

**Department of Legislative Services**  
 Maryland General Assembly  
 2009 Session

**FISCAL AND POLICY NOTE**  
**Revised**

Senate Bill 163

(Chair, Education, Health, and Environmental Affairs  
 Committee)(By Request - Departmental - Natural  
 Resources)

Education, Health, and Environmental Affairs

Environmental Matters

**Program Open Space - Use of Funds - Indoor or Outdoor Recreational Facilities**

This emergency departmental bill authorizes the use of local Program Open Space (POS) funds for both indoor and outdoor recreation and open space purposes, including the construction of indoor nature centers and indoor aquatic, golf, and community facilities. The bill requires indoor recreational facilities funded with local POS funds to (1) meet specified green building standards, if the facility is at least 7,500 square feet; and (2) incorporate, to the maximum extent practicable, specified nonstructural site design practices. Also, the bill modifies State reimbursement provisions concerning local POS funds and requires a report. The bill applies prospectively.

**Fiscal Summary**

**State Effect:** Department of Natural Resources (DNR) and Maryland Department of Planning (MDP) general fund expenditures may increase to develop the required report. The green building, site design, and local POS project reimbursement provisions do not require additional State expenditures. Revenues are not affected.

**Local Effect:** Local governments may benefit from resuming the authority to use their POS funds for indoor recreational facility development. However, local expenditures may increase due to new green building requirements and revised local POS project reimbursement provisions. The revised project reimbursement provisions may result in a greater number of local projects receiving State funding, but a reduced level of State funding per project.

**Small Business Effect:** DNR has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

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## **Analysis**

**Bill Summary:** The bill alters State reimbursement provisions so that if a local governing body uses its local POS funds for an indoor recreational facility located outside a priority funding area (PFA), the State must reimburse the local jurisdiction 50% of the total project cost. Further, if a local jurisdiction uses local POS funds for the acquisition of land inside a PFA and agrees to limit the amount of impervious surface on the land to no more than 10%, the State must reimburse the local jurisdiction 90% of the total project cost.

MDP, in consultation with DNR, must evaluate the degree to which specified State goals are being effectively addressed by the local POS process, and MDP must submit a report with recommendations, by October 1, 2010, to specified committees of the General Assembly.

**Current Law:** State law specifies that POS funds are to be used by the State to acquire land for outdoor public recreation and open space use and by local governments for the acquisition and development of land for recreation and open space.

If a local governing body cannot obtain specified federal funds, for each approved local POS development project the State must provide (1) 75% of the total project cost; or (2) 90% of the total project cost if specified land acquisition goals have been met. If federal funds are provided, the State provides 50% of the difference between the total project cost and the federal contribution. The State contribution to a local POS project may not be more than 100%, or less than 25%, of a project's cost. If federal funds are less than 50% of a local POS development project's total cost, the State provides an amount equal to the difference between the federal contribution and (1) 75% of the total project cost; or (2) 90% of the total project cost if specified land acquisition goals have been met.

The High Performance Building Act (Chapter 124 of 2008) requires most new or renovated State buildings and new school buildings to be constructed as high-performance buildings, subject to waiver processes established by the Department of Budget and Management (DBM), Department of General Services (DGS), and Board of Public Works (BPW). Between fiscal 2010 and 2014, the State funds 50% of the local share of increased school construction costs associated with high-performance buildings.

Chapter 124 defines a high-performance building as one that:

- meets or exceeds the U.S. Green Building Council's (USGBC) Leadership in Energy and Environmental Design (LEED) criteria for a silver rating; or
- achieves a comparable numeric rating according to a nationally recognized, accepted, and appropriate standard approved by DBM and DGS.

Only new or renovated State buildings that are at least 7,500 square feet and are built or renovated entirely with State funds are subject to the high-performance requirement. Additionally, building renovations must include the replacement of heating, ventilation, air conditioning, electrical, and plumbing systems and must retain the building shell. Unoccupied buildings are exempt from the high-performance mandate, including warehouses, garages, maintenance facilities, transmitter buildings, and pumping stations.

**Background:** POS, established in 1969 and administered by DNR, provides funds for State and local acquisition and development of public outdoor recreational sites, facilities, and open space. The State share focuses on the acquisition of land for natural resource conservation with the inclusion of low-impact recreational activities where appropriate. The local jurisdiction's share is used primarily for the acquisition and development of high-impact recreational sites and facilities. As of January 7, 2009, the State share had preserved 292,652 acres and the local share had preserved 43,310 acres. POS is funded through special funds derived from the State's transfer tax which imposes a 0.5% tax on all real property recorded in the State.

It has been DNR's longstanding practice to allow local jurisdictions to use POS funding for projects that facilitate the enjoyment of traditional outdoor recreation activities in an indoor setting. POS funding has been used to build a variety of indoor recreational projects including indoor aquatic centers, community centers, golf course buildings, tennis facilities, and nature centers.

During the summer of 2008, the Department of Legislative Service's Office of Legislative Audits suggested that DNR refrain from using POS to fund indoor recreational facilities that do not support outdoor recreation as a primary function until the Office of the Attorney General endorsed such use. In response, DNR has refrained from seeking Board of Public Works' approval for such projects (including athletic courts, swimming pools, and ice rinks) until the enactment of clarifying legislation.

While POS current law contains numerous references to outdoor recreation it does not specifically refer to indoor recreation. However, current law does refer to the development of land for public recreation purposes. Counsel to the Maryland General Assembly advises that the use of POS funds for indoor recreational facilities does not

appear consistent with law. Differences in interpretation of the law may stem from the absence of a definition in the law of outdoor recreational facility.

DNR advises it will continue to prohibit the expenditure of funds for indoor recreational facilities that do not support outdoor recreation as a primary function if this bill is not enacted into law.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Baltimore, Charles, Frederick, and Somerset counties; Town of La Plata; City of Laurel; Department of Natural Resources; Department of Legislative Services

**Fiscal Note History:** First Reader - February 15, 2009  
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