SB 306

Department of Legislative Services

Maryland General Assembly
2005 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 306 (Senator Hollinger, *et al.*)

Education, Health, and Environmental Affairs and Budget and Taxation | Environmental Matters and Appropriations

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Land Preservation and State Asset Protection Act

This bill establishes new requirements with respect to the disposition of State-owned outdoor recreation, open space, conservation, preservation, park, or forest land. The bill establishes new requirements relating to the determination of such property as excess, establishes provisions governing the declaration of property as surplus, and modifies provisions governing disposition approval by the Board of Public Works (BPW). The bill also provides for the repayment of State transfer tax revenues transferred after fiscal 2005, expedites the use of transfer tax revenue over attainment under specified conditions, and provides that a minimum of $1.5 million of the State's share of funds under Program Open Space (POS) must be used to provide grants to Baltimore City.

The bill takes effect July 1, 2005.

Fiscal Summary

State Effect: Due to the transfer of transfer tax revenues to the general fund pursuant to the Budget Reconciliation and Financing Act of 2005, the bill's transfer tax over attainment provision will result in an increase in special fund revenues of an estimated $82.5 million in FY 2006, with a corresponding decrease in the subsequent year. Potential decrease in general/special fund revenues due to any delay in or disapproval of the disposition of affected State-owned property. General fund expenditure increase of at least $60,000 in FY 2006; future year estimates are adjusted for inflation.

(in dollars)	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010
SF Revenue	$82,462,000	($82,462,000)	-	-	-
GF/SF Rev.	(-)	(-)	(-)	(-)	(-)
GF Expenditure	60,000	61,600	65,100	69,000	73,100
Net Effect	$82,402,000	($82,523,600)	($65,100)	($69,000)	($73,100)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Local jurisdictions could acquire property from the State for $1 under specified conditions. State aid to local governments under POS would be affected by any increase or decrease in funds for POS. State aid to Baltimore City would continue at $1.5 million annually.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary:

Disposition of State Property

The bill establishes a number of new requirements relating to the determination of State-owned property as excess. The requirements apply to specified property owned by the State in fee simple, including property acquired with POS and Rural Legacy Program funds, public park land and recreational areas, wildland and open areas, heritage conservation areas, forest conservation areas, GreenPrint areas, property identified in the Department of Natural Resources' (DNR) public lands acreage report, and any other outdoor recreation, open space, conservation, preservation, park or forest land identified by DNR in regulation. For these properties, when notifying the Maryland Department of Planning (MDP) that the property is excess, a unit of State government must include specified information that it considered prior to declaring the property excess and make that information available upon request. After receiving such notice, MDP must notify specified committees of the General Assembly of the declaration of excess. Additionally, MDP must notify those General Assembly members who represent the district in which the property is located as well as adjacent property owners. If the value of the land is greater than $100,000, MDP must conduct a public hearing for the property if one is requested by a member of the public who received notice or who lives in the county in which the land is located. If a public hearing is not requested, MDP must nevertheless accept and consider public comments. Finally, MDP must determine whether any proposed disposition would conform to the local comprehensive plan, consolidate all the information received, and submit that information to the using unit. The bill authorizes the using unit to then rescind the notice of excess. If the unit does not do so, MDP must make its disposition recommendation to the unit and BPW and notify specified committees and members of the General Assembly of the recommendation.

Next, the bill establishes provisions governing the declaration of property as surplus and modifies provisions governing disposition approval by BPW. It establishes new provisions applicable to the State-owned real property identified in the excess-process portions of the bill and State-owned real or personal property funded pursuant to an appropriation act of the General Assembly that has an appraised value over $100,000. For such property, BPW may not approve the disposition until: (1) the Department of General Services (DGS) submits two independent appraisals; (2) BPW submits information to specified committees of the General Assembly; and (3) 45 days have elapsed since the committees received the notice and BPW declared the property as surplus.

For property that meets both of the above conditions, the Legislative Policy Committee (LPC) or the full General Assembly must approve any proposed disposition. LPC may: (1) approve the proposed disposition and refer it back to BPW; (2) refer the proposed disposition to the full General Assembly; or (3) do nothing. The failure of LPC to take action within 45 days is deemed an approval. If a proposed disposition is referred to the full General Assembly, it may not be approved by BPW unless it is approved through legislation at the General Assembly's next legislative session. The General Assembly may approve the disposition with or without conditions.

For specified property that has been declared as surplus, BPW must sell it to the federal government or a local government for $1 if the government has indicated its interest in the land and a restrictive covenant is placed on the property.

Revenues derived from the sale, transfer, exchange, or grant of State-owned real property identified in the excess-process provisions of the bill must be deposited in the Advance Option and Purchase Fund within DNR.

The bill also requires MDP to keep its list of real property owned by the State or any political subdivision of the State current and updated.

By December 1, 2005, DNR, in cooperation with MDP, DGS, and the Department of Budget and Management, must study and report to the Governor and specified committees of the General Assembly regarding lease, license, and easement interests related to specified State-owned land.

The bill's provisions are prospective and do not apply to pending or active sales of property between a county or counties and the State for State-owned property located in Garrett County.

Transfer Tax

The bill provides that in any fiscal year in which an appropriation or transfer is made from the transfer tax special fund to the general fund, any over attainment of transfer tax revenue from the prior fiscal year must be allocated to the current fiscal year according to the existing statutory allocation of transfer tax revenues.

Beginning in fiscal 2012, the bill provides for the repayment of State transfer tax revenues transferred to the general fund after fiscal 2005 by including the transfer tax special fund in the provisions relating to the disposition of any unappropriated general fund surplus. The repayment provisions would only take effect once the Transportation Trust Fund (TTF) has been fully repaid in accordance with current statutory requirements governing the disposition of any unappropriated general fund surplus.

Current Law:

State Property Disposition Process

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; 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 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 (MALPF).

Transfer Tax

The State transfer tax funds several programs in DNR and the Maryland Department of Agriculture. A portion of State transfer tax revenues (3%) is earmarked to defray administrative costs within DNR, DGS, and MDP. The remainder of the revenue is dedicated to various programs including POS, MALPF, Rural Legacy, and the Heritage

Conservation Fund. **Exhibit 1** shows the normal distribution of State transfer tax revenues after administrative costs are deducted.

Exhibit 1
Distribution of State Transfer Tax Revenues

POS	75.15%
POS Land Acquisition	1.00%
MALPF	17.05%
Rural Legacy	5.00%
Heritage Conservation Fund	1.80%
Total	**100.0%**

Of the transfer tax revenues distributed to POS, $1 million may be transferred by an appropriation in the State budget or by budget amendment to the Maryland Heritage Areas Authority Financing Fund within the Department of Housing and Community Development. (Chapter 209 of 2005 increases the amount that may be transferred to up to $3 million.) Of the remaining funds, half is allocated for State acquisition and half is allocated to local governing bodies for acquisition and development of land for recreation and open space purposes. A portion of the State's share of POS funds must be used to make grants to Baltimore City for projects that meet park purposes. Baltimore City also receives an allocation from the local share of funds under POS.

Under current law, when actual transfer tax revenue allocations are greater than the original revenue estimate used as the basis for program appropriations, the amount of the excess is allocated back to the transfer tax distribution formula in the second subsequent fiscal year.

Unappropriated General Fund Surplus

The Rainy Day Fund's sweeper provision provides that when there is a surplus of unappropriated funds in the general fund at the close of a fiscal year, the first $10 million of any such surplus will be retained by the general fund, while the next $11 million to $60 million will be transferred to the TTF, until such time as a specified amount has been repaid to the TTF. Any surplus amount exceeding $60 million will be appropriated to the Rainy Day Fund.

State Revenues:

Transfer Tax Provisions

The bill provides that in any fiscal year in which an appropriation or transfer is made from the transfer tax special fund to the general fund, any transfer tax revenue over attainment from the prior fiscal year must be allocated to the programs in the current fiscal year. For any given year, such a transfer would require legislation. The Budget Reconciliation and Financing Act of 2005 redirects $90 million in State transfer tax revenues to the general fund. Assuming that the bill is enacted, this provision would be triggered in fiscal 2006. The estimated fiscal 2005 over attainment is $82.5 million. Under current law, this amount would be available for the programs in fiscal 2007; under this bill, it would be available for the programs in fiscal 2006, thereby increasing special fund revenues by $82.5 million in fiscal 2006 and decreasing special fund revenues by the same amount in fiscal 2007. The net effect in fiscal 2007 would change to the extent this provision is again triggered in that year. The impact in future years would depend on any over attainment, which cannot be reliably estimated, and the extent to which this provision is triggered in any given year.

Beginning in fiscal 2012, special fund revenues could increase due to the bill's repayment provisions. Any such increase cannot be reliably estimated at this time. It would depend on the amount of any unappropriated general fund surplus, the amount eligible for repayment, and whether or not the TTF has been repaid. Legislative Services notes that SB 255 and HB 1352 of 2005, which passed the General Assembly, repeal the provisions requiring repayment to the TTF from the unappropriated general fund surplus.

Property Disposition Provisions

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 property that otherwise would have occurred. Revenues could also decrease as a result of the bill's requirement to sell specified land to the federal government or a local government for $1 under specified conditions. 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:

Property Disposition Process

General fund expenditures could increase by $59,965 in fiscal 2006. This estimate reflects the cost of hiring one planner within MDP to maintain a current list of State real property, provide the additional notifications required by the bill, conduct hearings and review public comments, determine whether the proposed disposition conforms to local comprehensive plans, consolidate information, and coordinate with other affected agencies. It includes a salary, fringe benefits, and ongoing operating expenses.

Salaries and Fringe Benefits	$58,530
Operating Expenses	1,435
Total FY 2006 State Expenditures	**$59,965**

Future year expenditures reflect: (1) 4.6% annual increases in the salary and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

These estimates do not include costs that would be incurred by DGS to conduct independent appraisals. The number of independent appraisals that would be conducted as a result of the bill in any given year is unknown. For real property, costs would likely increase by at least $10,000 per appraisal, although costs can vary depending on the size and nature of the property.

The bill's additional requirements with respect to the notification of excess property could result in a moderate increase in workload for DNR, given the types of land to which these requirements would apply. It is assumed that any increase in workload could be handled with existing budgeted resources, however.

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

BPW could handle the bill's changes with existing resources. It is assumed that the required study and report could be conducted using existing resources of the affected agencies.

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.

Baltimore City POS Grant

The bill's provision requiring at least $1.5 million of the State's share of POS funds to be used to provide grants to Baltimore City has no impact on State finances; the Budget Reconciliation and Financing Act of 2005 provides $1.5 million to Baltimore City from the State's share of POS funds for fiscal 2006, which is consistent with past funding actions.

Local Fiscal Effect: With respect to the bill's surplus property provisions, local jurisdictions could acquire 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.

With respect to the bill's transfer tax provisions, State aid to local governments under POS would be affected by any increase or decrease in funds for POS due to the bill's over attainment provision; local POS funds could increase beginning in fiscal 2012 due to the bill's repayment provisions. State aid to Baltimore City would continue at $1.5 million annually, consistent with the Budget Reconciliation and Financing Act of 2005 and past funding actions.

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.

Farmers and other small businesses would be affected to the extent the bill results in an increase or decrease in funding for POS and related programs in any given year.

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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