

Department of Legislative Services
Maryland General Assembly
2022 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

Senate Bill 744

(Senator Hettleman)

Education, Health, and Environmental Affairs

Environment and Transportation

**Housing and Community Development - Affordable Housing - Excess Real
Property**

This bill requires the Comptroller, after paying income tax refunds and deducting costs generally related to administering the income tax laws, to distribute \$30.0 million in personal income tax revenue to the Rental Housing Fund within the Department of Housing and Community Development (DHCD) by June 30, 2022. The bill also requires DHCD, after receiving notification of excess properties maintained by the Maryland Department of Planning (MDP) that have not otherwise been disposed of, to determine if any of the properties are suitable for use or redevelopment as affordable housing. Units of State government with the specified excess properties must, in consultation with DHCD and MDP, develop a proposal to (1) donate or sell the property to a nonprofit organization that contracts to use or redevelop the property as affordable housing or (2) sell the property to a buyer that contracts to use or redevelop the property as affordable housing. **The bill's provisions regarding the distribution of income tax revenue to the Rental Housing Fund take effect June 1, 2022.**

Fiscal Summary

State Effect: General fund revenues decrease by \$30.0 million in FY 2022 only; special fund revenues to the Rental Housing Fund increase commensurately. The FY 2022 general fund revenue effect is assumed in the FY 2023 budget. Special fund revenues to the Annuity Bond Fund decrease by an indeterminate amount beginning in FY 2023 to the extent that surplus State properties are donated to nonprofit organizations for affordable housing purposes (instead of sold). State expenditures are not anticipated to be materially affected, as discussed below.

Local Effect: The bill is not anticipated to materially affect local government finances or operations.

Small Business Effect: Minimal.

Analysis

Bill Summary: “Affordable housing” means residential property that is rented or sold to the public as low-income housing or workforce housing. “Low-income housing” means housing that is affordable for a household with an aggregate annual income that is below 60% of the area median income.

Identification of Excess Real Property Suitable for Affordable Housing

MDP must notify DHCD and specified committees of the General Assembly of any excess real property submitted to MDP which has not been otherwise disposed of in accordance with existing provisions of law. No later than 60 days after receiving such notification, DHCD must, in consultation with the unit of State government that controls the property, determine if the property is suitable for use or redevelopment as affordable housing. DHCD must identify a property as suitable for use or redevelopment as affordable housing if the property (1) is located in an area designated as a priority funding area; (2) does not belong to a specified category of property generally related to parks and conservation; (3) is adequately sized for any type of residential use; (4) has access to public utilities; and (5) has access to feasible ingress and egress points. In addition to these factors, DHCD is authorized to consider other factors when determining the suitability of a property for use or redevelopment as affordable housing.

DHCD must compile and regularly update a list of properties it has determined are suitable for use or redevelopment as affordable housing. For each property included in the list, DHCD must (1) give notice of the determination to the unit of State government that controls the property and the State Treasurer and (2) advise the unit of the bill’s requirements regarding the disposal of the listed property. The list must be made available to the public.

Proposals for Donation or Sale of Excess Real Property as Affordable Housing

If, after reasonable effort, a unit is unable to identify a suitable nonprofit organization or buyer for a designated property in accordance with the bill, the unit must develop a proposal to sell the property at auction. A proposal developed in this manner must be submitted to the Board of Public Works (BPW) for consideration as required under current law. The unit of State government must consider the proposed period of affordability, the number of affordable housing units created, and the viability of an offer when evaluating offers from multiple nonprofit organizations or buyers.

When a property is donated or sold in accordance with a proposal developed under the bill, the unit must give notice of the disposition to DHCD. A unit may not propose to donate or sell a property if the donation or sale would (1) violate any covenant or applicable federal

law or (2) in the opinion of the State Treasurer, adversely affect the tax-exempt status of any outstanding State bond, the proceeds of which were allocated to purchase or improve the property. Nothing in the bill must be construed to supersede the right of a person from whom real property was acquired or their successor in interest to reacquire the property under provisions of the Transportation Article relating to the sale of land not needed for public purposes.

Reporting

By December 31, 2024, and annually thereafter, DHCD must report to the General Assembly (1) the number of proposals submitted to BPW under the bill; (2) the number of properties that were donated pursuant to proposals developed under the bill; and (3) the number of properties that were sold pursuant to proposals developed under the bill.

Board of Public Works – Disposition of Surplus Property

If BPW has declared a property surplus, the board must donate or sell the property determined by DHCD to be suitable for use or redevelopment as affordable housing in accordance with a proposal developed under the bill.

Current Law:

Excess Real Property – Notification and Reporting

Each unit of State government must notify MDP in writing of any real property that is in excess of the needs of the unit, or any substantial change to any real property owned by the State. MDP must (1) study the proper disposition of the property; (2) determine whether any local government or unit of the State government is interested in the property; and (3) make an appropriate recommendation to the using unit of the State government and to BPW.

When a unit notifies MDP, the unit must include with the notification specified information relating to the property, and the information must be made available by the unit or MDP upon request. After MDP receives notice from a unit of State government, MDP must notify (1) specified committees of the General Assembly; (2) the General Assembly members who represent the legislative district in which the property is located; and (3) owners of property adjacent to the property declared excess, as specified.

Information Concerning Real Property and Inventory Lists

MDP must (1) be a repository and clearinghouse for information about real property available for public use and (2) correlate information concerning real property owned by

the State or any subdivision of the State. MDP must maintain a current, updated list of real property owned by the State or any political subdivision of the State. The list must include pertinent details concerning size, facilities, and value. A copy of the list and any related information must be provided to any State agency and the General Assembly upon request. MDP must also prepare and periodically revise inventory lists of the natural resources of the State and major public works and private facilities that are important to the development of the State as a whole. A copy of the inventory must be provided to any State agency and the General Assembly upon request.

Transfers of State Real Property – Generally

In general, any real or personal property owned by the State or a unit of State government may be sold, leased, transferred, exchanged, granted, or otherwise disposed of to (1) any person, the federal government or any of its units, or any unit of State government for consideration that BPW deems adequate or (2) any county or municipal corporation in the State, subject to conditions imposed by BPW.

For specified preserved and protected land and State-owned real or personal property funded by the General Assembly that has an appraised value of more than \$100,000, BPW may not approve the sale, transfer, exchange, or grant of property until (1) the Department of General Services (DGS) or the Department of Natural Resources submits two independent appraisals of the property that meet specified conditions; (2) specified information is provided to the Legislative Policy Committee (LPC) and the budget committees; and (3) 45 days have passed since the property was declared surplus and the information was provided to the General Assembly. Within 45 days, LPC must review the information and either approve the transaction or refer it to the full General Assembly and notify BPW of the referral. If LPC takes no action within 45 days, the disposition of property is deemed to be approved.

If BPW has declared the property surplus, BPW must sell the property to the federal government, a local government, or a unit of federal or local government for \$1.00 if (1) the government or unit has indicated its interest in acquiring the land and (2) a restrictive covenant is placed on the deed of transfer, as specified.

Transfers of State Real or Personal Property – Accounting for Proceeds

Generally, if cash is received as consideration for the disposition of a capital asset of the State or any unit of the State government, the cash must be applied to the State Annuity Bond Fund Account for the payment of the principal of and interest on the bonded indebtedness of the State. If cash is received as consideration for the disposition of any real or personal property of the State or any unit of State government, other than a capital asset, the cash must be accounted for and paid into the State Treasury.

However, if the capital asset is real property that is being leased or sold to a private party for the purpose of realizing a transit-oriented development, at the discretion of the State agency that is disposing of the property, all or a portion of the cash proceeds resulting from the transaction must be deposited in the Baltimore City Community Enhancement Transit-Oriented Development Fund for the purposes of that fund. If cash is received as consideration for the disposition of a capital asset, and if the capital asset was originally purchased with special funds, the cash must be applied to the special fund. In addition, cash received as consideration for the disposition of specified equipment generally relating to helicopters must be applied to the State Annuity Bond Fund Account for the payment of the principal of and interest on the bonded indebtedness of the State.

Disbursement of State Income Tax Revenue – Generally

The personal income tax, the State's single most important revenue source, is estimated to yield approximately \$13.4 billion in fiscal 2023. Individual income tax revenues (after an allowance for refunds, administrative costs, and unallocated withholdings) are distributed to the general fund.

Rental Housing Program and Fund

The purposes of the Rental Housing Program are to (1) stimulate the production and preservation of rental housing; (2) increase and improve the supply of decent, safe, and sanitary rental housing at costs that are affordable to households of limited income; (3) use available resources efficiently to serve the households that are in need of quality affordable housing opportunities, including families, the elderly, and persons with disabilities or special needs; (4) support economic growth and activity by financing, in whole or in part, the construction or substantial rehabilitation of rental housing projects; and (5) revitalize sustainable communities through office or other commercial space conversion. The fiscal 2023 budget includes \$92.0 million in pay-as-you-go general funds, \$16.5 million in special funds, and \$9.0 million in federal funds for the fund.

The Rental Housing Fund is to operate, make loans, and pay expenses of the program, including reserves for anticipated future losses directly related to the program, as provided in the State budget. The fund consists of (1) money appropriated for the program; (2) repayments and prepayments of loans made under the program and from specified repealed loan programs; (3) money appropriated under specified conditions as they relate to appropriations to the fund and the Special Loan Programs Fund; (4) specified money transfers from other DHCD managed funds; (5) funds received by DHCD or the Community Development Administration from the federal government or other public or private sources; and (6) investment earnings of the fund.

State Revenues: Due to the bill's provision's requiring the Comptroller to disburse \$30.0 million in income tax revenue to the Rental Housing Fund by June 30, 2022, general fund revenues decrease by \$30.0 million in fiscal 2022 and special fund revenues to the Rental Housing Fund increase commensurately. This analysis assumes that DHCD retains those funds for use in fiscal 2023.

Beginning in fiscal 2023, special fund revenues for the Annuity Bond Fund decrease to the extent surplus State properties are donated to nonprofit organizations for affordable housing purposes instead of sold. Although an estimate of any such decrease is not feasible as it depends on the specific properties donated pursuant to the bill's provisions, which cannot be predicted, the amount could be significant.

State Expenditures: DHCD advises that depending on the volume of excess State properties the department must assess pursuant to the bill, ongoing contractual services may be required (to assess the properties and create the required reports specified under the bill). The Department of Legislative Services disagrees; DHCD can likely handle the bill's requirements with existing resources as it must assess the specified excess State properties with the assistance of the controlling State unit. DGS also advises that it requires additional staff to assess the suitability of excess property. However, DGS assesses properties before they are referred to the MDP clearinghouse; any additional assessment required by the bill can likely be handled with existing resources.

MDP advises that it can assist DHCD with the bill's requirements with existing resources. BPW and the Office of the State Treasurer also advise that they can fulfil the bill's requirements with existing resources.

Additional Information

Prior Introductions: None.

Designated Cross File: HB 927 (Delegate Palakovich Carr) - Environment and Transportation.

Information Source(s): Department of Commerce; Department of Budget and Management; Department of General Services; Department of Housing and Community Development; Department of Natural Resources; State Treasurer's Office; Maryland Department of Planning; Board of Public Works; Maryland Department of Transportation; University System of Maryland; Department of Legislative Services

Fiscal Note History:
rh/mcr

First Reader - February 18, 2022
Third Reader - March 25, 2022
 Revised - Amendment(s) - March 25, 2022
 Revised - Updated Information - March 25, 2022
Enrolled - June 2, 2022
 Revised - Amendment(s) - June 2, 2022
 Revised - Budget Information - June 2, 2022
 Revised - Budget Information - July 27, 2022

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