

# SENATE BILL 896

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By: **Senators Astle and Middleton**

Introduced and read first time: February 3, 2017

Assigned to: Education, Health, and Environmental Affairs

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## A BILL ENTITLED

1 AN ACT concerning

2 **Natural Resources – Program Open Space – Use of Local Funds**

3 FOR the purpose of repealing a requirement that certain local governing bodies use at least  
4 a certain amount of the local governing body's annual apportionment for certain  
5 acquisition projects under Program Open Space; authorizing a local governing body  
6 to use all of the local governing body's annual apportionment for acquisition projects;  
7 altering the required contents of a local land preservation and recreation plan;  
8 repealing a requirement that the Department of Planning prepare certain guidelines  
9 with the Department of Natural Resources; increasing the amount of funds that a  
10 subdivision may use for certain purposes within a certain period of time; repealing  
11 the requirement that a local governing body use part of certain funds for a local  
12 advance option and purchase fund; authorizing a local governing body to use its  
13 annual apportionment for a local advance option and purchase fund; requiring  
14 certain projects to be consistent with and support the goals, objectives, and priorities  
15 presented in a certain plan and program; repealing the authorization for a local  
16 governing body to use a certain percentage of its future annual apportionment for  
17 certain projects for a certain period of time under certain circumstances; altering  
18 certain requirements related to how much funding the State should provide for  
19 certain projects under certain circumstances; providing that certain requirements  
20 related to donated land apply to certain local projects and not certain State projects;  
21 making conforming changes; and generally relating to the use of local acquisition  
22 and development funds under Program Open Space.

23 BY repealing and reenacting, with amendments,  
24 Article – Natural Resources  
25 Section 5–905  
26 Annotated Code of Maryland  
27 (2012 Replacement Volume and 2016 Supplement)

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

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



**Article – Natural Resources**

1  
2 5–905.

3 (a) (1) On or before May 1 of each year, the Department shall notify each local  
4 governing body of its allocation of local acquisition and development funds for the next  
5 fiscal year within the limits imposed by the formula developed for the apportionment of the  
6 annual appropriations for Program Open Space.

7 (2) (i) By the first of July each year, a participating local governing  
8 body shall submit an annual program of proposed acquisition and development projects,  
9 together with a list of projects submitted by any municipal corporation to the local  
10 governing body and not included in the local governing body's annual program, to the  
11 Department of Planning for review and to the Department for approval.

12 (ii) A municipal corporation may submit an annual program through  
13 its local governing body.

14 (iii) A subdivision, for each proposed project under this subsection,  
15 shall consider whether it is feasible to provide public access to the proposed project.

16 (iv) When considering whether it is feasible to provide public access  
17 to a proposed project under this paragraph, a subdivision may consider:

18 1. The availability of funds available under this program or  
19 from other sources to provide public access to the proposed project;

20 2. Public safety and liability issues if public access were  
21 provided to the site;

22 3. Whether the site for the proposed project was acquired as  
23 a part of a larger recreational and open space project that is not yet completed and ready  
24 for public access; and

25 4. The existence of a contractual commitment on the site for  
26 a proposed project that would limit public access for a period of time, including a home,  
27 agricultural, or hunting lease.

28 (3) (i) Upon review by the Department of Planning and approval by the  
29 Department and the Board of Public Works, the allocated funds shall be encumbered for  
30 the purposes of §§ 7–305(d)(3) and 8–128(c) of the State Finance and Procurement Article,  
31 and the annual program shall become the basis for a grant agreement for the total  
32 allocation to each of the local governing bodies.

33 (ii) Prior to approval of a local annual program, or any revision  
34 thereof, the Department shall provide the legislators from the district within which any

1 part of the local jurisdiction is located the opportunity to review and comment on the annual  
2 program or its revisions.

3 (4) Any program may be revised by the local governing body and the  
4 revised program, after the Department of Planning reviews and the Department approves  
5 it, shall be substituted for the original program in the grant agreement.

6 (5) (i) In accordance with the Department's regulations, upon receipt of  
7 evidence from the local governing body of a county or municipal corporation that funds have  
8 been spent on a project that is approved in the grant agreement, the Department shall  
9 cause the requested amount of funds from the local governing body's allocation to be  
10 reimbursed to the local governing body.

11 (ii) Any municipal corporation may submit evidence of expenditures  
12 for approved projects through its local governing body to the Department.

13 (b) (1) [Except as provided in subsection (c)(1) of this section and except in  
14 Baltimore City, at least one half of] **UP TO 100% OF** a local governing body's annual  
15 apportionment [shall] **MAY** be used for acquisition projects. Local matching funds are not  
16 required for acquisition projects. If the local governing body is unable to obtain federal  
17 funds pursuant to § 5-906 of this subtitle, for an approved local acquisition project, the  
18 total cost of the project shall be defrayed out of the local governing body's annual  
19 apportionment of State funds for open space. [In Baltimore City any portion of the annual  
20 apportionment may be used either for acquisition or development.]

21 (2) A local governing body shall prepare a local land preservation and  
22 recreation plan with [acquisition] goals, **OBJECTIVES, AND PRIORITIES** based upon the  
23 most current population data available from the Department of Planning and submit it to  
24 the Department and to the Department of Planning for joint approval according to the  
25 criteria and goals set forth in guidelines prepared by the Department [and the Department  
26 of Planning]. A local governing body shall revise its local land preservation and recreation  
27 plan at least every 5 years and submit the revised local plan to the Department and to the  
28 Department of Planning for joint approval 1 year prior to the revision of the Maryland Land  
29 Preservation and Recreation Plan. Prior to approval of a revised local plan, the Department  
30 shall provide the legislators from the district within which any part of the local jurisdiction  
31 is located the opportunity to review and comment on the revised local plan.

32 (3) Subject to the approval of the Department, a local governing body may  
33 use part of its [acquisition] funds for initial or periodic updating of local land preservation  
34 and recreation plans. The amount that may be used by a subdivision for planning purposes  
35 in the local land preservation and recreation plan shall not exceed [\$25,000] **\$125,000** for  
36 any [one] **PERIOD OF FIVE** fiscal [year] **YEARS**. Local matching funds are not required for  
37 planning or updating the local land preservation and recreation plan.

1           (4) If federal funds are provided on any acquisition project, the State shall  
2 provide 100 percent of the difference between the total project cost and the federal  
3 contribution.

4           (5) (i) A local governing body [shall] MAY use [part of] its funds  
5 [reserved for acquisition] for a local advance option and purchase fund. The funding level  
6 of the local advance option and purchase fund shall be determined on an annual basis and  
7 submitted as part of the annual program under subsection (a) of this section. The local  
8 advance option and purchase fund may be used to obtain an option on any parcel of land  
9 identified by the local governing body as facing intense development pressure within that  
10 county in advance of purchase or to purchase specific tracts of land.

11                   (ii) Funds available in a local advance option and purchase fund  
12 shall be allocated in the following order of priority:

13                           1. First to obtain an option on any parcel of land identified  
14 by the local governing body as facing intense or immediate development pressure within  
15 that county in advance of purchase, or to purchase a specific tract of land identified by the  
16 local governing body as facing intense development pressure within that county; and

17                           2. Then to purchase property on which an option has been  
18 obtained or any other parcel of land.

19           (6) (i) A local governing body may use part of its funds reserved for  
20 acquisition for a local land trust grant fund.

21                   (ii) A local land trust grant fund may be used to:

22                           1. Make matching or reimbursable grants to land trusts for  
23 the acquisition of interests or rights in real property for recreational or open space  
24 purposes; or

25                           2. Acquire, under an agreement with a land trust, title to or  
26 an interest or right in property owned by a land trust or property on which the land trust  
27 holds an option or a contract to purchase.

28                   (iii) As a condition to any agreement under which a local government  
29 agrees to acquire title to or an interest or rights in property owned by a land trust or  
30 property on which the land trust holds an option or a contract to purchase, a perpetual  
31 conservation easement on the land shall be donated.

32                   (iv) A project may not receive funds from a local land trust grant fund  
33 unless:

34                           1. The project is approved in the local governing body's grant  
35 agreement; or

1                                   2.     The Department and the Board of Public Works approve  
2 the project as being in conformity with criteria governing land acquired under a local grant  
3 from Program Open Space.

4                                   (v)    The Department may approve a grant from a local land trust  
5 grant fund conditional upon modifying its terms.

6                                   (7)    (i)     Except as provided in subparagraph (iii) of this paragraph, if any  
7 portion of an annual apportionment to a local governing body is not encumbered within 5  
8 years of the allocation, the unencumbered funds shall revert to the Department, to be held  
9 by the Department in a special account until the beginning of the next fiscal year.

10                                  (ii)    At the beginning of the next fiscal year, the funds held in the  
11 special account under subparagraph (i) of this paragraph shall be added to the funds  
12 appropriated under § 5–903(b) of this subtitle to assist local governing bodies in acquisition  
13 and development of land for recreation and open space purposes.

14                                  (iii)   If a local governing body demonstrates to the Department that  
15 unencumbered funds have been designated for a specified purpose, subparagraph (i) of this  
16 paragraph does not apply to the funds.

17                                  **(8)    ALL PROJECTS SUBJECT TO THIS SECTION SHALL BE CONSISTENT**  
18 **WITH AND SUPPORT THE GOALS, OBJECTIVES, AND PRIORITIES PRESENTED IN THE**  
19 **LOCAL GOVERNING BODY’S LAND PRESERVATION AND RECREATION PLAN AND**  
20 **ANNUAL PROGRAM.**

21                                  (c)    (1)    [(i)    One half of any] **EXCEPT AS PROVIDED IN SUBSECTION (B)(3)**  
22 **OF THIS SECTION,** A local governing body’s annual apportionment shall be used for  
23 acquisition or development projects provided that up to 20 percent of the funds authorized  
24 for acquisition or development projects under this [subparagraph] **PARAGRAPH** may be  
25 used for capital renewal as defined in § 5–901 of this subtitle.

26                                  [(ii)   If the Department and the Department of Planning certify that  
27 acquisition goals set forth in the current, approved local land preservation and recreation  
28 plan have been met and that such acreage attainment equals or exceeds the minimum  
29 recommended acreage goals developed for that jurisdiction under the Maryland Land  
30 Preservation and Recreation Plan, a local governing body may use up to 75 percent of its  
31 future annual apportionment for development projects for a period of 5 years after  
32 attainment, provided that up to 20 percent of the funds authorized for use for development  
33 projects under this subparagraph may be used for capital renewal.

34                                  (iii)   If a county determines that it qualifies for the additional funds  
35 for development and capital renewal projects under subparagraph (ii) of this paragraph,  
36 before the due date for all local governing bodies to submit revised local land preservation  
37 and recreation plans, that county may submit an interim local land preservation and  
38 recreation plan:



1                   2.     Subject to subparagraph 4 of this subparagraph, if a  
2 local governing body uses its funds appropriated under § 5-903(b)(1) of this subtitle to  
3 construct an indoor recreational facility that is not ancillary and necessary for outdoor  
4 recreation, and will be located outside of a priority funding area, as defined in § 5-7B-02  
5 of the State Finance and Procurement Article, the State shall provide 50 percent of the total  
6 project cost.

7                   3.     The State shall provide 90 percent of the total project cost  
8 under subparagraph 1 of this subparagraph if the local governing body agrees to limit  
9 the amount of impervious surface on the land acquired within a priority funding area, as  
10 defined in § 5-7B-02 of the State Finance and Procurement Article, to no more than 10  
11 percent of the land.

12                   4.     The 50% funding limit under subparagraph 2 of this  
13 subparagraph does not apply if the Department determines that:

14                   A.     The indoor recreational facility is designed to serve  
15 multiple priority funding areas, as defined in § 5-7B-02 of the State Finance and  
16 Procurement Article, or multiple census designated places within a priority funding area;

17                   B.     The indoor recreational facility contains equipment or  
18 facilities, including a swimming pool, that cannot be supported in multiple locations; and

19                   C.     The applicable local government planning and zoning  
20 agency has verified that the location of the indoor recreational facility is consistent with  
21 the local government's comprehensive plan.

22                   (d)     If land is donated to local governing bodies during the fiscal year, 75 percent  
23 of the appraised value the Department approves may be applied as a portion of, or all of,  
24 the local governing body's share of the project's cost for the projects referred to in [§ 5-904  
25 of this subtitle] **THIS SECTION.**

26                   (e)     If federal funds are received for any approved local project after it was funded  
27 by the State in accordance with subsection (b) of this section or § 5-904 of this subtitle, the  
28 applicant shall reimburse the State in an amount equal to the federal contribution. The  
29 reimbursement shall be reserved for other projects approved for the applicant up to the  
30 limit of the share allocated to the local governing body.

31                   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
32 October 1, 2017.