

Department of Legislative Services
Maryland General Assembly
2002 Session

FISCAL NOTE

Senate Bill 627 (Senator Frosh)
Education, Health, and Environmental Affairs

Local Land Preservation Programs

This bill authorizes a county or municipal corporation to adopt a local land preservation program. The bill establishes requirements relating to programs established under the bill and provides for State matching funds under specified conditions. The bill is contingent on specified approval by the U.S. Environmental Protection Agency (EPA).

Fiscal Summary

State Effect: Based on information provided by the Maryland Department of the Environment (MDE), EPA is unable, due to federal law, to provide the approval required for this bill to take effect.

Local Effect: None -- see above.

Small Business Effect: None.

Analysis

Bill Summary: The bill states that the General Assembly declares that:

- sprawl development and other modifications to the landscape in Maryland continue at an alarming rate, consuming land rich in natural resource, agricultural, and forestry value, adversely affecting water quality, wetlands and habitat, threatening resource-based economies and cultural assets, and rending the fabric of rural life;
- preserving valuable open space in its natural, agricultural, or forestry use will help contain sprawl development, improve the water quality of the Chesapeake Bay and its

tributaries by limiting point and nonpoint sources of pollution, and meet a goal of the Chesapeake Bay Agreement to protect 20% of the Chesapeake Bay watershed by 2010;

- current State, county, and local land conservation programs help to limit the effect of sprawl development but lack sufficient funding and focus to preserve key areas before escalating land values make their protection impossible or the land is lost to development; and
- local grant programs that leverage available funding, focus on preservation of strategic resources, streamline real property acquisition procedures, take advantage of innovative preservation techniques, and promote a greater level of natural and environmental resources protection than is provided by existing efforts, will establish a legacy for future generations.

A local land preservation program established under the bill must provide funds to the local government units and land trusts to purchase interests in real property from willing sellers, including easements, transferable development rights (TDRs), and fee estates. A program must encourage partnerships among the federal, State, and local governments and nonprofit land trust organizations and must encourage local land conservation initiatives. Each program must be administered in accordance with local law adopted under the authority of the bill.

A program must be funded by a continuing, dedicated, and clearly identified local or private funding source, not derived from State funds, that is adopted in accordance with State or local law. A local government may not use funding provided under the bill to supplant existing or planned local or private funds dedicated to land preservation. Subject to the availability of specified funds and other specified conditions, a program shall be eligible for State matching funds.

A local governing body may adopt regulations to implement a local land preservation program as specified in the bill. In a county with a locally adopted TDR program and with the approval of the county, funds may be used to purchase TDRs in the county in accordance with the locally approved TDR program. The bill establishes requirements relating to the resale of development rights.

To establish partnerships to carry out a local land preservation program, the bill authorizes a local governing body to enter into agreements with other governmental units, including the Rural Legacy Board, the Maryland Agricultural Land Preservation Foundation, and the Maryland Environmental Trust.

The bill establishes requirements relating to appraising the value of easements and fee simple interests in property acquired under the bill. All easement acquisitions must be

recorded among the land records where the real property is located. An easement acquired under the bill is perpetual and may not be extinguished or released.

The bill establishes requirements for sponsors (local governments) applying for funding to implement a local program under the bill. The sponsor must submit applications to appropriate State and local units and consider their recommendations. A sponsor may submit funding requests for acquisition of property under its program to DNR for evaluation and submission to the Board of Public Works (BPW).

The bill requires DNR to review local programs and applications, submit applications to BPW as specified in the bill, and coordinate applications received with available remaining funding. BPW must approve State funding for qualified applications in an amount equal to the funding supplied by the local government, to the extent that unexpended State moneys are available for that fiscal year from: (1) 80% of the interest earned in the preceding fiscal year by the Maryland Water Quality Revolving Loan Fund (WQRLF); and (2) up to 15% of any available surplus in the State budget for the current fiscal year. At the start of the next fiscal year, a local government may renew an application that is rejected due to unavailability of funds.

DNR must provide technical support and assistance to local governments, adopt criteria for distributing available State funding, assist sponsors to coordinate their programs with related efforts under existing State programs, and consult with other federal, State, and local units and private land trusts in order to facilitate conservation efforts under the bill. The bill specifies criteria DNR must use and establishes a procedure DNR must use to allocate available funding.

The bill also makes conforming changes to the provisions governing the WQRLF. Those provisions take effect July 1, 2004, or the date that DNR notifies specified entities that at least three counties have established local land preservation programs and that the cumulative population of those jurisdictions is at least 750,000.

Before the bill takes effect, the State must receive appropriate authorization from EPA to use funding derived from interest on the WQRLF to match local funding for local land preservation programs under the bill. The bill requires the Governor to petition EPA for that authorization by December 31, 2002. If EPA does not provide the appropriate authorization by December 31, 2003, the bill is null and void.

Current Law: Several land preservation programs are administered by the State, such as Program Open Space (POS), the Rural Legacy Program, the GreenPrint Program, and the Maryland Agricultural Land Preservation Program. The Maryland Environmental Trust, which was established by the General Assembly in 1967, is a statewide local land trust.

Local jurisdictions may establish land preservation programs in accordance with local law. In some cases, local programs may work in conjunction with State programs.

The Maryland Water Quality Financing Administration (WQFA) within MDE was established in 1988 to, among other things, assist in the financing of capital infrastructure costs for public entities for water quality point source and both public and private entities for non-point source pollution control projects consistent with the federal Clean Water Act. WQFA administers the WQRLF, which provides low-interest loans for eligible projects. MDE advises that land preservation activities that have a primary or secondary water quality benefit are eligible to apply for financing under the WQRLF. The loan fund receives federal funding from EPA under the Capitalization Grants for State Revolving Funds federal assistance program. According to MDE, federal law requires that investment income from the WQRLF remain in that fund.

Background: POS was established in 1969 to expedite the acquisition of outdoor recreation and open space before property cost and development made it impossible, and to accelerate the development of outdoor recreational facilities. POS provides for both State and local acquisition and development, and is funded through special funds. The special funds are derived from the State's transfer tax, which imposes a 0.5% tax on all real property recorded in the State.

The Rural Legacy Program was established in 1997 to enhance agricultural, forestry, and environmental protection while maintaining the viability of resource-based land usage and proper management of tillable and wooded areas through accepted agricultural and silvicultural practices for farm production and timber harvests. It provides funds to rural legacy sponsors (local governments and land trusts) to purchase interests in real property from willing sellers, including easements and fee estates, focused in designated Rural Legacy Areas. Funds under the program may be used to purchase a development right as part of an easement or fee acquisition, to be held by the titleholder and the Rural Legacy Board, and may be sold only within the same jurisdiction, pursuant to local law.

The GreenPrint Program was established in 2001 to create a statewide green infrastructure network by acquiring property and property interests, including easements, in a manner that complements other conservation programs. The program is aimed at protecting a network of ecologically valuable lands by using computer-based assessment, mapping, and targeting tools to identify the most strategic acquisitions.

The Maryland Agricultural Land Preservation Foundation (MALPF) was established in 1977. Agricultural preservation districts are formed when qualifying landowners sign voluntary agreements to keep their land in agricultural or woodland use for a minimum of five years. Landowners who agree to place their farms within an agricultural

preservation district may sell a development rights easement on that property to MALPF. Subject to some limitations, once an easement has been sold, the property is protected from further development.

Additional Comments: MDE advises that EPA Region 3 has provided verbal notification to MDE that taking investment earnings out of the WQRLF is a violation of federal law. Accordingly, EPA is unable to provide the approval necessary for this bill to take effect. MDE is awaiting written confirmation from EPA regarding this matter.

Additional Information

Prior Introductions: None.

Cross File: HB 1131 (Delegate James, *et al.*) – Environmental Matters is identified as a cross file although it is not identical.

Information Source(s): Department of Natural Resources; Maryland Department of the Environment; Maryland Department of Planning; Trust for Public Land; Calvert, Caroline, Montgomery, and Prince George’s counties; Town of Bel Air; City of Salisbury; Leonardtown; Department of Legislative Services

Fiscal Note History: First Reader - March 11, 2002
mam/cer

Analysis by: Lesley Frymier

Direct Inquiries to:
John Rixey, Coordinating Analyst
(410) 946-5510
(301) 970-5510