

HOUSE BILL 35

D3, M3, P3

2lr0766

(PRE-FILED)

By: **Delegates Smigiel, Cluster, Eckardt, Hough, Kach, Krebs, McComas, McDermott, Schulz, and Vitale**

Requested: October 20, 2011

Introduced and read first time: January 11, 2012

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Private Property Rights – Regulatory Infringement – Compensation**

3 FOR the purpose of giving an owner of private property a cause of action under certain
4 circumstances against the Department of the Environment, the Department of
5 Natural Resources, or the Department of Planning if the application of a
6 regulation adopted by the agency infringes on a private property right;
7 providing that the cause of action shall be filed in a certain court; providing for
8 the sum that a private property owner may recover under a certain cause of
9 action; requiring the award or judgment under a certain cause of action to be
10 paid from certain funds and prohibiting payment from the General Fund;
11 providing for the venue of a certain cause of action; establishing a certain
12 statute of limitations; providing for the application of this Act; defining a certain
13 term; and generally relating to the rights of private property owners.

14 BY adding to

15 Article – Courts and Judicial Proceedings
16 Section 5–120
17 Annotated Code of Maryland
18 (2006 Replacement Volume and 2011 Supplement)

19 BY repealing and reenacting, with amendments,

20 Article – Courts and Judicial Proceedings
21 Section 6–203(b)
22 Annotated Code of Maryland
23 (2006 Replacement Volume and 2011 Supplement)

24 BY adding to

25 Article – State Government

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 12–601 through 12–604 to be under the new subtitle “Subtitle 6.
2 Infringement on Private Property Rights”
3 Annotated Code of Maryland
4 (2009 Replacement Volume and 2011 Supplement)

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

7 **Article – Courts and Judicial Proceedings**

8 **5–120.**

9 AN ACTION FOR DAMAGES ARISING OUT OF THE APPLICATION OF A
10 REGULATION ADOPTED BY THE DEPARTMENT OF THE ENVIRONMENT, THE
11 DEPARTMENT OF NATURAL RESOURCES, OR THE DEPARTMENT OF PLANNING
12 TO PRIVATE PROPERTY UNDER TITLE 12, SUBTITLE 6 OF THE STATE
13 GOVERNMENT ARTICLE SHALL BE FILED WITHIN 6 YEARS OF THE DATE ON
14 WHICH THE REGULATION IS APPLIED TO THE PRIVATE PROPERTY.

15 **6–203.**

16 (b) (1) The venue of the following actions is in the county where all or any
17 portion of the subject matter of the action is located:

- 18 (i) Partition of real estate;
19 (ii) Enforcement of a charge or lien on land;
20 (iii) Eminent domain;
21 (iv) Trespass to land; [and]
22 (v) Waste; AND

23 (VI) ANY ACTION UNDER TITLE 12, SUBTITLE 6 OF THE
24 STATE GOVERNMENT ARTICLE.

25 (2) If the property lies in more than one county, the court where
26 proceedings are first brought has jurisdiction over the entire property.

27 **Article – State Government**

28 **SUBTITLE 6. INFRINGEMENT ON PRIVATE PROPERTY RIGHTS.**

29 **12–601.**

1 **IN THIS SUBTITLE, “PRIVATE PROPERTY” MEANS ANY REAL PROPERTY IN**
2 **THE STATE OTHER THAN REAL PROPERTY OWNED BY A UNIT OF FEDERAL,**
3 **STATE, OR LOCAL GOVERNMENT.**

4 **12-602.**

5 **THIS SUBTITLE DOES NOT APPLY TO REGULATIONS ADOPTED BY THE**
6 **DEPARTMENT OF THE ENVIRONMENT, THE DEPARTMENT OF NATURAL**
7 **RESOURCES, OR THE DEPARTMENT OF PLANNING THAT ARE:**

8 **(1) REQUIRED TO COMPLY WITH FEDERAL LAW; OR**

9 **(2) NECESSARY TO PROTECT PUBLIC SAFETY.**

10 **12-603.**

11 **(A) THE OWNER OF PRIVATE PROPERTY HAS A CAUSE OF ACTION**
12 **AGAINST THE STATE IF THE APPLICATION OF A REGULATION ADOPTED ON OR**
13 **AFTER OCTOBER 1, 2012, BY THE DEPARTMENT OF THE ENVIRONMENT, THE**
14 **DEPARTMENT OF NATURAL RESOURCES, OR THE DEPARTMENT OF PLANNING**
15 **RESTRICTS, LIMITS, OR OTHERWISE INFRINGES ON A RIGHT TO THE PRIVATE**
16 **PROPERTY THAT WOULD EXIST ABSENT THE APPLICATION.**

17 **(B) AN ACTION UNDER THIS SUBTITLE SHALL BE FILED IN A CIRCUIT**
18 **COURT AS PROVIDED IN § 6-203 OF THE COURTS ARTICLE.**

19 **12-604.**

20 **(A) IN AN ACTION FILED UNDER THIS SUBTITLE, THE PROPERTY OWNER**
21 **MAY RECOVER:**

22 **(1) A SUM EQUAL TO THE DIMINUTION IN THE FAIR MARKET**
23 **VALUE OF THE PORTION OF THE PRIVATE PROPERTY AFFECTED BY THE**
24 **APPLICATION OF THE REGULATION THAT IS THE BASIS OF THE ACTION; AND**

25 **(2) COURT COSTS, REASONABLE ATTORNEY’S FEES, AND**
26 **REASONABLE EXPENSES.**

27 **(B) (1) AN AWARD OR JUDGMENT IN FAVOR OF A PROPERTY OWNER**
28 **MADE UNDER THIS SUBTITLE SHALL BE PAID OUT OF THE BUDGET OF THE**
29 **AGENCY RESPONSIBLE FOR ADOPTING THE REGULATION THAT IS THE BASIS OF**
30 **THE ACTION.**

1 **(2) AN AWARD OR JUDGMENT IN FAVOR OF A PROPERTY OWNER**
2 **MADE UNDER THIS SUBTITLE MAY NOT BE PAID FROM THE GENERAL FUND OF**
3 **THE STATE.**

4 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 2012.