16 STANDARDS AND MEASUREMENTS ENUMERATED IN TITLE 12, SUBTITLE 6 OF THIS
17 ARTICLE.

18 (2) IN THIS SECTION "PRIVATE PROPERTY IMPACT ANALYSIS" MEANS A
19 WRITTEN DOCUMENT ANALYZING THE LIKELIHOOD THAT THE PROPOSED
20 LEGISLATION WILL RESULT IN THE TAKING OF PRIVATE PROPERTY AND THE
21 POTENTIAL COST OF COMPENSATING THE OWNER OF THE PRIVATE PROPERTY FOR
22 THE TAKING.

23 (B) (1) BEGINNING WITH THE 1998 REGULAR SESSION OF THE GENERAL
24 ASSEMBLY, A PRIVATE PROPERTY TAKING IMPACT ANALYSIS SHALL BE PREPARED
25 BY THE APPROPRIATE EXECUTIVE BRANCH AGENCY FOR EACH PROPOSED
26 LEGISLATION THAT IS INTRODUCED AT THE REQUEST OF THE ADMINISTRATION OR
27 A DEPARTMENT, AGENCY, OR COMMISSION OF THE EXECUTIVE BRANCH OF STATE
28 GOVERNMENT.

29 (2) A COPY OF THE PRIVATE PROPERTY TAKING ANALYSIS REQUIRED
30 UNDER THIS SUBSECTION SHALL BE SUBMITTED BY THE GOVERNOR'S OFFICE:

31 (I) TO THE DEPARTMENT OF FISCAL SERVICES WITHIN A
32 REASONABLE TIME FRAME PRIOR TO THE HEARING ON THE PROPOSED
33 LEGISLATION TO ALLOW THE DEPARTMENT OF FISCAL SERVICES TO COMMENT ON
34 THE PRIVATE PROPERTY TAKING IMPACT ANALYSIS; AND

35 (II) TO THE COMMITTEE TO WHICH THE PROPOSED LEGISLATION
36 IS REFERRED PRIOR TO THE HEARING ON THE LEGISLATION.

37 (C) (1) BEGINNING WITH THE 1999 REGULAR SESSION OF THE GENERAL
38 ASSEMBLY, A PRIVATE PROPERTY TAKING IMPACT ANALYSIS SHALL BE PREPARED
39 BY THE DEPARTMENT OF FISCAL SERVICES FOR EACH PROPOSED LEGISLATION
40 THAT IS INTRODUCED BY A MEMBER OF THE GENERAL ASSEMBLY.

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1 (2) A COPY OF THE PRIVATE PROPERTY TAKING IMPACT ANALYSIS
2 REQUIRED UNDER THIS SUBSECTION SHALL BE SUBMITTED BY THE DEPARTMENT
3 OF FISCAL SERVICES:

4 (I) TO THE PRIMARY SPONSOR OF THE PROPOSED LEGISLATION;
5 AND

6 (II) TO THE COMMITTEE TO WHICH THE PROPOSED LEGISLATION
7 IS REFERRED BEFORE THE HEARING ON THE LEGISLATION.

8 (D) (1) IF THE APPROPRIATE EXECUTIVE BRANCH AGENCY OR THE
9 DEPARTMENT OF FISCAL SERVICES DETERMINES THAT PROPOSED LEGISLATION
10 WILL HAVE MINIMAL OR NO PRIVATE PROPERTY TAKING IMPACT, THE AGENCY OR
11 DEPARTMENT OF FISCAL SERVICES SHALL INDICATE THAT DETERMINATION BY A
12 BRIEF WRITTEN STATEMENT.

13 (2) IF THE APPROPRIATE EXECUTIVE BRANCH AGENCY OR THE
14 DEPARTMENT OF FISCAL SERVICES DETERMINES THAT PROPOSED LEGISLATION
15 WILL HAVE A PRIVATE PROPERTY TAKING IMPACT, THE AGENCY OR DEPARTMENT
16 OF FISCAL SERVICES SHALL DEVELOP A COMPLETE WRITTEN PRIVATE PROPERTY
17 TAKING IMPACT ANALYSIS.

18 (3) (I) IF THE APPROPRIATE EXECUTIVE BRANCH AGENCY OR THE
19 DEPARTMENT OF FISCAL SERVICES DETERMINES THAT PROPOSED LEGISLATION
20 WILL HAVE A PRIVATE PROPERTY TAKING IMPACT AND IS UNABLE TO PROVIDE A
21 COMPLETE WRITTEN PRIVATE PROPERTY TAKING IMPACT ANALYSIS, THE AGENCY
22 OR DEPARTMENT OF FISCAL SERVICES SHALL PROVIDE A WRITTEN EXPLANATION
23 OF WHY THE AGENCY DETERMINED THAT THE LEGISLATION WILL HAVE A PRIVATE
24 PROPERTY TAKING IMPACT.

25 (II) THE EXPLANATION MAY IDENTIFY THE IMPACT IN GENERAL
26 TERMS AND NEED NOT QUANTIFY THE SPECIFIC TAKING IMPACT.

27 (E) THE PRIVATE PROPERTY TAKING IMPACT ANALYSIS REQUIRED UNDER
28 THIS SECTION SHALL INCLUDE CONSIDERATION OF THE FOLLOWING FACTORS, AS
29 APPROPRIATE:

30 (1) THE SPECIFIC PURPOSE OF THE PROPOSED LEGISLATION;

31 (2) AN ASSESSMENT OF THE LIKELIHOOD THAT A TAKING OF PRIVATE
32 PROPERTY WILL OCCUR UNDER THE LEGISLATION;

33 (3) AN EVALUATION OF WHETHER THE LEGISLATION IS LIKELY TO
34 REQUIRE COMPENSATION TO A PRIVATE PROPERTY OWNER; AND

35 (4) AN ESTIMATE OF THE POTENTIAL LIABILITY OF THE STATE IF THE
36 STATE IS REQUIRED TO COMPENSATE A PRIVATE PROPERTY OWNER.

37 (F) (1) THE EXECUTIVE BRANCH AGENCY OR THE DEPARTMENT OF FISCAL
38 SERVICES PREPARING THE PRIVATE PROPERTY TAKING IMPACT ANALYSIS
39 REQUIRED UNDER THIS SECTION SHALL CONSULT WITH, AS APPROPRIATE:

40 (I) OTHER UNITS OF STATE GOVERNMENT;

4

1 (II) UNITS OF LOCAL GOVERNMENT; AND

2 (III) BUSINESS, TRADE, CONSUMER, LABOR, AND OTHER GROUPS
3 IMPACTED BY OR HAVING AN INTEREST IN THE LEGISLATION.

4 (2) ON REQUEST OF THE DIRECTOR OF THE DEPARTMENT OF FISCAL
5 SERVICES, A UNIT OF THE STATE OR A LOCAL GOVERNMENT SHALL PROVIDE THE
6 DEPARTMENT OF FISCAL SERVICES WITH ASSISTANCE OR INFORMATION IN THE
7 PREPARATION OF A PRIVATE PROPERTY TAKING IMPACT ANALYSIS.

8 (G) (1) THE DEPARTMENT OF FISCAL SERVICES MAY INCLUDE A PRIVATE
9 PROPERTY TAKING IMPACT ANALYSIS PREPARED BY THE DEPARTMENT OF FISCAL
10 SERVICES OR BY THE APPROPRIATE EXECUTIVE BRANCH AGENCY AS PART OF A
11 FISCAL NOTE.

12 (2) THE DEPARTMENT OF FISCAL SERVICES MAY COMMENT ON THE
13 PRIVATE PROPERTY TAKING IMPACT ANALYSIS PREPARED BY THE APPROPRIATE
14 EXECUTIVE BRANCH AGENCY.

15 (H) THE DEPARTMENT OF FISCAL SERVICES MAY REVISE THE PRIVATE
16 PROPERTY TAKING IMPACT ANALYSIS CONSISTENT WITH AN AMENDED VERSION OF
17 THE PROPOSED LEGISLATION.

18 (I) (1) THE DEPARTMENT OF FISCAL SERVICES SHALL KEEP A COPY OF
19 EACH PRIVATE PROPERTY TAKING IMPACT ANALYSIS FOR 3 YEARS AFTER
20 PREPARATION OF THE ANALYSIS.

21 (2) THE COPIES SHALL BE REASONABLY AVAILABLE FOR PUBLIC
22 INSPECTION.

23 (J) PRIVATE PROPERTY TAKING IMPACT ANALYSES NEED NOT BE
24 PUBLISHED IN THE SENATE JOURNAL OR HOUSE JOURNAL.

25 (K) THE VALIDITY OF AN ENACTMENT OF THE PROPOSED LEGISLATION IS
26 NOT AFFECTED BY THE PRESENCE, ABSENCE, OR CONTENT OF A PRIVATE
27 PROPERTY TAKING IMPACT ANALYSIS.

28 2-1505.4.

29 (A) (1) FOR PURPOSES OF THIS SECTION, THE STANDARDS AND
30 MEASUREMENTS REQUIRED FOR DETERMINING WHETHER A TAKING OF PRIVATE
31 PROPERTY MAY OCCUR AS A RESULT OF PROPOSED REGULATION ARE THOSE
32 STANDARDS AND MEASUREMENTS ENUMERATED IN TITLE 12, SUBTITLE 6 OF THIS
33 ARTICLE.

34 (2) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS
35 INDICATED.

36 (I) "COMMITTEE" MEANS THE JOINT COMMITTEE ON
37 ADMINISTRATIVE, EXECUTIVE, AND LEGISLATIVE REVIEW.

38 (II) "PRIVATE PROPERTY IMPACT ANALYSIS" MEANS A WRITTEN
39 DOCUMENT ANALYZING THE LIKELIHOOD THAT PROPOSED LEGISLATION WILL

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1 RESULT IN THE TAKING OF PRIVATE PROPERTY AND THE POTENTIAL COST OF
2 COMPENSATING THE OWNER OF THE PRIVATE PROPERTY FOR THE TAKING.

3 (B) (1) ON AND AFTER OCTOBER 1, 1997, A PRIVATE PROPERTY TAKING
4 IMPACT ANALYSIS SHALL BE PREPARED BY THE APPROPRIATE EXECUTIVE BRANCH
5 AGENCY FOR EACH REGULATION THAT THE AGENCY PROPOSES FOR ADOPTION
6 UNDER TITLE 10, SUBTITLE 1 OF THIS ARTICLE.

7 (2) A COPY OF THE PRIVATE PROPERTY TAKING IMPACT ANALYSIS
8 REQUIRED UNDER THIS SUBSECTION SHALL BE SUBMITTED BY THE APPROPRIATE
9 AGENCY:

10 (I) TO THE DEPARTMENT OF FISCAL SERVICES NO LATER THAN
11 THE TIME THE AGENCY SUBMITS THE REGULATION TO THE COMMITTEE TO ALLOW
12 THE DEPARTMENT OF FISCAL SERVICES TO COMMENT ON THE PRIVATE PROPERTY
13 TAKING IMPACT ANALYSIS; AND

14 (II) TO THE COMMITTEE AT THE TIME THE AGENCY SUBMITS THE
15 REGULATION TO THE COMMITTEE.

16 (C) (1) IF THE APPROPRIATE EXECUTIVE BRANCH AGENCY OR THE
17 DEPARTMENT OF FISCAL SERVICES DETERMINES THAT A REGULATION WILL HAVE
18 MINIMAL OR NO PRIVATE PROPERTY TAKING IMPACT, THE AGENCY OR
19 DEPARTMENT OF FISCAL SERVICES SHALL INDICATE THAT DETERMINATION BY A
20 BRIEF WRITTEN STATEMENT.

21 (2) IF THE APPROPRIATE EXECUTIVE BRANCH AGENCY OR THE
22 DEPARTMENT OF FISCAL SERVICES DETERMINES THAT A REGULATION WILL HAVE
23 A PRIVATE PROPERTY TAKING IMPACT, THE AGENCY OR DEPARTMENT OF FISCAL
24 SERVICES SHALL DEVELOP A COMPLETE WRITTEN PRIVATE PROPERTY TAKING
25 IMPACT ANALYSIS.

26 (3) (I) IF THE APPROPRIATE EXECUTIVE BRANCH AGENCY OR THE
27 DEPARTMENT OF FISCAL SERVICES DETERMINES THAT A REGULATION WILL HAVE
28 A PRIVATE PROPERTY TAKING IMPACT AND IS UNABLE TO PROVIDE A COMPLETE
29 WRITTEN PRIVATE PROPERTY TAKING IMPACT ANALYSIS, THE AGENCY OR
30 DEPARTMENT OF FISCAL SERVICES SHALL PROVIDE A WRITTEN EXPLANATION OF
31 WHY THE AGENCY DETERMINED THAT THE REGULATION WILL HAVE A PRIVATE
32 PROPERTY TAKING IMPACT.

33 (II) THE EXPLANATION MAY IDENTIFY THE IMPACT IN GENERAL
34 TERMS AND NEED NOT QUANTIFY THE SPECIFIC PRIVATE PROPERTY TAKING
35 IMPACT.

36 (D) THE PRIVATE PROPERTY TAKING IMPACT ANALYSIS REQUIRED UNDER
37 THIS SECTION SHALL INCLUDE CONSIDERATION OF THE FOLLOWING FACTORS, AS
38 APPROPRIATE:

39 (1) THE SPECIFIC PURPOSE OF THE PROPOSED REGULATION;

40 (2) AN ASSESSMENT OF THE LIKELIHOOD THAT A TAKING OF PRIVATE
41 PROPERTY WILL OCCUR UNDER THE PROPOSED REGULATION;

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1 (3) AN EVALUATION OF WHETHER THE PROPOSED REGULATION IS
2 LIKELY TO REQUIRE COMPENSATION TO A PRIVATE PROPERTY OWNER;

3 (4) ALTERNATIVES TO THE PROPOSED REGULATION THAT WOULD
4 ACHIEVE THE INTENDED PURPOSES OF THE PROPOSED REGULATION AND LESSEN
5 THE LIKELIHOOD THAT A TAKING OF PRIVATE PROPERTY WILL OCCUR; AND

6 (5) AN ESTIMATE OF THE POTENTIAL LIABILITY OF THE STATE IF THE
7 STATE IS REQUIRED TO COMPENSATE A PRIVATE PROPERTY OWNER.

8 (E) (1) THE EXECUTIVE BRANCH AGENCY OR THE DEPARTMENT OF FISCAL
9 SERVICES PREPARING THE PRIVATE PROPERTY TAKING IMPACT ANALYSIS
10 REQUIRED UNDER THIS SECTION SHALL CONSULT WITH, AS APPROPRIATE:

11 (I) OTHER UNITS OF STATE GOVERNMENT;

12 (II) UNITS OF LOCAL GOVERNMENT; AND

13 (III) BUSINESS, TRADE, CONSUMER, LABOR, AND OTHER GROUPS
14 IMPACTED BY OR HAVING AN INTEREST IN THE REGULATION.

15 (2) ON REQUEST OF THE DIRECTOR OF THE DEPARTMENT OF FISCAL
16 SERVICES, A UNIT OF THE STATE OR A LOCAL GOVERNMENT SHALL PROVIDE THE
17 DEPARTMENT OF FISCAL SERVICES WITH ASSISTANCE OR INFORMATION IN THE
18 PREPARATION OF A PRIVATE PROPERTY TAKING IMPACT ANALYSIS.

19 (F) THE DEPARTMENT OF FISCAL SERVICES SHALL:

20 (1) COMMENT ON THE PRIVATE PROPERTY TAKING IMPACT ANALYSIS
21 PREPARED BY THE APPROPRIATE EXECUTIVE BRANCH AGENCY; AND

22 (2) TRANSMIT ITS COMMENT TO THE COMMITTEE.

23 (G) THE DEPARTMENT OF FISCAL SERVICES SHALL REVISE THE PRIVATE
24 PROPERTY TAKING IMPACT ANALYSIS CONSISTENT WITH AN AMENDED VERSION OF
25 A REGULATION.

26 (H) (1) THE DEPARTMENT OF FISCAL SERVICES SHALL KEEP A COPY OF
27 EACH PRIVATE PROPERTY TAKING IMPACT ANALYSIS FOR 3 YEARS AFTER
28 PREPARATION OF THE ANALYSIS.

29 (2) THE COPIES SHALL BE REASONABLY AVAILABLE FOR PUBLIC
30 INSPECTION.

31 (I) PRIVATE PROPERTY TAKING IMPACT ANALYSES SHALL BE PUBLISHED IN
32 THE MARYLAND REGISTER AT THE SAME TIME AS:

33 (1) A NOTICE OF PROPOSED ADOPTION OF A REGULATION IS
34 PUBLISHED IN THE MARYLAND REGISTER; OR

35 (2) A NOTICE OF EMERGENCY ADOPTION OF A REGULATION IS
36 PUBLISHED IN THE MARYLAND REGISTER.

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1 (J) THE VALIDITY OF AN ENACTMENT OF A REGULATION IS NOT AFFECTED
2 BY THE PRESENCE, ABSENCE, OR CONTENT OF A PRIVATE PROPERTY TAKING
3 IMPACT ANALYSIS.

4 SUBTITLE 6. PROTECTION OF PRIVATE PROPERTY RIGHTS.

5 PART I. DEFINITIONS AND GENERAL PROVISIONS.

6 12-601.

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

9 (B) (1) "AGENCY" MEANS A DEPARTMENT, AGENCY, OR INDEPENDENT
10 UNIT OF THE STATE, INCLUDING A BOARD OR COMMISSION IN THE EXECUTIVE
11 BRANCH OF THE STATE GOVERNMENT.

12 (2) "AGENCY" INCLUDES AN AGENCY THAT:

13 (I) CARRIES OUT OR ENFORCES A REGULATORY PROGRAM
14 REQUIRED UNDER STATE OR FEDERAL LAW;

15 (II) IS DELEGATED ADMINISTRATIVE OR SUBSTANTIVE
16 RESPONSIBILITY UNDER A FEDERAL OR STATE REGULATORY PROGRAM; OR

17 (III) RECEIVES FEDERAL FUNDS IN CONNECTION WITH A
18 REGULATORY PROGRAM ESTABLISHED BY THE STATE, IF THE STATE
19 ENFORCEMENT OF THE REGULATORY PROGRAM, OR THE RECEIPT OF FEDERAL
20 FUNDS IN CONNECTION WITH A REGULATORY PROGRAM ESTABLISHED BY THE
21 STATE, IS DIRECTLY RELATED TO THE TAKING OF PRIVATE PROPERTY SEEKING TO
22 BE VINDICATED UNDER THIS SUBTITLE.

23 (C) "AGENCY ACTION" MEANS AN ACTION OR DECISION CONSIDERED A
24 FINAL AGENCY ACTION UNDER THE ADMINISTRATIVE PROCEDURE ACT THAT:

25 (1) TAKES A PROPERTY RIGHT; OR

26 (2) UNREASONABLY IMPEDES THE USE OF PROPERTY OR THE
27 EXERCISE OF PROPERTY INTERESTS.

28 (D) (1) "COMPENSATION" MEANS COMPENSATION EQUAL TO THE FULL
29 EXTENT OF A PROPERTY OWNER'S LOSS, INCLUDING THE FAIR MARKET VALUE OF
30 THE PRIVATE PROPERTY TAKEN AND BUSINESS LOSSES ARISING FROM A TAKING,
31 WHETHER THE TAKING IS BY PHYSICAL OCCUPATION OR THROUGH REGULATION,
32 EXACTION, OR OTHER MEANS.

33 (2) "COMPENSATION" INCLUDES COMPOUNDED INTEREST
34 CALCULATED FROM THE DATE OF THE TAKING UNTIL THE DATE THE STATE
35 TENDERS PAYMENT.

36 (E) "OWNER" MEANS THE OWNER OR POSSESSOR OF PROPERTY OR RIGHTS
37 IN PROPERTY AT THE TIME THE TAKING OCCURS, INCLUDING WHEN:

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1 (1) THE STATUTE, REGULATION, RULE, ORDER, GUIDELINE, POLICY, OR
2 ACTION IS PASSED OR PROMULGATED; OR

3 (2) THE PERMIT, LICENSE, AUTHORIZATION, OR GOVERNMENTAL
4 PERMISSION IS DENIED OR SUSPENDED.

5 (F) (1) "PRIVATE PROPERTY" OR "PROPERTY" MEANS ALL PROPERTY
6 PROTECTED UNDER THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE
7 UNITED STATES, THE CONSTITUTION OF THE STATE OF MARYLAND, ANY
8 APPLICABLE FEDERAL OR STATE LAW, OR THIS SUBTITLE.

9 (2) "PRIVATE PROPERTY" OR "PROPERTY" INCLUDES:

10 (I) REAL PROPERTY, WHETHER VESTED OR NOT VESTED,
11 INCLUDING:

12 1. ESTATES IN FEE, LIFE ESTATES, ESTATES FOR YEARS, OR
13 OTHERWISE;

14 2. INCHOATE INTERESTS IN REAL PROPERTY SUCH AS
15 REMAINDERS AND FUTURE INTERESTS;

16 3. PERSONALTY THAT IS AFFIXED TO OR APPURTENANT TO
17 REAL PROPERTY;

18 4. EASEMENTS;

19 5. LEASEHOLDS;

20 6. RECORDED LIENS; AND

21 7. CONTRACTS OR OTHER SECURITY INTERESTS IN, OR
22 RELATED TO, REAL PROPERTY;

23 (II) THE RIGHT TO USE WATER OR THE RIGHT TO RECEIVE
24 WATER, INCLUDING ANY RECORDED LINES ON A WATER RIGHT;

25 (III) RENTS, ISSUES, AND PROFITS OF LAND, INCLUDING MINERALS,
26 TIMBER, FODDER, CROPS, OIL AND GAS, COAL, OR GEOTHERMAL ENERGY;

27 (IV) PROPERTY RIGHTS PROVIDED BY, OR MEMORIALIZED IN, A
28 CONTRACT;

29 (V) ANY INTEREST DEFINED AS PROPERTY UNDER STATE LAW; OR

30 (VI) ANY INTEREST UNDERSTOOD TO BE PROPERTY BASED ON
31 CUSTOM, USAGE, COMMON LAW, OR MUTUALLY REINFORCING UNDERSTANDINGS
32 SUFFICIENTLY WELL-GROUNDED IN LAW TO BACK A CLAIM OF INTEREST.

33 (3) "PRIVATE PROPERTY" OR "PROPERTY" DOES NOT INCLUDE
34 CONTRACT RIGHTS:

35 (I) FORMED UNDER CONTRACTS PROHIBITED BY THE STATE
36 BECAUSE THEY ARE CONSIDERED HARMFUL THE PUBLIC WELFARE; OR

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1 (II) THE EXECUTION OF WHICH MAY BE PREVENTED BY THE
2 STATE FOR EXIGENCIES THAT PRESENT IMMEDIATE OR REASONABLY
3 FORESEEABLE THREATS OR INJURIES TO LIFE OR PROPERTY.

4 (G) (1) "TAKING OF PRIVATE PROPERTY", "TAKING", OR "TAKE" MEANS AN
5 ACTION WHEREBY PRIVATE PROPERTY IS DIRECTLY TAKEN AS TO REQUIRE
6 COMPENSATION UNDER THE FIFTH AMENDMENT TO THE UNITED STATES
7 CONSTITUTION, THE CONSTITUTION OF THE STATE OF MARYLAND, OR UNDER THIS
8 SUBTITLE, INCLUDING BY PHYSICAL INVASION, REGULATION, EXACTION,
9 CONDITION, OR OTHER MEANS.

10 (2) "TAKING OF PRIVATE PROPERTY", "TAKING", OR "TAKE" DOES NOT
11 INCLUDE:

12 (I) A CONDEMNATION ACTION FILED BY THE STATE IN AN
13 APPLICABLE COURT; OR

14 (II) AN ACTION FILED BY THE STATE RELATING TO CRIMINAL OR
15 CIVIL FORFEITURE.

16 12-602.

17 NOTHING IN THIS SUBTITLE SHALL BE CONSTRUED TO:

18 (1) DENY A PERSON THE RIGHT TO EXHAUST OTHER ADMINISTRATIVE
19 REMEDIES;

20 (2) BAR ANY CLAIM OF A PERSON RELATING TO AN OWNER'S
21 PROPERTY UNDER OTHER LAW; OR

22 (3) CONSTITUTE A CONCLUSIVE DETERMINATION OF:

23 (I) THE VALUE OF PROPERTY FOR PURPOSES OF AN APPRAISAL
24 FOR THE ACQUISITION OF PROPERTY, OR FOR THE DETERMINATION OF DAMAGES;
25 OR

26 (II) ANY OTHER MATERIAL ISSUE.

27 PART II. COMPENSATION FOR A TAKING.

28 12-603.

29 (A) A PROPERTY OWNER MAY FILE A CIVIL ACTION IN CIRCUIT COURT TO
30 CHALLENGE THE VALIDITY OF OR CLAIM COMPENSATION FOR ANY AGENCY
31 ACTION THAT ADVERSELY AFFECTS THE OWNER'S INTEREST IN PRIVATE
32 PROPERTY.

33 (B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW AND
34 NOTWITHSTANDING THE ISSUES INVOLVED, THE RELIEF SOUGHT, OR THE AMOUNT
35 IN CONTROVERSY, THE COURT SHALL HAVE CONCURRENT JURISDICTION OVER
36 BOTH CLAIMS FOR MONETARY RELIEF AND CLAIMS SEEKING INVALIDATION OF
37 ANY ACT OF THE GENERAL ASSEMBLY OR ANY REGULATION OF AN AGENCY
38 AFFECTING PRIVATE PROPERTY RIGHTS.

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1 12-604.

2 (A) (1) AN AGENCY MAY NOT TAKE PRIVATE PROPERTY EXCEPT FOR
3 PUBLIC USE AND SHALL PROVIDE COMPENSATION TO THE PROPERTY OWNER
4 WHOSE PROPERTY WAS TAKEN.

5 (2) A PROPERTY OWNER SHALL RECEIVE COMPENSATION IF:

6 (I) AS A CONSEQUENCE OF AN AGENCY ACTION, PRIVATE
7 PROPERTY HAS BEEN PHYSICALLY INVADED OR TAKEN FOR PUBLIC USE WITHOUT
8 THE CONSENT OF THE OWNER; AND

9 (II) 1. THE AGENCY ACTION DOES NOT SUBSTANTIALLY
10 ADVANCE THE STATED GOVERNMENTAL INTEREST TO BE ACHIEVED BY THE
11 LEGISLATION OR REGULATION ON WHICH THE ACTION IS BASED;

12 2. THE AGENCY ACTION EXACTS THE OWNER'S
13 CONSTITUTIONAL OR OTHERWISE LAWFUL RIGHT TO USE THE PROPERTY OR A
14 PORTION OF THE PROPERTY AS A CONDITION FOR THE GRANTING OF A PERMIT,
15 LICENSE, VARIANCE, OR ANY OTHER AGENCY ACTION WITHOUT A ROUGH
16 PROPORTIONALITY BETWEEN THE STATED NEED FOR THE REQUIRED DEDICATION
17 AND THE IMPACT OF THE PROPOSED USE OF THE PROPERTY;

18 3. THE AGENCY ACTION RESULTS IN THE PROPERTY
19 OWNER BEING DEPRIVED, EITHER TEMPORARILY OR PERMANENTLY, OF ALL OR
20 SUBSTANTIALLY ALL ECONOMICALLY BENEFICIAL OR PRODUCTIVE USE OF THE
21 PROPERTY OR THAT PART OF THE PROPERTY AFFECTED BY THE ACTION WITHOUT
22 A SHOWING THAT SUCH DEPRIVATION INHERES IN THE OWNER'S TITLE ITSELF;

23 4. THE AGENCY ACTION DIMINISHES THE FAIR MARKET
24 VALUE OF THE AFFECTED PORTION OF THE PROPERTY WHICH IS THE SUBJECT OF
25 THE ACTION BY 33% OR MORE WITH RESPECT TO THE VALUE IMMEDIATELY
26 BEFORE THE GOVERNMENTAL ACTION; OR

27 5. UNDER ANY OTHER CIRCUMSTANCE WHERE A TAKING
28 HAS OCCURRED WITHIN THE MEANING OF THE FIFTH AMENDMENT OF THE UNITED
29 STATES CONSTITUTION OR THE CONSTITUTION OF THE STATE OF MARYLAND.

30 (B) THE AGENCY SHALL BEAR THE BURDEN OF PROOF IN ANY ACTION
31 DESCRIBED UNDER:

32 (1) SUBSECTION (A)(2)(II)1 OF THIS SECTION, WITH REGARD TO
33 SHOWING THE NEXUS BETWEEN THE STATED GOVERNMENTAL PURPOSE OF THE
34 GOVERNMENTAL INTEREST AND THE IMPACT ON THE PROPOSED USE OF PRIVATE
35 PROPERTY;

36 (2) SUBSECTION (A)(2)(II)2 OF THIS SECTION, WITH REGARD TO
37 SHOWING THE PROPORTIONALITY BETWEEN THE EXACTION AND THE IMPACT OF
38 THE PROPOSED USE OF THE PROPERTY; AND

39 (3) SUBSECTION (A)(2)(II)3 OF THIS SUBSECTION, WITH REGARD TO
40 SHOWING THAT SUCH DEPRIVATION OF VALUE INHERES IN THE OWNER'S TITLE TO
41 THE PROPERTY.

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1 (C) THE PROPERTY OWNER SHALL HAVE THE BURDEN OF PROOF IN ANY
2 ACTION DESCRIBED UNDER SUBSECTION (A)(2)(II)4, WITH REGARD TO
3 ESTABLISHING THE DIMINUTION OF VALUE OF PROPERTY.

4 (D) (1) (I) NO COMPENSATION IS REQUIRED UNDER THIS SUBTITLE IF
5 THE OWNER'S USE OR PROPOSED USE OF THE PROPERTY IS A NUISANCE.

6 (II) IN ORDER TO BAR AN AWARD OF DAMAGES UNDER THIS
7 SUBTITLE, THE AGENCY SHALL HAVE THE BURDEN OF PROOF TO ESTABLISH THAT
8 THE USE OR PROPOSED USE OF THE PROPERTY IS A NUISANCE.

9 (2) SUBJECT TO PARAGRAPH (1) OF THIS SUBSECTION, IF AN AGENCY
10 ACTION DIRECTLY TAKES PROPERTY OR A PORTION OF PROPERTY UNDER
11 SUBSECTION (A) OF THIS SECTION, COMPENSATION TO THE OWNER OF THE
12 PROPERTY THAT IS AFFECTED BY THE ACTION SHALL BE EITHER THE GREATER OF
13 AN AMOUNT EQUAL TO:

14 (I) THE DIFFERENCE BETWEEN:

15 1. THE FAIR MARKET VALUE OF THE PROPERTY OR
16 PORTION OF THE PROPERTY AFFECTED BY AGENCY ACTION BEFORE SUCH
17 PROPERTY BECAME THE SUBJECT OF THE SPECIFIC GOVERNMENT REGULATION;
18 AND

19 2. THE FAIR MARKET VALUE OF THE PROPERTY OR
20 PORTION OF THE PROPERTY WHEN THE PROPERTY BECOMES SUBJECT TO THE
21 AGENCY ACTION; OR

22 (II) BUSINESS LOSSES.

23 (E) THE AGENCY SHALL TAKE TITLE TO THE PROPERTY INTEREST FOR
24 WHICH THE STATE PAYS A CLAIM UNDER THIS SECTION.

25 (F) AWARDS OF COMPENSATION REFERRED TO IN THIS SECTION, WHETHER
26 BY JUDGMENT, SETTLEMENT, OR ADMINISTRATIVE ACTION, SHALL BE PAID AS
27 PROVIDED IN § 12-611 OF THIS SUBTITLE.

28 12-605.

29 (A) (1) EITHER PARTY TO A DISPUTE OVER A TAKING OF PRIVATE
30 PROPERTY AS DEFINED UNDER THIS SUBTITLE OR LITIGATION COMMENCED
31 UNDER THIS SUBTITLE MAY ELECT TO RESOLVE THE DISPUTE THROUGH
32 SETTLEMENT OR ARBITRATION.

33 (2) IN THE ADMINISTRATION OF THIS SECTION:

34 (I) ALTERNATIVE DISPUTE RESOLUTION MAY ONLY BE
35 EFFECTUATED BY THE CONSENT OF ALL PARTIES;

36 (II) ARBITRATION PROCEDURES SHALL BE IN ACCORDANCE WITH
37 THE ALTERNATIVE DISPUTE RESOLUTION PROCEDURES ESTABLISHED BY THE
38 AMERICAN ARBITRATION ASSOCIATION; AND

12

1 (III) IN NO EVENT SHALL ARBITRATION BE A CONDITION
2 PRECEDENT OR AN ADMINISTRATIVE PROCEDURE TO BE EXHAUSTED BEFORE THE
3 FILING OF A CIVIL ACTION UNDER THIS SUBTITLE.

4 (B) APPEAL FROM ARBITRATION DECISIONS SHALL BE TO THE CIRCUIT
5 COURT IN THE MANNER PRESCRIBED BY LAW FOR THE CLAIM UNDER THIS
6 SUBTITLE.

7 (C) AWARDS OF COMPENSATION REFERRED TO IN THIS SECTION SHALL BE
8 PAID AS PROVIDED IN § 12-611 OF THIS SUBTITLE.

9 12-606. RESERVED.

10 PART III. ENFORCEMENT OF ENDANGERED SPECIES AND WETLANDS LAW.

11 12-607.

12 THIS PART III APPLIES ONLY TO AGENCY ACTIONS UNDER:

13 (1) THE NONGAME AND ENDANGERED SPECIES CONSERVATION ACT
14 UNDER TITLE 10, SUBTITLE 2A OF THE NATURAL RESOURCES ARTICLE;

15 (2) PROVISIONS RELATING TO NONTIDAL WETLANDS UNDER TITLE 9,
16 SUBTITLE 5 OF THE ENVIRONMENT ARTICLE; AND

17 (3) PROVISIONS RELATING TO PRIVATE WETLANDS UNDER TITLE 16,
18 SUBTITLE 3 OF THE ENVIRONMENT ARTICLE.

19 12-608.

20 (A) AN AGENCY MAY NOT ENTER PRIVATE PROPERTY TO COLLECT
21 INFORMATION REGARDING THE PROPERTY UNLESS THE PRIVATE PROPERTY
22 OWNER:

23 (1) CONSENTS IN WRITING TO THE ENTRY;

24 (2) AFTER PROVIDING THE CONSENT, IS PROVIDED NOTICE OF THE
25 ENTRY; AND

26 (3) IS NOTIFIED THAT ANY RAW DATA COLLECTED FROM THE
27 PROPERTY SHALL BE MADE AVAILABLE TO THE OWNER AT NO COST TO THE
28 OWNER.

29 (B) THE PROHIBITION IN SUBSECTION (A) OF THIS SECTION DOES NOT APPLY
30 TO ENTRY ONTO PROPERTY FOR THE PURPOSE OBTAINING CONSENT OR
31 PROVIDING THE NOTICE REQUIRED UNDER SUBSECTION (A) OF THIS SUBSECTION.

32 12-609.

33 (A) EXCEPT AS PROVIDED IN THIS SECTION, NOTHING IN THIS SECTION
34 AFFECTS OR ABROGATES THE APPEAL PROVISIONS PROVIDED FOR AN AGGRIEVED
35 PERSON UNDER THE ENVIRONMENT AND NATURAL RESOURCES ARTICLES.

36 (B) A PRIVATE PROPERTY OWNER THAT, AS A CONSEQUENCE OF A FINAL
37 AGENCY ACTION, IS DEPRIVED OF 33% OR MORE OF THE FAIR MARKET VALUE, OR

13

1 THE ECONOMICALLY VIABLE USE, OF THE AFFECTED PORTION OF THE PROPERTY
2 AS DETERMINED BY A QUALIFIED APPRAISAL EXPERT, IS ENTITLED TO RECEIVE
3 COMPENSATION IN ACCORDANCE WITH THE STANDARDS ADOPTED IN PART II OF
4 THIS SUBTITLE.

5 (C) NOT LATER THAN 90 DAYS AFTER RECEIPT OF A FINAL DECISION OF AN
6 AGENCY THAT DEPRIVES A PRIVATE PROPERTY OWNER OF FAIR MARKET VALUE
7 OR VIABLE USE OF PROPERTY FOR WHICH COMPENSATION IS REQUIRED UNDER
8 SUBSECTION (B) OF THIS SECTION, THE PRIVATE PROPERTY OWNER MAY SUBMIT IN
9 WRITING A REQUEST TO THE AGENCY FOR COMPENSATION IN ACCORDANCE WITH
10 SUBSECTION (D) OF THIS SECTION.

11 (D) NOT LATER THAN 180 DAYS AFTER THE RECEIPT OF A REQUEST FOR
12 COMPENSATION, THE AGENCY SHALL STAY THE DECISION AND SHALL PROVIDE TO
13 THE PRIVATE PROPERTY OWNER:

14 (1) AN OFFER TO PURCHASE THE AFFECTED PROPERTY OF THE
15 PRIVATE PROPERTY OWNER AT A FAIR MARKET VALUE ASSUMING NO USE
16 RESTRICTIONS UNDER THE PROVISIONS ENUMERATED UNDER § 12-607 OF THIS
17 PART III OF THIS SUBTITLE; AND

18 (2) AN OFFER TO COMPENSATE THE PRIVATE PROPERTY OWNER FOR
19 THE DIFFERENCE BETWEEN THE FAIR MARKET VALUE OF THE PROPERTY WITHOUT
20 THOSE RESTRICTIONS AND THE FAIR MARKET VALUE OF THE PROPERTY WITH
21 THOSE RESTRICTIONS.

22 (E) (1) NOT LATER THAN 60 DAYS AFTER THE DATE OF RECEIPT OF THE
23 AGENCY'S OFFERS UNDER SUBSECTION (D) (1) AND (2) OF THIS SECTION, THE
24 PRIVATE PROPERTY OWNER SHALL ACCEPT ONE OF THE OFFERS OR REJECT BOTH
25 OFFERS.

26 (2) (I) IF THE PRIVATE PROPERTY OWNER REJECTS BOTH OFFERS,
27 THE PRIVATE PROPERTY OWNER MAY SUBMIT THE MATTER FOR ARBITRATION TO
28 AN ARBITRATOR APPOINTED BY THE AGENCY FROM A LIST OF ARBITRATORS
29 SUBMITTED TO THE AGENCY BY THE AMERICAN ARBITRATION ASSOCIATION.

30 (II) THE ARBITRATION SHALL BE CONDUCTED IN ACCORDANCE
31 WITH THE REAL ESTATE VALUATION ARBITRATION RULES OF THAT ASSOCIATION.

32 (3) THE ARBITRATOR SHALL DECIDE:

33 (I) WHETHER THE PRIVATE PROPERTY OWNER HAS BEEN
34 DEPRIVED OF FAIR MARKET VALUE OR VIABLE USE OF PROPERTY FOR WHICH
35 COMPENSATION IS REQUIRED UNDER SUBSECTION (B) OF THIS SECTION; AND

36 (II) THE AMOUNT, IF ANY, OF COMPENSATION OWED TO THE
37 PRIVATE PROPERTY OWNER.

38 (4) FOR PURPOSES OF THIS SECTION, AN ARBITRATION IS BINDING ON
39 THE AGENCY AND THE PRIVATE PROPERTY OWNER.

40 (F) AN AGENCY ACTION THAT DEPRIVES A PRIVATE PROPERTY OWNER OF
41 PROPERTY AS DESCRIBED UNDER SUBSECTION (B) OF THIS SECTION, IS

14

1 CONSIDERED, AT THE OPTION OF THE PRIVATE PROPERTY OWNER, TO BE A TAKING
2 UNDER THE UNITED STATES CONSTITUTION AND THE CONSTITUTION OF THE STATE
3 OF MARYLAND AND A JUDGMENT AGAINST THE STATE IF THE PRIVATE PROPERTY
4 OWNER:

5 (1) ACCEPTS THE AGENCY'S OFFER UNDER SUBSECTION (D) OF THIS
6 SECTION; OR

7 (2) SUBMITS TO ARBITRATION UNDER SUBSECTION (E) OF THIS
8 SECTION.

9 (G) AWARDS OF COMPENSATION REFERRED TO IN THIS SECTION SHALL BE
10 PAID AS PROVIDED IN § 12-611 OF THIS SUBTITLE.

11 (H) PAYMENT UNDER THIS SECTION, AS THAT FORM IS AGREED TO BY THE
12 AGENCY AND THE PRIVATE PROPERTY OWNER, MAY BE IN THE FORM OF:

13 (1) PAYMENT OF AN AMOUNT EQUAL TO THE FAIR MARKET VALUE OF
14 THE PROPERTY ON THE DAY BEFORE THE DATE OF THE FINAL AGENCY ACTION
15 WITH RESPECT TO WHICH THE PROPERTY OR INTEREST IS ACQUIRED; OR

16 (2) A PAYMENT OF AN AMOUNT EQUAL TO THE REDUCTION IN VALUE.

17 12-610. RESERVED.

18 PART IV. AWARD OF COMPENSATION.

19 12-611.

20 (A) AN AWARD OF COMPENSATION PAID TO A PROPERTY OWNER UNDER
21 THIS SUBTITLE SHALL BE PROMPTLY PAID BY THE AGENCY OUT OF CURRENTLY
22 AVAILABLE APPROPRIATIONS SUPPORTING THE ACTIVITIES GIVING RISE TO THE
23 CLAIMS FOR COMPENSATION.

24 (B) IF INSUFFICIENT FUNDS ARE AVAILABLE TO THE AGENCY IN THE FISCAL
25 YEAR IN WHICH THE AWARD BECOMES FINAL, THE AGENCY SHALL EITHER PAY THE
26 AWARD FROM APPROPRIATIONS AVAILABLE IN THE NEXT FISCAL YEAR OR
27 PROMPTLY SEEK ADDITIONAL APPROPRIATIONS FOR THE PURPOSE.

28 (C) PAYMENT MAY NOT BE MADE FROM THE GENERAL FUND OF THE STATE.

29 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 1997.