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**By: The President (Administration)**

Introduced and read first time: January 27, 1997

Rule 32(d) suspended

Assigned to: Economic and Environmental Affairs and Budget and Taxation

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## A BILL ENTITLED

1 AN ACT concerning

2 **"Smart Growth" and Neighborhood Conservation - "Smart Growth" Areas**

3 FOR the purpose of enhancing the Economic Growth, Resource Protection, and Planning  
4 Act of 1992 by setting priorities for certain State spending so as to preserve existing  
5 neighborhoods and agricultural, natural, and rural resources; establishing priority  
6 funding areas in the State; providing that certain State agencies may not approve  
7 certain projects which are not in priority funding areas after a certain date;  
8 providing for certain exceptions; authorizing the Board of Public Works to grant  
9 exceptions under certain circumstances; requiring the Maryland Office of Planning  
10 to establish a collaborative process with local governments for the determination of  
11 priority funding areas; defining certain terms; requiring that priority funding areas  
12 maps and descriptions be updated periodically; providing that a decision to fund or  
13 not to fund a project is not subject to certain administrative actions; providing that  
14 this Act does not create a private cause of action; providing that this Act shall not  
15 apply to certain projects; and generally relating to "smart growth" and the  
16 establishment of priority funding areas.

17 BY repealing and reenacting, without amendments,  
18 Article - Transportation  
19 Section 2-103.1(a)(4) and (5)  
20 Annotated Code of Maryland  
21 (1993 Replacement Volume and 1996 Supplement)

22 BY adding to  
23 Article - State Finance and Procurement  
24 Section 5-7B-01 through 5-7B-08, inclusive, to be under the new subtitle "Subtitle  
25 7B. Priority Funding Areas"; and 7-314(o)  
26 Annotated Code of Maryland  
27 (1995 Replacement Volume and 1996 Supplement)

2

1 Preamble

2 WHEREAS, The General Assembly enacted the Economic Growth, Resource  
3 Protection, and Planning Act of 1992 (the 1992 Act) which established the State  
4 Economic Growth, Resource Protection, and Planning Policy (the State Policy); and

5 WHEREAS, The State Policy provides that "development shall be concentrated  
6 in suitable areas" and that "in rural areas, growth shall be directed to existing population  
7 centers and resource areas shall be protected"; and

8 WHEREAS, If current patterns of development continue unchanged, Maryland  
9 will lose over 500,000 acres of farms and open spaces, will have abandoned many existing  
10 and historic neighborhoods, and will spend millions of taxpayer dollars building costly  
11 new infrastructure; and

12 WHEREAS, The 1992 Act is based on the recognition that State spending plays a  
13 significant role in guiding growth and facilitating development; and

14 WHEREAS, The 1992 Act was an important first step in directing State spending  
15 in a way that furthers the State Policy in that it requires certain projects funded through  
16 State or federal funds to be consistent with the local plans of the jurisdictions in which the  
17 projects are located; and

18 WHEREAS, In order to effectuate the State Policy adopted by the General  
19 Assembly in 1992, the State needs to build on the 1992 Act by focusing spending in those  
20 areas, including those parts of locally designated growth areas, that constitute the most  
21 efficient and effective use of the taxpayer dollars and which will serve to best preserve  
22 existing neighborhoods and Maryland's fields, farms, and open spaces; now, therefore,

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

25 **Article - Transportation**

26 2-103.1.

27 (a) (4) "Major capital project" means any new, expanded, or significantly  
28 improved facility or service that involves planning, environmental studies, design,  
29 right-of-way, construction, or purchase of essential equipment related to the facility or  
30 service.

31 (5) "Minor capital project" means any project for the preservation or  
32 rehabilitation of an existing facility or service, including the planning, design,  
33 right-of-way, construction, or purchase of equipment essential to the facility or service,  
34 and generally not requiring the preparation of an environmental impact assessment.

3

1 **Article - State Finance and Procurement**

2 SUBTITLE 7B. PRIORITY FUNDING AREAS.

3 5-7B-01.

4 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
5 INDICATED.

6 (B) "FUNDING" INCLUDES ANY FORM OF ASSURANCE, GUARANTEE, GRANT  
7 PAYMENT, CREDIT, TAX CREDIT, OR OTHER ASSISTANCE, INCLUDING A LOAN, LOAN  
8 GUARANTEE, OR REDUCTION IN THE PRINCIPAL OBLIGATION OF, OR RATE OF  
9 INTEREST PAYABLE ON, A LOAN OR A PORTION OF A LOAN.

10 (C) (1) "PROJECT" MEANS:

11 (I) ANY MAJOR CAPITAL PROJECT AS DEFINED IN § 2-103.1(A)(4) OF  
12 THE TRANSPORTATION ARTICLE, EXCEPT EXISTING TRANSPORTATION FACILITIES  
13 PROJECTS AS DEFINED IN § 4-101(I) OF THE TRANSPORTATION ARTICLE;

14 (II) FUNDING BY THE DEPARTMENT OF HOUSING AND  
15 COMMUNITY DEVELOPMENT FOR:

16 1. CONSTRUCTION OR PURCHASE OF NEWLY CONSTRUCTED  
17 SINGLE FAMILY HOMES OR PURCHASE OF LOANS FOR NEWLY CONSTRUCTED  
18 SINGLE FAMILY HOMES UNDER ARTICLE 83B, §§ 2-201 THROUGH 2-208, §§ 2-601  
19 THROUGH 2-614, OR §§ 2-1001 THROUGH 2-1007 OF THE CODE;

20 2. ACQUISITION OR CONSTRUCTION OF NEWLY  
21 CONSTRUCTED MULTIFAMILY RENTAL HOUSING UNDER ARTICLE 83B, §§ 2-201  
22 THROUGH 2-208, §§ 2-501 THROUGH 2-510, OR §§ 2-801 THROUGH 2-810 OF THE CODE;  
23 OR

24 3. STATE-FUNDED NEIGHBORHOOD REVITALIZATION  
25 PROJECTS UNDER ARTICLE 83B, TITLE 4 OF THE CODE;

26 (III) FUNDING BY THE DEPARTMENT OF BUSINESS AND ECONOMIC  
27 DEVELOPMENT UNDER ANY OF THE FOLLOWING:

28 1. THE MARYLAND INDUSTRIAL LAND ACT, AUTHORIZED  
29 UNDER ARTICLE 83A, TITLE 5, SUBTITLE 7 OF THE CODE;

30 2. THE MARYLAND INDUSTRIAL AND COMMERCIAL  
31 REDEVELOPMENT FUND, AUTHORIZED UNDER ARTICLE 83A, TITLE 5, SUBTITLE 8 OF  
32 THE CODE;

33 3. THE MARYLAND INDUSTRIAL DEVELOPMENT FINANCING  
34 AUTHORITY, AUTHORIZED UNDER ARTICLE 83A, TITLE 5, SUBTITLE 9 OF THE CODE;

35 4. THE MARYLAND SMALL BUSINESS DEVELOPMENT  
36 FINANCING AUTHORITY, AUTHORIZED UNDER ARTICLE 83A, TITLE 5, SUBTITLE 10  
37 OF THE CODE;

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1                                   5. THE MARYLAND ENERGY FINANCING ACT, AUTHORIZED  
2 UNDER ARTICLE 83A, TITLE 6, SUBTITLE 4 OF THE CODE; AND

3                                   6. THE ECONOMIC DEVELOPMENT OPPORTUNITIES  
4 PROGRAM FUND, AUTHORIZED UNDER § 7-314 OF THE STATE FINANCE AND  
5 PROCUREMENT ARTICLE; AND

6                                   (IV) FUNDING BY THE DEPARTMENT OF THE ENVIRONMENT, FOR  
7 ANY PROJECT UNDER:

8                                   1. §§ 9-1601 THROUGH 9-1605 (WATER QUALITY REVOLVING  
9 LOAN FUND) OF THE ENVIRONMENT ARTICLE;

10                                  2. §§ 9-420 THROUGH 9-426 (WATER SUPPLY FINANCIAL  
11 ASSISTANCE PROGRAM) OF THE ENVIRONMENT ARTICLE; AND

12                                  3. THE FOLLOWING PROGRAMS AUTHORIZED UNDER TITLE  
13 9, SUBTITLE 3, PART VI OF THE ENVIRONMENT ARTICLE:

14                                   A. BIOLOGICAL NUTRIENT REMOVAL;

15                                   B. THE SUPPLEMENTAL ASSISTANCE PROGRAM;

16                                   C. THE STORMWATER CONTROL COST-SHARE PROGRAM;  
17 AND

18                                   D. SMALL CREEKS AND ESTUARIES RESTORATION.

19                                  (2) "PROJECT" DOES NOT INCLUDE FUNDING BY THE DEPARTMENT OF  
20 HOUSING AND COMMUNITY DEVELOPMENT FOR ANY PROJECT FINANCED WITH THE  
21 PROCEEDS OF REVENUE BONDS ISSUED BY THE COMMUNITY DEVELOPMENT  
22 ADMINISTRATION IF:

23                                   (I) THE SECRETARY OF HOUSING AND COMMUNITY  
24 DEVELOPMENT DETERMINES THAT APPLICATION OF THIS SECTION:

25                                   1. CONFLICTS WITH ANY PROVISION OF FEDERAL OR STATE  
26 LAW APPLICABLE TO THE ISSUANCE OR TAX-EXEMPT STATUS OF THE BONDS;

27                                   2. CONFLICTS WITH ANY PROVISION OF ANY TRUST  
28 AGREEMENT BETWEEN THE COMMUNITY DEVELOPMENT ADMINISTRATION AND  
29 ANY TRUSTEE; OR

30                                   3. WOULD OTHERWISE PROHIBIT FINANCING OF AN  
31 EXISTING PROJECT, OR FINANCING PROVIDED TO CURE OR PREVENT ANY DEFAULT  
32 UNDER EXISTING FINANCING; OR

33                                   (II) THE REVENUE BONDS ARE ISSUED UNDER A TRANSFER OF  
34 THE MARYLAND STATE CEILING TO THE ADMINISTRATION BY A COUNTY UNDER  
35 TITLE 13, SUBTITLE 8 OF THE FINANCIAL INSTITUTIONS ARTICLE.

36                                  (D) "TECHNICAL ASSISTANCE" MEANS THE PROVISION OF ADVICE,  
37 CONSULTATION, TRAINING, INFORMATION, OR DESIGN, OR ARCHITECTURAL,  
38 ORGANIZATIONAL, OR MANAGEMENT ASSISTANCE.

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1 5-7B-02.

2 THE FOLLOWING AREAS SHALL BE CONSIDERED STATE PRIORITY FUNDING  
3 AREAS UNDER THIS SUBTITLE:

4 (1) A MUNICIPAL CORPORATION, INCLUDING BALTIMORE CITY,  
5 PROVIDED THAT ALL AREAS ANNEXED AFTER JANUARY 1, 1997 SHALL SATISFY THE  
6 PROVISIONS OF ITEM (8) OF THIS SECTION;

7 (2) A DESIGNATED NEIGHBORHOOD, AS DEFINED IN ARTICLE 83B, §  
8 4-202 OF THE CODE;

9 (3) AN ENTERPRISE ZONE AS DESIGNATED UNDER ARTICLE 83A, § 5-401  
10 OF THE CODE, OR BY THE UNITED STATES GOVERNMENT;

11 (4) A CERTIFIED HERITAGE AREA AS DEFINED IN §§ 13-1101 AND 13-1111  
12 OF THE FINANCIAL INSTITUTIONS ARTICLE;

13 (5) THOSE AREAS OF THE STATE LOCATED BETWEEN INTERSTATE  
14 HIGHWAY 495 AND THE DISTRICT OF COLUMBIA;

15 (6) THOSE AREAS OF THE STATE LOCATED BETWEEN INTERSTATE  
16 HIGHWAY 695 AND BALTIMORE CITY;

17 (7) AREAS ZONED AS INDUSTRIAL OR THE EQUIVALENT WHICH ARE  
18 SERVED BY PUBLIC OR COMMUNITY WATER AND SEWER SYSTEMS; AND

19 (8) AN AREA WITHIN A LOCALLY DESIGNATED GROWTH THAT MEETS  
20 THE FOLLOWING CRITERIA:

21 (I) 1. THE AREA IS SERVED BY PUBLIC OR COMMUNITY WATER  
22 AND SEWER SERVICE; AND

23 2. IN ANY PART OF THE AREA SERVED BY PUBLIC OR  
24 COMMUNITY WATER AND SEWER SERVICE THAT IS DESIGNATED BY THE LOCAL  
25 GOVERNMENT FOR RESIDENTIAL USE OR DEVELOPMENT:

26 A. THERE IS REQUIRED AN AVERAGE DENSITY OF 2.0 UNITS  
27 PER ACRE; OR

28 B. THERE IS IN PRACTICE AN AVERAGE DENSITY OF 2.0  
29 UNITS PER ACRE; OR

30 (II) 1. THE AREA IS PLANNED TO BE SERVED BY PUBLIC OR  
31 COMMUNITY WATER AND SEWER SERVICE WITHIN 6 YEARS UNDER THE ADOPTED  
32 CAPITAL IMPROVEMENT PLAN OF THE LOCAL JURISDICTION AND THE APPROVED  
33 WATER AND SEWER PLAN IN WHICH THE AREA IS LOCATED; AND

34 2. IN ANY PART OF THE AREA PLANNED TO BE SERVED BY  
35 PUBLIC OR COMMUNITY WATER AND SEWER SERVICE THAT IS DESIGNATED BY THE  
36 LOCAL GOVERNMENT FOR RESIDENTIAL USE OR DEVELOPMENT:

37 A. THERE IS REQUIRED AN AVERAGE DENSITY OF 3.5 UNITS  
38 PER ACRE; OR

6

1 B. THERE IS IN PRACTICE AN AVERAGE DENSITY OF 3.5  
2 UNITS PER ACRE.

3 5-7B-03.

4 NOTWITHSTANDING ANY OTHER PROVISIONS OF LAW THAT MAY BE  
5 INCONSISTENT WITH THIS SUBTITLE, AND EXCEPT AS OTHERWISE PROVIDED IN  
6 THIS SUBTITLE, BEGINNING OCTOBER 1, 1998, THE STATE MAY NOT PROVIDE  
7 FUNDING FOR A PROJECT IF THE PROJECT IS NOT LOCATED WITHIN A STATE  
8 PRIORITY FUNDING AREA.

9 5-7B-04.

10 (A) THE STATE MAY PROVIDE FUNDING FOR A PROJECT NOT IN A STATE  
11 PRIORITY FUNDING AREA IF THE BOARD OF PUBLIC WORKS DETERMINES THAT  
12 EXTRAORDINARY CIRCUMSTANCES EXIST WHICH WARRANT PROCEEDING WITH  
13 THE PROJECT AND THAT NO REASONABLY FEASIBLE ALTERNATIVE EXISTS.

14 (B) A REQUEST FOR APPROVAL BY THE BOARD UNDER SUBSECTION (A) OF  
15 THIS SECTION MAY BE MADE AT THE REQUEST OF THE GOVERNING BODY OF THE  
16 LOCAL JURISDICTION IN WHICH THE PROJECT IS LOCATED OR THE SECRETARY  
17 WITH APPROVAL AUTHORITY OVER THE PROJECT.

18 (C) (1) WHEN A REQUEST IS MADE TO THE BOARD OF PUBLIC WORKS FOR  
19 AN EXCEPTION UNDER THIS SECTION, THE BOARD OF PUBLIC WORKS MAY REQUEST  
20 FROM THE STATE ECONOMIC GROWTH, RESOURCE PROTECTION, AND PLANNING  
21 COMMISSION AN ADVISORY OPINION ON THE REQUEST FOR THE EXCEPTION.

22 (2) UPON RECEIVING A REQUEST FOR AN ADVISORY OPINION UNDER  
23 THIS SUBSECTION, THE COMMISSION MAY, IN ITS DISCRETION, HOLD A PUBLIC  
24 MEETING TO GATHER INFORMATION RELEVANT TO THE ADVISORY OPINION.

25 5-7B-05.

26 THE STATE MAY PROVIDE FUNDING FOR A PROJECT NOT IN A STATE PRIORITY  
27 FUNDING AREA WITHOUT RECEIVING APPROVAL FROM THE BOARD OF PUBLIC  
28 WORKS AS PROVIDED UNDER § 5-7B-04 OF THIS SUBTITLE FOR:

29 (1) A TRANSPORTATION PROJECT THAT:

30 (I) MAINTAINS THE EXISTING TRANSPORTATION SYSTEM,  
31 PROVIDED THE DEPARTMENT OF TRANSPORTATION AND THE OFFICE OF PLANNING  
32 DETERMINE THE PROJECT DOES NOT SERVE TO INCREASE HIGHWAY CAPACITY;

33 (II) SERVES TO CONNECT STATE PRIORITY FUNDING AREAS,  
34 PROVIDED THAT:

35 1. THE DEPARTMENT OF TRANSPORTATION AND THE  
36 OFFICE OF PLANNING DETERMINE THAT ADEQUATE ACCESS CONTROL MEASURES  
37 ARE IN PLACE TO:

38 A. PREVENT DEVELOPMENT THAT IS INCONSISTENT WITH §  
39 5-7A-01(1), (2), AND (3) OF THIS TITLE; AND

7

1 B. MAINTAIN THE VIABILITY OF THE PROJECT WHILE  
2 CONCOMITANTLY CONSTRAINING DEVELOPMENT WHICH POTENTIALLY DETRACTS  
3 FROM MAIN STREET BUSINESS AREAS; AND

4 2. THE DEPARTMENT OF TRANSPORTATION IN  
5 CONSULTATION WITH THE OFFICE OF PLANNING HAS FIRST CONSIDERED WHETHER  
6 ALTERNATIVE TRANSPORTATION MODES SUCH AS MASS TRANSIT PROVIDE A  
7 REASONABLE ALTERNATIVE TO THE PROJECT AND DETERMINED THAT NO SUCH  
8 REASONABLE ALTERNATIVE EXISTS;

9 (III) HAS THE SOLE PURPOSE OF PROVIDING CONTROL OF ACCESS  
10 BY THE DEPARTMENT OF TRANSPORTATION ALONG AN EXISTING HIGHWAY  
11 CORRIDOR; OR

12 (IV) DUE TO ITS OPERATIONAL OR PHYSICAL CHARACTERISTICS,  
13 MUST BE LOCATED AWAY FROM OTHER DEVELOPMENT;

14 (2) A PROJECT THAT IS REQUIRED TO PROTECT PUBLIC HEALTH OR  
15 SAFETY; OR

16 (3) A PROJECT INVOLVING FEDERAL FUNDS, TO THE EXTENT  
17 COMPLIANCE WITH THIS SUBTITLE WOULD CONFLICT OR BE INCONSISTENT WITH  
18 FEDERAL LAW.

19 5-7B-06.

20 (A) THE OFFICE OF PLANNING SHALL:

21 (1) BY REGULATION AND IN CONSULTATION WITH THE STATE  
22 ECONOMIC GROWTH, RESOURCE PROTECTION, AND POLICY COMMISSION,  
23 ESTABLISH A COLLABORATIVE PROCESS WITH LOCAL JURISDICTIONS FOR THE  
24 DEVELOPMENT, AND PERIODIC UPDATING, OF MAPS AND DESCRIPTIONS OF STATE  
25 PRIORITY FUNDING AREAS;

26 (2) IN THE CASE OF A DISPUTE, DETERMINE THE LOCATION OF A STATE  
27 PRIORITY FUNDING AREA;

28 (3) ESTABLISH A PROCESS FOR THE REVIEW OF PROJECTS BY THE  
29 APPROPRIATE STATE AGENCIES AND THE OFFICE OF PLANNING FOR COMPLIANCE  
30 WITH THIS SUBTITLE; AND

31 (4) PROVIDE TO EACH STATE AGENCY AND UNIT OF STATE  
32 GOVERNMENT, AS APPROPRIATE, AS WELL AS LOCAL GOVERNMENTS, THE  
33 LOCATION OF STATE PRIORITY FUNDING AREAS.

34 (B) THE COLLABORATIVE PROCESS DESCRIBED IN SUBSECTION (A) OF THIS  
35 SECTION SHALL ENSURE THAT EACH COUNTY AND MUNICIPALITY HAS THE  
36 OPPORTUNITY TO SUBMIT A MAP AND DESCRIPTION OF THE JURISDICTION'S  
37 PRIORITY FUNDING AREAS, WHICH SHALL BE CONSISTENT WITH THE LOCAL  
38 COMPREHENSIVE PLAN AND THE CRITERIA SET FORTH IN § 5-7B-02 OF THIS  
39 SUBTITLE.

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1 5-7B-07.

2 EACH STATE AGENCY SUBJECT TO THIS SUBTITLE SHALL REPORT ANNUALLY  
3 TO THE OFFICE OF PLANNING ON THE IMPLEMENTATION OF THIS SUBTITLE IN A  
4 FORM APPROVED BY THE OFFICE OF PLANNING.

5 5-7B-08.

6 (A) THIS SECTION MAY NOT BE CONSTRUED TO CREATE A PRIVATE CAUSE OF  
7 ACTION FOR ANY PERSON OR LOCAL GOVERNMENT.

8 (B) A DECISION TO FUND A PROJECT OR NOT TO FUND A PROJECT AS  
9 REQUIRED UNDER THIS SUBTITLE SHALL NOT BE SUBJECT TO TITLE 10, SUBTITLE 2  
10 (ADMINISTRATIVE PROCEDURE ACT - CONTESTED CASES) OF THE STATE  
11 GOVERNMENT ARTICLE.

12 (C) THIS SUBTITLE MAY NOT BE CONSTRUED TO PREVENT AN AGENCY FROM  
13 PROVIDING TECHNICAL ASSISTANCE IN AN AREA THAT IS NOT A PRIORITY FUNDING  
14 AREA.

15 7-314.

16 (O) IN THE CASE OF AN ECONOMIC DEVELOPMENT OPPORTUNITY LOCATED  
17 OUTSIDE A PRIORITY FUNDING AREA AS ESTABLISHED UNDER TITLE 5, SUBTITLE 7B  
18 OF THIS ARTICLE, THE DEPARTMENT SHALL FIRST COMPLY WITH THE PROVISIONS  
19 OF THAT SUBTITLE BEFORE MAKING A REQUEST FOR APPROVAL BY THE  
20 LEGISLATIVE POLICY COMMITTEE UNDER THIS SECTION.

21 SECTION 2. AND BE IT FURTHER ENACTED, That no provision of this Act  
22 shall apply to any project or program for which approval has been granted or a  
23 commitment made before October 1, 1998, or for which a valid permit or State  
24 commitment for a grant, loan, loan guarantee, or insurance for a capital project, or for  
25 which final review under the National Environmental Policy Act or the Maryland  
26 Environmental Policy Act is completed by October 1, 1998, or for which final review  
27 through the State Clearinghouse for Intergovernmental Assistance is completed by  
28 January 1, 1999.

29 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
30 October 1, 1997.