

SENATE BILL 568

Unofficial Copy
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SB 702/97 - JPR

1998 Regular Session
8lr0553

By: **Senator Colburn**

Introduced and read first time: February 6, 1998

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Property Rights Protection Act**

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

27 BY adding to
28 Article - Courts and Judicial Proceedings
29 Section 5-117
30 Annotated Code of Maryland
31 (1995 Replacement Volume and 1997 Supplement)

32 BY adding to
33 Article - State Government

1 Section 2-1505.3, 2-1505.4; and 12-601 through 12-605, 12-607 through
2 12-609, and 12-611 to be under the new subtitle "Subtitle 6. Protection of
3 Private Property Rights"
4 Annotated Code of Maryland
5 (1995 Replacement Volume and 1997 Supplement)

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

8 **Article - Courts and Judicial Proceedings**

9 5-117.

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

15 **Article - State Government**

16 2-1505.3.

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

22 (2) IN THIS SECTION "PRIVATE PROPERTY IMPACT ANALYSIS" MEANS A
23 WRITTEN DOCUMENT ANALYZING THE LIKELIHOOD THAT A PROPOSED BILL WILL
24 RESULT IN THE TAKING OF PRIVATE PROPERTY AND THE POTENTIAL COST OF
25 COMPENSATING THE OWNER OF THE PRIVATE PROPERTY FOR THE TAKING.

26 (B) (1) BEGINNING WITH THE 1999 REGULAR SESSION OF THE GENERAL
27 ASSEMBLY, A PRIVATE PROPERTY TAKING IMPACT ANALYSIS SHALL BE PREPARED BY
28 THE APPROPRIATE EXECUTIVE BRANCH AGENCY FOR EACH PROPOSED BILL THAT IS
29 INTRODUCED AT THE REQUEST OF THE ADMINISTRATION OR A DEPARTMENT,
30 AGENCY, OR COMMISSION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

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

33 (I) TO THE DEPARTMENT OF LEGISLATIVE SERVICES WITHIN A
34 REASONABLE TIME FRAME PRIOR TO THE HEARING ON THE BILL TO ALLOW THE
35 DEPARTMENT OF LEGISLATIVE SERVICES TO COMMENT ON THE PRIVATE PROPERTY
36 TAKING IMPACT ANALYSIS; AND

1 (II) TO THE COMMITTEE TO WHICH THE BILL IS REFERRED PRIOR
2 TO THE HEARING ON THE BILL.

3 (C) (1) BEGINNING WITH THE 1999 REGULAR SESSION OF THE GENERAL
4 ASSEMBLY, A PRIVATE PROPERTY TAKING IMPACT ANALYSIS SHALL BE PREPARED BY
5 THE DEPARTMENT OF LEGISLATIVE SERVICES FOR EACH BILL THAT IS INTRODUCED
6 BY A MEMBER OF THE GENERAL ASSEMBLY.

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

10 (I) TO THE PRIMARY SPONSOR OF THE BILL; AND

11 (II) TO THE COMMITTEE TO WHICH THE BILL IS REFERRED BEFORE
12 THE HEARING ON THE BILL.

13 (D) (1) IF THE APPROPRIATE EXECUTIVE BRANCH AGENCY OR THE
14 DEPARTMENT OF LEGISLATIVE SERVICES DETERMINES THAT A BILL WILL HAVE
15 MINIMAL OR NO PRIVATE PROPERTY TAKING IMPACT, THE AGENCY OR DEPARTMENT
16 OF LEGISLATIVE SERVICES SHALL INDICATE THAT DETERMINATION BY A BRIEF
17 WRITTEN STATEMENT.

18 (2) IF THE APPROPRIATE EXECUTIVE BRANCH AGENCY OR THE
19 DEPARTMENT OF LEGISLATIVE SERVICES DETERMINES THAT A BILL WILL HAVE A
20 PRIVATE PROPERTY TAKING IMPACT, THE AGENCY OR DEPARTMENT OF
21 LEGISLATIVE SERVICES SHALL DEVELOP A COMPLETE WRITTEN PRIVATE PROPERTY
22 TAKING IMPACT ANALYSIS.

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

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

32 (E) THE PRIVATE PROPERTY TAKING IMPACT ANALYSIS REQUIRED UNDER
33 THIS SECTION SHALL INCLUDE CONSIDERATION OF THE FOLLOWING FACTORS, AS
34 APPROPRIATE:

35 (1) THE SPECIFIC PURPOSE OF THE BILL;

36 (2) AN ASSESSMENT OF THE LIKELIHOOD THAT A TAKING OF PRIVATE
37 PROPERTY WILL OCCUR UNDER THE BILL;

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

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

5 (F) (1) THE EXECUTIVE BRANCH AGENCY OR THE DEPARTMENT OF
6 LEGISLATIVE SERVICES PREPARING THE PRIVATE PROPERTY TAKING IMPACT
7 ANALYSIS REQUIRED UNDER THIS SECTION SHALL CONSULT WITH, AS
8 APPROPRIATE:

9 (I) OTHER UNITS OF STATE GOVERNMENT;

10 (II) UNITS OF LOCAL GOVERNMENT; AND

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

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

18 (G) (1) THE DEPARTMENT OF LEGISLATIVE SERVICES MAY INCLUDE A
19 PRIVATE PROPERTY TAKING IMPACT ANALYSIS PREPARED BY THE DEPARTMENT OF
20 LEGISLATIVE SERVICES OR BY THE APPROPRIATE EXECUTIVE BRANCH AGENCY AS
21 PART OF A FISCAL NOTE.

22 (2) THE DEPARTMENT OF LEGISLATIVE SERVICES MAY COMMENT ON
23 THE PRIVATE PROPERTY TAKING IMPACT ANALYSIS PREPARED BY THE
24 APPROPRIATE EXECUTIVE BRANCH AGENCY.

25 (H) THE DEPARTMENT OF LEGISLATIVE SERVICES MAY REVISE THE PRIVATE
26 PROPERTY TAKING IMPACT ANALYSIS CONSISTENT WITH AN AMENDED VERSION OF
27 A BILL.

28 (I) (1) THE DEPARTMENT OF LEGISLATIVE SERVICES SHALL KEEP A COPY
29 OF EACH PRIVATE PROPERTY TAKING IMPACT ANALYSIS FOR 3 YEARS AFTER
30 PREPARATION OF THE ANALYSIS.

31 (2) THE COPIES SHALL BE REASONABLY AVAILABLE FOR PUBLIC
32 INSPECTION.

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

35 (K) THE VALIDITY OF AN ENACTMENT OF A BILL IS NOT AFFECTED BY THE
36 PRESENCE, ABSENCE, OR CONTENT OF A PRIVATE PROPERTY TAKING IMPACT
37 ANALYSIS.

1 2-1505.4.

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

7 (2) (I) IN THIS SECTION THE FOLLOWING WORDS HAVE THE
8 MEANINGS INDICATED.

9 (II) "COMMITTEE" MEANS THE JOINT COMMITTEE ON
10 ADMINISTRATIVE, EXECUTIVE, AND LEGISLATIVE REVIEW.

11 (III) "PRIVATE PROPERTY IMPACT ANALYSIS" MEANS A WRITTEN
12 DOCUMENT ANALYZING THE LIKELIHOOD THAT PROPOSED REGULATIONS WILL
13 RESULT IN THE TAKING OF PRIVATE PROPERTY AND THE POTENTIAL COST OF
14 COMPENSATING THE OWNER OF THE PRIVATE PROPERTY FOR THE TAKING.

15 (B) (1) ON AND AFTER OCTOBER 1, 1998, A PRIVATE PROPERTY TAKING
16 IMPACT ANALYSIS SHALL BE PREPARED BY THE APPROPRIATE EXECUTIVE BRANCH
17 AGENCY FOR EACH REGULATION THAT THE AGENCY PROPOSES FOR ADOPTION
18 UNDER TITLE 10, SUBTITLE 1 OF THIS ARTICLE.

19 (2) A COPY OF THE PRIVATE PROPERTY TAKING IMPACT ANALYSIS
20 REQUIRED UNDER THIS SUBSECTION SHALL BE SUBMITTED BY THE APPROPRIATE
21 AGENCY:

22 (I) TO THE DEPARTMENT OF LEGISLATIVE SERVICES NO LATER
23 THAN THE TIME THE AGENCY SUBMITS THE REGULATION TO THE COMMITTEE TO
24 ALLOW THE DEPARTMENT OF LEGISLATIVE SERVICES TO COMMENT ON THE
25 PRIVATE PROPERTY TAKING IMPACT ANALYSIS; AND

26 (II) TO THE COMMITTEE AT THE TIME THE AGENCY SUBMITS THE
27 REGULATION TO THE COMMITTEE.

28 (C) (1) IF THE APPROPRIATE EXECUTIVE BRANCH AGENCY OR THE
29 DEPARTMENT OF LEGISLATIVE SERVICES DETERMINES THAT A REGULATION WILL
30 HAVE MINIMAL OR NO PRIVATE PROPERTY TAKING IMPACT, THE AGENCY OR
31 DEPARTMENT SHALL INDICATE THAT DETERMINATION BY A BRIEF WRITTEN
32 STATEMENT.

33 (2) IF THE APPROPRIATE EXECUTIVE BRANCH AGENCY OR THE
34 DEPARTMENT OF LEGISLATIVE SERVICES DETERMINES THAT A REGULATION WILL
35 HAVE A PRIVATE PROPERTY TAKING IMPACT, THE AGENCY OR DEPARTMENT SHALL
36 DEVELOP A COMPLETE WRITTEN PRIVATE PROPERTY TAKING IMPACT ANALYSIS.

37 (3) (I) IF THE APPROPRIATE EXECUTIVE BRANCH AGENCY OR THE
38 DEPARTMENT OF LEGISLATIVE SERVICES DETERMINES THAT A REGULATION WILL
39 HAVE A PRIVATE PROPERTY TAKING IMPACT AND IS UNABLE TO PROVIDE A

1 COMPLETE WRITTEN PRIVATE PROPERTY TAKING IMPACT ANALYSIS, THE AGENCY
2 OR DEPARTMENT SHALL PROVIDE A WRITTEN EXPLANATION OF WHY THE AGENCY
3 OR DEPARTMENT DETERMINED THAT THE REGULATION WILL HAVE A PRIVATE
4 PROPERTY TAKING IMPACT.

5 (II) THE EXPLANATION MAY IDENTIFY THE IMPACT IN GENERAL
6 TERMS AND NEED NOT QUANTIFY THE SPECIFIC PRIVATE PROPERTY TAKING
7 IMPACT.

8 (D) THE PRIVATE PROPERTY TAKING IMPACT ANALYSIS REQUIRED UNDER
9 THIS SECTION SHALL INCLUDE CONSIDERATION OF THE FOLLOWING FACTORS, AS
10 APPROPRIATE:

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

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

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

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

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

21 (E) (1) THE EXECUTIVE BRANCH AGENCY OR THE DEPARTMENT OF
22 LEGISLATIVE SERVICES PREPARING THE PRIVATE PROPERTY TAKING IMPACT
23 ANALYSIS REQUIRED UNDER THIS SECTION SHALL CONSULT WITH, AS
24 APPROPRIATE:

25 (I) OTHER UNITS OF STATE GOVERNMENT;

26 (II) UNITS OF LOCAL GOVERNMENT; AND

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

29 (2) ON REQUEST OF THE DIRECTOR OF THE DEPARTMENT OF
30 LEGISLATIVE SERVICES, A UNIT OF THE STATE OR A LOCAL GOVERNMENT SHALL
31 PROVIDE THE DEPARTMENT OF LEGISLATIVE SERVICES WITH ASSISTANCE OR
32 INFORMATION IN THE PREPARATION OF A PRIVATE PROPERTY TAKING IMPACT
33 ANALYSIS.

34 (F) THE DEPARTMENT OF LEGISLATIVE SERVICES SHALL:

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

1 (2) TRANSMIT ITS COMMENT TO THE COMMITTEE.

2 (G) THE DEPARTMENT OF LEGISLATIVE SERVICES SHALL REVISE THE
3 PRIVATE PROPERTY TAKING IMPACT ANALYSIS CONSISTENT WITH AN AMENDED
4 VERSION OF A REGULATION.

5 (H) (1) THE DEPARTMENT OF LEGISLATIVE SERVICES SHALL KEEP A COPY
6 OF EACH PRIVATE PROPERTY TAKING IMPACT ANALYSIS FOR 3 YEARS AFTER
7 PREPARATION OF THE ANALYSIS.

8 (2) THE COPIES SHALL BE REASONABLY AVAILABLE FOR PUBLIC
9 INSPECTION.

10 (I) THE PRIVATE PROPERTY TAKING IMPACT ANALYSIS SHALL BE PUBLISHED
11 IN THE MARYLAND REGISTER AT THE SAME TIME AS:

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

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

16 (J) THE VALIDITY OF THE ADOPTION OF A REGULATION IS NOT AFFECTED BY
17 THE PRESENCE, ABSENCE, OR CONTENT OF A PRIVATE PROPERTY TAKING IMPACT
18 ANALYSIS.

19 SUBTITLE 6. PROTECTION OF PRIVATE PROPERTY RIGHTS.

20 {center}PART I. DEFINITIONS AND GENERAL PROVISIONS.

21 12-601.

22 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
23 INDICATED.

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

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

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

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

32 (III) RECEIVES FEDERAL FUNDS IN CONNECTION WITH A
33 REGULATORY PROGRAM ESTABLISHED BY THE STATE, IF THE STATE ENFORCEMENT
34 OF THE REGULATORY PROGRAM, OR THE RECEIPT OF FEDERAL FUNDS IN

1 CONNECTION WITH A REGULATORY PROGRAM ESTABLISHED BY THE STATE, IS
2 DIRECTLY RELATED TO A TAKING OF PRIVATE PROPERTY FOR WHICH
3 COMPENSATION IS SOUGHT UNDER THIS SUBTITLE.

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

6 (1) TAKES A PROPERTY RIGHT; OR

7 (2) UNREASONABLY IMPEDES THE USE OF PROPERTY OR THE EXERCISE
8 OF PROPERTY INTERESTS.

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

14 (2) "COMPENSATION" INCLUDES COMPOUNDED INTEREST CALCULATED
15 FROM THE DATE OF THE TAKING UNTIL THE DATE THE STATE TENDERS PAYMENT.

16 (E) "OWNER" MEANS AN OWNER OR POSSESSOR OF PROPERTY OR RIGHTS IN
17 PROPERTY AT THE TIME A TAKING OCCURS.

18 (F) (1) "PRIVATE PROPERTY" OR "PROPERTY" MEANS ALL PROPERTY
19 PROTECTED UNDER THE FIFTH AMENDMENT TO THE CONSTITUTION OF THE
20 UNITED STATES, THE CONSTITUTION OF THE STATE OF MARYLAND, ANY
21 APPLICABLE FEDERAL OR STATE LAW, OR THIS SUBTITLE.

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

23 (I) REAL PROPERTY, WHETHER VESTED OR NOT VESTED,
24 INCLUDING:

25 1. ESTATES IN FEE, LIFE ESTATES, ESTATES FOR YEARS, OR
26 OTHERWISE;

27 2. INCHOATE INTERESTS IN REAL PROPERTY SUCH AS
28 REMAINDERS AND FUTURE INTERESTS;

29 3. PERSONALTY THAT IS AFFIXED TO OR APPURTENANT TO
30 REAL PROPERTY;

31 4. EASEMENTS;

32 5. LEASEHOLDS;

33 6. RECORDED LIENS; AND

34 7. CONTRACTS OR OTHER SECURITY INTERESTS IN, OR
35 RELATED TO, REAL PROPERTY;

1 (II) THE RIGHT TO USE WATER OR THE RIGHT TO RECEIVE WATER,
2 INCLUDING ANY RECORDED LIENS ON A WATER RIGHT;

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

5 (IV) PROPERTY RIGHTS PROVIDED BY, OR MEMORIALIZED IN, A
6 CONTRACT;

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

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

11 (3) "PRIVATE PROPERTY" OR "PROPERTY" DOES NOT INCLUDE
12 CONTRACT RIGHTS:

13 (I) FORMED UNDER CONTRACTS PROHIBITED BY THE STATE
14 BECAUSE THEY ARE CONSIDERED HARMFUL TO THE PUBLIC WELFARE; OR

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

18 (G) (1) "TAKING OF PRIVATE PROPERTY", "TAKING", OR "TAKE" MEANS AN
19 ACTION WHEREBY PRIVATE PROPERTY IS DIRECTLY TAKEN AS TO REQUIRE
20 COMPENSATION UNDER THE FIFTH AMENDMENT TO THE UNITED STATES
21 CONSTITUTION, THE CONSTITUTION OF THE STATE OF MARYLAND, OR UNDER THIS
22 SUBTITLE, INCLUDING BY PHYSICAL INVASION, REGULATION, EXACTION,
23 CONDITION, OR OTHER MEANS.

24 (2) "TAKING OF PRIVATE PROPERTY", "TAKING", OR "TAKE" DOES NOT
25 INCLUDE:

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

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

30 12-602.

31 THIS SUBTITLE MAY NOT BE CONSTRUED TO:

32 (1) DENY A PERSON THE RIGHT TO EXHAUST OTHER ADMINISTRATIVE
33 REMEDIES;

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

1 (3) CONSTITUTE A CONCLUSIVE DETERMINATION OF:

2 (I) THE VALUE OF PROPERTY FOR PURPOSES OF AN APPRAISAL
3 FOR THE ACQUISITION OF PROPERTY, OR FOR THE DETERMINATION OF DAMAGES; OR

4 (II) ANY OTHER MATERIAL ISSUE.

5 PART II. COMPENSATION FOR A TAKING.

6 12-603.

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

10 (B) NOTWITHSTANDING ANY OTHER PROVISION OF LAW AND
11 NOTWITHSTANDING THE ISSUES INVOLVED, THE RELIEF SOUGHT, OR THE AMOUNT
12 IN CONTROVERSY, THE COURT SHALL HAVE CONCURRENT JURISDICTION OVER
13 BOTH CLAIMS FOR MONETARY RELIEF AND CLAIMS SEEKING INVALIDATION OF ANY
14 ACT OF THE GENERAL ASSEMBLY OR ANY REGULATION OF AN AGENCY AFFECTING
15 PRIVATE PROPERTY RIGHTS.

16 12-604.

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

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

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

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

27 2. THE AGENCY ACTION EXACTS THE OWNER'S
28 CONSTITUTIONAL OR OTHERWISE LAWFUL RIGHT TO USE THE PROPERTY OR A
29 PORTION OF THE PROPERTY AS A CONDITION FOR THE GRANTING OF A PERMIT,
30 LICENSE, VARIANCE, OR ANY OTHER AGENCY ACTION WITHOUT A ROUGH
31 PROPORTIONALITY BETWEEN THE STATED NEED FOR THE REQUIRED DEDICATION
32 AND THE IMPACT OF THE PROPOSED USE OF THE PROPERTY;

33 3. THE AGENCY ACTION RESULTS IN THE PROPERTY OWNER
34 BEING DEPRIVED, EITHER TEMPORARILY OR PERMANENTLY, OF ALL OR
35 SUBSTANTIALLY ALL ECONOMICALLY BENEFICIAL OR PRODUCTIVE USE OF THE
36 PROPERTY OR THAT PART OF THE PROPERTY AFFECTED BY THE ACTION WITHOUT A
37 SHOWING THAT THE DEPRIVATION INHERES IN THE OWNER'S TITLE ITSELF;

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

5 5. A TAKING HAS OCCURRED WITHIN THE MEANING OF THE
6 FIFTH AMENDMENT OF THE UNITED STATES CONSTITUTION OR THE CONSTITUTION
7 OF THE STATE OF MARYLAND.

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

10 (1) SUBSECTION (A)(2)(II)1 OF THIS SECTION, WITH REGARD TO SHOWING
11 THE NEXUS BETWEEN THE STATED GOVERNMENTAL PURPOSE OF THE
12 GOVERNMENTAL INTEREST AND THE IMPACT ON THE PROPOSED USE OF PRIVATE
13 PROPERTY;

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

17 (3) SUBSECTION (A)(2)(II)3 OF THIS SECTION, WITH REGARD TO SHOWING
18 THAT THE DEPRIVATION OF VALUE INHERES IN THE OWNER'S TITLE TO THE
19 PROPERTY.

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

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

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

28 (2) SUBJECT TO PARAGRAPH (1) OF THIS SUBSECTION, IF AN AGENCY
29 ACTION DIRECTLY TAKES PROPERTY OR A PORTION OF PROPERTY UNDER
30 SUBSECTION (A) OF THIS SECTION, COMPENSATION TO THE OWNER OF THE
31 PROPERTY THAT IS AFFECTED BY THE ACTION SHALL BE THE GREATER OF AN
32 AMOUNT EQUAL TO:

33 (I) THE DIFFERENCE BETWEEN:

34 1. THE FAIR MARKET VALUE OF THE PROPERTY OR PORTION
35 OF THE PROPERTY AFFECTED BY AGENCY ACTION BEFORE THE PROPERTY BECAME
36 THE SUBJECT OF THE SPECIFIC GOVERNMENT REGULATION; AND

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

3 12-608.

4 (A) AN AGENCY MAY NOT ENTER PRIVATE PROPERTY TO COLLECT
5 INFORMATION REGARDING THE PROPERTY UNLESS THE PRIVATE PROPERTY OWNER:

6 (1) CONSENTS IN WRITING TO THE ENTRY;

7 (2) AFTER PROVIDING THE CONSENT, IS PROVIDED NOTICE OF THE
8 ENTRY; AND

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

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

14 12-609.

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

18 (B) A PRIVATE PROPERTY OWNER THAT, AS A CONSEQUENCE OF A FINAL
19 AGENCY ACTION, IS DEPRIVED OF 33% OR MORE OF THE FAIR MARKET VALUE, OR
20 THE ECONOMICALLY VIABLE USE, OF THE AFFECTED PORTION OF THE PROPERTY AS
21 DETERMINED BY A QUALIFIED APPRAISAL EXPERT, IS ENTITLED TO RECEIVE
22 COMPENSATION IN ACCORDANCE WITH THE STANDARDS ADOPTED IN PART II OF
23 THIS SUBTITLE.

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

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

33 (1) AN OFFER TO PURCHASE THE AFFECTED PORTION OF THE PRIVATE
34 PROPERTY AT A FAIR MARKET VALUE ASSUMING NO USE RESTRICTIONS UNDER THE
35 PROVISIONS ENUMERATED UNDER § 12-607 OF THIS PART III OF THIS SUBTITLE; AND

36 (2) AN OFFER TO COMPENSATE THE PRIVATE PROPERTY OWNER FOR
37 THE DIFFERENCE BETWEEN THE FAIR MARKET VALUE OF THE PROPERTY WITHOUT

1 THOSE RESTRICTIONS AND THE FAIR MARKET VALUE OF THE PROPERTY WITH
2 THOSE RESTRICTIONS.

3 (E) (1) NOT LATER THAN 60 DAYS AFTER THE DATE OF RECEIPT OF THE
4 AGENCY'S OFFERS UNDER SUBSECTION (D) OF THIS SECTION, THE PRIVATE
5 PROPERTY OWNER SHALL ACCEPT ONE OF THE OFFERS OR REJECT BOTH OFFERS.

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

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

12 (3) THE ARBITRATOR SHALL DECIDE:

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

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

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

20 (F) AN AGENCY ACTION THAT DEPRIVES A PRIVATE PROPERTY OWNER OF
21 PROPERTY AS DESCRIBED UNDER SUBSECTION (B) OF THIS SECTION, IS
22 CONSIDERED, AT THE OPTION OF THE PRIVATE PROPERTY OWNER, TO BE A TAKING
23 UNDER THE UNITED STATES CONSTITUTION AND THE CONSTITUTION OF THE STATE
24 OF MARYLAND AND A JUDGMENT AGAINST THE STATE IF THE PRIVATE PROPERTY
25 OWNER:

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

28 (2) SUBMITS TO ARBITRATION UNDER SUBSECTION (E) OF THIS
29 SECTION.

30 (G) AWARDS OF COMPENSATION UNDER THIS SECTION SHALL BE PAID AS
31 PROVIDED IN § 12-611 OF THIS SUBTITLE.

32 (H) PAYMENT UNDER THIS SECTION, AS AGREED TO BY THE AGENCY AND THE
33 PRIVATE PROPERTY OWNER, MAY BE IN:

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

1 (2) AN AMOUNT EQUAL TO THE REDUCTION IN VALUE.

2 12-610. RESERVED.

3

PART IV. AWARD OF COMPENSATION.

4 12-611.

5 (A) AN AWARD OF COMPENSATION PAID TO A PROPERTY OWNER UNDER THIS
6 SUBTITLE SHALL BE PROMPTLY PAID BY THE AGENCY OUT OF CURRENTLY
7 AVAILABLE APPROPRIATIONS SUPPORTING THE ACTIVITIES GIVING RISE TO THE
8 CLAIMS FOR COMPENSATION.

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

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

14 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 October 1, 1998.