

Department of Fiscal Services
Maryland General Assembly

FISCAL NOTE

Senate Bill 447 (Senator Colburn, et al.)
Judicial Proceedings

Private Property Rights - Infringement - Compensation

This bill provides that an owner of private property has a cause of action against the State if a State statute or regulation limits a right to private property and the fair market value of the private property declines by at least 75% as a result. If the owner brings an action against the State, the owner has the option of recovering the lost value and retaining title to the property, or recovering the fair market value of the affected portion of the property from the State and relinquishing title to the affected portion of the property.

Any prevailing plaintiff shall be awarded court costs and reasonable attorney fees and expenses. All awards for a plaintiff shall be paid out of the funds of the agency or agencies responsible for the statute or regulation which caused the loss of value. Payments may not be made from the general fund.

Any actions must be brought within six years of the date that an application of a statute or regulation reduced the fair market value of the property.

Fiscal Summary

State Effect: Expenditures could increase significantly. Revenues are not affected.

Local Effect: Circuit court workloads and expenditures could increase by an indeterminate amount, but expenditures are otherwise unaffected. Revenues are not affected.

Fiscal Analysis

State Expenditures: The liability of the State under this bill cannot be determined, but is potentially substantial. The State currently compensates landowners whose property is condemned, but this bill requires the State to compensate property owners whose property loses value. Many categories of State statute, regulation, and policy affect private property, including those related to the environment, transportation, public safety, and others. Types of

State action which could result in a loss of property value include restrictions on the use of land, such as wetlands regulation, erosion control regulation, and endangered species regulation. State actions on neighboring land could also affect land values. The placement of a prison, for example, reduces property values. Likewise, many transportation projects can have a detrimental effect on land values (though they can also increase the value of other parcels of land).

The amount of any reduction in the value of real property as a result of State law and regulation cannot be determined, and thus the potential cost to the State cannot be estimated. This bill, however, would not necessarily lead to an immediate increase in expenditures. Since agencies would be required to pay any claims out of their budgeted appropriations, there would be no effect on the general fund in the first year a judgment against the State was rendered. The next year, the agency would presumably require a deficiency appropriation or a much larger appropriation to make up for the loss.

State expenditures could decline as a result of reduced or no activity from some programs which would be likely to reduce the value of private property. For instance, the Forest Conservation Act requires that developers obtain approval of a forest conservation plan before subdivision grading or sediment and erosion control approvals are granted if they are developing 40,000 square feet or more of land. If the Department of Natural Resources determines that the potential liability to the State would be significantly greater than any benefits to be derived from this program, activity relating to this program could be curtailed. Any expenditure savings are assumed to be insignificant compared to the potential liability to the State.

Information Source(s): Judiciary (Administrative Office of the Courts), Department of Natural Resources, Department of Fiscal Services

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