

**Department of Legislative Services**  
Maryland General Assembly  
2014 Session

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

House Bill 1312

(Delegate Beidle)

Environmental Matters

Education, Health, and Environmental Affairs

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**Program Open Space Sites - Public Access**

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This bill specifies that State and local Program Open Space (POS) funds may be used to provide or enhance public access to acquired and existing recreational and open space sites. The bill also requires the Department of Natural Resources (DNR) and subdivisions to consider whether it is feasible to provide and enhance public access to recreational and open space sites.

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**Fiscal Summary**

**State Effect:** Overall POS funding is not affected, as discussed below. DNR can implement the bill's changes with existing budgeted resources.

**Local Effect:** Overall funding provided to local governments under POS is not affected. Local governments can implement the bill's changes with existing local resources.

**Small Business Effect:** Minimal or none.

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**Analysis**

**Bill Summary:** The bill requires DNR, for each project recommended, to consider whether it is feasible to provide public access to the recreational and open space site.

A subdivision must, for each proposed POS project, consider whether it is feasible to provide public access to the proposed project.

When considering whether it is feasible to provide public access to a site or a proposed project, DNR and subdivisions may consider (1) the availability of funds available under POS or from other sources to provide public access to the site or project; (2) public safety and liability issues if public access were provided to the site; (3) whether the site was

acquired as a part of a larger recreational and open space project that is not yet completed and ready for public access; and (4) the existence of a contractual commitment on the site that would limit public access for a period of time, including a home, agricultural, or hunting lease.

Finally, the bill modifies the authorized uses of the Bay Access Areas Fund within DNR to allow DNR to use the fund to provide public access to the recreational and open space uses of the acquired land.

### **Current Law/Background:**

#### *POS – Generally*

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 8, 2014, the State share had preserved 320,181 acres and the local share had preserved 45,457 acres.

#### *POS – Stateside*

DNR may, if necessary, use acquisition funds (not exceeding 10% of the purchase price of the land) to (1) stabilize the structural integrity of improvements existing on land at the time of acquisition; (2) eliminate hazards to health and safety, including treatment and removal of hazardous materials; and (3) protect water quality by implementing environmental improvements, including shore erosion control measures and vegetated buffers.

DNR utilizes GreenPrint to target the most desirable lands for preservation and Community Connections to score land conservation projects with exceptional management and public benefits. DNR completes an internal stewardship review process to provide ecological resource information and identify future use opportunities, as well as management commitments, prior to acquiring any property through POS – Stateside. The stewardship review process identifies recreational opportunities, including trail connections and potential water access sites.

DNR maintains over 1,500 buildings, hundreds of miles of roadway, parking lots, and a variety of water-associated facilities that serve millions of visitors annually. Critical maintenance projects include structural repairs to buildings, bridge repairs, well and septic system replacement, and road and utility repairs. According to information

provided by DNR in February 2014 based on the fiscal 2015 project list, there is a \$32.1 million (593 projects) backlog in necessary critical maintenance projects at State forests and parks, which is a decrease in both the overall cost and the number of projects since February 2013 (\$35.8 million and 614 projects). DNR defines the backlog as those projects not funded in the five-year *Capital Improvement Program*. DNR and the Department of General Services (DGS) both manage Critical Maintenance Projects. DNR handles procurement for projects that cost \$50,000 or less (the majority of projects), and DGS handles procurement for projects that cost more than \$50,000.

If it is determined that capital improvements are needed on the property to enhance public access, funding is requested through DNR's Engineering and Construction Unit, which administers the Natural Resources Development Fund and the Critical Maintenance Program. Under current law, up to 25% of the State's share of funds may be used for capital improvements on land owned by the State for the use of the department, if the improvements are approved in the State budget and are compatible with any master plan developed for the land, and the natural features of the land.

#### *POS – Local*

POS – Local funds are allocated to local governments for acquisition and development projects. Counties that have not met the land acquisition goals of either their local land preservation and recreation plans (LLPRPs) or the State's Land Preservation and Recreation Plan (LPRP) are required to use at least 50% of their total POS annual allocation exclusively for acquisition projects. Those that have met their goals may request certification to use up to 100% of their allocations, subsequent to their receiving certification, for acquisition or development projects.

#### *Efforts to Increase Public Access*

DNR advises that under POS, both the State and local governments have processes in place to address the balance between acquisition of outdoor recreation and open space areas and the development and capital renewal of needed outdoor recreation facilities. DNR reports that it works with the federal and local governments to meet the goal of increasing public access in Maryland, especially public water access.

DNR further advises that public access to recreational and open space sites, including the Chesapeake Bay, is already addressed in the draft LPRP, which is available on DNR's website at:

[http://www.dnr.state.md.us/land/Stewardship/LPRP\\_Draft\\_2014.asp](http://www.dnr.state.md.us/land/Stewardship/LPRP_Draft_2014.asp).

DNR also advises that it is working toward the goal specified in Executive Order 13508 – Strategy for Protecting and Restoring the Chesapeake Bay Watershed – to increase public access to the bay and its tributaries by adding 300 new public water access sites throughout the watershed by 2025. The types of public water access sites in the plan include boat-related, swimming, fishing, and viewing access sites. “New public water access” sites include both the development of public access facilities on new sites as well as the development of new types of access on existing sites.

Finally, Chapter 140 of 2013 requires local governments and the Maryland Department of Transportation, when developing a construction or improvement project involving a bridge or other transportation facility that is adjacent to or that crosses a waterway, to consider any reasonable and appropriate measures to provide or improve water access for fishing, canoeing, kayaking, or any other nonmotorized water dependent recreational activity.

**State Expenditures:** While the bill does not affect overall POS funding, it may alter the way in which existing funds are used; it may shift some spending from acquisition to development. Specifically, the bill authorizes DNR to use acquisition funds to provide public access to the recreational and open space uses of newly acquired land. Currently, these costs may not exceed 10% of the purchase price of the land. Adding an additional use of acquisition funds may result in fewer funds being available for land purchases if more funding is requested to provide public access on acquired land.

The bill also allows DNR to use acquisition funds to enhance public access to *existing* recreational and open space sites. The bill does not alter current law that allows up to 25% of the State’s share of funds to be used for capital improvements on land used by DNR; as a result, the bill does not alter the funding available for capital improvements at existing recreational and open space sites.

In addition, DNR advises that not all properties are acquired with the purpose to provide public access. In some instances, a property may be acquired to protect ecological resources, such as a rare, threatened, or endangered species.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Baltimore, Garrett, and Montgomery counties; Maryland Association of Counties; Maryland Municipal League; Maryland Department of Planning; Department of Natural Resources; Department of Legislative Services

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