SB 103

Department of Legislative Services

Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE

Senate Bill 103 (Senators Dyson and Frosh)
Education, Health, and Environmental Affairs and Budget and Taxation

---

Board of Public Works - Disposition of State Lands - Legislative Approval

---

This bill prohibits the Board of Public Works (BPW) from approving the sale, lease, transfer, exchange, grant, or other disposition of any State-designated open space, recreation, conservation, preservation, or other park or forest land without the approval of the General Assembly through legislation.

Fiscal Summary

State Effect: Potential significant decrease in general/special fund revenues due to any delay in or disapproval of the disposition of affected State-designated land. The bill would likely result in a significant increase in workload for affected agencies and have significant operational impacts.

Local Effect: Local jurisdictions could be affected to the extent the bill delays or prevents the disposition of property to them. The bill could also result in an increase in workload for some jurisdictions.

Small Business Effect: Potential meaningful.

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 (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.

- 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 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 surplus 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 significant decrease in general/special fund revenues to the extent it results in the delay in or disapproval of the sale or lease of any State-designated open space, recreation, conservation, preservation, or other park or forest 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.

For informational purposes, DNR advises that it currently has 447 active lease agreements which generate approximately $1.9 million annually in revenue; because most of its leases relate to forest or park land, the majority of DNR's lease revenue is paid into the State Forest or Park Reserve Fund and used for forest and park operations. DNR advises that, under this bill, the anticipated delay in the execution of leases would have a significant impact on its leasing program. DNR advises that it does not typically sell land, so any decrease in revenues from the sale of affected land would be minimal.

Although unclear, due to the bill's broad language, it is possible that some land owned by MDOT and other State agencies could be considered State-designated land affected by the bill. MDOT advises that the sale of excess properties by the various MDOT modal administrations generates $4 million to $30 million annually. Revenue from the sale of such property is paid into the Transportation Trust Fund.

State Expenditures: Because the bill would apply to State-designated open space, recreation, conservation, preservation, or other park or forest land, DNR and the Maryland Department of Agriculture would likely be most directly affected by the bill. 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 a significant increase in workload for affected agencies; however, without any actual experience under the bill, the need for additional staff cannot be reliably estimated at this time. The bill could also result in an increase in workload for DGS as the transactional agent for the agencies most directly affected by the bill.

In addition, the requirement to obtain legislative approval could have significant operational impacts on affected agencies. DNR advises that the increase in legislative oversight could undermine its conservation and recreation goals. For example, DNR routinely leases land to local jurisdictions to develop parks for recreational purposes. Under this bill, such a lease would have to be approved by the General Assembly through legislation and would, therefore, likely be significantly delayed. DNR advises that some lessees, such as farmers, might not be able to wait a year for such approval.

DGS advises that the inability to sell or exchange land to rectify property boundary issues could prolong management issues and related costs. MALPF advises that the bill has the potential to be extremely disruptive to its program because it could require that any swaps of easement for noneasement property be approved by the legislature. Swaps are occasionally approved if the MALPF Board of Trustees finds that the result is to the benefit of the State and the program, and has the effect of improving the farming operation or resolving difficult issues. Further, the bill could be interpreted to require that easement terminations, overlay easements, and farm leases currently permissible under specified conditions be subject to legislative approval. MALPF advises that this may be contrary to contract law and could result in a significant decrease in program participation.

The bill could result in a significant 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. Further, because the bill applies to the disposition of *State-designated* properties, it could be interpreted to apply to the disposition of *local* properties that were purchased with State funds (such as POS funds). MALPF advises that the bill could require additional review of certain activities by county agricultural land preservation advisory boards. Accordingly, the bill could result in an increase in workload for affected jurisdictions.

Small Business Effect: Most farms are small businesses. Many farmers participate in the Maryland Agricultural Land Preservation Program administered by MALPF. MALPF advises that any delay in the approval to exercise existing rights could result in increased costs to program participants, thereby reducing farm profitability. Farmers and other small businesses that lease land from DNR would also be affected.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - February 15, 2005
ncs/ljm

Analysis by: Lesley G. Cook

Direct Inquiries to:
(410) 946-5510
(301) 970-5510