

**Department of Legislative Services**  
Maryland General Assembly  
2012 Session

**FISCAL AND POLICY NOTE**  
**Revised**

Senate Bill 236 (The President, *et al.*) (By Request - Administration)  
Education, Health, and Environmental Affairs Environmental Matters

**Sustainable Growth and Agricultural Preservation Act of 2012**

This Administration bill establishes four growth tiers based on specified land use characteristics, which may be adopted by local jurisdictions. Beginning December 31, 2012, a jurisdiction may not authorize a residential major subdivision served by on-site sewage disposal systems, community sewerage systems, or shared systems unless it adopts growth tiers consistent with the bill. A jurisdiction that does not adopt a growth tier may authorize either a residential minor subdivision served by on-site sewage disposal systems, or any subdivision in a “Tier I” area served by “public sewer.” The bill establishes land use and sewerage criteria and restrictions applicable to each of the four tiers. Property within residential minor subdivisions is generally restricted from further subdivision beginning December 31, 2012. The bill establishes numerous exceptions from and conditions upon these restrictions, and it allows for the transfer of subdivision rights among specified agricultural property owners.

The bill generally takes effect July 1, 2012; however, certain provisions are contingent on the passage of House Bill 1290 and take effect when that bill takes effect on October 1, 2012.

**Fiscal Summary**

**State Effect:** Special fund revenues may decrease for several agencies beginning in FY 2013 to the extent that the development and sale of new residential property decreases under the bill’s restrictions. Annuity Bond Fund revenues may be affected to the extent that the total assessable base of residential property changes as a result of the bill. State expenditures (all funds) associated with achieving various Chesapeake Bay restoration goals and mandates may decrease to the extent that the bill results in a significant reduction in nutrient effluent from septic systems and stormwater runoff, thereby avoiding future expenditures to address pollution from these sources. The bill can be implemented with existing budgeted resources.

**Local Effect:** Local government revenues decrease to the extent that the collection of local taxes and fees associated with the development, sale, or value of new residential property decreases. Local expenditures may increase beginning in FY 2013 for additional planning and health department personnel or contractual assistance to implement the bill. Local expenditures may decrease due to savings associated with implementing State and federal environmental mandates and due to reductions in the provision of services associated with residential development and infrastructure. **This bill imposes a mandate on a unit of local government.**

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

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## Analysis

### Bill Summary:

#### *Definitions of Major and Minor Subdivision*

The bill defines “subdivision” as a division of a tract or parcel of land into at least two lots for the immediate or future purpose of sale or building development. The bill defines a “major subdivision” as the subdivision of land into new lots, plats, building sites, or other divisions of land (“lots”) defined or described as a major subdivision in a local ordinance or regulation (1) already in effect by January 1, 2012; or (2) adopted by December 31, 2012, if a jurisdiction either chooses to create a *new* definition or description solely for this bill or if a local ordinance or regulation had not defined or described a major subdivision by January 1, 2012. Otherwise, if a jurisdiction has not adopted a definition or description of a major subdivision by December 31, 2012, then a major subdivision is defined as the subdivision of land into five or more new lots. If a jurisdiction has multiple definitions of a major subdivision, it may determine which definition applies for purposes of the bill.

The bill similarly defines a “minor subdivision” as the subdivision of land into new lots defined in local law (1) already in effect by January 1, 2012; or (2) adopted by December 31, 2012, if a jurisdiction either chooses to create a new definition solely for this bill or had not defined a minor subdivision by January 1, 2012. However, a definition or description of a minor subdivision may not exceed seven new lots. If a jurisdiction has not adopted a definition by December 31, 2012, then a minor subdivision is defined as fewer than five new lots. A jurisdiction may determine which of multiple definitions applies for purposes of the bill.

The bill requires each jurisdiction to submit any definition or description of a major or minor subdivision in local law to the Maryland Department of Planning (MDP) by December 31, 2012; a list of each definition or description must be listed on the MDP and the Maryland Department of the Environment (MDE) websites.

### *Adoption of Tiers*

By December 31, 2012, a jurisdiction may adopt mapped growth tiers established by the bill. Before adoption of the growth tiers, a jurisdiction may submit the proposed tiers and any relevant information to MDP for technical assistance, review, and comment, and for the opportunity for public review. After adoption of the tiers, a jurisdiction must provide to MDP all information necessary to demonstrate the precise location of the tiers, including, as appropriate, a map of the area showing planning and zoning characteristics of each tier and existing and planned water and sewer services.

MDP may comment on the growth tiers adopted by local jurisdictions. If MDP comments on a tier or an area within a tier, the local legislative body or planning board must hold at least one public hearing on the comments by MDP and review the mapped growth tiers adopted by the jurisdiction in light of the comments. After a hearing and the consideration of MDP comments, the board must recommend to the jurisdiction whether a tier or area within a tier should be changed; if the recommendation is to change a growth tier, the planning board must provide the recommended tier changes to the jurisdiction.

Generally, a jurisdiction that chooses to adopt growth tiers is not required to adopt each tier. However, a municipal corporation with planning and zoning authority *must* adopt Tier I, and a county *must* adopt Tiers I, III, and IV. Tier II *may* be adopted by a municipal corporation or a county. A jurisdiction that does not adopt all tiers must document the reasons that a particular tier was not adopted.

A jurisdiction that adopts growth tiers must incorporate the tiers into the local comprehensive plan or an element of the plan when the jurisdiction conducts the six-year review of the plan as required under current law. For a jurisdiction that chooses not to adopt all growth tiers, the jurisdiction must state that a tier is not adopted.

The bill expresses the intent of the General Assembly that local jurisdictions use their existing comprehensive plan and zoning ordinance, if desired, to create the growth tiers. The tiers may be adopted as an amendment to the comprehensive plan and may be included as an appendix that delineates the tiers and the land use categories and zoning ordinance districts that are included in each tier. Further, the bill may not be construed to imply that local comprehensive plans, including land use and development regulation elements, may not be amended in accordance with the process established in State or local law.

MDP, in consultation with MDE, must report to the General Assembly by February 1, 2013, on the adoption of tiers. The report must include the mapped areas and specify each jurisdiction that has adopted or altered a local ordinance or regulation. MDP must also identify each jurisdiction for which it has provided comments based on adopted tiers.

### *Growth Tier Criteria*

Growth tiers adopted by a local jurisdiction must meet specified criteria as follows. A Tier I area must already be served by public sewerage systems and either be a mapped locally designated growth area or a municipal corporation that is a priority funding area (PFA).

Tier II areas are either *planned* to be served by public sewerage systems and in the municipal growth element, or mapped locally designated growth areas. In addition, Tier II areas are needed to satisfy demand for development at densities consistent with long-term development policy after consideration of the capacity of land areas available for development, including in-fill and redevelopment, within the local jurisdiction.

Tier III areas are (1) *not planned* for sewerage service and not dominated by agricultural or forest land; and (2) *not planned* or zoned by a local jurisdiction for land, agricultural, or resource protection, preservation, or conservation. However, they *must* either be municipal corporations not served by a public sewerage system, rural villages as described in State law, mapped locally designated growth areas, or areas planned and zoned for large lot and rural development.

Likewise, Tier IV areas are *not planned* for sewerage service. However, they are areas locally planned or zoned for protection, preservation, or conservation; areas dominated by agricultural lands, forest lands, or other natural areas; rural legacy or priority preservation areas; or areas subject to specified conservation easements or other restrictions for the benefit of, or held by, a “State agency” or a local jurisdiction to conserve natural resources or agricultural land. The bill defines a “State agency” as (1) the Maryland Agricultural Land Preservation Foundation (MALPF); (2) the Maryland Environmental Trust; (3) the Department of Natural Resources (DNR); or (4) the Maryland-National Capital Park and Planning Commission.

Finally, a jurisdiction must strive to avoid creating a Tier III area that is bounded on all sides by land in a Tier IV area.

If two or more jurisdictions adopt conflicting growth tier designations for the same area, MDE and MDP must confer with the jurisdictions. If a conflict is not resolved, MDP must recommend to MDE and MDE may approve the preferred local jurisdiction

designations based on the following best planning practices or factors: (1) the comprehensive plan and specified elements within the plan; (2) growth projections and development capacity; and (3) availability of infrastructure.

### *Prohibitions and Growth Tier Restrictions*

Beginning December 31, 2012, a local jurisdiction may not authorize a residential major subdivision served by an on-site sewage disposal system, community sewerage system, or shared system until the jurisdiction adopts the growth tiers. If a jurisdiction does not adopt the growth tiers, the jurisdiction may nevertheless authorize either a residential minor subdivision served by on-site sewage disposal systems (if the subdivision otherwise meets specified requirements in the bill and current law), or any subdivision in a Tier I area served by “public sewer.” “Public sewer” means a community, shared, or multiuse sewerage system.

In a designated Tier I area, a jurisdiction may not approve a residential subdivision plat unless all lots are to be served by public sewer. In a Tier II area, lots are to be served by public sewer, except that a *minor* subdivision may be served by on-site sewage disposal systems. An on-site sewage disposal system is defined for this purpose to also include a shared facility or community sewerage system that disposes of sewage effluent beneath the soil surface.

In a Tier III or IV area, only a minor subdivision served by individual on-site sewage disposal systems may be approved, except under specified conditions. In a Tier IV area, only minor subdivisions may be approved unless the local subdivision and zoning requirements applicable to the cumulative Tier IV areas result in an “overall yield” (density) of one or less dwelling unit per 20 acres as verified by MDP. A local jurisdiction may request a verification of the density by MDP, in consultation with the Maryland Sustainable Growth Commission. The bill requires MDP to verify the overall yield for zoning in a Tier IV area on request from a local jurisdiction, including reviewing and examining specified information. MDP must discuss any discrepancies or questions with the jurisdiction before determining if the jurisdiction’s Tier IV area meets the overall yield of one dwelling unit per 20 acres.

A jurisdiction that has established growth tiers may approve a major subdivision in a Tier III area served by on-site sewage disposal systems, shared facilities, or community sewerage systems if it has been recommended by the local planning board following a specified review. The planning board must hold at least one public hearing that includes a review of potential environmental issues or a natural resources inventory, as well as the estimated cost of providing local government services unless the jurisdiction’s adequate public facilities ordinance already requires a review of government services. The

planning board must make its recommendation on the proposed residential major subdivision by a resolution of the board.

The bill also prohibits a person from selling any land platted for a major subdivision, or building on the land, unless, in addition to other current requirements, the person submits to MDE documentation from the relevant jurisdiction that an on-site sewage disposal system, community sewerage system, or shared facility is in a Tier III area or a Tier IV area in a jurisdiction exempt from the restrictions due to its zoning density as discussed above.

Any delay in the approval of a residential subdivision plat under the bill's provisions that restrict subdivisions in the various growth tiers may not be construed as applying to any deadline for approving or disapproving a subdivision plat under specified current State laws or local ordinances.

#### *Exceptions and Exclusions*

The bill's prohibitions relating to the restrictions on subdivisions in the various growth tiers generally do not apply to a project for which the preliminary plan submission and approval are completed before specified dates, which vary based on the project planning requirements of the particular jurisdiction.

These prohibitions also do not affect conservation easements, covenants, restrictions, or conditions that were created for the benefit of, or held by, a local jurisdiction or specified State agencies. Additionally, the prohibitions may not be construed as granting any additional rights in conservation easements, covenants, or conditions. Finally, specified requirements and restrictions in the bill do not affect a local transfer of development rights (TDR) program authorized under specified provisions of State law, or diminish local development rights in these TDR programs.

#### *Transferring Subdivision Rights on Specified Agricultural Lands*

A jurisdiction is authorized to enact a local law or ordinance to allow the transfer of the right to subdivide up to seven lots between owners of property used for specified agricultural activities. A property that has been transferred residential subdivision rights is limited to a total of 15 lots and must cluster the lots on the property. Rights to subdivide may not be transferred from property in a Tier III area to property in a Tier IV area. These transfer of subdivision rights do not apply to specified conservation easements and other covenants and restrictions held by local jurisdictions or State agencies. The local law must provide for the recordation of any transferred rights.

### *Restrictions on Future Minor Subdivisions in Tier II, III, or IV Areas*

The bill places restrictions on the future subdivision of land involving residential minor subdivisions within a Tier II, III, or IV area. Beginning December 31, 2012, generally, if a parcel of land is subdivided into a minor subdivision leaving any remainder parcel or tract of land, neither the subdivision nor the remainder parcel may be further subdivided, and the subdivision plat must reflect this restriction.

However, the bill allows for a parcel to be subdivided into a minor subdivision over time as long as each time a new lot or parcel is created, the subdivision plat states the remaining number of lots allowed in the subdivision and that the subdivision plat is subject to State and local law; once no further lots or other divisions are allowed, the plat must also state this fact. The bill provides an exception from this general restriction for minor subdivisions within a PFA that are designated for sewer service within 10 years in the approved water and sewer plan.

### *Regulation of Shared Facilities, Community Sewerage Systems, and On-site Sewage Disposal Systems*

The bill regulates the use of shared facilities and community sewerage systems. MDE is prohibited from approving a shared facility or community sewerage system unless the system is managed, operated, and maintained by a “controlling authority” or its third-party contractor. Additionally, the discharge must be handled in one of the following three ways: (1) through discharge to surface waters under a specified permit; (2) through land application under a nutrient management plan that assures 100% of the nitrogen and phosphorus in the applied effluent will be taken up by vegetation; or (3) through an on-site sewerage system. A “controlling authority” is defined as a unit of government, a body public and corporate, or an intercounty agency authorized by the State, a county, or a municipal corporation. However, the bill specifies that it is not to be construed as requiring a jurisdiction to be a controlling authority or as allowing the use of a shared facility or community sewerage system.

MDE must also propose regulations by December 31, 2012, to establish nutrient offset requirements for new residential major subdivisions within Tier III areas that are to be served by on-site sewage disposal or shared systems. MDE must consult with counties and other stakeholders in drafting the regulations and must brief specified legislative committees before submitting the proposed regulations.

## **Current Law:**

### *Smart Growth, Land Use, and Agricultural Land Preservation*

State law has historically given significant zoning and planning authority to local governments. Two relatively recent laws articulate the State's policies with respect to planning and growth management: the Maryland Economic Growth, Resource Protection, and Planning Act of 1992 (the Planning Act); and the Smart Growth and Neighborhood Conservation Act of 1997 (Priority Funding Areas Act).

The Planning Act articulates the State's growth policy through several visions – which were updated by Chapters 176 and 177 of 2009 – that seek to concentrate development in suitable areas, protect sensitive areas, and establish funding mechanisms to achieve the visions. The Planning Act also requires local jurisdictions to address these same visions in their comprehensive plans. All local jurisdictions, with few exceptions, incorporated these visions into their comprehensive plans by July 1, 1997. Under the Act, local governments are required to review, and if necessary, update their plans once every six years. In addition, the Act requires all local jurisdictions to adopt ordinances and regulations that implement the planning visions and are consistent with the local comprehensive plan.

The Priority Funding Areas Act sought to strengthen the State's efforts to control sprawl, enhance land use, and control pollution. This Act capitalized on the influence of State expenditures on economic growth and development by directing State spending to PFAs. The broad purpose of PFAs is to focus State spending to make the most efficient and effective use of existing infrastructure; preserve existing neighborhoods; and preserve Maryland's fields, farms, and open spaces. The Act established certain areas as PFAs and allowed counties to designate additional areas if they meet minimum criteria. **Exhibit 1** lists the areas initially established as PFAs and areas eligible for county designation.

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**Exhibit 1**  
**Smart Growth – Priority Funding Areas**

**Areas Initially Established by Law**

Municipalities

Baltimore City

Areas inside the Baltimore and Washington beltways

Neighborhoods designated for revitalization by the Department of Housing and Community Development

Enterprise and empowerment zones

Certified Heritage Areas within county-designated growth areas

**Areas Eligible for County Designation**

Areas with industrial zoning

Areas with employment as the principal use which are served by, or planned for, a sewer system

Existing communities within county-designated growth areas which are served by a water or sewer system and which have an average density of 2 or more units per acre

Rural villages

Other areas within county-designated growth areas that, among other things, have a permitted density of 3.5 or more units per acre for new residential development

Source: Maryland Department of Planning

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In 2009, three smart growth/planning bills were enacted into law that strengthened the State's smart growth policy foundation. Chapters 176 and 177 of 2009 updated the State's planning visions, as noted above; required local and statewide reports on adequate public facilities ordinances; and authorized local jurisdictions to establish TDR programs within PFAs. Chapters 178 and 179 of 2009 require local planning commissions or boards to submit annual reports to local legislative bodies that specify which ordinances or regulations were adopted to implement the State's planning visions and that contain, among other things, information on growth inside and outside of PFAs. Chapters 178 and 179 also established specified land use goals relating to development within and outside of PFAs. Chapters 180 and 181 of 2009 clarify and reiterate that local jurisdictions must implement and follow the comprehensive plan each adopts by clarifying the link between local comprehensive plans and local land use ordinances.

In addition to these growth management and planning laws, the State administers a number of programs that aim to preserve agricultural land, including:

- MALPF, which purchases agricultural preservation easements that restrict development on prime farmland and woodland; and
- the Rural Legacy Program, administered by DNR, which supplements State land preservation programs in order to preserve key areas before escalating land values render protection impossible or before the land is lost to development.

#### *Water Supply Systems and Sewerage Systems – Subdivisions*

Land platted for subdivision may not be offered for sale or development, or developed with a permanent building, unless a plat of the subdivision, a statement of the proposed water and sewerage service for the subdivision, and other information MDE deems necessary is submitted to MDE. On the basis of this information, MDE may order:

- preparation and submission of any plans and specifications that MDE considers necessary to provide for adequate water supply and sewerage service to the subdivision; and
- installation of a whole or partial water supply system or sewerage system for the subdivision that (1) conforms to the plans submitted to MDE and to any revision of the plans MDE approves; and (2) is necessary to preserve public health.

MDE is authorized to (1) conduct surveys and research to carry out specified water supply, sewerage, and refuse disposal system provisions; and (2) specify the location for any sewerage treatment facility discharge point that is included in any county plan. MDE must adopt rules and regulations to, among other things:

- carry out specified water supply, sewerage, and refuse disposal system provisions;
- control, limit, or prohibit the installation and use of water supply and sewerage systems;
- require that consideration be given to specified issues prior to installation of individual water supply or sewerage systems; and
- require an area to be served by community water supply, sewerage, or solid waste facilities.

#### *County Water and Sewerage Plans*

Each county must have a county plan or a plan with adjoining counties that is (1) approved by MDE; (2) covers at least a 10-year period; and (3) addresses water supply systems, sewerage systems, solid waste disposal systems, solid waste acceptance facilities, and the systematic collection and disposal of solid waste, including litter.

Counties must review these plans at least once every three years in accordance with a schedule set by MDE. A county must adopt and submit to MDE any revision or amendment to its plan that the county governing body or MDE requires.

**Background:** Over the past year, the State has been engaged in several substantial efforts to determine how Maryland should grow and develop in the future. Some of these efforts are summarized below.

### *The Task Force on Sustainable Growth and Wastewater Disposal*

During the 2011 session, the General Assembly considered the Sustainable Growth and Agricultural Preservation Act of 2011 (SB 846/HB 1107), which would have prohibited major residential subdivisions served by septic systems or minor subdivisions served by septic systems that do not use best available technology for nitrogen removal. Bill hearings were held in both the Senate and the House, but no further action was taken. To continue the discussions initiated by that legislation, Governor O'Malley established the Task Force on Sustainable Growth and Wastewater Disposal via Executive Order 01.01.2011.05. The task force met throughout the 2011 interim and reviewed and studied such issues as what impact septic systems and shared community systems have on water quality and land use patterns and whether they constitute any barriers to smart growth. Further, the task force considered if existing growth areas that have central sewerage systems would be able to accommodate projected growth in terms of development capacity, increased flow to wastewater treatment plants, and funding for system upgrades. On December 20, 2011, the task force submitted a report containing numerous recommendations, including:

- designate areas within the land use plan of a local government's comprehensive plan into tiers that specify the appropriate level and type of development;
- require septic systems to include best available technology when they (1) are associated with new construction in the Chesapeake and Atlantic Coastal Bay watersheds or in other nitrogen impaired watersheds; or (2) replace existing systems in the Chesapeake and Atlantic Coastal Bays critical area; and
- allow the use of shared and community sewerage systems for new subdivisions if there is a controlling authority approved by MDE.

This legislation is one of two sets of Administration bills introduced to implement some of the recommendations contained in the task force's final report. The other legislation, Chapter 150 of 2012, increases the bay restoration fee on most users of wastewater facilities, septic systems, and sewage holding tanks to generate additional revenue for upgrading wastewater treatment plants and septic systems and for planting cover crops. It also expands the authorized uses of the Bay Restoration Fund beginning in fiscal 2018.

### *State Development Plan*

Over the past four years, MDP has worked with State agencies, local governments, private industry, and the general public to develop the State's first comprehensive development plan, known as PlanMaryland. PlanMaryland is a policy framework for growth and preservation in the State and a blueprint to help guide State agencies in their decisionmaking on programs and funding for growth and preservation. MDP released a draft plan in April 2011 and subsequently sought public input through open houses, targeted meetings, and an online comment tool. MDP released a revised draft plan in September 2011 that reflected public feedback and established an additional public comment period. The final PlanMaryland document was submitted to Governor O'Malley in December 2011. On December 19, 2011, the Governor accepted PlanMaryland and filed Executive Order 01.01.2011.22, which outlines a process for implementing the plan.

PlanMaryland proposes focusing State financial assistance in specific geographic areas and aligning State regulations and procedures. The plan calls for targeting State financial assistance to specific places that are designated for growth, revitalization, land preservation, and resource conservation, and maintaining public services and quality of life. The plan anticipates a future local-State effort to identify planning areas that reflect local feedback and data from existing State mapping tools. To streamline State regulations and procedures, the plan proposes that (1) State capital spending and noncapital plans, programs, and procedures be realigned and focused to achieve the objectives; and (2) MDP collaborate with other State agencies to incorporate PlanMaryland into other strategic State plans for major needs, such as transportation.

### *Meeting Chesapeake Bay Restoration Requirements*

In December 2010, the U.S. Environmental Protection Agency (EPA) established the first baywide Total Maximum Daily Load (TMDL) that (1) sets the maximum amount of pollution the bay can receive and still attain water quality standards; and (2) identifies specific pollution reduction requirements. **Exhibit 2** illustrates Maryland's pollution reduction goals in the TMDL. All pollution reduction measures must be in place by 2025, with at least 60% of the actions complete by 2017.

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**Exhibit 2**  
**Maryland's Pollution Reduction Goals in the Bay TMDL**  
**(Million Pounds Per Year)**

<u>Pollutant</u>	<u>2010 Loads</u>	<u>Bay TMDL Target Load</u>	<u>Percent Reduction</u>
Nitrogen	52.76	41.17	22.0%
Phosphorus	3.30	2.81	14.9%
Sediment	1,376	1,350	1.9%

TMDL: Total Maximum Daily Load

Note: Target loads as revised by EPA in August 2011.

Source: Maryland Department of the Environment; U.S. Environmental Protection Agency

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In 2010, each bay jurisdiction submitted a Phase I Watershed Implementation Plan (WIP) that details how the jurisdiction will achieve its individual pollution reduction goals under the TMDL. The Phase I WIP focused on the following three approaches for bridging the remaining loading gap: (1) developing new technology and approaches before 2017; (2) increasing the scope of implementation of existing strategies such as upgrading wastewater treatment plants, upgrading septic systems, and increasing the number and efficiency of stormwater runoff controls; and (3) improving regulatory requirements. The Phase I WIP establishes that all nutrient impacts from future growth must be offset if the TMDL is to be met. On March 30, 2012, after consideration of all comments received on the draft Phase II WIP during the public comment period, Maryland submitted to EPA the State's final Phase II WIP, which provides implementation strategies for the five major basins in Maryland (the Potomac River basin, Eastern Shore, Western Shore, the Patuxent River basin, and Maryland's portion of the Susquehanna River basin).

According to MDE, overall, septic systems currently account for approximately 6% of the total nitrogen load to the bay in Maryland. However, MDE advises that, while nitrogen loading from other sources is declining, nitrogen loading from septic systems continues to increase due to development. According to PlanMaryland, development on septic systems generates 10 times more nitrogen per household to the environment (including to groundwater) than development using advanced centralized treatment systems. Even septic systems that have been upgraded with best available technology do not reduce nitrogen to the same degree as modern community wastewater plants. According to the Administration, if current trends continue, about 120,000 new septic

systems will be installed over the next 25 years, generating 2.5 million pounds of nitrogen pollution to surface waters. While the number of new households projected to use public sewer systems is three times the number projected to use septic systems, the Administration advises that the pollution to rivers and streams from development on septic systems is likely to be twice the pollution from all new households on public sewer.

**State/Local Fiscal Effect:** A reliable estimate of the bill's overall fiscal impact on the State and local governments cannot be made, as numerous provisions in the bill have highly uncertain impacts on the patterns of residential development from which several sources of government revenue are derived. However, general descriptions as to the effect of the bill's various provisions and the types of resulting fiscal impacts are provided below, as well as direct impacts on local government operations and expenditures.

#### *New Residential Subdivisions May Face Permitting Delays in Fiscal 2013 and 2014*

The bill establishes a December 31, 2012 deadline for local governments to adopt growth tiers before the prohibition affecting major subdivisions takes effect. Thus, prior to this date, local jurisdictions may face a significant burden to adopt growth tiers with existing resources at local planning departments and other local agencies.

The bill also establishes additional tasks for local planning resources involving external coordination within the jurisdiction and with MDP for matters such as density verifications required by the bill. Charles County advises that its planning department's growth management processes and standard operating procedures will need to be revised to reflect various changes by the bill.

For proposed residential major subdivisions in Tier III areas, the bill generally requires that planning boards conduct specified fiscal and environmental reviews. Frederick County indicates that the costs and workloads associated with public hearings required by the bill (and existing notice requirements for such public hearings) may increase significantly, and that general administrative and legal expenses may also be incurred.

Overall, while the full implications of the bill are not clear at this time, several jurisdictions, including Harford, St. Mary's, and Worcester counties indicate that local operations will likely be strained to implement the bill's various requirements, particularly within the compressed timeframe established in the bill. Thus, significant permitting delays may occur in fiscal 2013 and 2014 for some jurisdictions depending on the extent to which local governments are able to implement the bill's requirements without a significant burden on available resources.

### *The Distribution of New Residential Subdivisions May Change*

MDP data show that nearly 21,000 parcels were developed outside of PFAs between calendar 2005 and 2009, representing about 28% of all new parcels and about 75% of newly developed acreage. Further, a 2011 report from the Abell Foundation shows that the long-term average share of single-family residential development occurring outside of PFAs is roughly 25%. MDP has estimated that, at the current pace and under the current pattern of residential development, about 404,000 additional acres will be developed by 2035, about 6.5% of all land in the State.

However, the distribution of future residential growth under the bill may differ significantly from the pattern described by MDP's Growth Simulation Model projections. The bill establishes a system of land use tiers, which are progressively more restrictive to residential growth. The effect will likely be to redirect growth from more rural areas where less dense residential development is typical (generally classified as Tier III under the bill) to PFAs and areas with more dense residential development that can be easily serviced by existing public sewer systems (Tiers I or II under the bill).

Therefore, jurisdictions with a greater than average share of residential development occurring within PFAs or connected to public sewer may experience an increase in demand for residential development. Conversely, jurisdictions with a greater than average share of residential development currently occurring outside of PFAs and areas adjacent to PFAs served by public sewer may experience a significant decrease in the number of new residential subdivisions. For contextual purposes, **Exhibit 3** shows the percentage of new residential development developed outside of PFAs within each county between calendar 2005 and 2009, ranked from highest to lowest, as well as population density for each county.

**Exhibit 3**  
**Percent of Development Outside of PFAs and Population Density**  
**Calendar 2005-2009**

<u>County</u>	<u>Development Outside PFA</u>	<u>Population Density Rank</u>	<u>County</u>	<u>Development Outside PFA</u>	<u>Population Density Rank</u>
Garrett	82.6%	24	Prince George's	31.6%	3
Queen Anne's	57.1%	18	Worcester	31.1%	19
Caroline	54.8%	20	Talbot	28.5%	17
Charles	47.0%	12	Statewide	28.4%	-
Calvert	46.3%	8	Washington	26.6%	11
Somerset	43.1%	21	Anne Arundel	24.5%	5
St. Mary's	42.5%	13	Wicomico	22.1%	15
Carroll	39.6%	9	Harford	21.3%	7
Cecil	38.3%	14	Baltimore Co.	19.6%	4
Dorchester	33.9%	23	Howard	18.6%	6
Allegany	33.7%	16	Frederick	17.0%	10
Kent	32.1%	22	Montgomery	13.7%	2

Source: Maryland Department of Planning; Department of Legislative Services

Baltimore City is excluded from Exhibit 3 as it is entirely within a PFA. As areas within PFAs, Baltimore City and all municipal corporations may face the most significant increase in long-term demand for residential development due to the comparatively less stringent requirements imposed on areas designated as Tier I under the bill; as of April 1, 2010, about 29% of the State population lived within Baltimore City or a municipal corporation. Counties such as Montgomery, Frederick, and Howard, which had the least development outside of PFAs between 2005 and 2009, may also experience an increase in demand for residential development.

Conversely, the extent of future growth may be significantly curtailed, particularly in the short term, for counties that have a disproportionately large share of current residential growth occurring in areas that would be designated as Tier III if adopted by a local jurisdiction. While the land within each tier has not yet been determined for any jurisdiction (and jurisdictions are not required to adopt all tiers), the counties that currently have the greatest share of development outside of PFAs and with the least dense development may experience the largest reductions in future residential development due to the greater restrictions under the bill associated with Tier III and IV areas.

### *The Pace and Extent of Long-term Residential Growth May Decrease*

As shown in Exhibit 3, in many counties, a significant share of recent residential development has occurred outside of areas that will be designated as Tier I areas under the bill. If growth is to continue outside of PFAs and areas that will be designated as Tier I under the bill, it may face significant delays and additional costs.

In addition to the permitting delays discussed above, and assuming that counties are able to adopt the required growth tiers within the time period necessary to avoid the prohibition affecting residential major subdivisions not being served by public sewer, new residential development will be subject to new restrictions and various forms of additional review. For example, a residential major subdivision not served by public sewer may be subject to fiscal, environmental, and other review by the local planning board as well as new State oversight and regulation of the residential subdivision's planned sewerage systems. The bill generally imposes fewer restrictions in Tier III areas for minor subdivisions, but these restrictions are nevertheless significantly greater than under current law and may slow the pace of development within the next few fiscal years.

If the bill is successful at redirecting new residential growth away from areas that will likely be designated as Tier III or IV areas, it may nevertheless impact the overall extent of residential growth statewide. For example, it is unclear whether developers reliant on current residential development patterns, business practices, and permit approval requirements will be able to quickly adapt to the new and different development patterns encouraged by the bill. A January 2012 study published by the National Center for Smart Growth Research and Education found that a substantial majority of developers and planners surveyed indicated that, for several reasons, it is more difficult to develop land within PFAs than in more open areas, contrary to the intent of the policy.

Finally, the bill imposes fewer restrictions on minor subdivisions compared to major subdivisions, which will likely result in fewer new dwelling units per development. Yet attempting to complete a greater number of residential minor subdivisions may be complicated by the bill's significantly enhanced permitting requirements as well as the provisions restricting the number of future subdivisions within Tier II, III, or IV areas. If a parcel of land is subdivided into a residential minor subdivision leaving any remainder parcel or tract of land, neither the subdivision nor the remainder parcel may be further subdivided, though the bill permits this subdivision to occur gradually and provides for several exemptions. This may result in short-term uncertainty among developers and owners of large tracts of land as to how to maximize profit from land transactions, as well as an overall decrease in the extent of land development in the long term.

### *Land Values May Be Affected*

The bill may have potentially significant but disparate impacts on the value of real property statewide. The type of impact depends on several factors, including whether a property is currently developed or undeveloped, and which tier, if any, a property will ultimately be located within. The value of agricultural properties may be impacted both to the extent they are designated as Tier III or IV areas and because of the restrictions on future subdivision rights. However, as noted, the bill establishes exemptions and separate provisions for agricultural lands, which may mitigate or alter the generally applicable effects the bill has on property values for those lands.

The value of properties located within areas that are designated as Tier I and II areas may increase significantly. While the bill's restrictions may cause a reduction in the *level* of development of new residential property, particularly in the short term, it is possible that the *value* of the existing housing stock will increase. To the extent that the demand for housing in Maryland remains constant, any decrease in the number of future homes built may be fully reflected in an increase in the value of existing homes. Legislative Services advises, however, that any increase in the value of current residential properties may have a detrimental impact on the availability of affordable housing in Maryland.

### *Revenue Sources Impacted by Changes in Residential Development Patterns*

The bill's various impacts on future residential development discussed above may result in a number of fiscal impacts to State and local revenue sources, including property taxes, transfer taxes, building excise taxes, development impact fees, recordation and subdivision plat fees, and other taxes and fees beginning in fiscal 2013.

In any fiscal year and for any jurisdiction in which new residential growth is less than it would be in the absence of the bill, State transfer tax revenues decrease. The State and most counties impose a transfer tax. The State transfer tax rate is 0.5% of the consideration payable for an instrument of writing conveying title to, or a leasehold interest in, real property (0.25% for first-time Maryland homebuyers). The decline in fiscal 2013 may be minimal due to the bill's various exemptions for subdivision applications that are submitted by specified dates.

The State transfer tax primarily funds Program Open Space, which is administered by DNR and provides funds for State and local conservation acquisitions and development of public outdoor recreational sites, facilities, and open space. The transfer tax also supports MALPF.

Similarly, any decrease in the overall extent of future residential development may also result in a minimal decrease in special fund revenues for the Circuit Court Real Property Records Improvement Fund, which consists of surcharges assessed on instruments recorded in the land records. However, this may be partially offset by an increase in the number of subdivision plat filings associated with the bill's requirement to record the number of remaining lots each time a new lot is created in a minor subdivision, and to record the transfer of any agricultural subdivision rights authorized by the bill.

In any fiscal year in which the statewide assessable base of residential property changes due to the bill's potential effects on real property values, tax revenues for the Annuity Bond Fund will be affected. The Annuity Bond Fund is used to make debt service payments on the State's general obligation bonds. However, it is unknown whether or when a change in the growth of the State's future assessable base may occur, since, as noted, decreases in the value of rural and undeveloped lands may be partially or fully offset by increases for existing homes statewide and for property within PFAs. According to MDP, the assessed value per acre of compact development is nearly five times greater than the taxable value of an acre of low density development.

Any reduction in future growth of residential development may result in a loss of future property tax revenues for affected counties. For example, Carroll County estimates that there are about 10,500 lots outside of planned sewer service areas in its county, of which it projects about 7,300 may be subject to the more rigorous approval process for Tier III or IV areas. Additionally, Charles County estimates that about 25% of its land is rural and subject to restrictions that may reduce future tax collections, and Garrett County estimates that more than 90% of land within its jurisdiction will be subject to restrictions on major subdivisions, thereby affecting its tax base growth. In fiscal 2010, counties statewide derived about 26.5% of total revenues from property taxes.

In addition to property taxes, as well as income and other taxes that reflect growth in economic activity, local revenues directly associated with residential development may also be impacted. For example, development impact fees and building excise taxes enable local governments to collect revenue from builders for public facilities necessitated by new residential or commercial development. As a result of these development charges, local governments are able to shift the costs of financing new public facilities from existing taxpayers to individuals responsible for the development. In many situations, the use of such development charges may eliminate the need for jurisdiction-wide tax increases. Several jurisdictions indicate that the bill will have an immediate and direct impact on the collection of these fees and taxes. In fiscal 2011, counties statewide collected about \$68.2 million in development impact fees and excise taxes, of which about 76% was used to support provision of local education services. However, because these revenues are directly targeted to offsetting the cost of services provided to new development, any decrease in these revenues will be associated with a

corresponding decrease in future expenditures, thus mitigating the overall fiscal impact on the jurisdiction and its current residents. Similarly, to the extent that local property tax revenues decrease for certain jurisdictions over the long term, local expenditures may also decrease as fewer public services are needed.

Finally, it should be noted that local expenditures may increase for additional personnel to oversee the installation and maintenance of community sewerage systems and shared facilities, although the bill does not require a jurisdiction to be a controlling authority. Under the bill, MDE is prohibited from approving a shared facility or community sewage disposal system unless the system is managed, operated, and maintained by a “controlling authority” or its third-party contractor. Charles County indicates that it would hire personnel to implement a program to oversee new shared and community sewerage systems, and Frederick County advises that it may hire an additional sanitarian within its Health Department, in part to regulate such systems.

#### *Bay Restoration Costs Decrease*

State and local expenditures associated with various programs designed to restore the Chesapeake Bay or achieve other environmental goals, or to comply with various local, State, or federal environmental laws, such as the Chesapeake Bay TMDL, may decrease. The bill may result in a significant reduction in nutrient loads to the Chesapeake Bay watershed to the extent fewer septic systems are installed and fewer impervious surfaces are created through less dense forms of development on previously undeveloped land. This may result in avoided costs for certain State and local programs designed to comply with the WIP. As noted earlier, the Phase I WIP establishes that all nutrient impacts from future growth be offset if the TMDL is to be met.

For contextual purposes, as shown in **Exhibit 4**, recent estimates of the cost of implementing the Phase II WIP associated with the bay TMDL are about \$6.3 billion through calendar 2017 and \$14.8 billion through calendar 2025.

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**Exhibit 4**  
**Estimated Phase II WIP Costs for Interim and Final Targets Under the Bay TMDL**  
**(\$ in Millions)**

<u>Source Sector</u>	<u>Cost of 2017 Strategy</u> <u>2010-2017</u>	<u>Cost of 2025 Strategy</u> <u>2010-2025</u>
<b>Agriculture</b>	<b>\$498</b>	<b>\$928</b>
<b>Municipal Wastewater</b>	<b>2,368</b>	<b>2,368</b>
Major Municipal Plants	2,306	2,306
Minor Municipal Plants	62	62
<b>Stormwater</b>	<b>2,518</b>	<b>7,772</b>
Maryland Department of Transportation	467	1,500
Local Government	2,051	6,272
<b>Septic Systems</b>	<b>896</b>	<b>3,723</b>
Septic System Upgrades	428	2,459
Septic System Connections	443	1,176
Septic System Pumping	25	88
<b>Total</b>	<b>\$6,280</b>	<b>\$14,791</b>

Notes: Exhibit does not reflect costs associated with controlling combined sewer and sanitary overflows or the implementation of the Healthy Air Act. Exhibit reflects the final Phase II WIP estimates submitted to EPA on March 30, 2012.

Source: *Phase II Watershed Implementation Plan*; Maryland Department of the Environment

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**Small Business Effect:** The Administration’s small business impact statement indicates that the bill has minimal and positive effects on small businesses. However, Legislative Services advises that the bill may have a meaningful adverse impact on many small business residential developers, homebuilders, and associated contractors.

The bill may have also have a meaningful beneficial impact on developers, homebuilders and associated contractors that specialize in various forms of development most prevalent within the State’s PFAs, including multifamily buildings, and urban in-fill and redevelopment projects. Further, a number of planning consultants may realize a meaningful increase in the demand for their services, particularly in the short term.

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**Additional Information**

**Prior Introductions:** None.

**Cross File:** Although HB 445 (The Speaker - By Request – Administration – Environmental Matters) is designated as a cross file, it is different.

**Information Source(s):** Calvert, Charles, Frederick, Garrett, Harford, Prince George’s, St. Mary’s, and Worcester counties; cities of Havre de Grace and Takoma Park; Maryland Municipal League; Maryland Department of Agriculture; Maryland Department of Planning; Maryland Department of the Environment; U.S. Environmental Protection Agency; The Abell Foundation; National Center for Smart Growth Research and Education; Department of Legislative Services

**Fiscal Note History:** First Reader - February 13, 2012  
ncs/lgc Revised - Senate Third Reader/Updated Information - April 3, 2012  
Revised - Enrolled Bill - May 24, 2012

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## ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Sustainable Growth and Agricultural Preservation Act of 2012

BILL NUMBER: SB 236

PREPARED BY: Matt Power

### PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

  x   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

Some developers and landowners will be positively affected by the legislation since the bill will encourage smart growth development in priority funding areas on properties of interest to those businesses. This can result in economies of scale for consumers and businesses in revitalized areas. Since the bill does not ban septic, but rather encourages them in Tier III areas as opposed to areas planned for agriculture and preservation (Tier IV areas) the fiscal impact of the bill is expected to be minimal for those businesses. Those businesses will choose to develop major subdivisions on septic in Tier III areas rather than in Tier IV areas. Minor subdivisions are still allowed on septic in both Tiers III and IV. Agricultural businesses could see a positive, stabilizing impact on their farming operations due to reduced sprawl development threatening the availability of viable agricultural lands.