

Department of Legislative Services
 Maryland General Assembly
 2016 Session

FISCAL AND POLICY NOTE
 First Reader - Revised

House Bill 1464
 Appropriations

(Delegate Gaines, *et al.*)

Program Open Space Trust Fund Act of 2016

This bill establishes a Program Open Space (POS) Trust Fund in the Department of Natural Resources (DNR), which is a continuation of the existing special fund into which transfer tax revenues are deposited. The bill repeals an authorization to transfer funding from the fund to the general fund in fiscal 2018, requires specified reimbursement of appropriations or transfers from the fund to the general fund made in fiscal 2006, 2016, and 2017, and requires specified reimbursement of any future appropriations or transfers made beyond fiscal 2017. The bill also exempts the fund from a provision that requires net interest on State money allocated to special funds or accounts to accrue to the general fund. DNR, the Maryland Department of Agriculture (MDA), and the Department of Budget and Management (DBM) are subject to reporting requirements.

Fiscal Summary

State Effect: General fund revenues decrease by approximately \$600,000 in FY 2017. In FY 2018, general fund revenues decrease and general fund expenditures increase to have a combined negative general fund impact of \$207.8 million. Future years reflect ongoing general fund impacts, including a positive impact in FY 2020. Special fund revenues and expenditures increase in a manner corresponding with the net general fund impacts. **This bill establishes mandated appropriations beginning in FY 2018.**

(\$ in millions)	FY 2017	FY 2018	FY 2019	FY 2020	FY 2021
GF Revenue	(\$0.6)	(\$86.7)	(\$0.7)	(\$0.7)	(\$0.7)
SF Revenue	\$0.6	\$207.1	\$84.5	(\$33.3)	\$6.7
GF Expenditure	\$0	\$121.1	\$84.5	(\$33.3)	\$6.8
SF Expenditure	\$0.6	\$207.1	\$84.5	(\$33.3)	\$6.7
Net Effect	(\$0.6)	(\$207.8)	(\$85.2)	\$32.6	(\$7.5)

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

Local Effect: Local government revenues increase annually (including by \$49.9 million and \$18.0 million in FY 2018 and 2019), with the exception of fiscal 2020 in which revenues decrease by \$8.6 million.

Small Business Effect: Meaningful.

Analysis

Bill Summary:

Program Open Space Trust Fund

The POS Trust Fund provides funding to DNR for land preservation initiatives and related activities in accordance with existing statutory provisions allocating transfer tax funding among POS and other programs and purposes. The fund consists of transfer tax revenue, interest earnings of the fund, and any money appropriated in the State budget to the fund or accepted for the benefit of the fund from any other source.

Fiscal 2018 Transfer – Repealed

An authorization for the Governor to transfer \$86,028,000 from the fund to the general fund in fiscal 2018 is repealed.

Fiscal 2006 Transfer – Reimbursement

Existing provisions requiring specified reimbursement of certain transfers from the fund to the general fund, beginning in fiscal 2019, if a condition is met, are repealed. Due to exemptions of most recent transfers from those provisions, the provisions apply only to a \$90 million transfer to the general fund in fiscal 2006. The bill requires the \$90 million transfer in fiscal 2006 to instead be reimbursed with general funds as follows:

- \$5.0 million – appropriated in fiscal 2018 to the Agricultural Land Preservation Fund to provide grants for the use of the Next Generation Farmland Acquisition Program;
- \$45.0 million – appropriated in fiscal 2019 to the POS Trust Fund to be allocated according to an existing allocation among POS, the Agricultural Land Preservation Fund, the Rural Legacy Program, and the Heritage Conservation Fund; and
- \$40.0 million – appropriated in annual amounts of \$6.0 million for fiscal 2019 through 2024 and \$4.0 million in fiscal 2025 for critical maintenance of State projects located on lands managed by DNR for public purposes.

Fiscal 2016 and 2017 Transfers – Reimbursement

The cumulative amounts of any appropriations or transfers from the fund to the general fund for fiscal 2016 and 2017 must be reimbursed by a general fund appropriation of an equal amount in fiscal 2018 and 2019, respectively. The reimbursement appropriations are allocated according to an existing allocation among POS, the Agricultural Land Preservation Fund, the Rural Legacy Program, and the Heritage Conservation Fund.

Any Future Transfers beyond Fiscal 2017 – Reimbursement

If an appropriation or a transfer from the fund to the general fund occurs after fiscal 2017, the cumulative amount of the appropriation or transfer must be reimbursed by general fund appropriations in each of the three successive fiscal years, each equal to one-third of the cumulative amount of the appropriation or transfer from the fund to the general fund. The appropriations are allocated according to an existing allocation among POS, the Agricultural Land Preservation Fund, the Rural Legacy Program, and the Heritage Conservation Fund.

Adjustments of Reimbursements

The bill establishes provisions relating to most of the reimbursements required under the bill that provide for the reduction of those amounts if other, specified nonrequired amounts are appropriated from the general fund and identified as appropriations for those specific reimbursements.

Intention to Return to Full Funding

The bill expresses the General Assembly's intent that, beginning in fiscal 2018, the POS Trust Fund return to full funding through the distribution of State transfer tax revenues in accordance with the bill.

Reporting Requirements

In conjunction with MDA, DNR must report each year, by December 15, on specified activities pertaining to the fund during the preceding fiscal year, to specified legislative committees. The report must include information on (1) funds deposited into the fund; (2) cumulative appropriations or transfers from the fund, by fiscal year, beginning with fiscal 2018; (3) appropriations or transfers to pay interest on general obligation bonds issued to replace funds appropriated or transferred from the fund in prior fiscal years; (4) specified disbursements made from the fund; and (5) attainment of land preservation goals by each program receiving revenues from the fund.

The bill establishes the intent of the General Assembly that, beginning in fiscal 2018, if the Governor appropriates or transfers funds from the POS Trust Fund to the general fund, DBM must submit a report to specified legislative committees that specifies a plan for reimbursement and identifies alternative funding sources for the ongoing operations of affected programs.

Current Law:

Allocation of Transfer Tax Revenue

Revenue from the transfer tax, after payment of any debt service on outstanding bonds secured by a pledge of the State transfer tax and deduction of costs of administering the transfer tax, is paid to the Comptroller for deposit in a special fund.

Chapter 425 of 2013 (the Budget Reconciliation and Financing Act of 2013), notwithstanding any other law, authorized the Governor to transfer specified amounts from the transfer tax special fund to the general fund in each fiscal year from fiscal 2014 through 2018 (the fiscal 2015 and 2016 amounts were increased by subsequent budget reconciliation legislation). The amounts authorized to be transferred in fiscal 2016, 2017, and 2018 are \$115,366,700, \$82,771,000 and \$86,028,000, respectively.

Of the remaining amounts in the special fund not transferred to the general fund under Chapter 425 (or subsequent budget reconciliation legislation), up to 3% may be appropriated in the State budget for salaries and related expenses in the Department of General Services (DGS), DNR, and the Maryland Department of Planning (MDP) necessary to administer POS. The remaining funds are distributed as follows:

- 75.15% – POS (for purposes under the program, including land acquisition);
- 1% – POS (land acquisition);
- 17.05% – Agricultural Land Preservation Fund;
- 5% – Rural Legacy Program; and
- 1.8% – Heritage Conservation Fund.

The POS allocations are subject to further allocation among the State and local components of the program and other purposes, including funding to operate State forests and parks. The POS allocations for State land acquisition and the Agricultural Land Preservation Fund allocation are subject to reductions equal to any debt service paid on outstanding bonds attributable to those purposes.

Future Repayment of Previous Transfers

Provisions governing the transfer tax special fund establish a process for certain funds transferred from the special fund to the general fund to be reimbursed to the special fund beginning in fiscal 2019, if the unappropriated general fund surplus as of June 30 of the second preceding year exceeds \$10 million. The general fund appropriation in an applicable fiscal year, to satisfy the reimbursement requirement, generally equals at least the lesser of \$50 million or the excess surplus over \$10 million. Due to exemptions of recent transfers from those provisions, the provisions apply only to a \$90 million transfer in fiscal 2006.

Background:

Use of Transfer Tax Revenues to Balance Operating Budget

A significant amount of transfer tax funding that otherwise would have been distributed among POS and other land preservation programs has been transferred in recent years to help balance the State's operating budget. Those funds have been partially replaced with general obligation bond funding. **Appendix 1** shows a history of the transfers and replacement funding.

Review of Land Preservation and Easement Acquisition Programs

In the 2015 *Joint Chairmen's Report*, the budget committees of the General Assembly requested an evaluation of the State's land preservation and easement acquisition programs and all capital and operating programs funded with the transfer tax. The review was conducted by a workgroup consisting of DNR, MDA, MDP, DBM, representatives from county parks and recreation departments, and other interested stakeholders. Some of the bill's actions implement certain recommendations of the workgroup, or are similar to recommendations of the workgroup. For more information, see [Maryland's Land Preservation Programs: Report to the Chairmen of the Senate Budget and Taxation Committee and House Appropriations Committee](#) (December 2015).

Fiscal 2016 and 2017 Transfers

The fiscal 2017 budget includes pay-as-you-go (PAYGO) special fund appropriations totaling \$20 million that are contingent on the enactment of legislation to increase funding for land preservation programs. Senate Bill 383/House Bill 462 of 2016 reduce the amounts authorized to be transferred from the transfer tax special fund to the general fund by \$20 million in fiscal 2017 and by \$40 million in fiscal 2018. The bills also require \$20 million in fiscal 2017 and \$40 million in fiscal 2018 to be distributed from the transfer tax special fund, in specified amounts, to specified land preservation and capital

development programs/purposes. If Senate Bill 383/House Bill 462 are enacted, the authorized transfers in fiscal 2017 and 2018 are reduced to \$62,771,000 and \$46,028,000, respectively.

Next Generation Farmland Acquisition Program

The Next Generation Farmland Acquisition Program is intended to help qualified beginning or young farmers purchase farmland for sustainable agricultural uses, but is currently not funded.

State Fiscal Effect:

General Fund Impact

As shown in **Appendix 2**, general fund revenues decrease by approximately \$600,000 in fiscal 2017, due to retention of interest income in the POS Trust Fund. However, more significant impacts are incurred in future years, especially in fiscal 2018, when general fund revenues decrease by \$86.7 million and general fund expenditures increase by \$121.1 million, resulting in an overall negative impact on the general fund of \$207.8 million. Future years reflect ongoing general fund impacts. This estimate reflects the following assumptions:

- in the absence of the bill, the Governor transfers \$86,028,000 from the transfer tax special fund to general fund in fiscal 2018;
- in the absence of the bill, \$50 million in fiscal 2019 and \$40 million in fiscal 2020 is appropriated from the general fund to the transfer tax special fund in accordance with existing provisions requiring reimbursement of \$90 million transferred from the fund in fiscal 2006 if a condition (discussed above) is met (the Department of Legislative Services notes, however, that it is uncertain at this time whether or when those reimbursement payments are made); and
- no further transfers are made from the POS Trust Fund to the general fund beyond fiscal 2017.

As noted above (under Background), if Senate Bill 383/House Bill 462 are enacted, the existing transfer authorizations in fiscal 2017 and 2018 are reduced by \$20 million and \$40 million, respectively. However, for the purposes of this fiscal and policy note, those reductions are not assumed.

Included in the ongoing general fund impacts in future years are general fund personnel expenditures of \$731,521 in fiscal 2018 and similar amounts in future years, which accounts for additional funding being available for POS in general (including critical maintenance) in fiscal 2018 and the beginning of specific appropriations for critical

maintenance projects in fiscal 2019 and future years under the bill. The estimate reflects the cost of hiring eight project management and engineering personnel in DNR and DGS (four positions in each agency). Existing personnel in each agency assigned to DNR critical maintenance projects cannot handle the administration of the additional critical maintenance projects that are undertaken with the significant additional critical maintenance funding provided under the bill. The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	8
Salaries and Fringe Benefits	\$671,320
Operating Expenses	<u>60,201</u>
Total FY 2018 Admin. Expenditures	\$731,521

Future year expenditures reflect full salaries with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

Special Fund Impact

Special fund revenues and expenditures (including PAYGO capital and operating expenditures) increase by approximately \$600,000 in fiscal 2017, by \$207.1 million in fiscal 2018, and by ongoing amounts in future years (with the exception of fiscal 2020), reflecting the availability of funds for distribution from the POS Trust Fund in accordance with the bill for land preservation and capital development programs/purposes. The revenue decrease in fiscal 2020 reflects the assumption (described above) that, in the absence of the bill, a \$40 million general fund appropriation is made from the general fund to the transfer tax special fund in fiscal 2020 in accordance with existing reimbursement provisions (which, under the bill, are repealed). Special fund revenues and expenditures increase or decrease by amounts that, in large part, inversely correspond with the net general fund impact in a given fiscal year, as shown in Appendix 2. The general fund administrative expenditures for additional personnel for critical maintenance projects, however, are assumed to not pass through the POS Trust Fund and therefore do not have a corresponding effect on special fund revenues and expenditures.

Local Revenues: Local government revenues increase each year, with the exception of fiscal 2020, in which revenues decrease, as shown in **Exhibit 1**, reflecting the impact on funding available for distribution through the local component of POS. The impacts on the local component of POS are proportional to the impact on POS special fund expenditures at the State level because the local component receives a portion of those funds. Under the local component, DNR allocates funds among the counties according to a formula established in 1982 that is based on past grant amounts, population change, and transfer tax revenue collections in each jurisdiction.

Exhibit 1
Impact on Local Component of POS
(\$ in Millions)

	<u>FY 2017</u>	<u>FY 2018</u>	<u>FY 2019</u>	<u>FY 2020</u>	<u>FY 2021</u>
Local POS Revenues	\$0.1	\$49.9	\$18.0	(\$8.6)	\$0.1

Source: Department of Legislative Services

Small Business Effect: Small businesses benefit from the bill in various ways:

- additional business from funding allocated to DNR capital development under POS (including critical maintenance) and funding under the local component of POS used for park development projects;
- additional business from funding allocated for land acquisition, which requires title work, surveys, and appraisal; and
- additional easement acquisition funding, including under the Next Generation Farmland Acquisition Program.

Additional Information

Prior Introductions: None.

Cross File: SB 927 (Senator Middleton, *et al.*) - Budget and Taxation.

Information Source(s): Department of Natural Resources, Department of Budget and Management, Department of General Services, Maryland Department of Agriculture, Comptroller's Office, Maryland Department of Planning, State Department of Assessments and Taxation, Department of Legislative Services

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**Appendix 1 – Transfer Tax Revenue Transfers and
General Obligation Bond Replacement
Fiscal 2002-2016
(\$ in Millions)**

<u>Fiscal Year</u>	<u>Transfers</u>	<u>Replacement</u>	<u>Difference</u>
2002	\$29.2	\$0.0	-\$29.2
2003	60.5	0.0	-60.5
2004	102.8	53.3	-49.5
2005	189.3	22.0	-167.3
2006	90.0	0.0	-90.0
2007	0.0	0.0	0.0
2008	0.0	0.0	0.0
2009	136.5	0.0	-136.5
2010	188.5	130.6	-57.9
2011	23.5	156.3	132.7
2012	94.5	45.8	-48.7
2013	96.9	86.6	-10.3
2014	89.2	59.4	-29.8
2015	154.7	67.1	-87.6
2016	115.4	80.2	-35.2
Total	\$1,371.0	\$701.1	-\$669.8

Source: Department of Budget and Management; Department of Legislative Services

Appendix 2 – Fiscal Impact Summary

	<u>FY 2017</u>	<u>FY 2018</u>	<u>FY 2019</u>	<u>FY 2020</u>	<u>FY 2021</u>	<u>FY 2022</u>	<u>FY 2023</u>	<u>FY 2024</u>	<u>FY 2025</u>
GF Revenues									
Fiscal 2018 Transfer – Repealed		(\$86.0)							
Retention of Interest in Special Fund	(0.6)	(0.7)	(0.7)	(0.7)	(0.7)	(0.7)	(0.7)	(0.7)	(0.7)
Subtotal	(\$0.6)	(\$86.7)	(\$0.7)	(\$0.7)	(\$0.7)	(\$0.7)	(\$0.7)	(\$0.7)	(\$0.7)
GF Expenditures									
Repeal of Existing Fiscal 2006 Transfer – Reimbursement			(50.0)	(40.0)					
New Fiscal 2006 Transfer – Reimbursement									
Next Generation Farmland Acquisition		5.0							
Allocated through Existing POS, ALPF, RLP, HCF Allocation			45.0						
Critical Maintenance			6.0	6.0	6.0	6.0	6.0	6.0	4.0
Additional Personnel for Critical Maintenance		0.7	0.7	0.7	0.8	0.8	0.8	0.9	0.9
Fiscal 2016 Transfer – Reimbursement (Allocated through existing POS, ALPF, RLP, HCF Allocation)		115.4							
Fiscal 2017 Transfer – Reimbursement (Allocated through existing POS, ALPF, RLP, HCF Allocation)			82.8						
Subtotal	\$0.0	\$121.1	\$84.5	(\$33.3)	\$6.8	\$6.8	\$6.8	\$6.9	\$4.9
Net GF Impact	(\$0.6)	(\$207.8)	(\$85.2)	\$32.6	(\$7.5)	(\$7.5)	(\$7.5)	(\$7.6)	(\$5.6)
Corresponding SF Revenues and Expenditures	\$0.6	\$207.1	\$84.5	(\$33.3)	\$6.7	\$6.7	\$6.7	\$6.7	\$4.7