

(in dollars)	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
GF Revenue	-	-	-	-	-
SF Revenue	-	-	-	-	-
GF Expenditure	\$110,300	\$138,100	\$145,000	\$152,200	\$159,800
SF Expenditure	-	-	-	-	-
Net Effect	(\$110,300)	(\$138,100)	(\$145,000)	(\$152,200)	(\$159,800)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Local revenues and expenditures increase potentially significantly in FY 2012 and future years to the extent local jurisdictions establish and implement districts.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: “State rail station overlay district” means an area within walking distance of a rail station established as a State rail station overlay district that imposes alternative regulations to those required by the underlying zoning classification of the local zoning ordinance.

Purpose

The stated purposes of a State rail station overlay district are to:

- accommodate a mix of high-density development adjacent to rail stations, including commercial and residential structures, parking facilities, and public open spaces;
- create an environment that maximizes the potential number of pedestrians who use rail transit as well as the destinations for rail transit riders without reliance on automobiles;
- encourage the retention, improvement, and reuse of unique building and public spaces;
- preserve and enhance the character of existing neighborhoods within walking distance of rail stations by improving the “public realm;”
- encourage infill development; and
- reduce the time and expense used to develop mixed-use developments within walking distance of rail stations.

“Public realm” means each area within a district that can be viewed from public streets, except for privately owned land developed, approved for development, or intended for

private development. The term includes streets, rights-of-way, sidewalks, alleys, parks, plazas, other open spaces, utility structures, stormwater management structures, and proximate environmentally sensitive natural areas, the expansion and enhancement of which would improve the quality of life of people in the district.

District Boundaries and Regulations

MDP and MDOT must consult with the local jurisdiction in which the district will be located to establish the boundaries of the district. The bill states that it is the intent of the General Assembly that such boundaries expand over time with the public and private sectors collaborating to make the district easily accessible to pedestrians and maximize the number of individuals who will be able to work and live in the district without reliance on automobiles.

MDP, in consultation with MDOT, must adopt regulations that establish (1) requirements for the construction, alteration, reconstruction, and demolition of structures and the public realm within a district; and (2) procedures that local jurisdictions must follow in implementing regulations for development in a district. MDP may vary specific requirements to accommodate specified conditions present in each district, and MDP must consider implementing less restrictive height and density limits in a district than may otherwise be established in a local zoning ordinance. In a district, the regulations adopted under the bill prevail over local zoning and subdivision ordinances or regulations.

Properties within a district are not subject to local adequate public facilities provisions.

Local Requirements, Zoning, and Amenity Funds

The local jurisdiction in which the district is located must attempt to maximize the potential number of pedestrians with access to rail stations by:

- establishing procedures and guidelines for development in the district;
- developing a district development plan that implements specified improvements to the public realm;
- facilitating a streamlined development review and approval process for development in the district, in consultation with MDP; and
- establishing an amenity fund to accept payments from owners and developers for additional development rights and to provide a means for making payments to improve and enhance the public realm.

A local jurisdiction that creates a district must establish and administer an amenity fund. The fund consists of payments from owners and developers for additional development rights; funds received from the State as a result of increased revenues from the State sales tax generated within the overlay district, as described below; and investment earnings. Money in amenity funds must be invested. The local jurisdiction must use the fund to improve the public realm, including providing for stormwater management; underground utilities; landscaping; street lighting; public parks and open spaces; the preservation of the character of existing neighborhoods; the preservation and enhancement of unique buildings and public spaces; programs that reduce dependency on automobiles; and the expansion, protection, and preservation of environmental resources.

In a district, a local jurisdiction is authorized to sell to developers floor area ratios and other development rights that are above the base standard established for the underlying zoning classification in the local zoning ordinances, adjusted by any floor area ratios or other development rights acquired from other properties in the district, for a price equal to 50% of the value of the additional floor area ratios or other development rights. The local jurisdiction must calculate the value of the additional floor area ratios or other development rights based on specified statistics and financial records used by the developer, including land acquisition records and project financing appraisals. The developer must pay the purchase price for the additional floor area ratios or other development rights to the amenity fund at the time the building permit is issued.

An owner of an existing building in a district is authorized to sell the development rights for the base standard for floor area ratios established for the underlying zoning classification in the local zoning ordinances and any other development rights to another property owner or developer in the same district. An owner selling development rights must pay to the amenity fund 25% of the purchase price and invest at least 25% in improvements to the building from which the rights were sold. Before an occupancy permit may be issued, the local jurisdiction must determine that such improvements are complete.

The State must pay to the amenity fund an amount equal to 50% of the increased revenues from the State sales tax generated within the district that are attributable to the sale of floor area ratios and other development rights.

A local jurisdiction may establish (1) a tax increment financing (TIF) district whose borders coincide with the borders of a district; and (2) a special taxing district whose borders coincide with the borders of a district for the purpose of funding infrastructure improvements in the district.

Appeal of Decisions

A developer or other aggrieved party with standing may appeal a decision of a local jurisdiction in connection with a development in a district to MDP. The bill establishes provisions governing appeals, hearings, and judicial review of decisions and related requirements for MDP, a party to an appeal, and the circuit court of the county in which the district is located.

Current Law/Background:

Land Use Planning

Currently, the State entrusts local jurisdictions with land use planning authority. Current law authorizes a local government to guide growth and development; outlines the responsibilities, roles, and functions of the local planning commission; and sets the ground rules for operations. MDP provides technical and policy advice to localities to encourage and facilitate the implementation of Maryland's Economic Growth, Resource Protection, and Planning Policy which includes 12 planning visions that address quality of life and sustainability, public participation, growth areas, community design, infrastructure, transportation, housing, economic development, environmental protection, resource conservation, stewardship, and implementation approaches. Local jurisdictions are required to include the visions in their local comprehensive plans and implement them through zoning ordinances and regulations. MDP seeks to promote smart and sustainable growth with local planning entities by reviewing and helping develop local comprehensive plans and coordinating various growth and land use planning activities among local jurisdictions.

Overlay Zones

According to a 1995 report by MDP, an overlay zone is a zone that is placed on a zoning map "over" traditional zoning districts. Overlay zoning was born of the necessity to add an additional dimension of land use control to the zoning map for some special public purpose that does not coincide with the boundaries of current zoning. Overlay zoning has been in use since the 1960s, although its application to a wide array of public interests, such as protection of environmentally sensitive areas and historic sites, is more recent. Generally, lands affected by an overlay zone are subject to the rules of the underlying zone, as well as the rules of the overlay zone.

For the past two decades, local jurisdictions in Maryland have been planning and developing transit overlay zones as part of their comprehensive plan processes to encourage transit-oriented development (TOD) near rail station areas. Transit overlay zones seek to encourage coordinated and integrated development schemes for certain

properties within a specified distance of existing and planned transit stations. Almost all the rail station areas in Montgomery and Prince George's counties have their own specific plans that address TOD overlay zones and related planning issues. In addition, Baltimore City and Anne Arundel, Baltimore, Frederick, Harford, Howard, and Cecil counties as well as some municipalities are planning transit overlay zones around rail station areas that involve mixed-use land use policies and regulations.

Transit-oriented Development

It is the policy of the State that the development of improved and expanded railroad facilities, railroad services, transit facilities, and transit services operating as a unified and coordinated regional transportation system, and the realization of TOD throughout the State, represent transportation purposes that are essential for the satisfactory movement of people and goods, the alleviation of present and future traffic congestion, the economic welfare and vitality, and the development of the metropolitan area of Baltimore and other political subdivisions of the State.

“TOD” is a mix of private or public parking facilities; commercial and residential structures; and uses, improvements, and facilities customarily appurtenant to such facilities and uses, which is:

- part of a deliberate development plan or strategy involving (1) property that is adjacent to the passenger boarding and alighting location of a planned or existing transit station; or (2) property, any part of which is located within one-half mile of the passenger boarding and alighting location of a planned or existing transit station;
- planned to maximize the use of transit, walking, and bicycling by residents and employees; and
- designated as TOD by (1) the Secretary of Transportation after considering a recommendation of the Smart Growth Subcabinet; and (2) the local government or multicounty agency with land use and planning responsibility for the relevant area.

TOD is a development style that leverages transit stations as the foundation for vibrant communities with a dense mix of commercial, residential, and retail development. By clustering development around transit sites, TOD seeks to maximize the State's investment in transit by promoting increased ridership and enhanced opportunities for pedestrian and bicycle mobility. The benefits of TOD may include easing congestion on roadways, curbing greenhouse gas emissions, reducing pollution, and providing a viable alternative to sprawl. The State has officially designated 14 TOD sites.

MDOT is partnering with local agencies to identify and implement land use regulations that support transit and pedestrian-friendly development in proximity to major transit facilities. MDOT has also been conducting analysis and planning to identify station area needs and opportunities. MDOT also undertakes mixed-use, transit-focused, and pedestrian-friendly developments with private partners and leverages available federal funds to facilitate TOD development.

To identify station areas with the greatest TOD potential, MDOT evaluates existing land uses and physical characteristics, the perspective of surrounding communities, regulations, market strength, and other issues. Maryland's TOD strategy is built around several goals:

- ensuring that adjacent station areas are economically ready for development;
- building State agencies' and local jurisdictions' understanding of TOD and their ability to carry out TOD projects;
- strengthening public support for TOD throughout the Baltimore and Washington metropolitan areas; and
- enhancing the potential for federal funding to expand transit in the Baltimore area by showing that development patterns can support transit.

MDP works as a partner agency with MDOT in support of the State's TOD effort by providing land use and census data analyses in TOD areas and assisting in TOD planning and promotional activities.

According to MDP, there are approximately 106 rail transit stations in the State. All of them, except the Perryville MARC Station in Cecil County, are located in the Washington and Baltimore metropolitan counties and municipalities, including Baltimore City and Anne Arundel, Baltimore, Frederick, Harford, Howard, Montgomery, and Prince George's counties.

State Sales Tax

The current State sales and use tax rate is 6%. After making required distributions to the refund and administrative costs accounts, the Comptroller must pay into TTF, for fiscal 2012 and 2013, 5.3% of the remaining sales and use tax revenue; and, beginning in fiscal 2014, 6.5% of the remaining sales and use tax revenue. The Comptroller must pay the remaining sales and use tax revenue into the general fund.

Tax Increment Financing

TIF is a public financing method that uses future gains in tax revenues to finance current improvements. It is designed to channel funding toward improvements in distressed or underdeveloped areas where development might not otherwise occur. TIF creates funding for public projects that may otherwise be unaffordable to localities, by borrowing against future property tax revenues.

Chapter 182 of 2009 authorized certain counties and municipalities to finance the costs of infrastructure improvements located in or supporting a TOD. The Act authorized the Maryland Economic Development Corporation (MEDCO) to enter into agreements with certain local jurisdictions to use proceeds from a special taxing district, including TIF, to repay debt service on bonds issued by MEDCO on behalf of TOD projects.

Special Taxing Districts

All counties have authority to establish special taxing districts for limited purposes, such as drainage or street lighting improvements. In addition, the governing bodies of counties that have adopted charter home rule or code home rule also have broad authority under the Express Powers Act to create special taxing districts to carry out most “municipal-type services.” The number of special taxing districts established under this authority varies significantly.

State Revenues: General fund and TTF revenues increase to the extent the establishment of districts results in an increase in economic development that otherwise would not occur. Any increase in tax revenues cannot be reliably estimated at this time. A portion of the increase in sales tax attributable to the sale of floor area ratios and other development rights, however, must be allocated to the appropriate local jurisdiction’s amenity fund.

State Expenditures: General fund expenditures for MDP increase by at least \$110,255 in fiscal 2012, which accounts for the bill’s October 1, 2011 effective date. This estimate reflects the cost of hiring two planners to establish district boundaries, develop regulations, consult with MDOT and local governments, and handle appeals. It includes salaries, fringe benefits, one-time start-up costs, travel, and ongoing operating expenses.

Positions	2
Salaries and Fringe Benefits	\$94,670
Operating Expenses	<u>15,585</u>
Total FY 2012 MDP Expenditures	\$110,255

Future year expenditures reflect full salaries with 4.4% annual increases and 3% employee turnover as well as 1% annual increases in ongoing operating expenses. To the extent MDP holds hearings, as required when parties appeal a local jurisdiction's decision concerning development in a district, MDP general fund expenditures could increase further; however, the amount of any such increase cannot be reliably estimated.

MDOT advises that any additional work as a result of the bill, such as consultation and coordination with MDP and local jurisdictions, can be absorbed within existing budgeted resources.

State Payments to Local Amenity Funds

As noted above, the bill requires the State to pay to the amenity fund an amount equal to 50% of the increased revenues from the State sales tax generated within the district that are attributable to the sale of floor area ratios and other development rights. Since the total amount of additional sales tax revenue generated under the bill is unknown, the total annual payments by the State cannot be estimated. Sales tax revenue is paid into the general fund and TTF; thus, it is assumed that payments would be made from those funds.

Local Fiscal Effect: As previously mentioned, many local jurisdictions are already engaged in efforts to develop transit overlay zones. The number of local jurisdictions that will establish State rail station overlay districts as a result of the bill is unknown; however, a local jurisdiction that does so could benefit from an increase in local revenues to its amenity fund from the sale of development rights as well as an increase in local tax revenues from any increase in development that occurs as a result of the district. Local expenditures increase, however, to establish development procedures and guidelines, create development plans, facilitate a streamlined review and approval process, administer the amenity fund, and ensure required improvements are made prior to issuing occupancy permits. Local expenditures increase further as a result of spending from the amenity fund to improve and enhance the public realm. Finally, circuit court workloads may increase due to the judicial review process established by the bill.

Local finances are further affected to the extent any local governments use the bill's authority to establish a tax increment financing district or a special taxing district to fund infrastructure improvements within the district. Local jurisdictions may realize an increase in revenues due to the collection of special taxes and bond proceeds and an increase in expenditures due to the financing of infrastructure improvements and debt service. However, the net fiscal impact is expected to be minimal since revenues from special taxing districts will be used to fund these expenditures.

Small Business Effect: The bill impacts small businesses to the extent local jurisdictions use the authority provided by the bill to establish State rail station overlay districts. Real estate developers, land use lawyers, construction firms, landscaping companies, and other small businesses located in or working on development and related infrastructure projects in a district benefit from the establishment of the district, the streamlined review process, and any increase in development that occurs as a result of the bill. Owners of existing buildings and developers, in particular, may benefit from the ability to sell and purchase floor area ratios and other development rights under the bill.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Cecil, Carroll, Harford, and Montgomery counties; City of Rockville; Maryland Department of Planning; Maryland Department of the Environment; Judiciary (Administrative Office of the Courts); Maryland Association of Counties; Maryland Department of Transportation; Department of Legislative Services

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