

Department of Legislative Services
Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

House Bill 903 (Delegate James, *et al.*)
Environmental Matters and Appropriations

Land Preservation Retention Act

This bill prohibits the Department of Natural Resources (DNR) from declaring property that was acquired for conservation as excess property until it has notified State legislators and adjacent land owners, held a public hearing, and created a public record. DNR must adopt regulations that establish the criteria to be used in a determination of land as excess; the criteria must be available before the hearing. The bill also modifies the existing process regarding the disposal of excess property and establishes several new requirements for the disposal of land acquired in fee simple for conservation purposes.

The bill takes effect July 1, 2005.

Fiscal Summary

State Effect: Potential significant decrease in general/special fund revenues due to the bill's changes to the disposition process. DNR expenditures could increase to comply with the additional requirements; costs could also increase for the Maryland Department of Planning (MDP) to conduct appraisals. A reliable estimate of any such increase cannot be made at this time.

Local Effect: Local jurisdictions could acquire specified property from the State for \$1 under specified conditions. Local jurisdictions could also be affected to the extent the bill delays or prevents the disposition of property to them.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill establishes requirements regarding the public record for each property that is declared as excess. For any real property acquired in fee simple for conservation purposes, DNR must provide MDP with a copy of the public record. MDP must, for excess real property identified by DNR, obtain two independent appraisals of the property. For excess real property acquired in fee simple for conservation purposes, MDP must review the file provided by DNR.

For all excess real property, MDP must make an appropriate recommendation as to whether the land is surplus to the needs of the State. In addition, the bill expands the list of entities to which MDP must make a recommendation; under the bill, local governments, specified State legislators, and specified committees of the General Assembly would be included.

When a recommendation is made regarding real property acquired in fee simple for conservation purposes, MDP must submit to the Board of Public Works (BPW) a copy of the public record created by DNR.

The bill also establishes requirements for BPW with respect to the sale of specified excess property. The bill requires BPW to sell to a local government for \$1 any property acquired by the State in fee simple for land conservation and declared by DNR as excess under specified conditions. BPW would be prohibited from approving the sale of any real property acquired in fee simple for conservation purposes and funded pursuant to an appropriation act of the General Assembly if the property has an appraised value over \$100,000 until BPW has received and reviewed a copy of the public record created by DNR.

Finally, for any real property acquired in fee simple for conservation purposes, the bill requires the Department of General Services (DGS) to provide to specified committees of the General Assembly prior to the disposition, any justification for not selling, leasing, transferring, exchanging, or otherwise disposing of surplus real property in accordance with the requirements of the competitive sealed bids process.

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 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 (including appropriate State legislators); 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.
- 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 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 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.

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 disposition of affected property that otherwise would occur. Revenues could also decrease as a result of the bill's requirement to sell to a local government, for \$1, under specified conditions, any property acquired by the State in fee simple for land conservation and declared by DNR as excess.

Because the future disposition of affected property cannot be predicted, a reliable estimate of any decrease in revenues cannot be made at this time. However, DNR advises that it rarely sells land. Accordingly, while the potential exists for the bill to have a significant impact on any given transaction, it is reasonable to assume that any decrease in revenues from the sale of affected land would not be significant in the long run.

State Expenditures:

Department of Natural Resources

DNR expenditures could increase to notify State legislators and adjacent land owners, hold public hearings, and create public records regarding the declaration of real property acquired for conservation purposes as excess property. A reliable estimate of any increase in costs cannot be made at this time. Without any actual experience under the bill, the need for any additional staff is unclear.

Maryland Department of Planning

The bill's provision requiring independent appraisals for property identified by DNR as excess would result in an increase in expenditures for MDP; according to BPW, depending on the size and the nature of the property, independent land appraisals average \$10,000 per appraisal. Total costs would depend on the volume of land affected by this requirement, which cannot be reliably estimated at this time.

Other

BPW and DGS could handle any increase in workload with existing budgeted resources.

Local Fiscal Effect: Local jurisdictions could benefit from the bill's requirement that, for property acquired by the State in fee simple for land conservation and declared by DNR as excess, BPW must sell the land to a local government for \$1, under specified conditions. Local jurisdictions could also be affected to the extent the bill delays or prevents the disposition of property that otherwise would have been disposed of to the local jurisdiction.

Small Business Effect: Small businesses could be affected to the extent the bill delays or prevents the disposition of property that otherwise would have been disposed of to the small business.

Additional Information

Prior Introductions: None.

Cross File: None.

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

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