

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 685 (Senator Augustine)
Education, Energy, and the Environment

Program Open Space - Use of Property - Renewable Energy and Storage

This bill establishes that, regardless of any other provision of State or local law, land that is acquired or developed using funds available under Program Open Space (POS) may be used for (1) the generation of electricity from a solar or wind source or (2) the storage of electricity in an energy storage device. “Funds available under POS” means the proceeds of POS and the annual apportionment of allocation of the Land and Water Conservation Fund (LWCF) to the State by the U.S. Department of the Interior, National Park Service (NPS). The bill’s authorization does not affect any approval of the use of the land for electricity generation or storage required by the Public Service Commission.

Fiscal Summary

State Effect: The bill is not anticipated to directly affect State finances, as discussed below.

Local Effect: Local government finances may be affected, as discussed below, to the extent any local governments use the authority under the bill.

Small Business Effect: Potential meaningful.

Analysis

Current Law:

Program Open Space

The Department of Natural Resources (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 State component, POS preserves natural areas through fee-simple purchases and easement acquisitions. A portion of POS State funding is also dedicated to capital improvements, critical maintenance, and State park operations.

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.

To participate in the grant process, a local government must prepare a local Land Preservation and Recreation Plan every five years. Each participating local governing body must also submit an annual program of proposed acquisition and development projects to DNR and the Maryland Department of Planning by July 1 each year. The annual program is the basis for a grant agreement for the total allocation to each local government.

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 received or not received federal funds for the project; and
- rules and regulations have been complied with.

For development (nonland acquisition) projects, subject to exceptions, the local governing body must pay for 25% of the project cost, or, if the local governing body has met specified land acquisition goals, 10% of the project cost. Local matching funds are not required for land acquisition projects.

“Local governing body” means the Maryland-National Capital Park and Planning Commission and the governing body of any county or Baltimore City.

Program Open Space – Conversion of Land by a Local Governing Body

POS statute prohibits the conversion of land acquired or developed with POS Local funding from outdoor public recreation or open space use to any other use, without written approval of the Secretary of Natural Resources, the Secretary of Budget and Management, and the Secretary of Planning. Any conversion in land use may be approved only after the local governing body replaces the land with land of at least equivalent area and of equal recreation or open space value. In addition, the appraised monetary value of the land proposed for acquisition must be equal to or greater than the appraised monetary value of the land to be converted, under the proposed new use of the converted land. DNR must consider funds spent by the local jurisdiction to acquire replacement land to be in excess of encumbered POS Local funds.

Land and Water Conservation Fund

Under the State POS statute, any funds previously or subsequently appropriated or reimbursed to DNR from LWCF must be used to supplement the acquisition and development program of the department and of other eligible State agencies and local government bodies.

Federal statute and regulations governing LWCF specify that property acquired or developed with LWCF assistance may not be converted to a use other than public recreation uses unless NPS (within the U.S. Department of the Interior) approves substitution property of reasonably equivalent usefulness and location and of at least equal fair market value.

State Fiscal Effect: The bill is not anticipated to directly affect State finances. To the extent that, pursuant to the bill, the State uses land acquired or developed using POS State funding for solar or wind energy generation and/or energy storage, State finances may be affected (presumably positively, if at all, through increased revenues and/or decreased electricity expenditures). This assumes that, under current law, the State does not use POS State land for solar or wind energy generation and/or energy storage under any circumstances, since State law does not expressly provide for conversion of POS State land from outdoor public recreation or open space use to another use, with or without replacement of the converted land.

The likelihood of any use of POS State land for solar or wind energy generation and/or energy storage, under the bill, is unknown and at the discretion of the State. In addition, State land acquired under POS with any amount of LWCF funding is still subject to federal

LWCF requirements (and any similar requirements/restrictions from other federal funding sources used to acquire or improve the land) that land converted from public recreational uses be substituted with equivalent land, both under current law and under the bill.

Local Fiscal Effect: To the extent local governments decide to use land acquired or developed using POS Local funding for solar or wind energy generation and/or energy storage, under the bill they are no longer subject to the State law prohibition against conversion of POS Local land without approval and replacement of the land. Under those circumstances, local governments may be positively affected, due to (1) the avoidance of any costs of purchasing or developing replacement public recreation and open space land (assuming there are not other applicable restrictions, due to LWCF or other federal funding) and/or (2) any revenues or reduced electricity expenditures that result from the solar or wind energy generation and/or energy storage.

Small Business Effect: Small businesses in the renewable energy industry may meaningfully benefit from any additional solar, wind, or energy storage development that occurs under the bill.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: None.

Information Source(s): Anne Arundel, Baltimore, Frederick, Montgomery, and Somerset counties; Maryland Association of Counties; Maryland-National Capital Park and Planning Commission; City of Havre de Grace; Maryland Municipal League; Department of Natural Resources; Maryland Energy Administration; Public Service Commission; Department of Legislative Services

Fiscal Note History: First Reader - February 25, 2024
km/sdk

Analysis by: Joanne E. Tetlow

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