

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1130

(The Speaker)(By Request - Department of Legislative
Services - Code Revision)

Environmental Matters

Education, Health, and Environmental Affairs

Land Use - Cross-References and Corrections

This code revision bill (1) corrects cross-references to the new Land Use Article of the Annotated Code of Maryland; (2) adds a reference to laws governing the Critical Area Program to a list in the Land Use Article of other public general laws that may affect land use in a local jurisdiction; and (3) specifies that, under provisions relating to historic preservation in Title 8 of the Land Use Article, which are generally applicable to noncharter counties and municipalities, “person” includes a unit of local government.

Fiscal Summary

State Effect: None. The bill does not affect State operations or finances.

Local Effect: The bill is not expected to affect local government finances in most cases. However, in limited instances, where a local government would not otherwise comply with requirements imposed on a government project by a local historic preservation or historic district commission established under Title 8 of the Land Use Article, the bill’s expanded definition of “person” to include a unit of local government may cause a local government to incur additional costs which it otherwise would not. The likelihood of any such impact is uncertain.

Small Business Effect: None.

Analysis

Background: This bill is a companion to HB 1290, which adds the new Land Use Article to the Annotated Code. The new article as a whole governs the establishment and implementation of land use mechanisms by local governments in their jurisdictions and contains a Division I and Division II, derived from Article 66B and Article 28, respectively. The Land Use Article is a product of the continuing revision of the Annotated Code of Maryland by the legal staff of the Office of Policy Analysis of the Department of Legislative Services.

Defining “Person” to Include a Unit of Local Government

The primary purposes of code revision are modernization and clarification, and every effort is made to ensure that proposed revisions conform as nearly as possible to the intent of the General Assembly. In some instances, however, the Land Use Article Review Committee and its staff have used revisor’s notes to call the General Assembly’s attention to policy issues that are beyond the purview of the revision process and have not been addressed in the revised article.

The bill’s specification that, under the provisions relating to historic preservation in Title 8 of the Land Use Article, “person” includes a unit of local government, addresses an issue raised in a Revisor’s Note in the Land Use Article by the Land Use Article Review Committee for consideration by the General Assembly. The Revisor’s Note indicates that § 8-302(a) of the Land Use Article, within Title 8 (“Historic Preservation”), requires a “person” to file an application for a permit to change a site or structure, and the term “person” defined in § 1-101 (the generally applicable definitions section for the Land Use Article) does not generally include a governmental unit. The committee, however, indicates that units of local government have historically been required to file an application for such a permit. The committee suggested that, for purposes of clarity, the General Assembly may wish to add an affirmative definition of “person” to § 8-101, the definitions section for Title 8, specifically including a unit of local government.

Under Title 8 of the Land Use Article (Title 8 of Article 66B recodified), which generally applies to noncharter counties and municipalities, local jurisdictions are given certain powers to preserve historically significant sites, structures, and districts, including the ability to designate boundaries for sites, structures, and districts which are considered to be of historic, archeological, or architectural significance and to create an historic district commission or an historic preservation commission. Pursuant to § 8-302(a) and other provisions of Title 8, before a person may make exterior changes to a site or structure within a designated district which would affect the historic, archeological, or architectural significance of the site or structure, any portion of which is visible or intended to be visible from a public way, an application must be filed with the historic district

commission or historic preservation commission for approval or rejection before beginning the project.

Local Fiscal Effect: It appears to be current practice in most, if not all, cases that a local government will seek approval for, or a review of, projects subject to the jurisdiction of a local historic preservation or historic district commission created under Title 8 of Article 66B (recodified as Title 8 in the new Land Use Article), from or by the applicable commission. The Court of Appeals determined in *City of Annapolis v. Anne Arundel County*, 271 Md. 265 (1974) that the General Assembly, by enacting Chapter 874 of 1963 (which first established the historic area zoning provisions in Article 66B), as amended, “intended that the political subdivisions owning land within an historic district be subject to the jurisdiction of the historic area commission.” It appears that *City of Annapolis* is generally considered to be controlling with respect to whether a local government must seek approval for a project from an historic preservation or historic district commission established under Title 8 of Article 66B. The Court of Appeals, in a later case, seemed to cast some doubt on the holding in *City of Annapolis*, but it did not expressly invalidate it. *Benson v. State*, 389 Md. 615, footnote 21 (2005). *Cf. People’s Counsel for Baltimore County v. Surina*, 400 Md. 662, footnote 35 (2007).

Despite the fact that it appears that most local governments in the State currently seek approval from and comply with requirements imposed by historic preservation or historic district commissions, to the extent a local government may not consider itself to be bound by requirements imposed on a government project by a commission established under Title 8 of Article 66B (recodified as Title 8 in the new Land Use Article), which is generally applicable to noncharter counties and municipalities, the local government’s finances could be affected. One local government, of a small number contacted, indicated that the bill could have a fiscal impact if the local government were bound by requirements imposed by its own historic district commission for a project in the future. The likelihood of any such impact for a given local government, however, is uncertain and, it appears, would occur in a limited number of instances statewide, if any.

Legislative Services also notes that it is not entirely clear that defining “person” to include a unit of local government under Title 8 of the Land Use Article would cause a local government to be bound by decisions of its own historic preservation or historic district commission. In *City of Annapolis*, the Court of Appeals was deciding whether one local government was subject to the jurisdiction of the historic district commission of another. If the court’s holding may not be controlling with respect to whether a local government is bound by requirements or conditions imposed by its own commission, it is not clear whether this bill would cause a local government to be bound by such requirements or conditions.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Planning; Anne Arundel, Frederick, Montgomery, Prince George's, Wicomico, and Worcester counties; Maryland Municipal League; cities of Annapolis, Frederick, Gaithersburg, Hagerstown, Laurel, and Salisbury; Department of Legislative Services

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