

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1438 (Delegate Stein, *et al.*)
Appropriations

Natural Resources - Program Open Space - Use of Local Funds

This bill increases the extent to which counties can use Program Open Space (POS) local funding for development projects and capital renewal – as opposed to land acquisition – and makes other, related changes.

Fiscal Summary

State Effect: None. POS State funding is not affected.

Local Effect: The increased flexibility provided under the bill may affect the timing of spending of POS local funding by counties, but it does not change the amount of POS local funding allocated to counties overall or individually.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill allows for 100% of a local governing body’s annual apportionment of POS local funding to be used for either development or acquisition projects, and up to 20% may be used for capital renewal.

The bill also modifies a requirement that a local governing body prepare a “local land preservation and recreation plan with acquisition goals [based on current population data]” to instead require preparation of a “local land preservation and recreation plan with goals, objectives, and priorities [based on current population data].” All projects must be consistent with and support the goals, objectives, and priorities presented in the local governing body’s plan and the local governing body’s annual program of proposed projects

submitted to the Department of Natural Resources (DNR) each year for approval. DNR is given sole responsibility for preparing the guidelines for approval of a local land preservation and recreation plan, in place of DNR and the Maryland Department of Planning (MDP) having shared responsibility for preparing the guidelines.

Provisions allowing for an increase in the percentage of a development project's costs that POS funding can be used for (whether alone or in conjunction with certain federal funding) – from 75% to 90% – are modified. Under the modification, instead of the increase being dependent on a county having met its acquisition goals, it is dependent on a county having an approved local land preservation and recreation plan that determines that additional land acquisition is not currently merited.

The amount of POS funding a local governing body may use for updating of local land preservation and recreation plans is changed from being limited to \$25,000 for any one fiscal year to instead being limited to \$125,000 for any period of five fiscal years (under existing law, plans must be revised at least every five years).

A requirement that a local governing body use part of its funds reserved for acquisition for a local advance option and purchase fund (which facilitates acquisition of land facing intense or immediate development pressure) is changed to an *authorization* for a local governing body to use its funds for that purpose.

A provision allowing for 75% of the appraised value of land donated to a local governing body to be applied toward the local governing body's share of a project's cost is modified so that it refers to local projects rather than State projects.

Current Law: At least 50% of a county's annual apportionment of POS local funding must be used for acquisition projects. The other 50% may be used for either acquisition or development projects, and 20% of that 50% may be used for capital renewal. Baltimore City is an exception and may use any portion of its annual POS local apportionment for acquisition or development.

If a county meets acquisition goals in its local land preservation and recreation plan and those goals equal or exceed minimum acreage goals recommended for that jurisdiction under the State's land preservation and recreation plan, a county may use up to 75% of its future annual apportionment for development projects for a period of five years after attainment. Up to 20% of the 75% may be used for capital renewal.

“Capital renewal” means renewal of a capital project for which an improvement is necessary to ensure the physical integrity of a facility, fixed equipment, or an existing physical improvement. It does not include preventive, routine, or operational maintenance projects related to aesthetics, daily upkeep, maintenance of surrounding grounds, or road

maintenance (with the exception of park or recreation area road maintenance projects identified in the Governor's operating or capital budgets).

POS funding (alone or in conjunction with federal funding) covers 100% of the cost of approved acquisition projects, but POS funding cannot be used to cover the full cost of a development project. Subject to certain exceptions, POS funding (alone or in conjunction with federal funding) covers 75% of the cost of a development project. If DNR certifies that a county has met its acquisition goals, the percentage increases to 90%.

Background:

Program Open Space, in General

POS acquires and improves outdoor recreation and open space areas for public use. The program also preserves unique natural areas that are home to rare and endangered species. The State's goal is to conserve these lands before unaffordable land prices or development makes the task impossible. POS consists of a State and a local component.

The State component includes land acquisition funding, capital development funding, and a direct grant of \$1.5 million in fiscal 2017, increasing to \$6.0 million in fiscal 2020 and following years, to Baltimore City for park projects (which is in addition to funding the city receives under the local component of POS).

Under the local component of POS, DNR allocates funds among the counties according to a formula established in 1982 that is based on past grant amounts, population change, and transfer tax revenue collections in each jurisdiction. To participate in the grant process, a county submits an annual program of proposed acquisition and development projects to DNR for approval. The annual program becomes the basis for a grant agreement for the county's total annual allocation. A municipality may receive POS funds through its county. The municipality must apply to its county for consideration of proposed municipal projects along with other county projects.

Use of Program Open Space Local Funding

In response to a request in the *2015 Joint Chairmen's Report*, a report on the State's land preservation programs was submitted to the budget committee chairmen by DNR and other agencies, which discussed the question of the appropriate percentage of POS local funding to be devoted to acquisition of land before development projects may be funded. DNR had been receiving feedback from counties for years that they would like more flexibility in spending POS funding. The reasons given were that (1) counties can have more urgent operating, maintenance, and development needs at existing parks than the need to acquire additional land; (2) acquisition projects can be more expensive and require banking of

funding over multiple years to generate enough funding for an acquisition project, whereas funding could be spent more quickly on priority development projects; and (3) more flexibility would allow counties to maximize their funding, such as using it for acquisition when the real estate market is low and focusing more on development projects when the real estate market is high.

The report recommended removing the current restriction on POS local funding that sets aside a percentage only for acquisition. It also indicated that projects should be funded based on needs identified in a county's local land preservation, parks, and recreation plan using an analytical methodology that includes multiple factors such as user demand, population density, and land and facility distribution. At the time, the 23 counties and Baltimore City had identified needs-based priorities in their local land preservation, parks, and recreation plans for more than \$1.8 billion for the acquisition, development, and rehabilitation of park and recreation facilities through 2022.

DNR indicates that the counties are currently working on updating their 2012 land preservation, parks, and recreation plans (referred to in statute as land preservation and recreation plans), with the final plans due to be submitted to DNR and MDP by July 1, 2017. The bill's change regarding the plans, indicating that they include "goals, objectives, and priorities" rather than "acquisition goals" is consistent with revised guidelines for the plans developed by DNR in consultation with MDP and local governments.

Local Fiscal Effect: The bill does not change the amount of POS local funding allocated to counties overall or individually. However, the increased flexibility for counties to use the funding for development projects and capital renewal may affect the timing of when POS local funding is spent by counties, potentially accelerating the use of funding in at least some counties. **Appendix 1** shows the POS local funding allocations for the local governments under the Governor's proposed fiscal 2018 budget.

Small Business Effect: To the extent more POS local funding is used for development projects and capital renewal, small businesses providing services for those projects, such as construction contractors, may meaningfully benefit.

Additional Information

Prior Introductions: None.

Cross File: SB 896 (Senators Astle and Middleton) - Education, Health, and Environmental Affairs.

Information Source(s): Department of Natural Resources; Maryland Department of Planning; Baltimore City; Montgomery and Worcester counties; Maryland Association of Counties; Town of Leonardtown; Maryland Municipal League; Department of Legislative Services

Fiscal Note History: First Reader - February 24, 2017
md/lgc

Analysis by: Scott D. Kennedy

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

**Appendix 1 – Program Open Space Local Allocations under the
Governor’s Proposed Fiscal 2018 Budget**

<u>County</u>	<u>Allocation</u>
Allegany	\$410,938
Anne Arundel	4,373,406
Baltimore City	3,921,847*
Baltimore County	4,947,383
Calvert	433,387
Caroline	192,397
Carroll	982,183
Cecil	506,327
Charles	891,122
Dorchester	164,178
Frederick	1,015,843
Garrett	202,318
Harford	1,455,204
Howard	2,579,824
Kent	122,393
Montgomery	6,497,925
Prince George’s	5,590,935
Queen Anne’s	261,490
St. Mary’s	492,863
Somerset	118,344
Talbot	274,246
Washington	773,841
Wicomico	516,957
Worcester	487,928
Total	\$37,213,279

*Does not include Program Open Space State funding that Baltimore City also receives.