

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

House Bill 297

(The Speaker, *et al.*) (By Request - Administration)

Environmental Matters

Education, Health, and Environmental Affairs

Smart, Green, and Growing - Smart and Sustainable Growth Act of 2009

This Administration bill requires local governments to enact, adopt, amend, and execute specified planning documents and to take actions that are consistent with these plans. The bill clarifies that special exceptions must be consistent with a local government's comprehensive plan and defines "consistent." The bill requires members of local government planning commissions and boards of appeal to complete an educational course. The bill expresses legislative intent to overturn the Court of Appeals ruling in *David Trail, et al. v. Terrapin Run, LLC et al.*, 403 Md. 523 (2008), but applies prospectively otherwise.

The bill takes effect July 1, 2009.

Fiscal Summary

State Effect: The bill's requirements can be handled with existing budgeted resources.

Local Effect: Assuming use of the online educational course developed by the Maryland Department of Planning, local jurisdictions can handle the bill's requirements with existing resources.

Small Business Effect: The Administration has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary: Actions that are “consistent with” or have “consistency with” a comprehensive plan are actions that further, and are not contrary to, the following items in the plan: policies, timing of implementation of the plan, timing of development, timing of rezoning, development patterns, land uses, and densities or intensities. Within a priority funding area (PFA), actions that are “consistent with” or have “consistency with” a comprehensive plan are actions that further, and are not contrary to, the following items in the plan: policies, timing of implementation of the plan, timing of development, timing of rezoning, and development patterns.

The bill encourages the development of ordinances and regulations that apply to locally designated PFAs and allow for mixed uses and bonus densities beyond those specified in the local comprehensive plan by excluding land uses and densities or intensities in the definition of “consistency” for PFAs.

After July 1, 2009, the Critical Area Commission is required to determine consistency with a local jurisdiction’s comprehensive plan, when considering (1) a text amendment related to an alternative standard for the location of a new intensely developed or limited development area; and (2) an award of growth allocation. This provision applies prospectively.

The bill requires members of local jurisdiction’s planning commissions and boards of appeals to complete an educational course within six months of being appointed to the commission or board. The educational course must address the role of the comprehensive plan; proper standards for special exceptions and variances, if applicable; and the jurisdiction’s ordinances and regulations on zoning, planned development, and subdivisions. Existing members must complete the course by July 1, 2010. Failure to complete an educational course is not grounds for invalidating a decision of the commission or board or creating a private cause of action by any person.

The Task Force on the Future for Growth and Development is required to develop recommendations on the educational course for local jurisdictions, and the Maryland Department of Planning (MDP) is required to develop an online planning education course for local jurisdictions and make it available by January 1, 2010. Local jurisdictions are authorized to develop their own educational course.

Current Law: The State has delegated to local governments the power to plan and zone subject to specified statutory requirements. There are 23 counties in the State and 156 incorporated municipalities (Baltimore City functions as both a county and municipality). Approximately two-thirds of the incorporated municipalities have

planning authority, the remaining one-third defer planning authority to their respective counties.

Local planning commissions develop and approve comprehensive plans that must be recommended to the local legislative body for adoption. In part, comprehensive plans serve as a guide to public and private actions and decisions relating to development. However, comprehensive plans must contain standards that implement specified land use policies incorporated in the State's eight planning visions. The plans, at a minimum, must contain a statement of goals and standards, a land use plan element, a transportation plan element, a community facilities plan element, a mineral resources plan element under specified conditions, a water resources plan element, recommendations for land development regulations, recommendations for the designation of areas of critical concern, a sensitive areas element, and a municipal growth element (municipalities only). For charter counties and Baltimore City, the plan is required to include only 5 of the 10 previously mentioned elements: a transportation plan, a mineral resources plan under specified circumstances, a water resources plan, recommendations for land development regulations, and a sensitive areas element. Plans must be reviewed and if necessary, revised and amended, at least once every six years.

The Critical Area Commission for the Chesapeake and Atlantic Coastal Bays oversees the development and implementation of local land use programs dealing with the critical area, which is all land within 1,000 feet of the mean high water line of tidal waters or the landward edge of tidal wetlands and all waters of and lands under the Chesapeake Bay and its tributaries. When considering specified amendments or refinements involving the award of growth allocation, the commission must consider environmental impacts as well as consistency with local comprehensive plans, growth management policies, and environmental protection policies.

Background: The Task Force on the Future for Growth and Development in Maryland (established by Chapter 381 of 2006 and modified by Chapter 626 of 2007) is charged with studying a wide range of smart growth and land use issues impacting Maryland. The task force is required to advise the Smart Growth Subcabinet until it terminates in December 2010. The task force released a report in January 2009 providing detailed recommendations for action at various levels of State and local government. The report's recommendations fall within the 15 categories outlined in **Exhibit 1**. The bill is a direct result of the report's recommendations.

Exhibit 1
Recommendations of the Task Force on the Future for
Growth and Development in Maryland

- Modernize the State’s planning visions to achieve smart and sustainable growth by updating the “Eight Visions”
- Collect good information for good planning
- Emphasize Transit-oriented Development
- Assess and address critical infrastructure needs
- Stimulate revitalization of existing communities
- Incorporate climate change into growth planning
- Identify inconsistent and/or conflicting laws, regulations, and policies
- Strengthen comprehensive plans
- Promote preparation and adoption of State development, housing, and transportation plans
- Sharpen the focus of Priority Funding Areas
- Preserve land for resource production
- Address housing challenges
- Ensure adequate water and sewer for smart growth
- Establish a statewide planning advisory committee
- Promote smart growth education and outreach

Source: Task Force on the Future for Growth and Development in Maryland, January 2009

The recent decision of the Maryland Court of Appeals in *David Trail, et al. v. Terrapin Run, LLC et al.* held that a special exception could be granted to a local comprehensive plan even if it did not strictly conform to the plan. However, the broad language of the majority opinion could be interpreted to mean that local land use ordinances and regulations need not be consistent with the locally adopted comprehensive plan. This ambiguity could undermine Article 66B and the central role that comprehensive plans play in State land use laws and associated decisions regarding specific development projects.

The Administration advises that local comprehensive plans are not meant to be a straightjacket nor a merely advisory document. Until the plan is revised, the course it lays out should be implemented, and land use ordinances and regulations should be

consistent with the plan. This approach protects the communal investment in the plans and maintains their integrity.

Additional Information

Prior Introductions: None.

Cross File: SB 280 (The President, *et al.*) (By Request - Administration) - Education, Health, and Environmental Affairs.

Information Source(s): Allegany, Harford, Montgomery, and Talbot counties; Maryland Municipal League; Maryland Department of Planning; Department of Legislative Services

Fiscal Note History: First Reader - February 16, 2009
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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Smart, Green, and Growing - Smart and Sustainable Growth Act of 2009

BILL NUMBER: House Bill 297

PREPARED BY: Governor's Legislative Office

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.