

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

**FISCAL AND POLICY NOTE**

House Bill 1564

(Delegate Stein)

Environmental Matters

Education, Health, and Environmental Affairs

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

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This emergency 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.

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**Fiscal Summary**

**State Effect:** The bill does not affect State operations or finances.

**Local Effect:** While local governments may benefit from resuming the authority to use their POS funds for indoor recreational facility development, the bill does not have a significant impact on local operations or finances.

**Small Business Effect:** Minimal.

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**Analysis**

**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.

**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:SB 163 (Chair, Education, Health, and Environmental Affairs Committee)(By Request - Departmental - Natural Resources) - Education, Health, and Environmental Affairs.**

**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 - March 17, 2009  
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Analysis by: Amanda Mock

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