

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 102

(Senator Frosh, *et al.*)

Education, Health, and Environmental Affairs
and Budget and Taxation

Environmental Matters and
Appropriations

**Board of Public Works - Disposition of Park Lands - General Assembly
Approval Required**

This bill amends the Constitution to prohibit the Board of Public Works (BPW) from approving the sale, transfer, exchange, grant, or other permanent disposition of any State-owned outdoor recreation, open space, conservation, preservation, forest, or park land without the express approval of the General Assembly or of a committee that the General Assembly designates by statute, resolution, or rule.

Fiscal Summary

State Effect: Potential decrease in general/special fund revenues due to any delay in or disapproval of the disposition of affected State-owned land. The bill's changes could be handled with existing resources.

Local Effect: Local jurisdictions could be affected to the extent the bill delays or prevents the disposition of property to them. Any increase in local expenditures related to the proposed amendment to the Constitution could be handled within existing resources.

Small Business Effect: Potential meaningful. Small businesses could be affected to the extent the bill delays or prevents the disposition of property to them.

Analysis

Current Law: Sections 5-310 and 10-301 *et seq.* of the State Finance and Procurement (SF&P) Article and its implementing regulations address the disposition of State excess real property. The current process operates as follows:

- State agencies initiate the review process by notifying the Maryland Department of Planning (MDP) of excess property under their control.
- MDP studies the proper disposition of the property; solicits comments from State agencies, local governments, and local elected officials; determines whether other State agencies or local governments are interested in the property; and makes a summary of findings and/or disposition recommendation to the agencies and BPW.
- The Department of General Services (DGS) or the Maryland Department of Transportation (MDOT) requests placement on the BPW agenda.
- BPW determines whether excess property should be: (1) disposed of to another government unit; (2) retained by the State; or (3) declared “surplus” and disposed of to anyone. Surplus property is defined as property BPW has determined is not needed and may be disposed of.
- Following BPW determination, either DGS or MDOT disposes of the property subject to the conditions imposed by BPW.
- MDP maintains a list of those properties BPW determines should be retained for possible future use by the State.
- Final disposition of any real property is subject to BPW approval for consideration BPW decides is adequate. Cash proceeds are remitted to the State Treasurer, except that: (1) cash proceeds from the disposition of a capital asset are applied to the State Annuity Bond Fund Account; (2) if the capital asset was originally purchased with any special funds, the proceeds revert to that fund; and (3) any money received by the State as consideration for property acquired under Program Open Space (POS) is deposited in the Advance Option and Purchase Fund within the Department of Natural Resources (DNR).
- MDP is advised of final disposition.

In part to secure a voice in the property disposition process, Chapter 432 of 2004 requires that, prior to BPW approval of the sale of any State-owned property with an appraised value over \$100,000, the Senate Budget and Taxation Committee and the House Committee on Appropriations must receive a written description of the property in question. The committees are also provided with a 45-day review and comment period

concerning proposed sales. The provision does not expressly address conveyances by means other than sale, nor, it appears, does State law presently require that an appraisal of the property be conducted. According to BPW, although not required by law, BPW historically has required State agencies to obtain appraisals before the proposed land disposition is brought to BPW for approval.

According to the statutory and regulatory requirements, a property is supposed to be declared surplus by BPW before it is marketed for sale. In practice, however, BPW is often asked to make a determination that a property is surplus at the same time it is presented with a contract of sale for its consideration and approval. In effect, BPW is concurring that property is surplus and approving the sale consideration concurrently.

In general, the process described above is applicable to all State-owned real property except for residential property acquired by foreclosure, DNR property to be sold or leased to an electric company under the Power Plant Research Program, and State Highway Administration (SHA) property less than three acres in size. In addition, the provisions of Title 10, Subtitle 3 of SF&P do not apply to the release of lots under the Maryland Agricultural Land Preservation Foundation (MALPF).

Background: Shortly after taking office, Governor Ehrlich directed MDP and DGS to develop an Asset Maximization Plan with the intent of identifying underutilized or surplus State-owned property that could be sold. MDP initially completed an inventory assessment in the summer of 2003, utilizing its web-based MD Property View System, which resulted in the identification of 13,584 State-owned real property parcels with an estimated cash value in excess of \$8 billion. As expected, MDOT and DNR account for most of the State-owned real property parcels, representing ownership of 11,711 or 86% of the parcels comprising 460,215 or 92% of the total acreage.

As a component of the plan, MDP launched a statewide review process to identify excess properties on the inventory list. The Asset Maximization Plan provides that all properties ultimately declared excess will be systematically put through the MDP Clearinghouse Process before a proposal for disposition of the property is presented to BPW.

Concern was raised in September 2004 as a result of a proposal to surplus an 836.5-acre tract of land in St. Mary's County (the Salem Tract). The land, which is currently a timber forest, was purchased by the State in October 2003 in order to preserve its significant contribution to Maryland's resource-based industry and its high overall ecological value. A purchaser expressed interest in buying the Salem Tract and donating associated development rights to the State over time. At the time, DGS suggested that tax considerations would impact the terms of the settlement; however, the proposal suggested that the property would be sold for approximately the same amount it had been purchased for one year prior; revenue from the sale would be allocated to POS; and the

purchaser expressed a willingness to donate conservation easements on the land to the State as well as land to St. Mary's County for future school sites. In October 2004, the Senate Budget and Taxation Committee held a briefing on the proposal. Several fiscal and policy implications were raised at the briefing, including the potential loss of important natural resource values, the uncertain future use of the property, tax policy concerns, and the State's role as a real estate "go-between." In November 2004, the prospective purchaser withdrew from the proposed transaction.

Since November, additional legislative briefings have been held regarding the disposition of State-owned property. Concern has been expressed regarding the existing process and the General Assembly's role in that process.

State Revenues: The bill could result in a decrease in general/special fund revenues to the extent it results in the delay in or disapproval of the sale of any State-owned or outdoor recreation, open space, conservation, preservation, forest, or park land that otherwise would have occurred. Because the future disposition of affected property cannot be predicted, a reliable estimate of any decrease in revenues cannot be made at this time.

State Expenditures: Because the bill would apply to State-owned outdoor recreation, open space, conservation, preservation, forest, or park land, DNR would likely be most directly affected by the bill, although other agencies that own land as specified in the bill could also be affected. BPW advises that, although not specified in the bill, it assumes any legislative approval required as a result of the bill would be sought by the affected agency prior to BPW's involvement. This could result in an increase in workload for affected agencies; however, it is assumed that any such increase could be handled with existing resources.

To the extent that the bill results in the delay in or disapproval of the disposition of land that otherwise would occur, affected agencies would incur ongoing maintenance costs associated with that land.

The bill could result in an increase in workload for the General Assembly; any such increase, however, could likely be handled with existing budgeted resources.

Local Fiscal Effect: Local jurisdictions could be affected to the extent the bill delays or prevents the disposition of property that otherwise would have been disposed of to local jurisdictions.

The Maryland Constitution requires that proposed amendments to the Constitution be publicized either: (1) in at least two newspapers in each county, if available, and in at least three newspapers in Baltimore City once a week for four weeks immediately

preceding the general election; or (2) by order of the Governor in a manner provided by law. State law requires local boards of elections to publicize proposed amendments to the Constitution either in newspapers or on specimen ballots; local boards of elections are responsible for the costs associated with these requirements. It is anticipated that the fiscal 2007 budgets of local election boards will contain funding for notifying qualified voters about proposed constitutional amendments for the 2006 general election in newspapers or on specimen ballots.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Department of Natural Resources, Maryland Department of Agriculture, Board of Public Works, Department of General Services, Maryland Department of Planning, Maryland Department of Transportation, Department of Budget and Management, University System of Maryland, Department of Legislative Services

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