

# CHAPTER 419

(House Bill 783)

AN ACT concerning

## **Transfer Tax - Program Open Space Bonds - Land and Easement Acquisition**

FOR the purpose of ~~authorizing the Department of Natural Resources, by resolution of the Secretary of Natural Resources and subject to the approval of the Board of Public Works, to issue certain bonds for the purpose of land acquisition; providing for the use of the proceeds; providing that, in addition to other funding, Program Open Space funding may be provided in the State Consolidated Capital Bond Funding Program or in separate bond enabling acts; providing that a bond enabling act that provides funding for a particular Program Open Space purpose may not affect the allocation of funds for certain other purposes; requiring that certain allocations of certain funds distributed to Program Open Space be adjusted in a certain manner for certain fiscal years under certain circumstances; providing for the reduction of the distribution of revenues in a certain special fund in an amount equal to the debt service for a certain fiscal year; authorizing, on a certain request, the creation of a State Debt in the amount of Sixty Million Dollars (\$60,000,000) *Seventy Million Dollars (\$70,000,000)*, the proceeds to be used for certain land acquisition and easement purchases of the State under certain circumstances; providing generally for the issuance and sale of bonds evidencing the loan under certain circumstances; imposing a certain tax on certain instruments of writing and pledging the proceeds of the tax for certain payments under certain circumstances; requiring the proceeds of a certain tax to be used for the payment of principal and interest on certain bonds under certain circumstances; altering the distribution of the proceeds of a certain tax under certain circumstances; authorizing the Department of Natural Resources to purchase certain real property based on an offer by the State that is less than a certain appraisal; stating the intent of the General Assembly that certain bonds not be included in a certain calculation unless and until the bonds have been issued; authorizing the Comptroller under certain circumstances to advance certain funds for certain land acquisition and easement purchases of the State; providing that bonds issued under this Act are not subject to a certain termination provision; dedicating certain revenues from the State transfer tax to payment of principal and interest on the bonds; and generally relating to ~~the authority of the Department of Natural Resources to authorize the issuance of~~ Program Open Space ~~bonds~~ funding.~~

BY ~~adding to~~ repealing and reenacting, with amendments,  
 Article - Natural Resources  
 Section ~~5-902.1~~ 5-902(c) and 5-903(a)(2)

Annotated Code of Maryland  
(2005 Replacement Volume and 2008 Supplement)

BY ~~adding to~~ repealing and reenacting, with amendments,

Article – Tax – Property  
Section ~~13-209(h)~~ 13-209(a)  
Annotated Code of Maryland  
(2007 Replacement Volume and 2008 Supplement)

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

**Article – Natural Resources**

~~5-902.1.~~

~~(A) (1) SUBJECT TO THE APPROVAL OF THE BOARD OF PUBLIC WORKS, THE DEPARTMENT MAY, BY RESOLUTION OF THE SECRETARY, BORROW MONEY AND INCUR INDEBTEDNESS THROUGH ISSUANCE OF PROGRAM OPEN SPACE BONDS.~~

~~(2) THE INDEBTEDNESS AUTHORIZED UNDER THIS SECTION SHALL BE EVIDENCED BY THE ISSUANCE, SALE, AND DELIVERY OF PROGRAM OPEN SPACE BONDS IN ACCORDANCE WITH TITLE 8, SUBTITLE 2 OF THE STATE FINANCE AND PROCUREMENT ARTICLE AND ARTICLE 31, § 22 OF THE CODE.~~

~~(B) THE BONDS TO EVIDENCE THE INDEBTEDNESS AUTHORIZED UNDER THIS SECTION OR INSTALLMENTS OF THE INDEBTEDNESS AUTHORIZED UNDER THIS SECTION MAY BE SOLD AS A SINGLE ISSUE OR MAY BE CONSOLIDATED AND SOLD AS PART OF A SINGLE ISSUE OF BONDS.~~

~~(C) THE CASH PROCEEDS OF THE SALE OF THE BONDS SHALL BE PAID TO THE STATE TREASURER AND FIRST SHALL BE APPLIED TO THE PAYMENT OF THE EXPENSES OF ISSUING, SELLING, AND DELIVERING THE BONDS, UNLESS FUNDS FOR THIS PURPOSE ARE OTHERWISE PROVIDED, AND THEN SHALL BE CREDITED ON THE BOOKS OF THE COMPTROLLER AND EXPENDED, ON APPROVAL BY THE BOARD OF PUBLIC WORKS, FOR STATE LAND ACQUISITION UNDER THIS SUBTITLE, INCLUDING ANY APPLICABLE ARCHITECTS' AND ENGINEERS' FEES.~~

~~(D) (1) FOR THE PURPOSE OF PAYING THE PRINCIPAL OF AND INTEREST ON THE BONDS, AS AND WHEN DUE AND UNTIL PAID IN FULL, THE TRANSFER TAX UNDER TITLE 13, SUBTITLE 2 OF THE TAX – PROPERTY ARTICLE IS HEREBY IMPOSED AND DEDICATED.~~

~~(2) THE PRINCIPAL SHALL BE DISCHARGED WITHIN 15 YEARS AFTER THE DATE OF ISSUE OF THE BONDS.~~

5-902.

(c) (1) To effectuate the purposes of this section, the General Assembly has established a TRANSFER TAX funding program under [Chapter 403 of the Acts of the General Assembly of 1969] TITLE 13, SUBTITLE 2 OF THE TAX - PROPERTY ARTICLE.

(2) IN ADDITION TO OR IN LIEU OF THE FUNDING UNDER PARAGRAPH (1) OF THIS SUBSECTION, PROGRAM OPEN SPACE FUNDING MAY BE PROVIDED IN THE STATE CONSOLIDATED CAPITAL BOND FUNDING PROGRAM OR IN A SEPARATE BOND ENABLING ACT.

~~(3) In any fiscal year in which funding for Program Open Space is provided through the State Consolidated Capital Bond Funding Program or other bond enabling act, UNLESS OTHERWISE PROVIDED BY THE ENABLING ACT, [the debt allocations shall be provided to the Department of Natural Resources and] the Department shall allocate THE funds [among local governing bodies according to the apportionment formula] AS described in § 5-903 of this subtitle.~~

~~(4) A BOND ENABLING ACT THAT PROVIDES FUNDING FOR A PARTICULAR PROGRAM OPEN SPACE PURPOSE MAY NOT AFFECT THE ALLOCATION OF FUNDS UNDER § 5-903 OF THIS SUBTITLE.~~

(3) In any fiscal year [in] FOR which funding for Program Open Space is provided through the State Consolidated Capital Bond Funding Program or other bond enabling act, [the] EXCEPT AS OTHERWISE EXPRESSLY PROVIDED UNDER THE BOND ENABLING ACT THROUGH WHICH THE FUNDING IS PROVIDED:

(I) THE debt allocations shall be provided to the Department of Natural Resources and the Department shall allocate funds among local governing bodies according to the apportionment formula described in § 5-903 of this subtitle; AND

(II) FOR FISCAL YEARS 2011 THROUGH 2013 ONLY, THE ALLOCATIONS PROVIDED UNDER § 5-903 OF THIS SUBTITLE OF THE FUNDS DISTRIBUTED TO PROGRAM OPEN SPACE UNDER § 13-209 OF THE TAX - PROPERTY ARTICLE SHALL BE ADJUSTED TO REDUCE THE AMOUNT THAT WOULD OTHERWISE BE ALLOCATED FOR ANY PURPOSE BY THE AMOUNT OF FUNDING PROVIDED FOR THAT PURPOSE UNDER THE BOND ENABLING ACT.

5-903.

(a) (2) (i) 1. Of the remaining funds not appropriated under paragraph (1) of this subsection:

A. One half of the funds shall be used for recreation and open space purposes by the Department and the Historic St. Mary's City Commission; and

B. 20% of the funds or \$21,000,000, whichever is greater, shall be appropriated to the Forest and Park Service in the Department to operate State forests and parks.

2. Except as otherwise provided in this section, any funds the General Assembly appropriates to the State under this subsection shall be used only for land acquisition projects.

(ii) At least \$1,500,000 of the State's share of funds available under subparagraph (i)1A of this paragraph for this program shall be utilized to make grants to Baltimore City for projects which meet park purposes. The grants shall be in addition to any funds Baltimore City is eligible to receive under subsection (b) of this section, and may be used for acquisition or development. In order for Baltimore City to be eligible for a State grant, the Department shall review projects or land to be acquired within Baltimore City, and upon the Department's recommendation, the Board of Public Works may approve projects and land including the cost. Title to the land shall be in the name of the Mayor and City Council of Baltimore City. The State is not responsible for costs involved in the development or maintenance of the land.

(iii) 1. A portion of the State's share of funds available under subparagraph (i)1A of this paragraph for this program not to exceed \$8,000,000 for each fiscal year may be transferred by an appropriation in the State budget to the Rural Legacy Program under Subtitle 9A of this title.

2. In each fiscal year, up to \$2 million of the funds transferred under this subparagraph to the Rural Legacy Program may be used to purchase zero coupon bonds for easements.

3. Sums allocated to the Rural Legacy Program may not revert to the General Fund of the State.

**(IV) THE DEPARTMENT MAY ACQUIRE REAL PROPERTY UNDER SUBPARAGRAPH (I)1A OF THIS PARAGRAPH BASED ON AN OFFER BY THE STATE THAT IS LESS THAN THE LOWEST APPROVED APPRAISAL FOR THE PROPERTY.**

13-209.

~~(H) THE AMOUNT ALLOCATED IN THE STATE BUDGET FOR LAND ACQUISITION UNDER TITLE 5, SUBTITLE 9 OF THE NATURAL RESOURCES ARTICLE (PROGRAM OPEN SPACE) SHALL BE APPROPRIATED IN THE FIRST INSTANCE FOR PAYMENT OF PRINCIPAL AND INTEREST ON PROGRAM OPEN SPACE BONDS ISSUED UNDER § 5-902.1 OF THE NATURAL RESOURCES ARTICLE.~~

(a) (1) BEFORE ANY OTHER DISTRIBUTION UNDER THIS SECTION, IN ANY FISCAL YEAR THAT BONDS SECURED BY A PLEDGE OF THE STATE TRANSFER TAX ARE OUTSTANDING, THE REVENUE FROM THE TRANSFER TAX SHALL BE USED TO PAY, AS AND WHEN DUE, THE PRINCIPAL OF AND INTEREST ON THE BONDS.

(2) The Department shall deduct the cost of administering the transfer tax from the taxes collected under this title and credit those revenues to the fund established under § 1-203.3 of the Corporations and Associations Article.

~~[(2)]~~ (3) EXCEPT AS PROVIDED IN PARAGRAPH (4) OF THIS SUBSECTION, [After] AFTER deducting the revenues required under [paragraph (1)] PARAGRAPHS (1) AND (2) of this subsection, the revenue from transfer tax is payable to the Comptroller for deposit in a special fund.

(4) IN ANY FISCAL YEAR IN WHICH TRANSFER TAX REVENUE IS USED TO PAY DEBT SERVICE ON OUTSTANDING BONDS UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE DISTRIBUTION OF REVENUES IN THE SPECIAL FUND UNDER THIS SECTION AND AS SPECIFIED IN SUBPARAGRAPH (I)1A OF § 5-903(A)(2) OF THE NATURAL RESOURCES ARTICLE, FOR STATE LAND ACQUISITION, OR TO THE AGRICULTURAL LAND PRESERVATION FUND TO THE EXTENT ANY DEBT SERVICE IS ATTRIBUTABLE TO THAT FUND, SHALL BE REDUCED BY AN AMOUNT EQUAL TO THE DEBT SERVICE FOR THE FISCAL YEAR.

SECTION 2. AND BE IT FURTHER ENACTED, That:

(1) On request of the ~~Secretary of Natural Resources~~ Governor, the Board of Public Works may borrow money and incur special obligation indebtedness through a special obligation loan to be known as the Program Open Space Acquisition Opportunity Loan of 2009 in the total principal amount up to ~~\$60,000,000~~ \$70,000,000. This loan shall be evidenced by the issuance, sale, and delivery of Maryland Program Open Space bonds authorized, issued, sold, and delivered in accordance with a resolution adopted by the Board of Public Works.

(2) The bonds to evidence the loan or installments of the loan may be sold as a single issue or may be consolidated and sold as part of a single issue of bonds under § 8-122 of the State Finance and Procurement Article.

(3) The cash proceeds of the sale of the bonds shall be paid to the Treasurer and first shall be applied to the payment of the expenses of issuing, selling, and delivering the bonds, unless funds for this purpose are otherwise provided, and then shall be credited on the books of the Comptroller and expended, only on approval by the Board of Public Works, for the following public purposes: as a grant to the Department of Natural Resources for:

(a) the acquisition by the State of land for Program Open Space only if the cost of the land to be acquired is supported by current appraisals and the land presents a unique acquisition opportunity, as a result of:

(i) the reduced price of the land; or

(ii) the extraordinary location or environmental value of the land; and

(b) on the request of the Secretary of Agriculture, up to \$5,000,000 of the proceeds may be transferred to the Agricultural Land Preservation Fund for the purchase of easements that present unique opportunities as a result of:

(i) the reduced price of the easements; or

(ii) the extraordinary location or agricultural value of the easements.

(4) A State transfer tax is imposed on instruments of writing as provided under Title 13, Subtitle 2 of the Tax – Property Article and is hereby pledged to the extent necessary to pay the principal of and interest on the bonds, as and when due and until paid in full. The principal shall be discharged within 15 years after the date of issuance of the bonds.

(5) The proceeds of the sale of these bonds may not be used to reimburse the State for the acquisition of land prior to the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That it is the intent of the General Assembly that the ~~\$60,000,000~~ \$70,000,000 of Program Open Space bonds authorized by this Act not be included as State tax supported debt by the Capital Debt Affordability Committee, in accordance with § 8-112 of the State Finance and Procurement Article, unless and until the bonds authorized by this Act have been issued.

SECTION 4. AND BE IT FURTHER ENACTED, That the Comptroller may, upon the request of the ~~Department of Natural Resources~~ Governor, advance funds for land acquisition opportunity purposes under this Act, provided that if special obligation bonds have not been issued under the authority of this Act, the Board of Public Works shall within 1 year issue Program Open Space bonds under the authority of this Act in an amount at least equivalent to the amount of the funds so advanced.

SECTION 5. AND BE IT FURTHER ENACTED, That the bond authorization under Section 1 of this Act is not subject to § 8-128 of the State Finance and Procurement Article.

SECTION ~~2~~ 6. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~July~~ June 1, 2009.

**Approved by the Governor, May 7, 2009.**