# Department of Legislative Services
Maryland General Assembly
2005 Session

## FISCAL AND POLICY NOTE

Senate Bill 104 (Senator Middleton)
Education, Health, and Environmental Affairs and Budget and Taxation

**Board of Public Works - Disposition of Public Lands - Review by Legislative Policy Committee**

This bill establishes new requirements for units of State government and the Maryland Department of Planning (MDP) with respect to the determination and notification of excess real property. The bill also prohibits the Board of Public Works (BPW) from approving the disposition of property that the State owns or in which it has an interest unless BPW determines that the monetary value or other benefit that the State will receive for the property equals or exceeds the economic, social, community, and environmental value of the property. Under specified conditions, the bill also provides for review of disposition proposals by the Legislative Policy Committee (LPC).

## Fiscal Summary

**State Effect:** Potential significant decrease in general/special fund revenues due to any delay in or disapproval of the disposition of land that the State owns or in which it has an interest. The bill would likely result in an 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 delay or prevent the disposition of *local* property in which the State has an interest.

**Small Business Effect:** Potential meaningful.

## Analysis

**Bill Summary:** The bill requires a unit of State government to include in its assessment of whether any real property is in excess of the needs of the State the social, community, and environmental value of the property. The bill establishes recordkeeping and annual reporting requirements for units of State government. MDP must consolidate the reports and distribute a copy of the consolidated report to the General Assembly, and on request, to the public.

If a person makes a proposal to BPW asking that the State sell, lease, transfer, exchange, grant, or otherwise dispose of property that the State owns or in which it has an interest, including specified properties under the Department of Natural Resources (DNR), BPW must, within 30 days of the receipt of the proposal, submit it to LPC and allow LPC at least 45 days for review and comment. On request, BPW, in consultation with any applicable unit of State government, must provide additional information regarding the proposal and allow LPC an additional 60 days for review and comment.

**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.

- 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 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 percent of the parcels comprising 460,215 or 92 percent 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 land that the State owns or in which it has an interest. 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 it does not typically sell land, so any decrease in revenues from the sale of land would be minimal.

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.

Other agencies also would be affected; however, DNR and MDOT own the majority of land in the State.

**State Expenditures:** The bill requires units of State government, when considering whether any real property is in excess of the needs of the State, to include in its assessment the social, community, and environmental value of the property. The bill also imposes additional reporting and recordkeeping requirements. This would result in an 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. DNR advises that the assessments would be difficult to do and would likely delay the current disposition process.

In addition, the bill's prohibition could result in the disapproval by BPW of the disposition of land that otherwise would occur. The bill could, therefore, also have significant operational impacts on agencies that routinely sell, lease, or otherwise dispose of affected land, such as DNR and MDOT, and could result in ongoing maintenance costs for land that otherwise would have been disposed of.

According to BPW, nearly all land transactions brought to BPW originate from a State agency rather than a private entity. The bill limits LPC review to those requests brought to BPW by a person. Although the bill does not define "person," it is assumed that the definition of person would not include a State agency. Accordingly, the LPC review provisions would likely only rarely be implemented. If the intent of the bill is to apply the LPC review process to all disposition proposals, however, this additional review would further delay the disposition process.

MDP could implement the bill's provisions 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 land in which the State has an interest, it could be interpreted to apply to the disposition of *local* properties purchased with State funds (such as POS funds).

**Small Business Effect:** Farmers and other 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 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

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

Analysis by: Lesley G. Cook

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