

FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.:

Amendment to: SB 2388

Requested by Legislative Council

Date of Request: 2-15-95

- 1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, and cities.

Narrative:

See attached

- 2. State fiscal effect in dollar amounts:

	1993-95 <u>Biennium</u>		1995-97 <u>Biennium</u>		1997-99 <u>Biennium</u>	
	<u>General Fund</u>	<u>Special Funds</u>	<u>General Fund</u>	<u>Special Funds</u>	<u>General Fund</u>	<u>Special Funds</u>
Revenues:	None	None	None	None	None	None
Expenditures:	None	None	at least \$496,744	None	at least \$496,744	None

- 3. What, if any, is the effect of this measure on the appropriation for your agency or department:

- a. For rest of 1993-95 biennium: None
- b. For the 1995-97 biennium: \$76,744
- c. For the 1997-99 biennium: \$76,744

- 4. County and City fiscal effect in dollar amounts:

	1993-95 <u>Biennium</u>		1995-97 <u>Biennium</u>		1997-99 <u>Biennium</u>	
	<u>Counties</u>	<u>Cities</u>	<u>Counties</u>	<u>Cities</u>	<u>Counties</u>	<u>Cities</u>
	None	None	Unknown	Unknown	Unknown	Unknown

If additional space is needed, attach a supplemental sheet.

Signed Charles Carvell

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Date Prepared: 03-02-95

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NARRATIVE ON FISCAL NOTE TO REENGROSSED SEN. BILL NO. 2388
COST TO OFFICE OF ATTORNEY GENERAL

Senate Bill No. 2388 imposes three responsibilities on government, each of which will have a fiscal impact. Preparing the fiscal note on one of these responsibilities was not difficult. It was, however, extraordinary difficult to do so on the other two responsibilities. This is because of the breadth of the bill, which is more fully reviewed below in the discussion of the fiscal impact of the three duties required by the bill.

Duty No. 1 (Section 2(1)). Attorney General's annual preparation and distribution to "every governmental agency" of taking guidelines.

To train a lawyer in the law of takings and keep the lawyer current, and to prepare the takings guidelines and their annual revision, will require about 60 hours a year, or a cost of about \$4,000 a biennium. The expenses in copying and mailing the guidelines to "every governmental agency," state and local, would be about \$2,000 a biennium.

Duty No. 2 (Section 4). Preparation of a takings assessment by state agencies when they take a "government action."

Because a "government action," as defined by § 1 of the bill, is often taken by governing authorities, sometimes a number of times each day, thousands of takings assessment will have to be performed each year.

For example, the industrial commission's oil and gas division issues about 450 orders and permits each year. Most, if not all of these actions would constitute a "government action" under the bill and trigger the duty to prepare a takings assessment. The environmental health section of the health department issues about 340 air, solid waste, wastewater, and radioactive materials permits a year and 480 x-ray machine permits. It estimates that it would need 3.5 FTE's at a cost of \$350,000 a biennium, to prepare the assessments on these permits. These costs do not include health department work on hospitals, nursing homes, motels, restaurants, and feedlots. The agriculture department issues hundreds of permits a year to livestock dealers, auction markets, nurseries and greenhouses, dairy processors, etc. Likely, all such actions will require a takings assessment. The state engineer issues about 250 permits a year. Each may require a takings assessment, which the state engineer estimates will cost about \$20,000 a biennium. The parks and recreation department estimates that the law will cost it \$10,000 a biennium.

The public service commission has significant regulatory responsibilities. Before the Senate Agriculture Committee the PSC stated: "Not only will the Commission be unduly delayed in its work, it will also see a substantial increase in the cost of doing business. The Commission will need additional staff to prepare and monitor the assessments." The game and fish department estimates that as a result of the bill it will spend about \$40,000 a biennium in preparing takings assessments and in legal fees.

Thousands of takings assessments will have to be performed each year. Even if we assume an assessment does not require a great deal of time to complete, hundreds of hours will be spent each year. The cost in time to state agencies will be substantial. There will also be out-of-pocket expenses in performing the assessments since a copy of each assessment must be sent "to the governor, the appropriate financial management authority, and the attorney general."

Duty No. 3 (Section 3). Attorney General's regulatory oversight of the duty upon state agencies to perform takings assessments.

Adequate oversight will require review of takings assessments received from state agencies and any necessary follow-up work. Periodic compliance investigations will also be required. Because thousands of instances will occur requiring an assessment, minimal regulatory oversight will require about one FTE to handle the paperwork, evaluate the takings assessments filed, and conduct investigations. Some attorney time will also be required. The FTE would cost about \$70,744 a biennium.

Possible Additional Costs.

While we do not believe the bill changes the present substantive law of takings, if it is interpreted to do so, government actions that today are not a taking may be one tomorrow. The result, at least until the revised law of takings is fully understood, will be a rise in the number of takings claims and a rise in the number of civil judgments against the state and political subdivisions. The amount government will spend to defend the suits and to pay judgments will likely be substantial. We have, however, no way to estimate these costs.