



Wes Moore, Governor
Aruna Miller, Lt. Governor
Josh Kurtz, Secretary
David Goshorn, Deputy Secretary

February 27, 2024

BILL NUMBER: Senate Bill 685 – First Reader

SHORT TITLE: Program Open Space - Use of Property - Renewable Energy & Storage

DEPARTMENT’S POSITION: SUPPORT WITH AMENDMENTS

EXPLANATION OF DEPARTMENT’S POSITION

The proposed Bill would allow for solar or wind power generation, as well as energy storage related to those types of uses to be conducted on Department lands. The Department appreciates the conversations with the sponsor on this legislation to better understand the intent – and we appreciate sponsors intent to provide flexibility in the event that there is land that is appropriate for the uses authorized in the legislation.

In that vein, we are offering one amendment to the legislation to clarify that the Department retains the ultimate authority and sole discretion with regard to any potential use of our lands under the authority granted in the bill.

It is also important to note that any effort to locate solar, wind or energy storage on Program Open Space funded acquisitions would require a significant investment of staff time to determine not only appropriate locations, but if locating the use on a particular site would be allowable under the above-mentioned restrictions. It could also involve significant coordination with Federal partners.

BACKGROUND INFORMATION

Program Open Space was established in 1969 pursuant to Title 5, Subtitle 9 of the Natural Resources Article. Pursuant to the title, a portion of funds collected through the transfer tax flow to the Department (Program Open Space, Stateside) to acquire real property interests for “*recreation and open space purposes.*” The Department owns and manages over 500,000 acres throughout the State.

In addition to Program Open Space, Stateside funding many Department lands were acquired with Federal assistance and may also be encumbered with other restrictions on use:

1) Land & Water Conservation Funds (LWCF) – Approximately 10% of Department Lands are encumbered with LWCF funding. The National Park Service (NPS) could construe that additional adjacent Department Lands are considered to be impacted under LWCF regulations, making the total percentage higher than 10%. A final determination of what constitutes LWCF-impacted lands is a lengthy process that would require research and confirmation by NPS. Under LWCF guidelines, uses other than recreation would create a conversion of use, which would require the Department to identify

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and acquire other lands for recreation to replace any lands that might be impacted by solar, wind or energy storage uses. Approval and coordination is required with the National Park Service.

2) L-U or Land Utilization from the United States Department of Agriculture (USDA) – 42,000 +/- acres of Department lands in Garrett and Worcester Counties were granted by USDA and are restricted for public uses. Past opinions from the Office of the Attorney General have guided against conveying interests in these lands as it could result in a reversion of title to the USDA.

3) Maryland Wildlands Preservation System - 65,000 +/- acres are identified as Wildlands. Statute would likely prohibit any solar, wind or energy storage uses.

4) Thousands of acres are protected with funds from US Fish & Wildlife (including North American Wetlands Conservation Act funds) and the US Navy's Readiness & Environmental Protection Integration (REPI) and the US Army's Compatible Use Buffer Program (ACUB).

In addition to Department owned lands, 47,948 +/- acres of private lands are protected Program Open Space, Stateside conservation easements. Often, the above-mentioned Federal funding sources, in addition to other Federal programs such as the USDA/NRCS Farm and Ranchland Protection Program are partners for those easements.

Program Open Space, Local provides grants to local jurisdictions to acquire property for public recreation. Energy production or storage uses could create a conversion pursuant to Statute, which is similar to the conversion process for LWCF. Federal funding sources, especially LWCF, can also be part of these acquisitions as well.

BILL EXPLANATION

The bill would allow for lands funded with Program Open Space to be used for solar or wind power generation, as well as the storage of energy generated from those uses.

BY:

(To be offered in the Education, Energy, and the Environment Committee)

AMENDMENT TO SENATE BILL 685

(First Reading File Bill)

AMENDMENT NO. 1

On page 2, in line 6, strike “SUBSECTION” and substitute “SUBSECTIONS”; in the same line, after “(B)” insert “AND (C)”; in line 13, after “(B)” insert “DECISIONS TO USE LAND OWNED OR MANAGED BY THE DEPARTMENT FOR THE USES SPECIFIED IN PARAGRAPHS (A)(1) AND (2) OF THIS SECTION ARE WITHIN THE SOLE DISCRETION OF THE DEPARTMENT.”

(C)”.