

HOUSE BILL 1438

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CF SB 896

By: **Delegates Stein, Gilchrist, Holmes, Jacobs, and Otto**

Introduced and read first time: February 10, 2017

Assigned to: Appropriations

A BILL ENTITLED

1 AN ACT concerning

2 **Natural Resources – Program Open Space – Use of Local Funds**

3 FOR the purpose of repealing a requirement that certain local governing bodies use at least
4 a certain amount of the local governing body's annual apportionment for certain
5 acquisition projects under Program Open Space; authorizing a local governing body
6 to use all of the local governing body's annual apportionment for acquisition projects;
7 altering the required contents of a local land preservation and recreation plan;
8 repealing a requirement that the Department of Planning prepare certain guidelines
9 with the Department of Natural Resources; increasing the amount of funds that a
10 subdivision may use for certain purposes within a certain period of time; repealing
11 the requirement that a local governing body use part of certain funds for a local
12 advance option and purchase fund; authorizing a local governing body to use its
13 annual apportionment for a local advance option and purchase fund; requiring
14 certain projects to be consistent with and support the goals, objectives, and priorities
15 presented in a certain plan and program; repealing the authorization for a local
16 governing body to use a certain percentage of its future annual apportionment for
17 certain projects for a certain period of time under certain circumstances; altering
18 certain requirements related to how much funding the State should provide for
19 certain projects under certain circumstances; providing that certain requirements
20 related to donated land apply to certain local projects and not certain State projects;
21 making conforming changes; and generally relating to the use of local acquisition
22 and development funds under Program Open Space.

23 BY repealing and reenacting, with amendments,
24 Article – Natural Resources
25 Section 5–905
26 Annotated Code of Maryland
27 (2012 Replacement Volume and 2016 Supplement)

28 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
29 That the Laws of Maryland read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Natural Resources

1
2 5–905.

3 (a) (1) On or before May 1 of each year, the Department shall notify each local
4 governing body of its allocation of local acquisition and development funds for the next
5 fiscal year within the limits imposed by the formula developed for the apportionment of the
6 annual appropriations for Program Open Space.

7 (2) (i) By the first of July each year, a participating local governing
8 body shall submit an annual program of proposed acquisition and development projects,
9 together with a list of projects submitted by any municipal corporation to the local
10 governing body and not included in the local governing body's annual program, to the
11 Department of Planning for review and to the Department for approval.

12 (ii) A municipal corporation may submit an annual program through
13 its local governing body.

14 (iii) A subdivision, for each proposed project under this subsection,
15 shall consider whether it is feasible to provide public access to the proposed project.

16 (iv) When considering whether it is feasible to provide public access
17 to a proposed project under this paragraph, a subdivision may consider:

18 1. The availability of funds available under this program or
19 from other sources to provide public access to the proposed project;

20 2. Public safety and liability issues if public access were
21 provided to the site;

22 3. Whether the site for the proposed project was acquired as
23 a part of a larger recreational and open space project that is not yet completed and ready
24 for public access; and

25 4. The existence of a contractual commitment on the site for
26 a proposed project that would limit public access for a period of time, including a home,
27 agricultural, or hunting lease.

28 (3) (i) Upon review by the Department of Planning and approval by the
29 Department and the Board of Public Works, the allocated funds shall be encumbered for
30 the purposes of §§ 7–305(d)(3) and 8–128(c) of the State Finance and Procurement Article,
31 and the annual program shall become the basis for a grant agreement for the total
32 allocation to each of the local governing bodies.

33 (ii) Prior to approval of a local annual program, or any revision
34 thereof, the Department shall provide the legislators from the district within which any

1 part of the local jurisdiction is located the opportunity to review and comment on the annual
2 program or its revisions.

3 (4) Any program may be revised by the local governing body and the
4 revised program, after the Department of Planning reviews and the Department approves
5 it, shall be substituted for the original program in the grant agreement.

6 (5) (i) In accordance with the Department's regulations, upon receipt of
7 evidence from the local governing body of a county or municipal corporation that funds have
8 been spent on a project that is approved in the grant agreement, the Department shall
9 cause the requested amount of funds from the local governing body's allocation to be
10 reimbursed to the local governing body.

11 (ii) Any municipal corporation may submit evidence of expenditures
12 for approved projects through its local governing body to the Department.

13 (b) (1) [Except as provided in subsection (c)(1) of this section and except in
14 Baltimore City, at least one half of] **UP TO 100% OF** a local governing body's annual
15 apportionment [shall] **MAY** be used for acquisition projects. Local matching funds are not
16 required for acquisition projects. If the local governing body is unable to obtain federal
17 funds pursuant to § 5-906 of this subtitle, for an approved local acquisition project, the
18 total cost of the project shall be defrayed out of the local governing body's annual
19 apportionment of State funds for open space. [In Baltimore City any portion of the annual
20 apportionment may be used either for acquisition or development.]

21 (2) A local governing body shall prepare a local land preservation and
22 recreation plan with [acquisition] goals, **OBJECTIVES, AND PRIORITIES** based upon the
23 most current population data available from the Department of Planning and submit it to
24 the Department and to the Department of Planning for joint approval according to the
25 criteria and goals set forth in guidelines prepared by the Department [and the Department
26 of Planning]. A local governing body shall revise its local land preservation and recreation
27 plan at least every 5 years and submit the revised local plan to the Department and to the
28 Department of Planning for joint approval 1 year prior to the revision of the Maryland Land
29 Preservation and Recreation Plan. Prior to approval of a revised local plan, the Department
30 shall provide the legislators from the district within which any part of the local jurisdiction
31 is located the opportunity to review and comment on the revised local plan.

32 (3) Subject to the approval of the Department, a local governing body may
33 use part of its [acquisition] funds for initial or periodic updating of local land preservation
34 and recreation plans. The amount that may be used by a subdivision for planning purposes
35 in the local land preservation and recreation plan shall not exceed [\$25,000] **\$125,000** for
36 any [one] **PERIOD OF FIVE** fiscal [year] **YEARS**. Local matching funds are not required for
37 planning or updating the local land preservation and recreation plan.

1 (4) If federal funds are provided on any acquisition project, the State shall
2 provide 100 percent of the difference between the total project cost and the federal
3 contribution.

4 (5) (i) A local governing body [shall] MAY use [part of] its funds
5 [reserved for acquisition] for a local advance option and purchase fund. The funding level
6 of the local advance option and purchase fund shall be determined on an annual basis and
7 submitted as part of the annual program under subsection (a) of this section. The local
8 advance option and purchase fund may be used to obtain an option on any parcel of land
9 identified by the local governing body as facing intense development pressure within that
10 county in advance of purchase or to purchase specific tracts of land.

11 (ii) Funds available in a local advance option and purchase fund
12 shall be allocated in the following order of priority:

13 1. First to obtain an option on any parcel of land identified
14 by the local governing body as facing intense or immediate development pressure within
15 that county in advance of purchase, or to purchase a specific tract of land identified by the
16 local governing body as facing intense development pressure within that county; and

17 2. Then to purchase property on which an option has been
18 obtained or any other parcel of land.

19 (6) (i) A local governing body may use part of its funds reserved for
20 acquisition for a local land trust grant fund.

21 (ii) A local land trust grant fund may be used to:

22 1. Make matching or reimbursable grants to land trusts for
23 the acquisition of interests or rights in real property for recreational or open space
24 purposes; or

25 2. Acquire, under an agreement with a land trust, title to or
26 an interest or right in property owned by a land trust or property on which the land trust
27 holds an option or a contract to purchase.

28 (iii) As a condition to any agreement under which a local government
29 agrees to acquire title to or an interest or rights in property owned by a land trust or
30 property on which the land trust holds an option or a contract to purchase, a perpetual
31 conservation easement on the land shall be donated.

32 (iv) A project may not receive funds from a local land trust grant fund
33 unless:

34 1. The project is approved in the local governing body's grant
35 agreement; or

1 2. The Department and the Board of Public Works approve
2 the project as being in conformity with criteria governing land acquired under a local grant
3 from Program Open Space.

4 (v) The Department may approve a grant from a local land trust
5 grant fund conditional upon modifying its terms.

6 (7) (i) Except as provided in subparagraph (iii) of this paragraph, if any
7 portion of an annual apportionment to a local governing body is not encumbered within 5
8 years of the allocation, the unencumbered funds shall revert to the Department, to be held
9 by the Department in a special account until the beginning of the next fiscal year.

10 (ii) At the beginning of the next fiscal year, the funds held in the
11 special account under subparagraph (i) of this paragraph shall be added to the funds
12 appropriated under § 5–903(b) of this subtitle to assist local governing bodies in acquisition
13 and development of land for recreation and open space purposes.

14 (iii) If a local governing body demonstrates to the Department that
15 unencumbered funds have been designated for a specified purpose, subparagraph (i) of this
16 paragraph does not apply to the funds.

17 **(8) ALL PROJECTS SUBJECT TO THIS SECTION SHALL BE CONSISTENT**
18 **WITH AND SUPPORT THE GOALS, OBJECTIVES, AND PRIORITIES PRESENTED IN THE**
19 **LOCAL GOVERNING BODY’S LAND PRESERVATION AND RECREATION PLAN AND**
20 **ANNUAL PROGRAM.**

21 (c) (1) [(i) One half of any] **EXCEPT AS PROVIDED IN SUBSECTION (B)(3)**
22 **OF THIS SECTION,** A local governing body’s annual apportionment shall be used for
23 acquisition or development projects provided that up to 20 percent of the funds authorized
24 for acquisition or development projects under this [subparagraph] **PARAGRAPH** may be
25 used for capital renewal as defined in § 5–901 of this subtitle.

26 [(ii) If the Department and the Department of Planning certify that
27 acquisition goals set forth in the current, approved local land preservation and recreation
28 plan have been met and that such acreage attainment equals or exceeds the minimum
29 recommended acreage goals developed for that jurisdiction under the Maryland Land
30 Preservation and Recreation Plan, a local governing body may use up to 75 percent of its
31 future annual apportionment for development projects for a period of 5 years after
32 attainment, provided that up to 20 percent of the funds authorized for use for development
33 projects under this subparagraph may be used for capital renewal.

34 (iii) If a county determines that it qualifies for the additional funds
35 for development and capital renewal projects under subparagraph (ii) of this paragraph,
36 before the due date for all local governing bodies to submit revised local land preservation
37 and recreation plans, that county may submit an interim local land preservation and
38 recreation plan:

1 1. Prior to the submission under subsection (b)(2) of this
2 section; and

3 2. In addition to the submission required under subsection
4 (b)(2) of this section.]

5 (2) The State shall provide 100 percent of the total project cost of each
6 approved local acquisition project or, if federal funds are provided, 100 percent of the
7 difference between the total project cost and the federal contribution.

8 (3) (i) Except as provided in subparagraph (iii) of this paragraph, if the
9 local governing body is unable to obtain federal funds pursuant to § 5–906 of this subtitle,
10 for each approved local development project the State shall provide:

11 1. 75 percent of the total project cost; or

12 2. If the Department has [certified pursuant to paragraph (1)
13 of this subsection that acquisition goals have been met] **APPROVED A COUNTY’S LOCAL
14 LAND PRESERVATION AND RECREATION PLAN UNDER SUBSECTION (B) OF THIS
15 SECTION AND THE PLAN DETERMINES THAT ADDITIONAL LAND ACQUISITION IS NOT
16 CURRENTLY MERITED**, 90 percent of the total project cost.

17 (ii) Except as provided in subparagraph (iii) of this paragraph, if
18 federal funds are provided on any development project cost, the State shall provide 50
19 percent of the difference between the total project cost and the federal contribution. Subject
20 to the limitation that total State funds, when added to every other available fund, may not
21 exceed 100 percent of a project’s cost, the minimum State contribution to a project shall be
22 25 percent. If the federal funds are less than 50 percent of the total project cost, the State
23 shall provide an amount equal to the difference between the federal contribution and:

24 1. 75 percent of the total project cost; or

25 2. If the Department [has certified pursuant to paragraph (1)
26 of this subsection that acquisition goals have been met] **APPROVED A COUNTY’S LOCAL
27 LAND PRESERVATION AND RECREATION PLAN UNDER SUBSECTION (B) OF THIS
28 SECTION AND THE PLAN DETERMINES THAT ADDITIONAL LAND ACQUISITION IS NOT
29 CURRENTLY MERITED**, 90 percent of the total project cost.

30 (iii) 1. Subject to the requirement in subparagraph 3 of this
31 subparagraph, if a local governing body uses its funds appropriated under § 5–903(b)(1) of
32 this subtitle to build a recreational facility within a priority funding area, as defined in §
33 5–7B–02 of the State Finance and Procurement Article, the State shall provide 90 percent
34 of the total project cost.

1 2. Subject to subparagraph 4 of this subparagraph, if a
2 local governing body uses its funds appropriated under § 5-903(b)(1) of this subtitle to
3 construct an indoor recreational facility that is not ancillary and necessary for outdoor
4 recreation, and will be located outside of a priority funding area, as defined in § 5-7B-02
5 of the State Finance and Procurement Article, the State shall provide 50 percent of the total
6 project cost.

7 3. The State shall provide 90 percent of the total project cost
8 under subparagraph 1 of this subparagraph if the local governing body agrees to limit
9 the amount of impervious surface on the land acquired within a priority funding area, as
10 defined in § 5-7B-02 of the State Finance and Procurement Article, to no more than 10
11 percent of the land.

12 4. The 50% funding limit under subparagraph 2 of this
13 subparagraph does not apply if the Department determines that:

14 A. The indoor recreational facility is designed to serve
15 multiple priority funding areas, as defined in § 5-7B-02 of the State Finance and
16 Procurement Article, or multiple census designated places within a priority funding area;

17 B. The indoor recreational facility contains equipment or
18 facilities, including a swimming pool, that cannot be supported in multiple locations; and

19 C. The applicable local government planning and zoning
20 agency has verified that the location of the indoor recreational facility is consistent with
21 the local government's comprehensive plan.

22 (d) If land is donated to local governing bodies during the fiscal year, 75 percent
23 of the appraised value the Department approves may be applied as a portion of, or all of,
24 the local governing body's share of the project's cost for the projects referred to in [§ 5-904
25 of this subtitle] **THIS SECTION.**

26 (e) If federal funds are received for any approved local project after it was funded
27 by the State in accordance with subsection (b) of this section or § 5-904 of this subtitle, the
28 applicant shall reimburse the State in an amount equal to the federal contribution. The
29 reimbursement shall be reserved for other projects approved for the applicant up to the
30 limit of the share allocated to the local governing body.

31 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
32 October 1, 2017.