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# **Program Open Space Early Session Briefing**

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**Presentation to the  
House Transportation and the Environment and  
House Capital Subcommittees**

**Department of Legislative Services  
Office of Policy Analysis  
Annapolis, Maryland**

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# Outline

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- Purpose of Program Open Space (POS) and Allied Programs
- Status of Purposes
- Protected Lands Map
- Evolution of the Transfer Tax Formula
- How the Transfer Tax Formula Works
- Transfer and Replacement History
- Status of Outstanding Replacement
- Fiscal 2017 and 2018 Actions
- Recent Transfers and Replacements
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# Purpose of POS and Allied Programs

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- **Chapter 606 of 1970** – “there is a need for a program (POS) to make funds available to State agencies and subdivisions in order to (1) expedite the acquisition of outdoor recreation and open space areas before the escalating costs of land prevents its purchase for public use and before potential areas are devoted to some other use; and (2) accelerate development of needed outdoor recreation facilities”
- **Senate Joint Resolution 10 of 2002** – established a statewide land preservation goal to triple (1,030,000 acres) the existing number of acres of productive agricultural land preserved by the Maryland Agricultural Land Preservation Foundation, GreenPrint, Rural Legacy Program, and local preservation programs by the year 2022
- **Maryland Land Preservation and Recreation Plan (Spring 2014)** – recommended a local land acquisition goal of 30 acres of recreational land per 1,000 persons, but counties are allowed to set their own goals
- **Chesapeake Bay Watershed Agreement** – established a commitment under the June 16, 2014 Chesapeake Bay Watershed Agreement by 2025 (using a 2010 baseline) for Maryland to contribute to the goal of protecting an additional 2,000,000 acres throughout the Chesapeake Bay watershed, including 225,000 acres of wetlands and 695,000 acres of forestland, and adding 300 new Chesapeake Bay public access sites for boating, swimming, and fishing

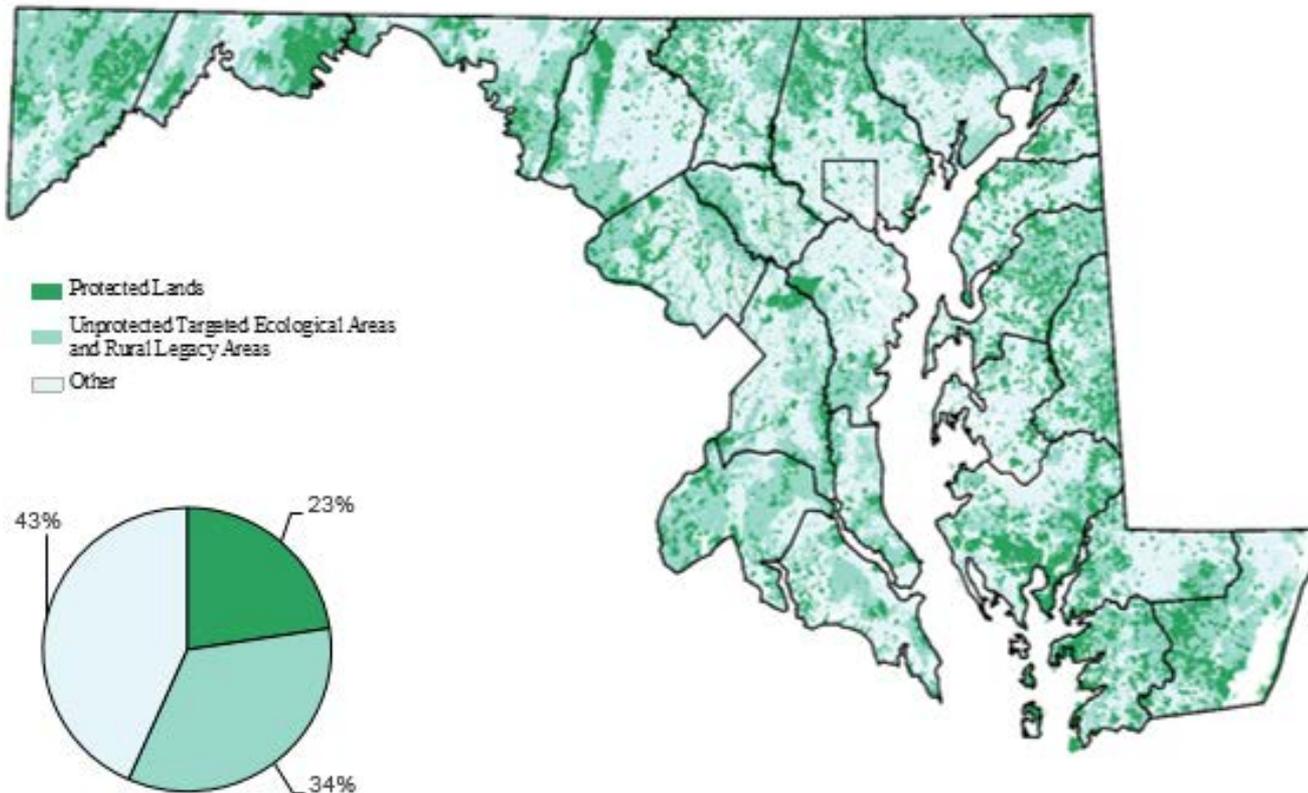
# Status of Purposes

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- **Senate Joint Resolution 10 of 2002** – as of December 2015, a total of 612,121 acres have been preserved; thus, an additional 417,879 acres need to be preserved by 2022, or 59,697 acres annually, which does not compare well to the 13,180 acres that were preserved on average between fiscal 2008 and 2015
- **Maryland Land Preservation and Recreation Plan** – as of June 2015, 12 counties have met their goals, which may include a standard different from 30 acres per 1,000 persons, and 11 counties have not met their goals (Baltimore City is not included)
- **Chesapeake Bay Watershed Agreement** – overall, the states protected 570,000 acres between 2010 and 2013, or 29% of the goal; Maryland's share has not been allocated, but for illustrative purposes a calculation by the Department of Natural Resources (DNR) based on land area equates to 205,000 acres between calendar 2014 and 2025, or 17,000 acres annually; this compares to approximately 16,000 acres protected annually by the State between fiscal 2011 and 2015 (this does not account for additional acres protected by non-State partners, which increases the number, and acres protected by Maryland but outside the Chesapeake Bay watershed, which decreases the number)

# Protected Lands Map

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# Evolution of the Transfer Tax Formula

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- **1969** – imposed 0.5% of the consideration paid for real property transfers to be used for **POS** and related programs
- **1984 and 1987** – created increasing **caps on revenues** allocated to **POS** of \$24.0 million, then \$29.0 million in fiscal 1998, and then \$32.0 million in subsequent years
- **1990** – phased out the **cap on revenues** by fiscal 1996 and allowed for **capital development** on State lands

# Evolution of the Transfer Tax Formula (cont.)

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- **1997** – authorized DNR to use up to \$1.2 million of the State share for **State forest and park operations** in subsequent years and created the Rural Legacy Program and allocation
- **2001** – increased temporarily, from 75% to 100%, the amount a local government could spend on development projects once acreage acquisition goals were met, which has been reinstated most recently in 2011 with a May 31, 2014 termination date
- **2005** – authorized POS State funding to **Baltimore City** be at least \$1.5 million and the amount for the **Heritage Areas Authority** was increased from \$1.0 million to \$3.0 million

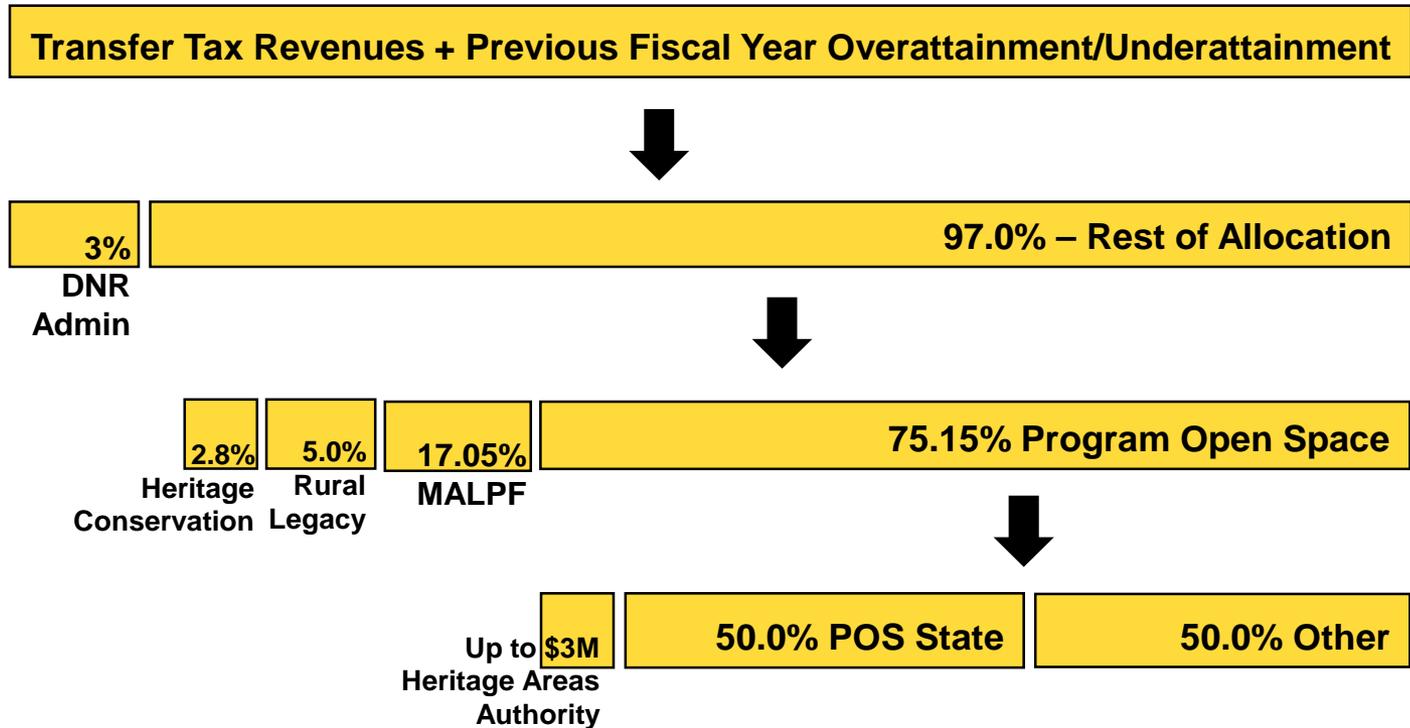
# Evolution of the Transfer Tax Formula (cont.)

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- **2007** – amended the allocation to require the greater of 20%, or \$21.0 million, be appropriated for **State forests or parks**, effectively reducing **POS Local** funding. Legislation provided new controlling interest revenue to local governments to help offset the park funding
- **2009** – authorized up to \$70.0 million of debt supported by the transfer tax revenue (later issued as general obligation bonds) of which \$65.0 million went to **POS** and \$5.0 million went to the **Maryland Agricultural Land Preservation Foundation**, which requires debt service payments

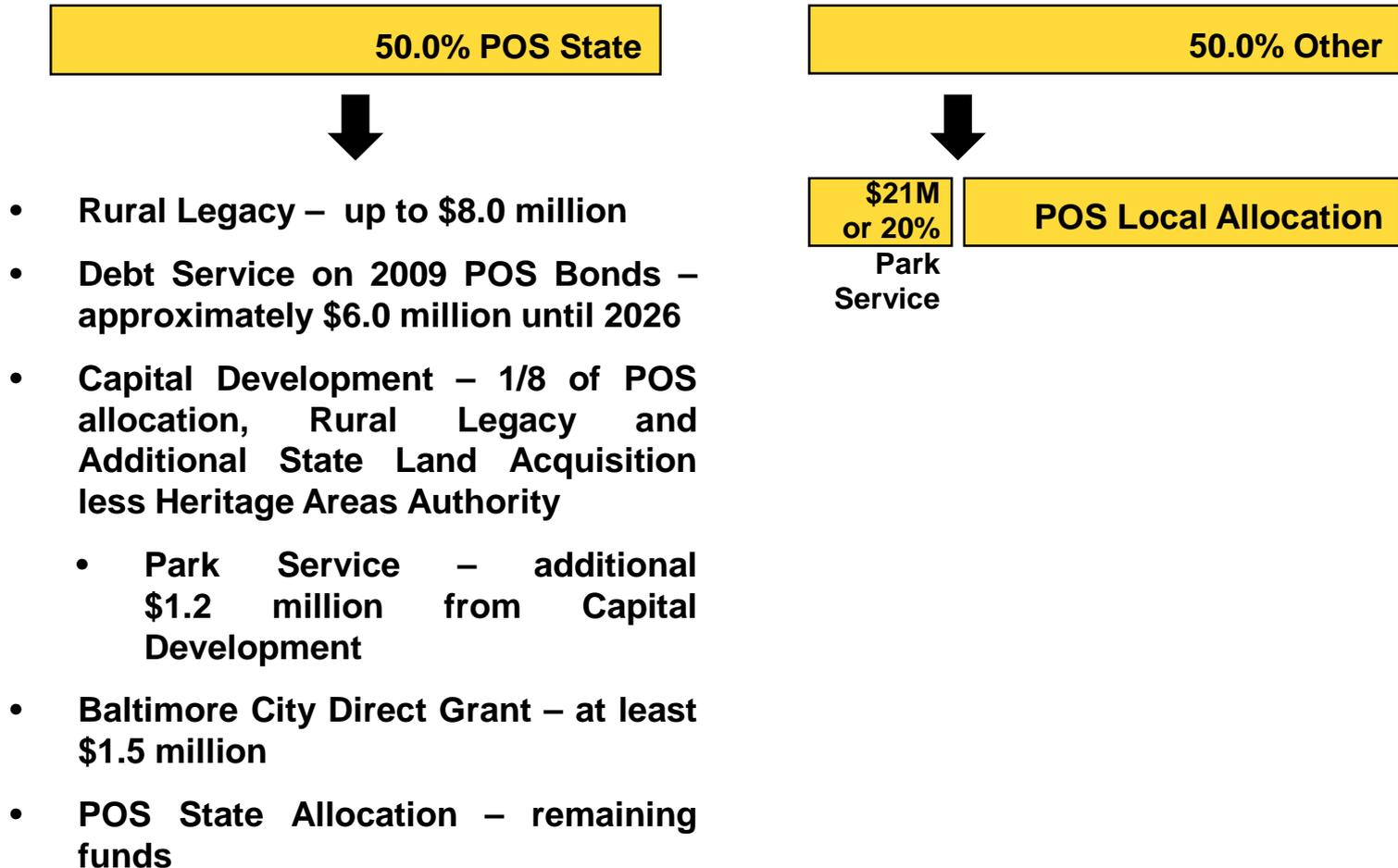
# How the Transfer Tax Formula Works

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# How the Transfer Tax Formula Works (cont.)

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# Transfer and Replacement History

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- **Repayment Provisions** – enacted legislation in 2005 requiring **repayment** of transfer tax transferred to the General Fund after fiscal 2005
- **Transfers and Repayments** – **transferred** \$1,371.0 million to the General Fund between fiscal 2002 and 2016. Thus far, transfers after fiscal 2006 have been made exempt from the 2005 session repayment provision because of planned replacement with general obligation (GO) bonds
  - \$708.3 million of prior transfers were replaced with GO bonds
  - \$662.7 million was not replaced, of which \$306.5 million is attributable to the period before the 2005 repayment provision
- **Additional Planned Transfers** – 2013 legislation authorized transfers to the General Fund of \$82.8 million in fiscal 2017 and \$86.0 million in fiscal 2018, which are exempt from replacement provisions

# Status of Outstanding Replacement

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- **Outstanding Repayment** – \$90 million transferred to the General Fund in fiscal 2006 has yet to be replaced. Originally required to be repaid in fiscal 2012, repayment was deferred annually in budget reconciliation legislation until fiscal 2016
- **Budget Reconciliation and Financing Act of 2015** – the **repayment** of the \$90 million was deferred until fiscal 2019

# Fiscal 2017 and 2018 Actions

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- Reduce fiscal 2017 authorized transfer by \$20.0 million from \$82.8 million to \$62.8 million, and the fiscal 2018 transfer by \$40.0 million from \$86.0 million to \$46.0 million
- Repurpose the \$20.0 million in fiscal 2017 for pay-as-you-go capital programs contingent on legislation authorizing the appropriations
- Appropriate contingently in fiscal 2017 as follows:
  - Program Open Space – State Acquisition (Capital Development) – \$2,638,000
  - Program Open Space – Eager Park Grant – \$4,000,000
  - Program Open Space – Local – \$5,000,000
  - Rural Legacy Program – \$4,862,000
  - Maryland Agricultural Land Preservation Foundation – \$3,500,000

# Fiscal 2017 Actions (cont.)

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	<u>Statutory Allocation</u>	<u>BRFA of 2013 General Fund Transfer</u>	<u>Fiscal 2017 Allowance Before Enhancement</u>	<u>Fiscal 2017 Enhancement</u>	<u>Fiscal 2017 Allowance</u>
DNR – Land Acquisition and Planning					
Program Open Space – State Share	\$39,012,427	-\$23,644,000	\$15,368,427	\$4,000,000	\$19,368,427
Program Open Space – Local Share	39,551,973	-22,861,000	16,690,973	5,000,000	21,690,973
Rural Legacy Program	16,971,385	-9,170,000	7,801,385	4,862,000	12,663,385
Capital Development	16,625,696	-9,701,000	6,924,696	2,638,000	9,562,696
Maryland Department of Agriculture – Maryland Agricultural Land Preservation Foundation	30,122,744	-17,395,000	12,727,744	3,500,000	16,227,744
<b>Distribution for Programs with Enhancements</b>	<b>\$142,284,225</b>	<b>-\$82,771,000</b>	<b>\$59,513,225</b>	<b>\$20,000,000</b>	<b>\$79,513,225</b>

Note: The fiscal 2017 operating budget bill is not clear on whether enhancement funding is provided to Capital Development, but that is the assumption given supplemental information provided by the Administration.

# Recent Transfers and Replacements (\$ in Millions)

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<u>Fiscal Year</u>	<u>Transfers</u>	<u>Replacements</u>	<u>Difference</u>
2002	\$29.2	\$0.0	-\$29.2
2003	60.5	0.0	-60.5
2004	102.8	53.3	-49.5
2005	189.3	22.0	-167.3
2006	90.0	0.0	-90.0
2007	0.0	0.0	0.0
2008	0.0	0.0	0.0
2009	136.5	0.0	-136.5
2010	188.5	130.6	-57.9
2011	23.5	156.3	132.7
2012	94.5	45.8	-48.7
2013	96.9	86.6	-10.3
2014	89.2	59.4	-29.8
2015	154.7	67.1	-87.6
2016	115.4	87.3	-28.1
<b>Total</b>	<b>\$1,371.0</b>	<b>\$708.3</b>	<b>-\$662.7</b>
2017 Proposed	62.8	0.0	62.8
2018 Proposed	46.0	0.0	46.0

Note: The current statutory authorization is to transfer \$82.8 million in fiscal 2017 and \$86.0 million in fiscal 2018. The fiscal 2006 transfer of \$90 million is required to be repaid in fiscal 2019.

# Land Preservation Workgroup Report – Agreements

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- **Formula** – do not change the transfer tax allocation formula
- **Repurposing** – use a portion of the \$90 million transferred in fiscal 2006 (to be replaced beginning in fiscal 2019) for capital projects on DNR lands
- **Programs** – do not combine any of the State land preservation programs
- **Local Funding** – remove the requirement for POS Local funding to meet an acquisition percentage starting in fiscal 2017 and instead focus on POS Local funding being used to meet needs identified in the Land Preservation, Parks and Recreation Plan
- **Local Apportionment Formula** – encourage the meeting of POS Local apportionment stakeholders to determine the allocation and whether further meetings are needed

# Land Preservation Workgroup Report – Disagreements

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- **Funding**

- *Workgroup* – return to full pay-as-you-go cash funding in fiscal 2018 and only divert fiscal 2017 funding if needed for the structural deficit
- *Administration* – continue with the authorized transfers of \$82.8 million in fiscal 2017 and \$86.0 million in fiscal 2018 given the ongoing structural deficit

- **Replacement**

- *Workgroup* – use GO bond for fiscal 2017 and general funds over three years to replace fiscal 2016 and 2017 transfers
- *Administration* – allow the Administration to determine repayment for fiscal 2016 through 2018 transfers based on revenue estimates and operating budget needs

- **Lockbox**

- *Workgroup* – create a lockbox to stop diversions to the General Fund
- *Administration* – retain the flexibility of the General Assembly and Governor to address the State's fiscal situation and consider the negative view bond rating agencies have on limitations of State budgeting flexibility