

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

House Bill 1525

(Chair, Environmental Matters Committee and Chair,
Appropriations Committee)(By Request - Departmental -
Transportation)

Environmental Matters and
Appropriations

**State Highway Administration - Disposition of Real Property Not Needed for
Public Purpose**

This departmental bill exempts State Highway Administration (SHA) real property from requirements concerning the disposition of specified real or personnel property under the State Finance and Procurement (SF&P) Article. The bill defines and clarifies several terms. The Secretary of Transportation is authorized to determine whether SHA should dispose of land. The bill clarifies that specified criteria must be used to determine the amount paid to SHA by individuals who previously owned SHA land and want to reacquire that land. The Board of Public Works (BPW) must approve the transfer of specified SHA property. BPW may not approve the transfer of any property with an appraised value over \$100,000 until (1) specified information is submitted to specified committees of the General Assembly; and (2) 45 days have elapsed since the information was received by the committees.

Fiscal Summary

State Effect: Transportation Trust Fund (TTF) expenditures may decrease due to reduced litigation and may increase due to prolonged land management responsibility. TTF revenues may increase to the extent SHA disposes of more properties.

Local Effect: To the extent SHA disposes of more properties, a local government may benefit indirectly from increased property tax revenue.

Small Business Effect: The Maryland Department of Transportation (MDOT) has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment.

Analysis

Bill Summary: An “abandoned project” means any project on which no substantial construction has occurred and that the Secretary of Transportation has determined has been abandoned.

“Appraised value” means the price to be paid for a property, as determined by the Secretary of Transportation, after consideration of at least one independently certified appraisal.

The “date of acquisition” means the earliest of the following to occur: (1) the date on which SHA took legal title to the property; (2) the date on which SHA took possession of the property; or (3) the date on which SHA obtained the right to take possession of the property.

“Notice” means notification by (1) certified mail sent to the last address provided to SHA by the intended recipient of the notification; (2) certified mail sent to an address provided on a security interest filed against the property that is the subject of the notification; (3) publication for two consecutive weeks in a newspaper that is published or as a general circulation in the county in which the property that is the subject of the notification is located; and (4) posting a sign on the property that is the subject of the notification for at least two consecutive weeks.

The following information about a proposed property transfer must be submitted to the Senate Budget and Taxation Committee and the House Appropriations Committee in specified circumstances: (1) a description of the property; and (2) if applicable, any justification for not selling, transferring, exchanging, or granting the property in a manner that generated the highest return for the State.

Current Law:

State Finance and Procurement Article – Disposition of State Property

Any real or personal property of the State may be sold, leased, transferred, exchanged, granted, or otherwise disposed of (1) to any person or specified government unit for a consideration BPW decides is adequate; or (2) to any county or municipal corporation in the State, subject to conditions BPW imposes.

BPW may not approve the sale, transfer, exchange, or grant of specified real property and State-owned real or personal property, funded in accordance with an appropriation act of the General Assembly, that has an appraised value over \$100,000, until (1) the Department of General Services submits two independent appraisals; (2) specified information about the proposed disposition has been submitted 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.

The Legislative Policy Committee (LPC) or the full General Assembly must approve any proposed disposition of specified real property and State-owned real or personal property with an appraised value over \$100,000. 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.

Transportation Article – Disposition of SHA Property

SHA is required to dispose of land not needed for present or future State, county, or municipal transportation purposes or other public purposes as soon as practicable after the completion or abandonment of the project for which the land was acquired.

If land proposed for disposition is from a project that was abandoned, a county or municipality may acquire the land for a transportation purpose, with the approval of the Secretary of Transportation, upon payment of an amount equal to the lesser of (1) the appraised value of the land; or (2) the consideration that was originally paid for the land, plus simple interest at the fair market rate, calculated from the time of acquisition to the time of disposition, and administrative costs.

If the land is not needed for a county or municipal transportation purpose, the person from whom the land was acquired, or their successor, has the right to reacquire the land, upon payment of an amount equal to the lesser of (1) the appraised value of the land; or (2) the consideration that was originally paid for the land, plus simple interest at the fair market value, calculated from the time of acquisition to the time of disposition, and administrative costs.

If neither of these rights is exercised, the land must be disposed of in the same manner as if it is from a completed project or as otherwise permitted.

If land proposed for disposition is from a completed SHA project, SHA must notify the person from whom the land was acquired, or their successor, within 30 days after making a determination that the land is not needed by SHA and that the land is available for reacquisition. If reacquired within five years from the date the land was acquired, payment must equal the consideration that was originally paid for the property. However, if reacquired after five years from the date the land was acquired, payment must be at the current market value. If the right to reacquire the land is not exercised within eight months after SHA provides the notice that the land is available, the land must be sold at public auction in accordance with a specified process.

If land proposed for disposition is from an abandoned or completed project, the person from whom the land was acquired, or their successor, has the first right of refusal to reacquire the land, and SHA may exchange the land for land of substantially equal value if the land is needed for a current State highway purpose that has received prior legislative approval for planning.

In specified circumstances, SHA may convey any of its surplus land to an adjacent property owner as consideration for a right-of-way transaction or on a negotiated sale, at a price based on the appraised value of the land. If land proposed for sale has a value exceeding \$25,000, it must be appraised by at least one independent, qualified real estate appraiser and approved by BPW.

In specified circumstances, SHA, with the approval of BPW, may convey surplus land to any State or local agency that needs the property for a public purpose and pays an amount equal to the lesser of (1) the appraised value of the land; or (2) the consideration originally paid for the land, plus simple interest at the fair market rate, calculated from the time of acquisition to the time of disposition, and administrative costs.

Current law gives former owners first rights of refusal to lease back SHA properties that are no longer required.

After following a specified procedure, SHA may, after giving notice to the Maryland Department of Planning (MDP) and with BPW approval, convey any of its surplus land to promote economic development in the State.

2008 Budget Bill

The 2008 Budget Bill (Chapter 335 of 2008) expresses the intent of the General Assembly that SHA introduce legislation during the 2009 session that resolves any conflicts within current law regarding the land disposition process.

Background: During the 2007 and 2008 legislative sessions, concern was raised about discrepancies that exist between the way SHA disposes of land and the way other State agencies dispose of land. Land disposition by all State agencies, including MDOT, is governed by law within the SF&P Article. However, the Transportation Article also sets forth provisions of law concerning the disposal of SHA-owned property. Since SHA is not exempt from requirements in the SF&P Article, and the provisions of law in the two Articles are not consistent, it is not clear which land disposition policies and processes SHA should follow. Some of the inconsistencies within current law are summarized below.

- Required Appraisals – State agencies are required to submit two independent appraisals when the value of a property exceeds \$100,000, whereas the Transportation Article requires only one independent appraisal when the value of a SHA property exceeds \$25,000. In practice, MDOT advises it completes two independent appraisals when the value of a SHA property is close to or exceeds \$100,000.
- Budget Committee Notification – State agencies are required to notify specified committees of the General Assembly when there is a proposal to dispose of State property worth more than \$100,000. The Transportation Article does not require notification. In practice, MDOT advises it complies with the notification requirement for SHA properties as long as it does not conflict with the Transportation Article.
- MDP Clearinghouse Process – State agencies are required to dispose of State property through the MDP clearinghouse process. In practice, MDOT advises it complies with the clearinghouse process requirement for SHA properties so long as it does not conflict with the Transportation Article. Properties less than three acres in size and sales back to the former owner of property from an abandoned project are exempt from the clearinghouse process, but still require BPW approval.

There is a lack of logical organization and clarity within the Transportation Article, particularly with regard to the rights of former owners to repurchase land, identifying the permissible purchasers, and determining the appropriate consideration that a purchaser

must pay. The inconsistencies and confusion within current law have led to (1) a hesitancy to dispose of SHA property due to a lack of clarity concerning the rights of former owners; (2) limitations in revenue generated from the sale of SHA parcels back to former owners since a fair market price is not required; and (3) significant litigation concerning SHA property disposals.

MDOT advises the bill ensures a clear and consistent process for disposing of excess land and it will result in less litigation.

State Fiscal Effect: To the extent the bill results in less litigation, TTF expenditures decrease. SHA advises that the bill may result in a savings of \$100,000 annually due to reduced litigation. To the extent the bill results in the delay in or disapproval of property dispositions that otherwise would occur, TTF expenditures increase for property maintenance costs.

To the extent more SHA properties enter the disposition process due to greater clarity concerning the process and benefits, TTF revenues increase.

Local Fiscal Effect: To the extent SHA disposes of more properties, a local government may benefit indirectly from increased property tax revenue.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Board of Public Works, Department of General Services, Maryland Department of Transportation, Department of Legislative Services

Fiscal Note History: First Reader - March 20, 2009
mlm/ljm

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: State Highway Administration – Disposition of Real Property Not Needed for Public Purpose

BILL NUMBER: HB 1525

PREPARED BY: Maryland Department of Transportation

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.