SPONSOR: Sen. McBride Reps. Longhurst Heffernan
Sens. Blevins, Bushweller, Ennis, Hocker, McDowell, Poore;
Reps. Atkins, Brady, Q. Johnson, Kenton, Outten, Wilson

DELAWARE STATE SENATE

147th GENERAL ASSEMBLY

SENATE BILL NO. 75
AS AMENDED BY
SENATE AMENDMENT NO. 1
AND
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 29 AND TITLE 30 RELATING TO THE INVESTMENT OF THE PARKS ENDOWMENT ACCOUNT AND THE DELAWARE LAND AND WATER CONSERVATION TRUST FUND ENDOWMENT IN THE DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 29, Chapter 61 of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 6102A Twenty-First Century Fund Investments Act.

(c) *Open space. —*

(1) ~~The sum of $6 million shall be transferred from the appropriations of the Twenty-First Century Fund for Open Space to~~ Investment income from the Land and Water Conservation Trust Fund Endowment Accounts~~,~~ shall generate funds for ~~the Earnings Account~~ local outdoor recreation, park, and trail projects ~~and Greenways projects. Fifty percent of the funds generated from the Earnings Account shall be used to fund local projects~~ administered under § 5423 of Title 30 and ~~[former] § 7506(11) [repealed] of Title 7 and 50% of the funds generated from the Earnings Account shall be used to fund Greenways projects administered under~~ § 8017A of this title and state stewardship projects administered under § 5423 of Title 30.

~~(2) The Secretary of Natural Resources and Environmental Control is authorized to expend the remaining amount from funds appropriated from the Twenty-First Century Fund for Open Space for the purchase of land and conservation easements to preserve the environment and provide open space for future generations subject to the following conditions and terms. Funds shall be transferred from the Twenty-First Century Fund to the Project Account of the Land and Water Trust Fund~~

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~~upon the transmittal of a letter of certification from the Secretary of Natural Resources and Environmental Control to the Secretary of Finance which states that the funds are for a project approved by the Open Space Council pursuant to § 7506 of Title 7 and demonstrates matching contributions of at least a total of 1 (non-State) to 1 (State) ratio per fiscal year. Interest earnings on funds transferred from the Twenty-First Century Fund to the project account of the Land and Water Trust Fund revert to the Fund. Matching contributions in excess of this ratio may be applied to match state funding in any succeeding fiscal year until such excess contributions are exhausted. Matching contributions shall be defined as irrevocable donations of land, cash, conservation easements or acquisitions by and to qualified non-profit conservation organizations and the State. The value of the land shall be approved by the Open Space Council for matching purposes. Only contributions received subsequent to July 11, 1995, shall qualify as matching contributions. No land or easements counted as match for this purpose may subsequently be purchased by the State without a replacement provided.~~

~~(3) In the event that funds authorized under subparagraph (2) of this subsection are not sufficient to meet the State's anticipated land protection needs, the Secretary of Natural Resources and Environmental Control may request the General Assembly to accelerate funds appropriated from the Twenty-First Century for Open Space into the Project Account, provided that qualifying matching contributions have been secured.~~

(2~~4~~) For purposes of match, State funds appropriated for the "Community Transportation Fund" shall qualify as matching contributions for ~~Greenways~~ outdoor recreation, park, and trail projects as described in § 5423 of Title 30 and § 8017A of this title.

(3~~5~~) Notwithstanding any other provision of the Delaware Code, a portion of the investment income ~~funds~~ generated from the ~~Earnings Account of~~ the Land and Water Conservation Trust Fund Endowment for ~~Greenways~~ outdoor recreation, park, and trail projects as described in § 5423 of Title 30, and § 8017A of this title ~~shall not be eligible to~~ may be used to fund administrative costs that are necessary to administer this chapter.

(e) *Parks endowment. —*

~~(1)~~ A special fund appropriation account is hereby created in the Department of Natural Resources and Environmental Control, Division of Parks and Recreation, to be known as the "Parks Endowment Account." It is the intent of the General Assembly that the sum appropriated from the Twenty-First Century Fund for the Parks Endowment Account shall be known as the "principal" and shall remain intact. The Parks Endowment Account shall be invested in a manner consistent with endowment investment guidelines as approved by the Cash Management Policy Board. The Department of Natural Resources and Environmental Control may ~~be~~ expend up to 5% annually, on a five-year rolling average, of the value of the Parks Endowment Account ~~only the interest and/or the investment yield from the principal~~ for capital-related purposes,

including minor capital improvements, to preserve the quality of the State's parks system and enhance recreational opportunities.

~~(2) Funds appropriated from the Twenty-First Century Fund for Parks Endowment shall be transferred to the Parks Endowment Account on July 11, 1995. The Secretary of Natural Resources and Environmental Control shall not be authorized to expend the interest earned or the investment yield from the principal until a letter of certification has been received by the Secretary of Finance which demonstrates a matching contribution of at least 1 (non-state) to 3 (state) ratio of the principal, or fractional amount thereof. The unmatched interest shall accumulate until the full match has been achieved. Matching contributions shall be defined as monetary, including moneys set aside as endowment. Only contributions received subsequent to July 11, 1995, shall qualify as matching contributions. Moneys received as match from cash contributions shall only be eligible to be counted as match for 1 year for purposes of calculating the percentage of interest earned and/or investment yield that can be expended.~~

~~(3) The Department of Natural Resources and Environmental Control shall include a list of proposed projects to be funded by the interest earned or investment yield of this Account in its annual capital improvements request for approval by the Joint Legislative Committee on Capital Improvement Programs.~~

Section 2. Amend Title 30, Chapter 54, of the Delaware Code by making insertions as shown by underlining and deletions as shown by strike through as follows:

§ 5421 Definitions.

The following words, terms and phrases, when used in this subchapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(1) "Conservation Trust Fund" means the Delaware Land and Water Conservation Trust Fund established and maintained pursuant to this subchapter.

(2) "Department" means the Department of Natural Resources and Environmental Control.

~~(3) "Earnings Account" means the account by that name created within the Conservation Trust Fund pursuant to § 5423 of this title.~~

(4<u>3</u>) "Endowment Account" means the account by that name created within the Conservation Trust Fund pursuant to § 5423 of this title.

<u>(4) "Infrastructure Account" means the account by that name created within the Conservation Trust Fund pursuant to § 5423 of this title.</u>

(5) "Project" means the planning for, and the acquisition and development of property, undertaken to achieve the purposes of this chapter.

(6) “Outdoor Recreation, Park and Trails Program” means a local government matching grants program to support the expansion of access to outdoor recreational facilities across the state.

(~~6~~7) "Secretary" means the Secretary of the Department.

(~~7~~8) "State agency" means the following units of state government which manage natural and cultural resources: Department of Natural Resources and Environmental Control (Division of Parks and Recreation and Fish and Wildlife), Department of State (Division of Historical and Cultural Affairs) and the Department of Agriculture (Division of Resource Management).

(~~8~~9) "Stewardship ~~Account~~ Program" means the ~~account~~ program by that name created within the Conservation Trust Fund pursuant to § 5423 of this title. Generally, this ~~account~~ program shall ~~hold funds to~~ be used in the planning for and implementation of management projects on public lands that promote cultural preservation and conservation activities related to plants and animals and their habitat.

(10) “Open Space Program” means the program to carry out the purpose of Title 7, Chapter 75 Delaware Land Protection Act.

§ 5422 General.

The purpose of this subchapter is to provide funding to implement the conservation program described in Volume 65, Chapter 212 of the Laws of Delaware and safeguard this funding in perpetuity. Funding to achieve the purposes of this subchapter shall be provided from appropriations by the State, grants from the federal government, funds in the Conservation Trust Fund and the earnings thereon, private donations and any other sources which may be available from time to time. The Department is authorized and directed to encourage and seek funding from any available private and public sources.

§ 5423 Delaware Land and Water Conservation Trust Fund.

(a) There is created and established under the jurisdiction and control of the Department a trust fund to be known as the Delaware Land and Water Conservation Trust Fund to implement the conservation program described in Volume 65, Chapter 212 of the Laws of Delaware. Within the Conservation Trust Fund there is established an "Endowment Account," ~~a "Stewardship Account," a "Project Account," and an "Earnings Account"~~ and an "Infrastructure Account." The Endowment Account shall be invested in a manner consistent with endowment investment guidelines as approved by the Cash Management Policy Board. Funds in the Conservation Trust Fund shall be applied for the purposes of this subchapter as hereinafter provided.

(b)(1) The corpus of funds remaining on deposit in the Delaware Land and Water Conservation Trust Fund maintained under § 4733 [repealed] of Title 7 on July 13, 1990, shall be deposited in the Endowment Account. ~~Any earnings on said corpus still on deposit in said Fund on July 13, 1990, and all~~ Up to 5% of the value across a five-year rolling average of the value of ~~earnings on the funds in~~ the Endowment Account shall be distributed annually as follows: 2/3 to the ~~Earnings Account~~ Outdoor Recreation, Parks and Trails Program and 1/3 to the Stewardship Program ~~Account~~. Additional deposits shall be made to the Endowment Account from realty transfer taxes as hereinafter provided, from other state funds as the General Assembly may from time to time determine, and from any other public and private sources which may from time to time be made available. The Endowment Account is intended to provide a permanent endowment to accomplish the purposes of this subchapter. The corpus of the Endowment Account shall not be invaded unless for a purpose identified in this section.

(2) On or before December 15 of each fiscal year ~~except the fiscal year ending June 30, 2000,~~ the State shall transfer $1,000,000 of realty transfer taxes to the ~~Endowment~~ Infrastructure Account annually. ~~until such account reaches $60,000,000 as hereinafter provided For the fiscal year ending June 30, 2000, the State shall transfer $3,000,000 to the Endowment Account.~~

~~(3) After the amount in the Endowment Account equals $60,000,000, no further transfers of realty transfer taxes shall be made into the Endowment Account or the Project Account.~~

(c)(1) Funds ~~in the Project Account~~ for the Open Space Program, and the earnings thereon to be retained therein, shall be applied by the Department to pay the costs of planning, and acquisition and development of property, to achieve the purposes of this subchapter. The ~~Project Account~~ program shall be funded by a transfer of $9,000,000 of realty transfer taxes into the Endowment Account on or before December 15 of each fiscal year. ~~until such time as the Endowment Account reaches $60,000,000 as heretofore provided, from other state funds as the General Assembly may from time to time determine, and from any other public and private sources which may from time to time be made available.~~ The annual appropriations to the ~~Project~~ Endowment Account ~~is~~ are intended to provide funds for current expenditure to achieve the purposes of this subchapter although the Department may, in its discretion, accumulate funds ~~in the Project Account~~ for particular project purposes.

(2) It is intended that property acquired with funds from the ~~Project~~ Endowment Account shall remain in public outdoor recreation and conservation use in perpetuity. Said property may not be converted to other uses without a subsequent act of the General Assembly. If the General Assembly approved the sale of any project or portion thereof, the State shall receive its pro rata share of net sale income. Said funds shall be deposited in the ~~Project~~ Endowment Account to be immediately available for other projects.

~~(3) [Deleted.]~~

(d)(1) Funds in the ~~Earnings~~ Endowment Account, and the earnings thereon, which are to be retained therein, shall be disbursed, upon application, to state agencies, counties, municipal governments and local park districts, to pay the costs of planning, ~~and~~ acquisition and outdoor recreation infrastructure development of property, to achieve the purposes of this subchapter. Not more than ~~50~~75% of a total project cost may be paid from the Conservation Trust Fund. ~~; except that up to 75% of a project cost may be paid where the applicant is a local park district or an municipal government or county that has not received a grant within the past 10 years and up to 100% of a total project cost may be paid where the applicant is a state agency, if the park district or state agency, as applicable, provides evidence satisfactory to the Department that no other matching funds or in-kind contributions are available.~~ In any given year, state agencies shall only be eligible to receive funds as defined in this section where the Secretary determines that available funds exceed the eligible project requests from nonstate applicants. Private entities, including nonprofit entities, and school districts shall not be eligible for a grant through this program ~~from the Earnings Endowment Account~~. ~~At the end of each fiscal year the Secretary may transfer from the Earnings Account to the Project Account all funds in the Earnings Account which have not been reserved for grants under this subsection.~~ Funds in the ~~Earnings~~ Endowment Account shall be eligible to fund ~~Greenway Projects~~ outdoor recreation, park, and trail projects in accordance with the provisions of § 6102A(c)(1) of Title 29 and the provisions of § 8017A of Title 29. Administrative costs associated with the administration of this section and development of the statewide outdoor recreation plan shall be eligible for funding under this section.

(2) The applicant requesting funds ~~from the Earnings Account~~ for outdoor recreation, park, and trail projects must provide evidence satisfactory to the Department that the required matching funds have been committed or will be expended for the proposed project. Any property previously held or expenditures already made by the applicant may not be counted as part of an applicant's matching contribution. Land donations, in-kind services and/or materials provided by the applicant or received by the applicant from other sources may be used by the applicant under certain conditions to satisfy its matching requirement.

(3) All expenses of operation and maintenance for property acquired with funds from the ~~Earnings~~ Endowment Account shall be borne perpetually by the applicant.

(4) It is intended that property acquired or improved with funds from the ~~Earnings~~ Endowment Account shall remain in public outdoor recreation and conservation use in perpetuity. Said property may not be converted to other uses without a subsequent act of the General Assembly. If the General Assembly approved the sale or lease of any project or a portion

thereof, the ~~State shall receive its~~ pro rata share of net sale and/or lease income shall be deposited into the Endowment Account. Said funds shall be deposited in the ~~Earnings~~ Endowment Account to be immediately available for other projects.

(e) Funds ~~in~~ dedicated for the Stewardship ~~Account~~ program, and the earnings thereon, which are to be retained therein, shall be disbursed proportionately by the Secretary according to the following formula: 35% to the Division of Parks and Recreation, 35% to the Division of Fish and Wildlife, 10% to the Division of Historical and Cultural Affairs, and 20% to the Department of Agriculture Forest Service. ~~The Secretary shall maintain an annual accounting of all expenditures for reporting to the General Assembly and shall include a summary of all program activities in the 5-year Open Space Report.~~ The Stewardship ~~Account~~ program is intended to provide funds for current expenditure, although the state agencies may, in their discretion, accumulate funds for ~~in the~~ Stewardship ~~Account~~ programs for particular project purposes.

It is the intent of the General Assembly that funds in the Stewardship ~~Account~~ program shall be used by the state agencies for management, ~~and~~ preservation and interpretation of biological, recreational and cultural resources in addition to any other funds which have been previously appropriated for this purpose or which may be so appropriated in the future.

(f) Funds in the Infrastructure Account, and the earnings thereon, which are to be retained therein, shall be disbursed by the Secretary to meet critical infrastructure needs of the Division of Parks and Recreation, the Division of Fish and Wildlife, and other Department outdoor recreational facilities. The Infrastructure Account is intended to provide funds for reinvestment in key open space infrastructure such as campgrounds, trails, visitor centers, recreational amenities, hunting, fishing and wildlife viewing areas.

(g) The Secretary shall maintain an annual accounting of all Land and Water Trust fund expenditures and report to the General Assembly.

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