

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 56 (Senator Ellis)
Education, Health, and Environmental Affairs

Program Open Space - Local Plans and Programs - General Assembly Approval

This bill modifies the Program Open Space (POS) Local approval process. Once each local governing body's annual program is reviewed by the Maryland Department of Planning (MDP) and approved by the Department of Natural Resources (DNR), the annual program must be submitted to the General Assembly for approval. Each local governing body's local Land Preservation and Recreation Plan (LPRP) must be submitted to the General Assembly after joint approval by MDP and DNR. POS Local grant agreements may not be executed, and local projects may not take effect, until an annual program and LPRP have been approved by the General Assembly through legislation. Revised annual programs and LPRPs must also be approved by the General Assembly through legislation. **The bill takes effect July 1, 2022.**

Fiscal Summary

State Effect: DNR can likely implement the bill with existing resources. However, the bill may affect the timing of reimbursements provided to local governing bodies under POS Local, as discussed below. Revenues are not affected.

Local Effect: The bill does not change the amount of POS Local funding allocated to local governing bodies overall or individually. However, the bill may affect the timing of spending of POS Local funding by local governing bodies, as discussed below.

Small Business Effect: Minimal.

Analysis

Current Law: DNR administers POS, which acquires and improves outdoor recreation and open space areas for public use. POS consists of a State and local component. Under the local component, DNR allocates funds among the counties for local conservation acquisitions and development of public outdoor recreational sites, facilities, and open space.

Every acquisition and development project funded by the State must meet the needs identified in the State LPRP. In consultation with MDP and local governments, DNR must prepare and revise the State LPRP every five years. The State LPRP must identify targeted areas that are facing the most intense or immediate development pressure. The current [State LPRP](#) was revised in 2019.

To participate in the grant process, a local governing body must prepare a local LPRP every five years. Local governing bodies must submit the local LPRP, consistent with the criteria and goals established in the current State LPRP, to DNR and MDP for joint approval. Each local LPRP must also include acquisition goals based upon the most current population data available from MDP. Prior to approval, DNR must provide legislators from affected districts the opportunity to review and comment on the LPRP.

Each participating local governing body must also submit an annual program of proposed acquisition and development projects to DNR and MDP by July 1 each year. Prior to approval, DNR must provide legislators from affected districts the opportunity to review and comment on the annual program. Additionally, local governing bodies must submit either a consolidated application for funding for the acquisition or development projects or individual applications for each project.

On each application for POS Local funding, the applicant must certify that:

- the project conforms to the annual program of the local governing body;
- a governmental agency is charged to manage and administer an outdoor public recreation and open space program;
- funds are or will be available within 12 months of the date of submission of the application to pay the local share of the project cost;
- the value or interest of the land proposed for acquisition has been established by appraisers;
- the applicant has applied for federal funds and received notification of federal approval or disapproval, or applied for federal funds and has not received notification of a grant approval or disapproval within 120 days of submission of a

federal grant application, or has verified that the project is not eligible for federal funds;

- rules and regulations have been complied with;
- land acquired or developed under a POS grant may not be converted, without specified written approval, from outdoor public recreation or open space use to any other use; and
- for any approved conversion of land acquired or developed under a POS grant, the appraised monetary value of the land proposed for acquisition to replace the converted land must be equal to or greater than the appraised monetary value of the land to be converted.

According to DNR, once an application has been approved and the project eligibility is determined, DNR presents the individual project to the Board of Public Works (BPW) for approval. DNR notifies legislators from affected districts when project applications are submitted to BPW.

Upon receipt of evidence from the local governing body that funds have been spent on an approved project, DNR must reimburse the local governing body. A municipal corporation may submit evidence of expenditures for approved projects through its local governing body. If any portion of an annual apportionment to a local governing body is not encumbered within five years, the unencumbered funds must revert to a special account held by DNR until the beginning of the next fiscal year and then added to the overall funds appropriated to POS Local. If a local governing body demonstrates that unencumbered funds have been designated for a specific purpose, the funds do not revert to DNR.

State/Local Fiscal Effect: Although the bill does not change the amount of POS Local funding allocated to local governing bodies overall or individually, the bill may affect the timing of when POS Local funding is spent and potentially slow the use of funding in some counties (and associated reimbursements provided by DNR).

By requiring General Assembly approval through legislation, the bill delays the POS Local approval process. Currently, to participate in POS Local, local governing bodies must submit to DNR an LPRP every five years and an annual program by July 1 each year. Once LPRPs and annual programs receive the necessary approval, local governing bodies can determine which project applications to submit to BPW. DNR advises that project applications are submitted to BPW throughout the year and must be submitted before the end of the fiscal year. Once the local project is approved, POS Local grant agreements can be executed.

Under the bill, project applications cannot be submitted to BPW by a local governing body until legislation approving the local LPRP (when applicable) and annual program has been enacted. This could significantly delay BPW approval for certain projects and the execution

of grant agreements. For example, if an annual program (or a specific project within an annual program) is not approved by the General Assembly in any given year, the local governing body is not able to submit affected project applications to BPW, and the projects must then be considered under the annual program for the following fiscal year.

Additionally, revisions to an annual program or LPRP could not occur outside of the legislative session, providing local governing bodies with less flexibility.

DNR advises that an influx of project applications following General Assembly approval of annual programs might require the hiring of contractual staff. In the absence of the bill, project applications are typically submitted throughout the year. Under the bill, applications will be reviewed and submitted in a period of less than three months. Although the need for contractual staff is unclear, to the extent DNR must hire contractual staff due to the compressed timeframe, State expenditures increase.

Additional Information

Prior Introductions: None.

Designated Cross File: None.

Information Source(s): Anne Arundel, Baltimore, Garrett, Howard, and Montgomery counties; Maryland Association of Counties; City of Laurel; Maryland Municipal League; Department of Budget and Management; Department of Natural Resources; Maryland Department of Planning; Board of Public Works; Department of Legislative Services

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