

SENATE BILL 384

M1

9lr1183

By: **Senators Harris, Dyson, and Frosh**

Introduced and read first time: February 2, 2009

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Program Open Space – Impervious Surface Projects – Prohibition**

3 FOR the purpose of prohibiting a local government body from using certain Program
4 Open Space funds for the development of impervious surface; defining a certain
5 term; and generally relating to the use of funds for Program Open Space.

6 BY repealing and reenacting, with amendments,
7 Article – Natural Resources
8 Section 5–901 and 5–903(b)
9 Annotated Code of Maryland
10 (2005 Replacement Volume and 2008 Supplement)

11 BY repealing and reenacting, without amendments,
12 Article – Natural Resources
13 Section 5–903(a)
14 Annotated Code of Maryland
15 (2005 Replacement Volume and 2008 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
17 MARYLAND, That the Laws of Maryland read as follows:

18 **Article – Natural Resources**

19 5–901.

20 (a) In this subtitle the following terms have the meanings indicated.

21 (b) “Annual program” means a schedule of acquisition or development for one
22 fiscal year.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (c) (1) “Capital renewal”, except as provided in subsection [(1)(5)] **(M)(5)**
2 of this section, means renewal of a capital project for which an improvement is
3 necessary to ensure the physical integrity of:

4 (i) A facility;

5 (ii) Fixed equipment; or

6 (iii) An existing physical improvement.

7 (2) “Capital renewal” does not include:

8 (i) Preventive, routine, or operational maintenance projects
9 instituted to ensure:

10 1. The aesthetic appeal of a project;

11 2. The general daily upkeep of a project; or

12 3. The maintenance of grounds surrounding a project; or

13 (ii) Preventive, routine, or operational road maintenance
14 projects except for those park or recreation area road maintenance projects identified
15 in the Governor’s operating budget or the consolidated capital budget.

16 (d) “Funds available under this program” means the proceeds of Program
17 Open Space and the annual apportionment of allocation of the Land and Water
18 Conservation Fund to the State by the United States Department of Interior, National
19 Park Service.

20 (e) “Governmental agency” means the Department of Recreation and Parks
21 of a local governing body which currently provides or is charged by the local governing
22 body with providing public outdoor recreation and open space areas.

23 **(F) (1) “IMPERVIOUS SURFACE” INCLUDES:**

24 **(I) STRUCTURES, BUILDINGS, DWELLING UNITS, ROADS,**
25 **PARKING LOTS, AND DRIVEWAYS; AND**

26 **(II) AREAS THAT ARE COVERED WITH GRAVEL, STONE,**
27 **SHELL, IMPERMEABLE DECKING, PAVERS, OR ANY OTHER IMPERVIOUS**
28 **MATERIAL.**

29 **(2) “IMPERVIOUS SURFACE” DOES NOT INCLUDE:**

1 **(I) A FENCE OR WALL THAT IS LESS THAN 1 FOOT IN WIDTH**
2 **THAT HAS NOT BEEN CONSTRUCTED WITH A FOOTER;**

3 **(II) A WOOD MULCH PATHWAY, A BIKE PATHWAY, OR A**
4 **WALKING PATHWAY; OR**

5 **(III) A DECK WITH GAPS TO ALLOW WATER TO PASS FREELY.**

6 **[(f)] (G)** “Land trust” has the meaning stated in § 3-2A-01(d) of this article.

7 **[(g)] (H)** “Local governing body” means the Maryland–National Capital
8 Park and Planning Commission and the governing body of any county or Baltimore
9 City.

10 **[(h)] (I)** “Local projects” means acquisition or development of projects
11 sponsored by the local governing bodies or their units, and in the case of Baltimore
12 City it also means operation and maintenance of projects as provided in subsection
13 **[(l)] (M)** of this section.

14 **[(i)] (J)** “Municipal corporation” means the incorporated towns of the State
15 as defined in Article XI–E of the Maryland Constitution.

16 **[(j)] (K)** “Subdivision” means one of the 23 counties of the State or
17 Baltimore City.

18 **[(k)] (L)** “Targeted areas” means those resource areas facing the most
19 intense or immediate development pressure as identified and recommended for State
20 acquisition efforts under the Maryland Land Preservation and Recreation Plan.

21 **[(l)] (M)** “Total project cost” means every direct cost attributable to a
22 particular project, including the cost of:

23 (1) Materials;

24 (2) Equipment;

25 (3) Other capital expenditures;

26 (4) Acquisition of land including any incidental cost relating to
27 acquisition of interests in real property, such as the cost of surveys, appraisals, title
28 search, and legal fees, if the total projects which are reimbursed for incidental costs
29 are limited to the fee schedules approved by the Board of Public Works for the
30 incidental costs, which schedules shall be contained in regulations adopted by the
31 Department of Natural Resources, with the approval of the Board of Public Works, in
32 accordance with Title 10, Subtitle 1 of the State Government Article; or

1 (5) For Baltimore City operation and maintenance of any recreational
2 facilities owned and operated by the City, if the amount of the funds expended does
3 not exceed the proportion of the allocation to Baltimore City which is derived from
4 current revenues, as distinguished from proceeds of bond issues.

5 5-903.

6 (a) (1) Of the funds distributed to Program Open Space under § 13-209 of
7 the Tax – Property Article, up to \$3,000,000 may be transferred by an appropriation in
8 the State budget, or by an amendment to the State budget under Title 7, Subtitle 2 of
9 the State Finance and Procurement Article, to the Maryland Heritage Areas Authority
10 Financing Fund established under Title 13, Subtitle 11 of the Financial Institutions
11 Article to be used for the purposes provided in that subtitle.

12 (2) (i) 1. Of the remaining funds not appropriated under
13 paragraph (1) of this subsection:

14 A. One half of the funds shall be used for recreation and
15 open space purposes by the Department and the Historic St. Mary's City Commission;
16 and

17 B. 20% of the funds or \$21,000,000, whichever is greater,
18 shall be appropriated to the Forest and Park Service in the Department to operate
19 State forests and parks.

20 2. Except as otherwise provided in this section, any
21 funds the General Assembly appropriates to the State under this subsection shall be
22 used only for land acquisition projects.

23 (ii) At least \$1,500,000 of the State's share of funds available
24 under subparagraph (i)1A of this paragraph for this program shall be utilized to make
25 grants to Baltimore City for projects which meet park purposes. The grants shall be in
26 addition to any funds Baltimore City is eligible to receive under subsection (b) of this
27 section, and may be used for acquisition or development. In order for Baltimore City to
28 be eligible for a State grant, the Department shall review projects or land to be
29 acquired within Baltimore City, and upon the Department's recommendation, the
30 Board of Public Works may approve projects and land including the cost. Title to the
31 land shall be in the name of the Mayor and City Council of Baltimore City. The State
32 is not responsible for costs involved in the development or maintenance of the land.

33 (iii) 1. A portion of the State's share of funds available under
34 subparagraph (i)1A of this paragraph for this Program not to exceed \$8,000,000 for
35 each fiscal year may be transferred by an appropriation in the State budget to the
36 Rural Legacy Program under Subtitle 9A of this title.

37 2. In each fiscal year, up to \$2 million of the funds
38 transferred under this subparagraph to the Rural Legacy Program may be used to
39 purchase zero coupon bonds for easements.

1 3. Sums allocated to the Rural Legacy Program may not
2 revert to the General Fund of the State.

3 (b) **(1)** The General Assembly shall appropriate the remaining funds not
4 appropriated under subsection (a) of this section to assist local governing bodies in
5 acquisition and development of land for recreation and open space purposes.

6 **(2) FUNDS APPROPRIATED UNDER PARAGRAPH (1) OF THIS**
7 **SUBSECTION FOR DEVELOPMENT OF LAND FOR RECREATION AND OPEN SPACE**
8 **PURPOSES MAY NOT BE USED TO DEVELOP IMPERVIOUS SURFACE.**

9 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
10 October 1, 2009.