

Department of Legislative Services
 Maryland General Assembly
 2023 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 470

(Senator Elfreth, *et al.*)

Budget and Taxation and Education, Energy,
 and the Environment

Environment and Transportation

Natural Resources - Land Conservation - Establishment of Goals and Programs
(Maryland the Beautiful Act)

This bill establishes (1) land conservation goals for the State; (2) a 40 x 40 Land Conservation Implementation Grant Program; and (3) a Local Land Trust Revolving Loan Program (along with an authorization for allocation of specified fiscal 2023 transfer tax revenues to the program). The bill also authorizes specified annual stewardship grants. **The provision authorizing the reallocation of specified transfer tax revenues terminates September 30, 2026.**

Fiscal Summary

State Effect: No effect in FY 2024. General fund expenditures increase by \$6.7 million in FY 2025, by \$738,600 in FY 2026, and by ongoing amounts in future years. Special fund revenues increase by \$6.0 million in FY 2025 and by indeterminate amounts in future years. Special fund expenditures increase by \$3.0 million in both FY 2025 and 2026 and by indeterminate amounts in future years.

(in dollars)	FY 2024	FY 2025	FY 2026	FY 2027	FY 2028
SF Revenue	\$0	\$6,000,000	-	-	-
GF Expenditure	\$0	\$6,747,700	\$738,600	\$749,800	\$763,800
SF Expenditure	\$0	\$3,000,000	\$3,000,000	-	-
Net Effect	\$0	(\$3,747,700)	(\$3,738,600)	(\$749,800)	(\$763,800)

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

Local Effect: Local revenues and expenditures likely increase beginning in FY 2025.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Conservation Goals

The bill establishes the intent of the General Assembly that (1) by 2030, 30% of lands in the State be conserved and (2) by 2040, 40% of lands in the State be conserved. To meet the specified conservation goals, the Smart Growth Subcabinet, in coordination with relevant stakeholders, must (1) coordinate the actions of State agencies, local governments, and nongovernmental partners; (2) by July 1, 2024, develop and publish a plan to meet the State's conservation goals and update the plan as needed (but not less than every five years thereafter); and (3) by December 1, 2024, and each December 1 thereafter, report to specified committees of the General Assembly on the State's progress toward meeting the conservation goals.

“Conserve” means to permanently protect land from development through purchase, donation, a perpetual conservation or an open space easement, or fee ownership in order to preserve the cultural, historical, ecological, or agricultural value of the land.

The conservation goals must be accomplished through multiple efforts, including:

- working with local communities, counties, municipalities, American Indian communities, and private landowners to conserve natural places and resources;
- improving access to nature for all individuals in the State, including communities of color and economically disadvantaged communities;
- sequestering carbon and greenhouse gas emissions in lands and waters of the State;
- increasing public incentives for private landowners to voluntarily conserve and protect areas of demonstrated conservation value and areas that have a high capacity to sequester carbon and greenhouse gas emissions;
- focusing conservation work at a large landscape scale that is biologically and ecologically meaningful;
- preventing the extinction of native plant and animal species by recovering and restoring the species;
- stabilizing ecosystems and ecosystem services, restoring degraded ecosystems, and maintaining ecological functions; and
- increasing economic opportunities for farmers, ranchers, fishers, and foresters.

40 x 40 Land Conservation Implementation Grant Program

The Maryland Environmental Trust (MET) must administer a 40 x 40 Land Conservation Implementation Grant Program to support implementation of the conservation goals established by the bill. Program grants must:

- be awarded each year on a competitive basis to a nonprofit organization that focuses on supporting the permanent conservation of the lands of the State; and
- provide at least (1) \$150,000 to the grant recipient for the purpose of providing tools and resources, organizational support, and capacity building to local land trusts and (2) \$100,000 to the grant recipient for the purpose of providing statewide educational conferences and trainings for local land trusts on the topics of easement acquisition, conservation programs and tools, land management and stewardship, and other relevant subjects.

In fiscal 2025 and each fiscal year thereafter, the Governor may include in the annual budget bill an appropriation of \$250,000 to MET for the purpose of providing the grants.

Local Land Trust Revolving Loan Program

Purpose and Administration

The purpose of the Local Land Trust Revolving Loan Program is to (1) support the efforts of local land trusts that work with State and local governmental entities and (2) provide revolving loans to land trusts on a rolling basis to assist the land trusts to purchase fee simple or easement interests in real property for conservation purposes. MET must (1) administer the program; (2) establish application procedures and eligibility criteria for program loans; (3) prepare loan documents for approved loans; and (4) establish terms and conditions for the loans. “Land trust” is defined as a qualified conservation organization that (1) is a qualified organization under a specified provision of the Internal Revenue Code and regulations adopted under the provision and (2) has executed a cooperative agreement with MET.

A land trust that receives a program loan must repay the Local Land Trust Revolving Loan Fund, described below, (1) at a rate to be determined by MET, not to exceed one point below the prime interest rate and (2) after the property is placed under a conservation easement or transferred to a State or local governmental entity. However, a land trust must repay a program loan and any accrued interest within five years after receiving the loan, whether or not the property has been placed under a conservation easement or transferred to a State or local government entity, unless MET’s board of trustees approves an extension of time based on extenuating circumstances. The bill does not obligate a State or local

government entity to accept or purchase from a land trust a conservation easement or transferred property purchased with a program loan.

If a land trust violates any provision of the loan documents or ceases to meet the requirements of the bill's provisions governing the program or other statutory provisions governing MET, on reasonable notice to the land trust, MET may exercise any remedy available under law, including any remedies provided for in the loan documents.

The bill also prohibits a person from knowingly making or causing to be made specified false statements or reports and establishes that a violation of the bill's provisions governing the program or other statutory provisions governing MET is a misdemeanor subject to a fine of up to \$50,000 and/or imprisonment for up to five years.

Local Land Trust Revolving Loan Fund

The Local Land Trust Revolving Loan Fund must be administered by MET to finance the revolving loan program. The fund consists of money appropriated in the State budget to the fund, interest earnings, repayments of principal and interest from loans made under the program, and any other money from any other source accepted for the benefit of the fund. The bill authorizes the Governor to include an appropriation to the fund in the annual budget bill and, if actual transfer tax revenue collections in fiscal 2023 are greater than the revenue estimates used as the basis for the appropriations of transfer tax revenue required under existing law for fiscal 2023, the amount of the excess may be allocated to the fund in fiscal 2025. The provision authorizing the allocation of excess fiscal 2023 transfer tax revenue collections to the fund terminates September 30, 2026.

Land Preservation Rapid Response Advisory Committee

The bill establishes a Land Preservation Rapid Response Advisory Committee to (1) review and prioritize program loan applications for consideration by MET's board of trustees and (2) make recommendations to the board of trustees on which projects to fund and the funding to be allocated to each project.

Stewardship Grants

The bill authorizes the Governor, in fiscal 2025 and each fiscal year thereafter, to include in the annual budget bill an appropriation of \$235,000 to MET to be used in the following amounts for the following purposes:

- \$50,000 per year to provide land stewardship capacity-building grants of up to \$10,000 to land trusts to support monitoring and stewardship scholarships, land monitoring and stewardship equipment, or organizational accreditation and certification trainings;

- \$50,000 per year to provide land stewardship improvement grants of up to \$10,000 to land trusts to support improved monitoring and stewardship of agricultural lands, forest lands, or lands facing a high degree of threat from invasive species or the effects of climate change; and
- \$135,000 per year to provide citizen stewardship grants of up to \$5,000 to nonprofit organizations, community organizations, schools, and municipalities to engage community members, especially children and young adults, in environmental education and stewardship.

The grant funding is supplemental to and not intended to take the place of funding that would otherwise be appropriated to MET for grants administered under the Keep Maryland Beautiful Program.

Current Law:

Agricultural Land Preservation Goal

Chapter 284 of 2021 established a State goal of preserving a total of 1,030,000 acres of productive agricultural land by 2030, through local land preservation programs and several State programs, including:

- *Maryland Agricultural Land Preservation Foundation (MALPF):* The General Assembly created MALPF to preserve productive agricultural land and woodland, limit the extent of urban development, and protect agricultural land and woodland as open space. MALPF, with the assistance and cooperation of landowners and local governments, purchases development rights easements as a means of protecting agricultural land and woodland production activities;
- *Maryland GreenPrint Program:* Chapter 570 of 2001 established the Maryland GreenPrint Program to create a statewide green infrastructure network by acquiring property and property interests, including easements, in a manner that complements other conservation programs. Chapter 570 terminated in 2006, although acres that were preserved under the program contribute toward the State’s agricultural land preservation goal;
- *Rural Legacy Program:* The Rural Legacy Program within the Department of Natural Resources (DNR) provides funding for local governments and conservation organizations (such as land trusts) to purchase property and conservation easements within designated rural legacy areas. Rural legacy areas are designated as rich in a multitude of agricultural, forestry, natural, and cultural resources. Local governments and land trusts apply annually to the Rural Legacy Board, which makes recommendations for designating rural legacy areas and granting funds to preserve land in the rural legacy areas that are then reviewed and approved by the Board of Public Works;

- *Maryland Environmental Trust:* MET was established by statute in 1967 “to conserve, improve, stimulate, and perpetuate the aesthetic, natural, health and welfare, scenic, and cultural qualities of the environment, including, but not limited to land, water, air, wildlife, scenic qualities, [and] open spaces.” The trust was created as a quasi-public entity and is both a unit of DNR and governed by a private board of trustees. MET’s primary method for protecting land is through soliciting donations of conservation easements from private landowners, who may be eligible for both federal and State tax benefits that are available for such donations. Its programs now include Land Conservation, Monitoring and Stewardship, Local Land Trust Assistance, and the Keep Maryland Beautiful Grant Program; and
- *Next Generation Farmland Acquisition Program:* The Next Generation Farmland Acquisition Program (“Next Gen Program”) is administered by the Maryland Agricultural and Resource-Based Industry Development Corporation (MARBIDCO), which was established under Chapter 467 of 2004 to help Maryland’s farm, forestry, seafood, and related rural businesses to achieve profitability and sustainability. Under statutory authority to administer rural land acquisition and easement programs, including programs to assist young and beginning farmers, MARBIDCO administers the Next Gen Program, and the recently begun Small Acreage Next Generation Farmland Acquisition Program, which help young and beginning farmers purchase land, with the purchases made under the programs resulting in, or typically leading to, permanent easements on the land.

Smart Growth Subcabinet

The Smart Growth Subcabinet comprises the Special Secretary; the Secretary of Agriculture; the Secretary of Budget and Management; the Secretary of Commerce; the Secretary of the Environment; the Secretary of General Services; the Secretary of Higher Education; the Secretary of Housing and Community Development; the Assistant Secretary of the Office of Neighborhood Revitalization; the Secretary of Natural Resources; the Secretary of Planning; the Secretary of Transportation; a representative of the Governor’s office; the Secretary of Health; the Secretary of Labor; and the Director of the Maryland Energy Administration. The subcabinet must:

- provide a forum for discussion of interdepartmental issues relating to activities that affect growth, development, neighborhood conservation, and resource management;
- work together to promote the understanding of smart growth;
- work together to create, enhance, support, and revitalize sustainable communities;
- meet at least biannually with county and municipal elected leaders and planning officials to discuss local government issues relating to activities that affect smart growth, development, neighborhood conservation, and resource management;

- make recommendations to specified State agencies;
- evaluate and report annually to the Governor and the General Assembly on the implementation of the State's smart growth policy; and
- perform other duties assigned by the Governor.

State Transfer Tax Funding Allocation and Program Open Space

Funding Allocation

The State transfer tax of 0.5% of the consideration paid for the transfer of real property is used to fund several land conservation programs as well as State forest and park operations. After certain initial allocations for debt service and administrative costs, the revenue is held in a transfer tax special fund and allocated according to the following percentages (“transfer tax formula”): (1) 76.15% to Program Open Space (POS), administered by DNR; (2) 17.05% to MALPF; (3) 5% to the Rural Legacy Program; and (4) 1.8% to the Heritage Conservation Fund.

Program Open Space

The 76.15% allocated to POS through the transfer tax formula is subject to further required allocations among different uses, including State land acquisition and capital improvements for recreation and open space purposes, local government acquisition and development of land for recreation and open space purposes, and State forest and park operations. Subject to certain additional detail and allocations, in general, approximately 50% is allocated to State land acquisition and capital development, 30% is allocated to local government acquisition and development, and 20% is allocated to State forest and park operations.

To participate in the POS grant process, a local government must prepare a local Land Preservation and Recreation Plan every five years. Each participating local government must also submit an annual program of proposed acquisition and development projects to DNR and the Maryland Department of Planning (MDP). The annual program is the basis for total allocations to each local government.

Allocation of Excess Revenue

For any fiscal year in which the actual transfer tax revenue collections are greater than the revenue estimates used as the basis for the appropriations of the revenues for the fiscal year, the amount of the excess must be allocated in accordance with the transfer tax formula in the second fiscal year following the fiscal year in which there is an excess (*e.g.*, an excess in fiscal 2023 is allocated/appropriated in fiscal 2025).

State Fiscal Effect:

Conservation Goals

It is unclear to what extent State spending on land conservation increases over the course of fiscal 2024 through 2040 as a result of the bill's conservation goals, which aim to conserve (1) 30% of lands in the State by 2030 and (2) 40% of lands in the State by 2040. Establishing the goals in statute may increase the likelihood that land conservation program funding levels (not including those established under the bill) increase in fiscal 2024 through 2040.

MDP indicates that, as of June 30, 2022, approximately 868,627 acres of productive *agricultural* land have been preserved, which is 84.3% of the 1,030,000-acre goal established by Chapter 284. Overall, 1,839,453 acres of *total* land, approximately 29% of the land acreage in the State, have been protected through the aforementioned programs and other efforts.

The development and publishing of the required plan to meet the State's conservation goals, and associated updates and reporting, can be handled by the Smart Growth Subcabinet with existing resources.

Transfer Tax-Funded Programs

Special fund (transfer tax special fund) revenues *may* be reallocated in fiscal 2025 pursuant to the bill to the extent that there are excess revenues collected in fiscal 2023 in comparison to the revenue estimates that were used as the basis for the fiscal 2023 appropriations of the revenues in the fiscal 2023 budget. The bill requires those excess revenues to be allocated to the Local Land Trust Revolving Loan Fund in fiscal 2025 instead of, under current law, being allocated/appropriated in accordance with the transfer tax formula in fiscal 2025. To the extent that reallocation occurs under the bill, funding for the transfer tax-funded programs – POS (including State forest and park operations), MALPF, the Rural Legacy Program, and the Heritage Conservation Fund – is reduced.

However, it appears unlikely that there will be excess revenues in fiscal 2023. A recent estimate of fiscal 2023 transfer tax revenues, in December 2022, was lower than the estimated revenues used as the basis for the fiscal 2023 appropriations. The December 2022 estimate for fiscal 2023 transfer tax revenues, by the Bureau of Revenue Estimates, was \$258.5 million, and the December 2021 estimate, which was used as a basis for the fiscal 2023 appropriations, was \$306.5 million. Because it appears unlikely that there will be excess fiscal 2023 transfer tax revenues to be allocated to the Local Land Trust Revolving Loan Fund in fiscal 2025, this analysis assumes general funds are needed to capitalize the fund, as discussed below.

Grant/Loan Programs

General Fund Impact

General fund expenditures increase by \$6.7 million in fiscal 2025, by \$738,573 in fiscal 2026, and by ongoing amounts in future years. This estimate reflects the cost of (1) hiring one agency grants specialist and one natural resources planner in fiscal 2025 in order to administer the Local Land Trust Revolving Loan Program; (2) hiring one agency grants specialist in fiscal 2025 to administer the 40 x 40 Land Conservation Implementation Grant Program and the stewardship grants; (3) capitalizing the Local Land Trust Revolving Loan Fund in fiscal 2025 (\$6.0 million); and (4) providing annual funding for the 40 x 40 Land Conservation Implementation Grant Program (\$250,000) and the stewardship grants (\$235,000) beginning in fiscal 2025. The estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. It reflects the following information and assumptions:

- The 40 x 40 Land Conservation Implementation Grant Program and the stewardship grants are funded in accordance with the authorizations in the bill (\$250,000 and \$235,000, respectively, each fiscal year beginning in fiscal 2025) and \$6.0 million is appropriated in fiscal 2025 to capitalize the Local Land Trust Revolving Loan Fund. As discussed above, it appears unlikely that transfer tax revenues will be allocated to the fund in fiscal 2025, and \$6.0 million is assumed to be the minimum amount of funding needed for the Local Land Trust Revolving Loan Program to be an effective, viable program. These funding amounts are assumed to be supported by general funds in the absence of another funding source.
- While the bill takes effect in fiscal 2024, this analysis assumes funding for the programs, and the staffing to administer the programs, do not begin until fiscal 2025, when funding is first authorized. The authorization for the Governor to include an appropriation in the annual budget bill to the Local Land Trust Revolving Loan Fund does not specify a fiscal year when the authorization begins, but fiscal 2025 is the first fiscal year for which the Governor has an opportunity to include funding in the annual budget bill after the bill takes effect.
- MET indicates it is not able handle the additional workload of administering the grant and loan programs with existing staff.
- The natural resources planner starts in fiscal 2025 to absorb the workload of an existing natural resources planner involved in easement stewardship that MET expects to reassign to supervise the loan program.
- Since the bill does not explicitly allow for the Local Land Trust Revolving Loan Fund to be used for administrative costs, this analysis assumes that those costs are funded with general funds, independent of the special fund.

	<u>FY 2025</u>	<u>FY 2026</u>
Positions (New)	3.0	0.0
Salaries and Fringe Benefits (Total)	\$237,637	\$248,289
Loan Fund Capitalization	6,000,000	0
40 x 40 Grants	250,000	250,000
Stewardship Grants	235,000	235,000
Operating Expenses	<u>25,074</u>	<u>5,284</u>
Total General Fund Expenditures	\$6,747,711	\$738,573

Future year expenditures reflect (1) full salaries with annual increases and employee turnover; (2) ongoing grant funding; and (3) annual increases in ongoing operating expenses.

The bill's criminal penalty provision is not expected to materially affect general fund revenues or expenditures.

Special Fund Impact – Local Land Trust Revolving Loan Fund

Special fund revenues increase by \$6.0 million in fiscal 2025 and by indeterminate amounts in future years, reflecting the revolving loan fund's receipt of general funds and loan repayments. It is uncertain how quickly the initial capitalization of the fund will be spent, through awarding of loans, but this analysis assumes special fund expenditures increase by \$3.0 million in each of fiscal 2025 and 2026 and by indeterminate amounts in future years.

Local Fiscal Effect: Counties and municipalities are likely affected by and/or participate in the goals and programs established by the bill, beginning in fiscal 2025. Local revenues and expenditures related to land conservation, and environmental education and stewardship, likely increase by an indeterminate amount as a result.

To the extent excess fiscal 2023 transfer tax revenues are reallocated to the Local Land Trust Revolving Loan Fund in fiscal 2025, instead of being allocated/appropriated in accordance with the transfer tax formula, local funding/grants under POS and the Rural Legacy Program are reduced in fiscal 2025. However, as noted above, this appears unlikely.

The bill's criminal penalty provision is not expected to materially affect local government revenues or expenditures.

Small Business Effect: Small businesses that provide services, including appraisals, title work, surveys, or other due diligence, for land acquisition projects may meaningfully benefit from additional land conservation efforts under the bill. Small businesses in the

agricultural and resource-based industries may also benefit to the extent land conservation efforts in the State are increased to meet the bill's land conservation goals.

Additional Information

Prior Introductions: Similar legislation has been introduced within the last three years. See SB 791 and HB 1031 of 2022.

Designated Cross File: HB 631 (Delegate Stein) - Environment and Transportation.

Information Source(s): Department of Natural Resources; Maryland Department of Planning; Maryland Department of Agriculture; Department of Budget and Management; Harford, Montgomery, and Talbot counties; Baltimore City Public Schools; Montgomery County Public Schools; Maryland-National Capital Park and Planning Commission; City of Havre de Grace; Maryland Association of Counties; Maryland Municipal League; Comptroller's Office; Department of Legislative Services

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