

**Department of Legislative Services**  
Maryland General Assembly

**FISCAL NOTE**

Senate Bill 568 (Senator Colburn)

Judicial Proceedings

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**Property Rights Protection Act**

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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” includes real property, the right to use or receive water, profits from the use of land, and any interest defined as property under law or common law. Compensation includes potential business loss and interest from the date of taking the property.

With respect to the Non-Game and Endangered Species Conservation 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 Legislative Services (DLS) 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.

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## 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 1999	FY 2000	FY 2001	FY 2002	FY 2003
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-million dollar compensation payments.

**Local Effect:** Local revenues could increase an indeterminate amount. The legislation is not applicable to actions by local governments. Therefore, there is no impact on local expenditures.

**Small Business Effect:** Meaningful. The property owners who receive compensation could include small business. The compensation could be substantial for any particular small businesses.

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## 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. DLS would require additional staff to prepare and analyze the private property impact analyses. Assuming that analysis was not required for the budget bill or the capital bond bill, this would require one analyst in fiscal 1999 and another analyst in fiscal 2000. 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 1999 and 10 positions and \$450,000 beginning in fiscal 2000.

There is no basis to determine the amount of compensation the State may have to pay to a property owner. The Department of Transportation has advised that currently claims of projected business losses are considered speculative whereas Senate Bill 568 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 through the local income tax if compensation was considered as taxable income.

**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 any particular small businesses, compensation could be substantial.

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**Information Source(s):** Maryland Department of the Environment, Department of Transportation, Secretary of State (Division of State Documents), Department of Legislative Services

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