SB 702

Department of Fiscal Services

Maryland General Assembly

FISCAL NOTE

Senate Bill 702 (Senator Colburn, *et al.*)
Judicial Proceedings

Property Rights Protection Act of 1997

This bill establishes standards relating to State agencies taking property or impeding the use of property and provides a basis for the property owner to receive compensation or to bring action against the State agency in order to obtain compensation under negotiation, arbitration, or litigation. Private property is defined as real property, right to use or receive water, profits from the use of land, and any interest defined as property under law or common law. Compensation would include potential business loss and interest from the date of taking the property.

With respect to non-game and endangered species act, non-tidal wetlands and private wetlands, the bill provides that State agencies may not enter property to obtain information without consent and shall make any information obtained available to the property owner. The bill also establishes the basis for the property owner to obtain compensation for losses resulting from agency action relating to these programs.

The bill requires inclusion of "private property impact analysis" on proposed legislation and on proposed regulations. Responsibility for preparing these analyses rests with the Department of Fiscal Services (DFS) and the State agencies.

Finally, the bill requires that any compensation awarded to a property owner must be paid by the agencies from appropriations for the program that gave rise to compensation. If appropriations are insufficient, the agency must seek additional appropriations. The bill provides that payments may not be made from the general fund, which is assumed to mean that the agency may not seek payment from the contingent fund.

Fiscal Summary

State Effect: State agencies could incur additional expenditures in administering the law. Depending on interpretation of the bill, the costs could be substantial. The estimates below assume a somewhat narrow interpretation.

(in dollars)	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002
Revenues	-	-	-	-	-
GF/SF Expenditures	$200,000	$450,000	$455,000	420,000	465,000
Net Effect	($200,000)	($450,000)	($455,000)	($420,000)	($465,000)

Note: ( ) - decrease; GF - general funds; FF - federal funds; SF - special funds

In addition, State agencies could incur substantial additional expenditures to pay compensation that could be awarded under the legislation. There is no basis to estimate the magnitude of these expenditures, but large tracts of land could involve multi-millions.

Local Effect: The legislation is not applicable to actions by local governments. Therefore, there is no impact on local expenditures.

Small Business Effect: The property owners who receive compensation could include small business. The compensation could be substantial for a particular small business.

Fiscal Analysis

State Revenues: To the extent that compensation awarded pursuant to this legislation was considered to be taxable by the Internal Revenue Service, there could be an increase in State income tax revenues. There is not a basis to determine the magnitude of this revenue increase.

State Expenditures: State agencies would incur additional expenditures in preparing the "private property impact analysis" on legislation and regulations. Agencies such as the Departments of Agriculture, Environment, General Services, Natural Resources, and Transportation should be more involved than other agencies. This would involve legal staff and personnel involved in litigation. DFS would require additional staff to prepare and analyze the "private property impact analysis." Assuming that analysis was not required for the budget bill or the capital bond bill, this would require one analyst in fiscal 1998 and another analyst in fiscal 1999. The Division of State Documents would incur some additional printing costs in connection with the *Maryland Register*. It is projected that total agency costs would involve five positions and $200,000 in fiscal 1998 and ten positions and $450,000 beginning in fiscal 1999.

There is no basis to determine the amount of compensation the State may have to pay to a property owner. The Department of Transportation advises that currently claims of projected business losses are considered speculative whereas Senate Bill 702 would recognize compensation for loss of business. The amount of compensation would vary from year to year but in some years could be substantial.

Local Revenues: Local income tax revenues could increase if compensation was considered as taxable income.

Local Expenditures: The legislation is not applicable to actions by local governments, therefore there is no impact on local expenditures.

Small Business Effect: It is anticipated that many property owners who claimed compensation due to the taking of private property would be considered small businesses. This is no basis to determine what small businesses would receive in compensation, but for a particular small business, compensation could be substantial.

Information Source(s): Department of Transportation, Department of Fiscal Services

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