COUNTY COUNCIL

OF

TALBOT COUNTY, MARYLAND

2013 Legislative Session, Legislative Day No. : October 22, 2013

Bill No.: 1255 *AS AMENDED*

Expiration Date: December 26, 2013

Introduced by: Mr. Bartlett, Mr. Duncan, Mr. Hollis, Mr. Pack, Ms. Price

A BILL TO REQUIRE NOTICE TO THE COUNTY OF ALL CLAIMS ASSERTED IN ANY PROCEEDING BY ANY PERSON THAT ANY ACT OR FAILURE TO ACT, OR THE APPLICATION OF ANY ORDINANCE, RULE, REGULATION, OR DECISION OF THE COUNTY, VIOLATES, OR WOULD VIOLATE, THE FEDERAL OR STATE CONSTITUTION, OR ANY STATUTE, RULE, OR REGULATION; TO REQUIRE THAT THE COUNTY, IN ITS EXECUTIVE CAPACITY, BE JOINED AS A NECESSARY PARTY IN ANY SUCH PROCEEDING ASSERTING ANY SUCH CLAIM, TO REQUIRE EXHAUSTION OF ADMINISTRATIVE REMEDIES, TO PROVIDE FOR RULES OF CONSTRUCTION, AND GENERALLY RELATING TO NOTICES OF SUCH CLAIMS IN SUCH PROCEEDINGS

By the Council: October 22, 2013

Introduced, read first time, ordered posted, and public hearing scheduled on Tuesday, November 26, 2013 at 6:30 p.m. at the Bradley Meeting Room, Talbot County Court House, South Wing, 11 North Washington Street, Easton, Maryland 21601.

By Order Susan W. Moran

Susan W. Moran, Secretary

A BILL TO REQUIRE NOTICE TO THE COUNTY OF ALL CLAIMS ASSERTED IN ANY PROCEEDING BY ANY PERSON THAT ANY ACT OR FAILURE TO ACT, OR THE APPLICATION OF ANY ORDINANCE, RULE, REGULATION, OR DECISION OF THE COUNTY, VIOLATES, OR WOULD VIOLATE, THE FEDERAL OR STATE CONSTITUTION, OR ANY STATUTE, RULE, OR REGULATION; TO REQUIRE THAT THE COUNTY, IN ITS EXECUTIVE CAPACITY, BE JOINED AS A NECESSARY PARTY IN ANY SUCH PROCEEDING ASSERTING ANY SUCH CLAIM, TO REQUIRE EXHAUSTION OF ADMINISTRATIVE REMEDIES, TO PROVIDE FOR RULES OF CONSTRUCTION, AND GENERALLY RELATING TO NOTICES OF SUCH CLAIMS IN SUCH PROCEEDINGS

KEY

Boldface..... Heading or defined term

Underlining..... Added to existing law by original bill

~~Strikethrough~~..... Deleted from existing law by original bill

Double underlining..... Added to bill by amendment

~~Double strikethrough~~ .....Deleted from bill by amendment

* * *.....Existing law unaffected

SECTION ONE: BE IT ENACTED BY THE COUNTY COUNCIL OF TALBOT COUNTY, MARYLAND, that Chapter 94, Article I, entitled, "NOTICE OF CLAIMS" shall be and is hereby enacted as set forth herein:

Chapter 94
Article I – Notice of Claims

* * *

§ 94-1. Definitions

In this article the following definitions apply:

Act – any decision, action, or failure to act by the County to which a claim relates, or arises from, or upon which a claim is based.

County – Talbot County, Maryland.

7 **County representative** – all County boards and commissions, all County officials,
8 department heads, and hearing officers.
9 **Person** – in addition to an individual, this term includes a general or limited partnership,
10 joint stock company, unincorporated association or society, municipal or other corporation,
11 incorporated association, limited liability partnership, limited liability company, the State, an
12 agency or political subdivision of the State, and any other governmental entity.
13 **Proceeding** –a public hearing before a County representative including any administrative,
14 quasi-judicial or judicial appeal therefrom.

15 **§ 94-2. Applicability**

16 This article applies to:
17 (1) any claim in any proceeding that any act by a County representative violates or would
18 violate:
19 a. The Constitution of the United States or any federal laws or regulations
20 enacted thereunder;
21 b. The Constitution of the State of Maryland or any State laws or regulations
22 enacted thereunder; or,
23 c. The County Charter.
24 (2) any claim in any proceeding that a County ordinance, rule, or regulation, either on its
25 face or as applied violates or would violate:
26 a. The Constitution of the United States or any federal laws or regulations
27 enacted thereunder;
28 b. The Constitution of the State of Maryland or any State laws or regulations
29 enacted thereunder; or,

30 c. The County Charter.

31 **§ 94-3. Necessary party**

32 Talbot County, Maryland in its corporate capacity shall be a necessary party in all
33 proceedings to which this article applies.

34 (1) All stages. The County shall be entitled to participate as a party represented by the
35 Office of Law in all stages of any proceeding before any County representative involving
36 any claim to which this article applies, including all administrative, quasi-judicial, or
37 judicial reviews or appeals therefrom.

38 (2) Joinder and service. A person asserting a claim in a proceeding to which this article
39 applies shall formally name the County as a party in any such proceeding and shall
40 provide written notice and service upon the County in accordance with the requirements
41 of § 94-4 of this article.

42 **§ 94-4. Service of notice required**

43 Any person asserting a claim in a proceeding to which this article applies shall serve a
44 written "Notice of Claim" upon the County Manager and the County Attorney in accordance
45 with the requirements of this section.

46 (1) The Notice of Claim shall be filed in the proceeding and served with any application,
47 petition, appeal or any request for a permit, special exception, variance, approval, or
48 request for other action or relief.

49 (2) The Notice of Claim shall be in writing and shall separately state, with particularity:

50 (a) the essential elements of the claim;

51 (b) the facts on which the claimant relies; and,

52 (c) any damages and any other relief requested.

53 (3) Talbot County Code § 20-14, as amended, applies to all proceedings before any County
54 representative in which any person asserts a claim to which this article applies. The
55 Notice of Claim required by this section, § 94-4, shall be served sufficiently in advance
56 of the public hearing to permit timely compliance with the requirements of County Code
57 § 20-14.
58 (4) Upon failure to timely comply with the requirements of this section, § 94-4, and § 20-14,
59 the County representative shall postpone or continue and reschedule the public hearing
60 to permit timely compliance with this section unless such postponement or continuance is
61 affirmatively waived on the record by the Office of Law.
62 (5) Any proceeding to which this article applies, but as to which the person asserting a claim
63 has failed to comply with the requirements of this article, shall be void and of no force or
64 effect as to any claim by the person against the County or County representative.
65 **§ 94-5. Exhaustion required**
66 A person shall exhaust available administrative remedies and assert such claim in compliance
67 with the requirements of this article in all proceedings that the claim relates to or arises from,
68 or upon which the claim is based.
69 **§ 94-6. Rules of construction**
70 In this article, unless such construction would be unreasonable, the singular includes the
71 plural and vice versa; the masculine gender includes the feminine and vice versa; the
72 conjunctive shall also be taken in the disjunctive and vice versa; and the use of any tense of
73 any verb shall be considered also to include with its meaning all other tenses of the verb so
74 used. "Shall" is mandatory; "may" is permissive. "Herein," "hereby," "hereunder,"
75 "hereof," "hereinbefore," "hereinafter" and other equivalent words refer to this article and

76 not solely to the particular portion thereof in which any such word is used. Wherever the
77 words "include," "includes," or "including" are used in this article, they shall be deemed to
78 be followed by the words "without limitation." The phrases "relates to," "arises from,"
79 "upon which the claim is based," or "to which the claim relates" as used in this article,
80 means: constitute(s), refer(s) to, reflects(s), concern(s), pertain(s) to, or any way logically or
81 factually connect(s) any proceeding, ordinance, rule, regulation, decision, act, or failure to act
82 by the County or a County representative to any claim subject to this article.

SECTION TWO: BE IT FURTHER ENACTED, that the title and a summary of this Bill shall be published once on the first publication date after enactment of the Bill in accordance with County Charter § 213 (c). The title is not a substantive part of this Bill. If the Bill is amended, the title may be administratively revised if required to conform the title to the content of the Bill as finally enacted.

SECTION THREE: AND BE IT FURTHER ENACTED, that if any provision of this Ordinance or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Ordinance which can be given effect without the invalid provision or application, and for this purpose the provisions of this Ordinance are declared severable.

SECTION FOUR: AND BE IT FURTHER ENACTED, that the Publishers of the Talbot County Code or the Talbot County Office of Law, in consultation with and subject to the approval of the County Manager, shall make non-substantive corrections to codification, style, capitalization, punctuation, grammar, spelling, and any internal or external reference or citation to the Code that is incorrect or obsolete, with no further action required by the County Council. All such corrections shall be adequately referenced and described in an editor's note following the section affected.

SECTION FIVE: AND BE IT FURTHER ENACTED, this article shall apply both prospectively and retroactively to all proceedings, as defined herein, including all public hearings by a County representative held before passage of this ordinance, except to the extent such application or operation would impair vested rights. It shall also apply to all stages of all pending proceedings, including all stages of any administrative or judicial appeals currently in litigation. For purposes of applying this ordinance, a proceeding is not final, regardless of whether the public hearing has or has not been held, until all administrative and judicial appeals have been exhausted or waived, and the matter has been finally concluded.

SECTION SIX; AND BE IT FURTHER ENACTED, that nothing in this ordinance shall be construed to modify or amend any requirements established by the Local Government Tort Claims Act, Courts Article § 5-301, *et.seq.* as amended or modified from time to time. This

ordinance shall be construed as consistent with and complementary to all such requirements. Compliance with the requirements of this article shall not operate as a waiver, release, or relinquishment of any defense, right, privilege, or immunity otherwise available to the County or County representative.

SECTION SEVEN: AND BE IT FURTHER ENACTED, that this ordinance shall take effect sixty (60) days from the date of its passage.

PUBLIC HEARING

Having been posted and Notice of time, date, and place of hearing, and Title of Bill No. 1255 having been published, a public hearing was held on Tuesday, November 26, 2013 at 6:30 p.m. in the Bradley Meeting Room, South Wing, Talbot County Courthouse, 11 N. Washington St., Easton, Maryland.

BY THE COUNCIL

Read the third time.

ENACTED: **November 26, 2013 *AS AMENDED***

By Order Susan W. Moran
Susan W. Moran, Secretary

Bartlett	-	Aye
Hollis	-	Aye
Pack	-	Aye
Price	-	Aye
Duncan	-	Absent

Effective Date: January 25, 2014