

HOUSE BILL 1525

P3

9lr0177

By: **Chair, Environmental Matters Committee and Chair, Appropriations Committee (By Request – Departmental – Transportation)**

Introduced and read first time: March 6, 2009

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **State Highway Administration – Disposition of Real Property Not Needed for**
3 **Public Purpose**

4 FOR the purpose of exempting the disposition of real property taken by the State
5 Highway Administration for a transportation purpose from certain disposition
6 requirements; providing that a determination that certain land is not needed for
7 certain public purposes shall be made by the Secretary of Transportation;
8 clarifying in certain circumstances that the Administration shall use the date of
9 acquisition when making certain determinations; subjecting certain transfers of
10 land taken by the Administration to approval by the Board of Public Works;
11 prohibiting the Board from approving certain transfers until certain
12 information has been submitted to certain committees of the General Assembly
13 and a certain time period has elapsed; defining certain terms; making certain
14 clarifying and conforming changes; and generally relating to the disposition of
15 real property by the State Highway Administration.

16 BY repealing and reenacting, with amendments,
17 Article – State Finance and Procurement
18 Section 10–305(b)
19 Annotated Code of Maryland
20 (2006 Replacement Volume and 2008 Supplement)

21 BY repealing and reenacting, without amendments,
22 Article – Transportation
23 Section 8–101(a), (b), and (m)
24 Annotated Code of Maryland
25 (2008 Replacement Volume)

26 BY repealing and reenacting, with amendments,
27 Article – Transportation

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 8-309
2 Annotated Code of Maryland
3 (2008 Replacement Volume)

4 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
5 MARYLAND, That the Laws of Maryland read as follows:

6 **Article – State Finance and Procurement**

7 10-305.

8 (b) (1) (i) Except as provided under subparagraph (ii) of this
9 paragraph, this subsection applies to the sale, transfer, grant, or exchange of:

10 1. real property identified under § 5-310(c)(1) of this
11 article; and

12 2. State-owned real or personal property, funded in
13 accordance with an appropriation act of the General Assembly, that has an appraised
14 value over \$100,000.

15 (ii) This subsection does not apply to the following dispositions
16 of property identified in subparagraph (i) of this paragraph:

17 1. leasing the property; [or]

18 2. the sale, transfer, grant, or exchange of a corrective or
19 access easement on the property; **OR**

20 **3. THE DISPOSITION OF REAL PROPERTY UNDER §**
21 **8-309 OF THE TRANSPORTATION ARTICLE.**

22 (2) The Board may not approve the sale, transfer, exchange, or grant
23 of property until:

24 (i) the Department of General Services has submitted to the
25 Board two independent appraisals of the property that:

26 1. with regard to real property, consider the value of any
27 restrictive covenant that may be placed on the property; and

28 2. may not be publicly disclosed if the property is to be
29 sold at auction;

30 (ii) the following information has been submitted, by electronic
31 mail or facsimile and by certified mail, to the Senate Budget and Taxation Committee,

1 the House Appropriations Committee, and, for property that meets both criteria of
2 paragraph (1)(i) of this subsection, the Legislative Policy Committee:

3 1. a description of the property; and

4 2. if applicable, any justification for not selling,
5 transferring, exchanging, or granting the property in a manner that generates the
6 highest return for the State;

7 (iii) 45 days have elapsed since:

8 1. the information required by item (ii) of this paragraph
9 was received by the appropriate committees; and

10 2. the Board declared the property surplus; and

11 (iv) except for property sold under paragraph (4) of this
12 subsection, for property that meets both criteria under paragraph (1)(i) of this
13 subsection and for which the Board intends to approve a fee simple sale, transfer,
14 exchange, or grant, the General Assembly has approved the proposed disposition as
15 provided under paragraph (3) of this subsection.

16 (3) (i) Within 45 days after receiving the information submitted
17 under paragraph (2) of this subsection, the Legislative Policy Committee shall:

18 1. review the information and the public record created
19 by the Department of Planning for the property; and

20 2. A. approve the proposed disposition of the surplus
21 property and refer the property back to the Board for final disposition; or

22 B. refer the proposed disposition of the property to the
23 full General Assembly and notify the Board of the referral.

24 (ii) If the Legislative Policy Committee fails to take any action
25 under subparagraph (i)2 of this paragraph within the specified time period, the
26 proposed disposition shall be deemed approved by the Committee.

27 (iii) 1. If the proposed disposition of the surplus property is
28 referred by the Legislative Policy Committee to the full General Assembly, the
29 proposed disposition may not be approved by the Board unless it is approved by the
30 passage of legislation during the next legislative session of the General Assembly.

31 2. In any legislation passed in accordance with
32 subsubparagraph 1 of this subparagraph, the General Assembly may approve the
33 proposed disposition with or without conditions.

1 (4) If the Board has declared the property surplus, the Board shall sell
 2 the property to the federal government, a local government, or a unit of federal or local
 3 government for \$1.00, if:

4 (i) the government or unit has indicated its interest in
 5 acquiring the land; and

6 (ii) a restrictive covenant is placed on the deed of transfer, in
 7 accordance with § 5-906(e)(7) and (8) of the Natural Resources Article, that requires
 8 the property to be maintained in a use that is consistent with its use at the time of
 9 transfer.

10 (5) Any revenues derived from the sale, transfer, exchange, or grant of
 11 property identified under paragraph (1)(i)1 of this subsection shall be deposited in the
 12 Advance Option and Purchase Fund under § 5-904(b) of the Natural Resources
 13 Article.

14 **Article - Transportation**

15 8-101.

16 (a) In this title the following words have the meanings indicated.

17 (b) "Administration" means the State Highway Administration.

18 (m) "Project" means the construction, reconstruction, or relocation of one or
 19 more sections or parts of the State highway system.

20 8-309.

21 (a) **(1) (I) IN THIS SECTION THE FOLLOWING WORDS HAVE THE**
 22 **MEANINGS INDICATED.**

23 **(II) "ABANDONED PROJECT" MEANS ANY PROJECT:**

24 **1. ON WHICH NO SUBSTANTIAL CONSTRUCTION HAS**
 25 **OCCURRED; AND**

26 **2. THAT THE SECRETARY HAS DETERMINED HAS**
 27 **BEEN ABANDONED.**

28 **(III) "APPRAISED VALUE" MEANS THE PRICE TO BE PAID FOR**
 29 **A PROPERTY AS DETERMINED BY THE SECRETARY, AFTER CONSIDERATION OF**
 30 **AT LEAST ONE INDEPENDENTLY CERTIFIED APPRAISAL.**

1 (IV) **“COMPLETED PROJECT” MEANS A PROJECT THAT IS**
2 **NOT AN ABANDONED PROJECT.**

3 (V) **“DATE OF ACQUISITION” MEANS THE EARLIEST OF THE**
4 **FOLLOWING TO OCCUR:**

5 1. **THE DATE ON WHICH THE ADMINISTRATION TOOK**
6 **LEGAL TITLE TO THE PROPERTY;**

7 2. **THE DATE ON WHICH THE ADMINISTRATION TOOK**
8 **POSSESSION OF THE PROPERTY; OR**

9 3. **THE DATE ON WHICH THE ADMINISTRATION**
10 **OBTAINED THE RIGHT TO TAKE POSSESSION OF THE PROPERTY.**

11 (VI) **“PROJECT” INCLUDES AN ALIGNMENT FOR WHICH**
12 **PROPERTY WAS ACQUIRED UNDER THIS SUBTITLE.**

13 (VII) **“SUCCESSOR IN INTEREST” MEANS A PERSON ENTITLED**
14 **TO:**

15 1. **AN INTEREST FROM AN INTESTATE DECEDENT**
16 **UNDER TITLE 3, SUBTITLE 1 OF THE ESTATES AND TRUSTS ARTICLE;**

17 2. **AN INTEREST UNDER A PROBATED WILL; OR**

18 3. **AN INTEREST BY OPERATION OF A LEGALLY**
19 **ENFORCEABLE WRITTEN ASSIGNMENT OR CONTRACT.**

20 (2) The purpose of this section is to return unneeded land to the tax
21 rolls of the counties and to make this land available for use by a county or
22 municipality for any transportation purpose.

23 (b) (1) Notwithstanding any other statute to the contrary, if **THE**
24 **SECRETARY DETERMINES THAT** land acquired under this subtitle is not needed for
25 present or future State, county, or municipal transportation purpose or other public
26 purposes, the Administration shall dispose of the land as soon as practicable after the
27 completion or abandonment of the project for which the land was acquired.

28 (2) (i) If the land is from [a] **AN ABANDONED** project [that was
29 abandoned], and the Secretary determines that the property is no longer needed for
30 any State transportation purpose, a county or municipality may acquire the land for a
31 transportation purpose, with the approval of the Secretary, on payment of an amount
32 equal to the lesser of:

1 1. The appraised value of the land; or

2 2. The consideration that the Administration or
3 Commission originally paid for the land, plus simple interest at the fair market rate
4 calculated from the [time] DATE of acquisition to the [time] DATE of disposition and
5 administrative costs.

6 (ii) If the land is not needed for a county or municipal
7 transportation purpose, the person from whom the land was acquired or the successor
8 in interest of that person has the right to reacquire the land, [on] **AS PROVIDED IN**
9 **SUBSECTION (C)(1) OF THIS SECTION, EXCEPT THAT** payment [of] **SHALL BE** an
10 amount equal to the lesser of:

11 1. The appraised value of the land; or

12 2. The consideration that the Administration or
13 Commission originally paid for the land, plus simple interest at the fair market value
14 calculated from the [time] DATE of acquisition to the time of disposition and
15 administrative costs.

16 (iii) If neither of these rights is exercised, the land shall be
17 disposed of under this section in the same manner as if the land were from a project
18 that has been completed or otherwise as permitted by this section.

19 (c) (1) (i) **IN THIS SUBSECTION, "NOTICE" MEANS NOTIFICATION**
20 **BY:**

21 1. **CERTIFIED MAIL SENT TO THE LAST ADDRESS**
22 **PROVIDED TO THE ADMINISTRATION BY THE INTENDED RECIPIENT OF THE**
23 **NOTIFICATION;**

24 2. **CERTIFIED MAIL SENT TO AN ADDRESS PROVIDED**
25 **ON A SECURITY INTEREST FILED AGAINST THE PROPERTY THAT IS THE SUBJECT**
26 **OF THE NOTIFICATION;**

27 3. **PUBLICATION FOR 2 CONSECUTIVE WEEKS IN A**
28 **NEWSPAPER THAT IS PUBLISHED OR AS GENERAL CIRCULATION IN THE COUNTY**
29 **IN WHICH THE PROPERTY THAT IS THE SUBJECT OF THE NOTIFICATION IS**
30 **LOCATED; AND**

31 4. **POSTING A SIGN ON THE PROPERTY THAT IS THE**
32 **SUBJECT OF THE NOTIFICATION FOR AT LEAST 2 CONSECUTIVE WEEKS.**

33 (II) As to land from a completed project:

1 1. The Administration shall [notify] **PROVIDE NOTICE**
2 **TO** the person from whom the land was acquired, or the successor in interest of that
3 person, within 30 days after [making] **THE SECRETARY MAKES** a determination
4 **UNDER SUBSECTION (B)(1) OF THIS SECTION** that the land is not needed by the
5 Administration and that the land is available for reacquisition;

6 2. Within 5 years from the date [the land was acquired]
7 **OF ACQUISITION**, the person from whom the land was acquired, or the successor in
8 interest of that person, may reacquire the land, on payment of an amount equal to the
9 consideration that the Administration or Commission originally paid for the property;
10 and

11 3. After 5 years from the date [the land was acquired]
12 **OF ACQUISITION**, the person from whom the land was acquired, or the successor in
13 interest of that person, has the right to reacquire the land at the [current market]
14 **APPRAISED** value.

15 [(ii)] **(III)** If the right to reacquire the land as provided in
16 subparagraph [(i)] **(II)** of this paragraph is not exercised within 8 months after the
17 Administration provides the notice that the land is available, the Administration shall
18 sell the land at public auction as provided in this subsection.

19 (2) Before the sale:

20 (i) The Administration shall appraise the land; and

21 (ii) If the Administration believes that the land has a value of
22 more than \$25,000, the land also shall be appraised by at least one independent,
23 qualified real estate appraiser.

24 (3) The Administration shall notify the public of the sale by:

25 (i) Posting a [notice of the sale] **SIGN** on the land at least 2
26 weeks before the sale; and

27 (ii) Publishing [the notice] **A NOTIFICATION** for 2 consecutive
28 weeks in a newspaper that is published or has general circulation in the county in
29 which the property is located.

30 (4) The [notice] **NOTIFICATION** of the sale shall:

31 (i) Describe generally the property to be sold;

32 (ii) State the date, time, and place of the sale; and

1 (iii) Contain any other information that the Administration
2 considers proper.

3 (5) The sale shall be held on or near the land and may be conducted by
4 Administration personnel.

5 (6) At the conclusion of the sale, the Administration's representative
6 in charge of the sale shall announce publicly the name of the highest bidder and the
7 amount of the bid. If the highest bid does not approximate the appraised value of the
8 land, the representative may reject all bids and cancel the sale.

9 (7) The results of the sale shall be recorded and, if the highest bid was
10 accepted by the Administration's representative, presented to the Administrator for
11 approval or rejection. If the Administrator approves the sale, the Administrator may
12 execute a deed conveying the land to the buyer.

13 (8) If there is no bidder for the land, if all bids are rejected and the
14 sale canceled as provided in paragraph (6) of this subsection, or if the Administrator
15 considers all bids inadequate, the land shall be reoffered for sale within 6 months on
16 the same terms and in the same manner as the original sale.

17 (9) At the second sale, if there is no bidder for the land, if all bids are
18 rejected and the sale canceled as provided in paragraph (6) of this subsection, or if the
19 Administrator considers all bids inadequate, the Administrator may negotiate a sale of
20 the land. If the Board of Public Works approves the negotiated sale and the deed, the
21 Administrator may execute a deed conveying the land to the buyer.

22 (d) As to any land from a completed project, if the Administration considers
23 the land to be too small or otherwise unsuitable for private use or development, the
24 Administration shall establish a plan of disposal for that land. If the Board of Public
25 Works approves the plan and the deed, the Administrator may execute a deed
26 conveying the land under the plan.

27 (e) (1) Notwithstanding any other provision of this section, the
28 Administration may convey land from an abandoned or completed transportation
29 project by exchanging the land for privately or publicly owned land of substantially
30 equal value when the land to be acquired by the exchange is needed for a current State
31 highway purpose that has been identified within the current consolidated
32 transportation program as approved by the General Assembly, or has otherwise
33 received prior legislative approval for planning.

34 (2) In the case of an abandoned or completed project, the person from
35 whom the land was acquired, or the successor in interest of that person, shall have the
36 first right of refusal to reacquire the land, except that the offer and acceptance shall be
37 as follows:

1 (i) The Administration shall notify the person from whom the
2 land was acquired, or the successor in interest of that person, in writing, by certified
3 mail, return receipt requested of the proposed exchange and the value of the property;

4 (ii) Within 90 days from the date of the notice, the person from
5 whom the land was acquired, or the successor in interest of that person, shall notify
6 the Administration in writing of its intent to exercise its right to reacquire the land;
7 and

8 (iii) Within 90 days from the date of notifying the
9 Administration of its intent to reacquire the land, the person from whom the land was
10 acquired, or the successor in interest of that person, must tender payment of an
11 amount equal to the lesser of:

12 1. The appraised value of the land; or

13 2. The consideration that the Administration or
14 Commission originally paid for the land, plus simple interest at the fair market rate
15 calculated from the [time] **DATE** of acquisition to the time of disposition and
16 administrative costs.

17 (3) The person from whom the land was acquired, or the successor in
18 interest of that person, is deemed to have waived its right of first refusal if the person
19 or the successor in interest fails to follow the procedures set forth in paragraph (2) of
20 this subsection.

21 (4) In the case of a completed project or an abandoned project for
22 which the right of first refusal was waived, the procedure for the exchange shall be as
23 follows:

24 (i) If the exchange is not one proposed by a county or
25 municipality, the Administration shall:

26 1. Notify by registered mail any affected county or
27 municipality of the offer for an exchange of a parcel;

28 2. Allow 60 days after notification for any affected
29 county or municipality to make a request to acquire the parcel or part of the parcel
30 located within the borders of the county or municipality and for the Administration to
31 consider any such request; and

32 3. If any affected county or municipality makes an offer
33 to acquire the parcel, or part thereof within that jurisdiction's borders, that is equal to
34 or greater than, or includes land of an equal or greater value than, the appraised value
35 of the parcel or applicable portion thereof, the Administration shall accept that offer;

36 (ii) Before making an exchange under this subsection, the
37 exchange must be approved by the Board of Public Works; and

1 (iii) If the Administrator and the Board of Public Works
2 approved the terms and conditions of the exchange and all deeds, the Administrator
3 may execute and accept deeds effecting the conveyances necessary to complete the
4 exchange.

5 (5) Before the exchange:

6 (i) The Administration shall appraise all parcels of land to be
7 exchanged; and

8 (ii) If the Administration believes that any parcel of land in the
9 exchange has a value of more than \$25,000, the parcels of land also shall be appraised
10 by at least one independent, qualified real estate appraiser.

11 (6) In the event that the properties to be exchanged are determined to
12 be of unequal value, the Administrator may agree to accept or pay an amount
13 necessary to substantially equalize the value of land conveyed by the State.

14 (7) The owner of land exchanged under this subsection is not entitled
15 to first right of refusal if the exchanged land is later offered for sale by the State.

16 (f) (1) Except as required by this section for property from an abandoned
17 project, this section does not prevent the Administration from conveying any of its
18 surplus land to an adjacent property owner:

19 (i) As all or part of the consideration for a right-of-way
20 transaction; or

21 (ii) If the Administration believes that public auction of the
22 surplus land will affect adversely the value or use of the surplus land, on a negotiated
23 sale with a price based on the appraised value of the land.

24 (2) If the Administration believes that any land proposed for sale
25 under this subsection has a value of more than \$25,000, the land shall be appraised by
26 at least one independent, qualified real estate appraiser.

27 (3) If the Board of Public Works approves the sale and the deed, the
28 Administrator may execute a deed conveying the land to the adjacent property owner.

29 (g) Except as required by this section for property from an abandoned
30 project, this section does not prevent the Administration, with the approval of the
31 Board of Public Works, from conveying any of its surplus land to any State or local
32 agency that:

33 (1) Needs the property for a public purpose; and

34 (2) Pays the Administration an amount equal to the lesser of:

1 (i) The appraised value of the land; or

2 (ii) The consideration that the Administration or Commission
3 originally paid for the land, plus simple interest at the fair market rate calculated
4 from the [time] **DATE** of acquisition to the time of disposition and administrative
5 costs.

6 (h) (1) If the land is not to be used for any other public purpose by a State
7 or local agency, the person from whom unimproved land was acquired shall have the
8 first right of refusal to lease back the property at the fair market rent established by
9 the acquiring agency.

10 (2) (i) The person from whom an owner-occupied residential
11 property was acquired shall have the first right of refusal to lease back the property at
12 the fair market rent established by the acquiring agency.

13 (ii) On the exercise of the right to lease back the property, the
14 period of eligibility for an additional payment as authorized under § 12-202 of the
15 Real Property Article shall be calculated as provided in § 12-203(1) of the Real
16 Property Article.

17 (i) (1) (i) In this subsection, “former owner” means only that person
18 from whom the State acquired the land or who executed the instrument conveying the
19 land to the State.

20 (ii) “Former owner” includes a decedent’s:

21 1. Surviving spouse, as defined in § 1-202 of the Estates
22 and Trusts Article; and

23 2. Child, as defined in § 1-205 of the Estates and Trusts
24 Article.

25 (2) Notwithstanding any other law to the contrary, the Administration
26 may, after giving [notice] **WRITTEN NOTIFICATION** to the Maryland Department of
27 Planning and with the approval of the Board of Public Works, convey any of its
28 surplus land if the conveyance will promote economic development in the State of
29 Maryland.

30 (3) Prior to conveying land in accordance with paragraph (2) of this
31 subsection, the Administration shall [notify] **PROVIDE NOTICE, AS DEFINED IN**
32 **SUBSECTION (C) OF THIS SECTION, TO** the former owner of that person’s right to
33 reacquire the land.

34 (4) Within 45 days after the notice to the former owner by the
35 Administration that the land is not needed and is available for reacquisition, the

1 former owner may notify the Administration of its intent to exercise the right to
2 reacquire the land in accordance with this subsection.

3 (5) Within 45 days of [the notice] **GIVING WRITTEN NOTIFICATION**
4 to the county or municipal corporation by the Administration that the land is not
5 needed and is available for purchase, the county or municipal corporation in which the
6 property is located may notify the Administration of its interest in purchasing the
7 land.

8 (6) The right of a former owner to reacquire land under this
9 subsection:

10 (i) Is not assignable and may be transferred only as a result of
11 the death of a former owner;

12 (ii) Is null and void unless the person or persons exercising the
13 right tender the required payment within 60 days of the approval of the sale by the
14 Board of Public Works to that person or persons; and

15 (iii) Shall take precedence over the right of the county or
16 municipal corporation to acquire the land in the event both the former owner and the
17 county or municipal corporation notify the Administration of their intent to purchase.

18 (7) (i) The Administration may negotiate the sale of land to be
19 conveyed under this section.

20 (ii) In determining the consideration to be paid for the land, the
21 Administration shall consider:

22 1. The appraised value of the land; and

23 2. The economic benefits to the State of the proposed
24 development of the property.

25 (iii) The consideration may include payment in cash or exchange
26 of privately or publicly owned land.

27 (8) The notification and disposition provisions contained in this section
28 do not apply to a conveyance made under this subsection.

29 (9) Land conveyed under this subsection shall be subject to local
30 zoning laws.

31 **(J) (1) EXCEPT FOR A TRANSFER UNDER SUBSECTION (C)(7) OF THIS**
32 **SECTION, BEFORE TRANSFERRING ANY PROPERTY UNDER THIS SECTION, THE**
33 **TRANSFER MUST BE APPROVED BY THE BOARD OF PUBLIC WORKS.**

1 **(2) FOR ANY PROPERTY WITH AN APPRAISED VALUE OVER**
2 **\$100,000, THE BOARD OF PUBLIC WORKS MAY NOT APPROVE THE TRANSFER**
3 **OF PROPERTY UNDER THIS SECTION UNTIL:**

4 **(I) THE FOLLOWING INFORMATION HAS BEEN SUBMITTED**
5 **BY ELECTRONIC MAIL OR FACSIMILE AND BY CERTIFIED MAIL, TO THE SENATE**
6 **BUDGET AND TAXATION COMMITTEE AND THE HOUSE APPROPRIATIONS**
7 **COMMITTEE:**

8 **1. A DESCRIPTION OF THE PROPERTY; AND**

9 **2. IF APPLICABLE, ANY JUSTIFICATION FOR NOT**
10 **SELLING, TRANSFERRING, EXCHANGING, OR GRANTING THE PROPERTY IN A**
11 **MANNER THAT GENERATES THE HIGHEST RETURN FOR THE STATE; AND**

12 **(II) 45 DAYS HAVE ELAPSED SINCE THE INFORMATION**
13 **REQUIRED UNDER ITEM (I) OF THIS PARAGRAPH WAS RECEIVED BY THE**
14 **APPROPRIATE COMMITTEES.**

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
16 October 1, 2009.