

HOUSE BILL 106

M3

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CF 3lr1804

By: **Delegates McDermott, Afzali, Bates, Beitzel, Cluster, Elliott, Fisher, George, Haddaway–Riccio, Hershey, Hogan, Impallaria, Jacobs, McComas, McConkey, W. Miller, Myers, Norman, Otto, Ready, Schulz, Smigiel, Stifler, Stocksdale, and Szeliga**

Introduced and read first time: January 16, 2013

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Sustainable Growth and Agricultural Preservation Act of 2012 – Repeal**

3 FOR the purpose of repealing the Sustainable Growth and Agricultural Preservation
4 Act of 2012 (the Act); repealing certain provisions of law relating to the adoption
5 of certain growth tier designations by certain local jurisdictions; repealing
6 certain provisions of law relating to the authorization of certain subdivisions by
7 a local jurisdiction under certain circumstances; repealing certain provisions of
8 law relating to the resolution of conflicting growth tier designations; repealing a
9 prohibition against the sale or development of certain land unless certain
10 documentation is provided to the Department of the Environment; repealing
11 certain provisions of law relating to the prohibition against the subdivision or
12 resubdivision of a certain tract, parcel of land, or subdivision under certain
13 circumstances, and certain exceptions to the prohibition; repealing the
14 authorization of a local jurisdiction to enact a local law or ordinance for the
15 transfer of certain rights of an owner to subdivide certain property used for
16 agricultural activities under certain circumstances; repealing certain
17 requirements for the approval of a shared facility or community sewerage
18 system; repealing certain mandatory and certain discretionary provisions
19 relating to the adoption of certain growth tiers by certain jurisdictions;
20 repealing the requirement that a local jurisdiction provide documentation to the
21 Department of Planning if the jurisdiction does not adopt a certain tier;
22 repealing the requirement that a local legislative body or planning board hold a
23 certain hearing in certain circumstances; repealing the requirement that a
24 planning board make a certain recommendation under certain circumstances;
25 repealing the requirement that growth tiers adopted by a local jurisdiction meet
26 certain criteria; repealing the requirement that under certain circumstances a
27 local jurisdiction alter the contents of a certain plan; repealing the prohibition
28 against the approval of a certain subdivision unless a planning board reviews

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 and recommends approval under certain circumstances; repealing the
2 requirement that a planning board hold a certain hearing under certain
3 circumstances; repealing the requirement that a planning board review a
4 certain subdivision; repealing the requirement that a planning board
5 recommend a certain subdivision in a certain manner; repealing certain
6 provisions of law relating to the verification by the Department of Planning of a
7 certain yield for zoning; repealing a requirement that each local jurisdiction
8 submit to the Department of Planning a certain definition or description on or
9 before a certain date; repealing a requirement that the Department of Planning
10 prepare a list of certain definitions and descriptions for publication on certain
11 Web sites on or after a certain date; repealing certain provisions of law relating
12 to the requirement that the Department of the Environment propose certain
13 regulations on or before a certain date; repealing a certain provision of law
14 requiring the Department of Planning, in consultation with the Department of
15 the Environment, to submit a certain report to the General Assembly by a
16 certain date; repealing certain defined terms; repealing certain provisions of law
17 relating to the application of certain provisions of the Act; repealing certain
18 provisions of law relating to the construction of the Act; and generally relating
19 to the subdivision of land and planning for growth.

20 BY repealing and reenacting, with amendments,
21 Article – Environment
22 Section 9–206
23 Annotated Code of Maryland
24 (2007 Replacement Volume and 2012 Supplement)

25 BY repealing
26 Article – Environment
27 Section 9–1110
28 Annotated Code of Maryland
29 (2007 Replacement Volume and 2012 Supplement)

30 BY repealing and reenacting, with amendments,
31 Article – Land Use
32 Section 1–401 and 5–105
33 Annotated Code of Maryland
34 (2012 Volume)

35 BY repealing
36 Article – Land Use
37 Section 1–501 through 1–509 and the subtitle “Subtitle 5. Growth Tiers”; and
38 5–104
39 Annotated Code of Maryland
40 (2012 Volume)

41 BY repealing
42 Chapter 149 of the Acts of the General Assembly of 2012

1 Section 4 through 9

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

4 **Article – Environment**

5 9–206.

6 (a) [(1) In this section the following words have the meanings indicated.

7 (2) “Community sewerage system” means a publicly or privately
8 owned sewerage system that serves at least two lots.

9 (3) “Growth tiers” means the tiers adopted by a local jurisdiction in
10 accordance with Title 1, Subtitle 5 of the Land Use Article.

11 (4) “Lot” includes a part of a subdivision that:

12 (i) Is used or is intended to be used as a building site; and

13 (ii) Is not intended to be further subdivided.

14 (5) “Major subdivision” means:

15 (i) The subdivision of land:

16 1. Into new lots, plats, building sites, or other divisions
17 of land defined or described as a major subdivision in a local ordinance or regulation:

18 A. That is in effect on or before January 1, 2012; or

19 B. Adopted on or before December 31, 2012, if a local
20 jurisdiction chooses to create a definition or description applicable solely to this section
21 or if a local ordinance or regulation does not define or describe a major subdivision
22 under item A of this item; or

23 2. If a local jurisdiction has not adopted a definition or
24 description of a major subdivision on or before December 31, 2012, under item 1 of this
25 item, into five or more new lots, plats, building sites, or other divisions of land; and

26 (ii) If the local ordinance or regulation has multiple definitions
27 or descriptions of a major subdivision under item (i) of this paragraph, the definition
28 or description of a major subdivision that is determined by the local jurisdiction to
29 apply for the purposes of this section.

30 (6) “Minor subdivision” means:

1 (i) The subdivision of land:

2 1. Into new lots, plats, building sites, or other divisions
3 of land defined or described as a minor subdivision in a local ordinance or regulation:

4 A. That is in effect on or before January 1, 2012; or

5 B. Adopted on or before December 31, 2012, if a local
6 jurisdiction chooses to create a definition or description applicable solely to this section
7 or if a local ordinance or regulation does not define or describe a minor subdivision
8 under item A of this item, provided that a minor subdivision defined or described in
9 the adopted ordinance or regulation does not exceed seven new lots, plats, building
10 sites, or other divisions of land; or

11 2. If a local jurisdiction has not adopted a definition or
12 description of a minor subdivision on or before December 31, 2012, under item 1 of this
13 item, into fewer than five new lots, plats, building sites, or other divisions of land; and

14 (ii) If the local ordinance or regulation has multiple definitions
15 or descriptions of a minor subdivision under item (i) of this paragraph, the definition
16 or description of a minor subdivision that is determined by the local jurisdiction to
17 apply for the purposes of this section.

18 (7) “On-site sewage disposal” means the disposal of sewage beneath
19 the soil surface.

20 (8) (i) “On-site sewage disposal system” means a sewage
21 treatment unit, collection system, disposal area, and related appurtenances.

22 (ii) “On-site sewage disposal system” includes a shared facility
23 or community sewerage system that disposes of sewage effluent beneath the soil
24 surface.

25 (9) “Public sewer” means a community, shared, or multiuse sewerage
26 system.

27 (10) “Shared facility” means a sewerage system that:

28 (i) Serves more than one:

29 1. Lot and is owned in common by the users;

30 2. Condominium unit and is owned in common by the
31 users or by a condominium association;

1 3. User and is located on individual lots owned by the
2 users; or

3 4. User on one lot and is owned in common by the users;
4 or

5 (ii) Is located wholly or partly on any of the common elements of
6 a condominium; or

7 (iii) Serves a housing or another multiple ownership cooperative.

8 (11) “State agency” means:

9 (i) The Maryland Agricultural Land Preservation Foundation;

10 (ii) The Maryland Environmental Trust;

11 (iii) The Department of Natural Resources; or

12 (iv) The Maryland–National Capital Park and Planning
13 Commission.

14 (12) “Subdivision” means a division of a tract or parcel of land into at
15 least two lots for the immediate or future purpose of sale or building development.

16 (b) (1) Subsections (f) through (i) and subsection (l) of this section apply to
17 residential subdivisions.

18 (2) Subsections (f) through (i) do not apply to an application for
19 approval of a residential subdivision under § 9–512(e) of this title if:

20 (i) 1. By October 1, 2012, a submission for preliminary plan
21 approval is made to a local jurisdiction that includes, at a minimum, the preliminary
22 engineering, density, road network, lot layout, and existing features of the proposed
23 site development;

24 2. By July 1, 2012, in a local jurisdiction that requires a
25 soil percolation test before a submission for preliminary approval:

26 A. An application for a soil percolation test approval for
27 all lots that will be included in the submission for preliminary approval is made to the
28 local health department; and

29 B. Within 18 months after approval of the soil
30 percolation tests for the lots that will be included in the submission for preliminary
31 approval, a submission for preliminary approval is made to a local jurisdiction that

1 includes, at a minimum, the preliminary engineering, density, road network, lot
2 layout, and existing features of the proposed site development; or

3 3. By July 1, 2012, in a local jurisdiction that requires a
4 soil percolation test before a submission for preliminary approval and the local
5 jurisdiction does not accept applications for soil percolation tests year round:

6 A. Documentation that a Maryland professional engineer
7 or surveyor has prepared and certified under seal a site plan in anticipation of an
8 application for soil percolation tests;

9 B. An application for a soil percolation test approval for
10 all lots that will be included in the submission for preliminary approval is made to the
11 local health department at the next available soil percolation test season; and

12 C. Within 18 months after approval of the soil
13 percolation tests for the lots that will be included in the submission for preliminary
14 approval, a submission for preliminary approval is made to a local jurisdiction that
15 includes, at a minimum, the preliminary engineering, density, road network, lot
16 layout, and existing features of the proposed site development; and

17 (ii) By October 1, 2016, the preliminary plan is approved.

18 (c) (1) Subsections (f) through (i) and subsection (l) of this section do not
19 apply to covenants, restrictions, conditions, or conservation easements that were
20 created or entered into at any time under § 2–118 of the Real Property Article for the
21 benefit of, or held by, a State agency or a local jurisdiction for the purpose of
22 conserving natural resources or agricultural land.

23 (2) Subsections (f) through (i) of this section may not be construed as
24 granting any additional rights in covenants, restrictions, conditions, or conservation
25 easements that were created or entered into at any time under § 2–118 of the Real
26 Property Article for the benefit of, or held by, a State agency or a local jurisdiction for
27 the purpose of conserving natural resources or agricultural land.

28 (d) Subsections (f) through (i) and subsection (l) of this section do not:

29 (1) Affect a local transfer of development rights program authorized
30 under Article 25A, § 5(X) of the Code or Title 7, Subtitle 2 or § 22–105 of the Land Use
31 Article; or

32 (2) Diminish the local development rights transferred in these transfer
33 of development rights programs.

34 (e) Subsections (f) through (i) and subsection (l) of this section may not be
35 construed as prohibiting a local jurisdiction from altering the definition or description

1 of a major or minor subdivision in a local ordinance or regulation for local zoning or
2 development purposes.

3 (f) On or after December 31, 2012, a local jurisdiction:

4 (1) May not authorize a residential major subdivision served by
5 on-site sewage disposal systems, community sewerage systems, or shared systems
6 until the local jurisdiction adopts the growth tiers in accordance with § 5-104 of the
7 Land Use Article; or

8 (2) If the local jurisdiction has not adopted the growth tiers in
9 accordance with § 5-104 of the Land Use Article, may authorize:

10 (i) A residential minor subdivision served by on-site sewage
11 disposal systems if the residential subdivision otherwise meets the requirements of
12 this title; or

13 (ii) A major or minor subdivision served by public sewer in a
14 Tier I area.

15 (g) (1) Except as provided in subsection (f)(2) of this section and subject to
16 subsection (i) of this section, a local jurisdiction may authorize a residential
17 subdivision plat only if:

18 (i) All lots proposed in an area designated for Tier I growth will
19 be served by public sewer;

20 (ii) All lots proposed in an area designated for Tier II growth:

21 1. Will be served by public sewer; or

22 2. If the subdivision is a minor subdivision, may be
23 served by on-site sewage disposal systems;

24 (iii) Except as provided in subsection (h) of this section, the
25 subdivision is a minor subdivision served by individual on-site sewage disposal
26 systems in a Tier III or Tier IV area; or

27 (iv) The subdivision is a major subdivision served by on-site
28 sewage disposal systems, a community system, or a shared facility located in a Tier III
29 area and has been recommended by the local planning board in accordance with §
30 5-104 of the Land Use Article.

31 (2) Any delay in the approval of a residential subdivision plat under
32 this subsection may not be construed as applying to any deadline for approving or
33 disapproving a subdivision plat under Division II or § 5-201 of the Land Use Article or
34 a local ordinance.

1 (h) (1) The limitation of minor subdivisions in subsection (g)(1)(iii) of this
2 section does not apply to a local jurisdiction, if the subdivision and zoning
3 requirements in their cumulative Tier IV areas result in an actual overall yield of not
4 more than one dwelling unit per 20 acres that has been verified by the Department of
5 Planning.

6 (2) A local jurisdiction may request, in writing, a verification of the
7 actual overall yield from the Department of Planning.

8 (3) The Department of Planning shall verify the actual overall yield
9 after consultation with the Maryland Sustainable Growth Commission, established in
10 § 5-702 of the State Finance and Procurement Article.

11 (i) (1) If two or more local jurisdictions adopt conflicting growth tier
12 designations for the same area, the Department and the Department of Planning shall
13 confer with the local jurisdictions to seek resolution of the conflicting designations.

14 (2) If a conflict in growth tier designations is not resolved, the
15 Department of Planning shall recommend to the Department and the Department
16 may approve the preferred local jurisdiction designations as recommended by the
17 Department of Planning based on the following best planning practices or factors:

18 (i) The comprehensive plan, including the municipal growth
19 element, the water resources element, the land use element, and, if applicable, the
20 priority preservation element;

21 (ii) Growth projections and development capacity; and

22 (iii) Availability of infrastructure.

23 (j)] With respect to land that is platted for subdivision, a person may not
24 offer any of the land for sale or development or erect a permanent building on the
25 land, unless there have been submitted to the Department:

26 (1) A plat of the subdivision;

27 (2) A statement of the methods, consistent with Subtitle 5 of this title,
28 by which the subdivision is to be supplied with water and sewerage service; **AND**

29 (3) [Documentation by the local jurisdiction that a major subdivision
30 on-site sewage disposal system, a community sewerage system, or a shared facility is
31 in a:

32 (i) Tier III area as adopted by the local jurisdiction; or

1 (ii) Tier IV area in a local jurisdiction that is exempt from the
2 limitation of minor subdivisions as provided in subsection (h) of this section; and

3 (4) Any other information that the Department requires.

4 [(k)] (B) On the basis of information provided under subsection [(j)] (A) of
5 this section, the Department may order:

6 (1) Preparation and submission, within any time the Department sets,
7 of any plans and specifications that the Department considers necessary to provide for
8 adequate water supply and sewerage service to the subdivision; and

9 (2) Installation, within any time the Department sets, of the whole or
10 any part of a water supply system or sewerage system for the subdivision that:

11 (i) Conforms to the plans submitted to the Department and to
12 any revision of the plans that the Department approves; and

13 (ii) In the judgment of the Department, is needed for the public
14 health.

15 [(l)] (1) This subsection applies to a residential minor subdivision in a Tier
16 II, Tier III, or Tier IV area.

17 (2) Except as provided in paragraphs (4) and (5) of this subsection, on
18 or after December 31, 2012, if a tract or parcel of land is subdivided into a residential
19 minor subdivision leaving any remainder parcel or tract of land:

20 (i) The residential minor subdivision may not be resubdivided
21 or further subdivided; and

22 (ii) The remainder parcel or tract of land may not be subdivided.

23 (3) Except as provided in paragraphs (4) and (5) of this subsection, on
24 or after December 31, 2012, the subdivision plat of the residential minor subdivision
25 shall state that:

26 (i) The residential minor subdivision may not be resubdivided
27 or further subdivided;

28 (ii) The remainder parcel or tract of land may not be subdivided;
29 and

30 (iii) The subdivision plat is subject to State law and local
31 ordinances and regulations.

1 (4) On or after December 31, 2012, if a tract or parcel of land is
2 subdivided into a residential minor subdivision, the residential minor subdivision or
3 the remainder parcel or tract of land may be resubdivided or further subdivided if the
4 subdivision or the remainder parcel or tract of land is:

5 (i) Within a priority funding area as defined in Title 5, Subtitle
6 7B of the State Finance and Procurement Article; and

7 (ii) Designated for public sewerage service within 10 years in
8 the approved water and sewer plan.

9 (5) (i) A tract or parcel of land may be subdivided into a residential
10 minor subdivision in Tier II, Tier III, or Tier IV areas over time if each time a new lot
11 or parcel is created, the subdivision plat states the number of new lots, plats, building
12 sites, or other divisions of land that are left with the number of lots, plats, building
13 sites, or other divisions of land allowed as a subdivision.

14 (ii) Except as provided in paragraph (iii) of this paragraph,
15 when the tract or parcel of land that is subdivided over time reaches the total number
16 of lots, plats, building sites, or other divisions of land that are allowed as a residential
17 minor subdivision, the subdivision plat shall state that:

18 1. The residential minor subdivision may not be
19 resubdivided or further subdivided;

20 2. The remainder parcel or tract of land may not be
21 subdivided; and

22 3. The subdivision plat is subject to State law and local
23 ordinances and regulations.

24 (iii) A remainder parcel or tract of land may be subdivided for
25 nonresidential agricultural purposes, including a farm market, agricultural processing
26 facility, or creamery, and the owner may apply for approval of an on-site sewage
27 disposal system to serve the nonresidential agricultural purposes.

28 (m) (1) In this subsection, “agricultural activities” includes:

29 (i) Plowing, tillage, cropping, seeding, cultivating, and
30 harvesting for the production of food and fiber products; and

31 (ii) The grazing of livestock.

32 (2) A local jurisdiction may enact a local law or ordinance for the
33 transfer of the right to subdivide, up to 7 lots, by an owner of property used for
34 agricultural activities to the owner of another property used for agricultural activities
35 in accordance with this subsection.

1 (3) The local law or ordinance shall provide for the recordation of any
2 rights to subdivide that are transferred under this subsection.

3 (4) A property used for agricultural activities the owner of which
4 receives rights to subdivide under this subsection:

5 (i) Is limited to a total of 15 lots; and

6 (ii) Shall cluster the lots on the property.

7 (5) Rights to subdivide may not be transferred from the owner of
8 property used for agricultural activities in a Tier III area to the owner of property used
9 for agricultural activities in a Tier IV area.]

10 [9–1110.

11 (a) (1) In this section the following words have the meanings indicated.

12 (2) “Community sewerage system” means a publicly or privately
13 owned sewerage system that serves at least two lots.

14 (3) “Controlling authority” means a unit of government, a body public
15 and corporate, or an intercounty agency authorized by the State, a county, or a
16 municipal corporation to provide for the management, operation, and maintenance of a
17 community sewerage system, shared facility, or multiuse sewerage system.

18 (4) “Shared facility” means a sewerage system that:

19 (i) Serves more than one:

20 1. Lot and is owned in common by the users;

21 2. Condominium unit and is owned in common by the
22 users or by a condominium association;

23 3. User and is located on individual lots owned by the
24 users; or

25 4. User on one lot and is owned in common by the users;

26 (ii) Is located wholly or partly on any of the common elements of
27 a condominium; or

28 (iii) Serves a housing cooperative or other multiple ownership
29 cooperative.

1 (b) This section may not be construed as requiring a local jurisdiction to:

2 (1) Be a controlling authority; or

3 (2) Authorize or allow the use of a shared facility or a community
4 sewerage system within the local jurisdiction.

5 (c) A shared facility or community sewerage system may be approved only if
6 the system:

7 (1) Is managed, operated, and maintained by:

8 (i) A controlling authority; or

9 (ii) A third party under contract with the controlling authority;
10 and

11 (2) Discharges:

12 (i) To the surface waters of the State in accordance with a
13 permit issued under § 9–323 of this title;

14 (ii) By way of land application under a nutrient management
15 plan required under § 8–803.1 of the Agriculture Article that assures 100% of the
16 nitrogen and phosphorus in the applied effluent will be taken up by vegetation; or

17 (iii) By way of an on–site sewerage system.]

18 **Article – Land Use**

19 1–401.

20 (a) Except as provided in this section, this division does not apply to charter
21 counties.

22 (b) The following provisions of this division apply to a charter county:

23 (1) this subtitle, including Parts II and III (Charter county –
24 Comprehensive plans);

25 (2) § [1–101(l), (m), and (o)] **1–101(o)** (Definitions – [“Plan”, “Priority
26 funding area”, and] “Sensitive area”);

27 (3) § 1–201 (Visions);

28 (4) § 1–206 (Required education);

- 1 (5) § 1–207 (Annual report – In general);
- 2 (6) § 1–208 (Annual report – Measures and indicators);
- 3 (7) Title 1, Subtitle 3 (Consistency);
- 4 [(8) Title 1, Subtitle 5 (Growth Tiers);]
- 5 [(9)] (8) § 4–104(b) (Limitations – Bicycle parking);
- 6 [(10)] (9) § 4–208 (Exceptions – Maryland Accessibility Code);
- 7 [(11)] (10) § 4–210 (Permits and variances – Solar panels);
- 8 [(12)] (11) § 5–102(d) (Subdivision regulations – Burial sites);
- 9 [(13) § 5–104 (Major subdivision – Review);]
- 10 [(14)] (12) Title 7, Subtitle 1 (Development Mechanisms);
- 11 [(15)] (13) Title 7, Subtitle 2 (Transfer of Development Rights);
- 12 [(16)] (14) except in Montgomery County or Prince George’s County,
- 13 Title 7, Subtitle 3 (Development Rights and Responsibilities Agreements);
- 14 [(17)] (15) Title 7, Subtitle 4 (Inclusionary Zoning);
- 15 [(18)] (16) § 8–401 (Conversion of overhead facilities);
- 16 [(19)] (17) for Baltimore County only, Title 9, Subtitle 3
- 17 (Single–County Provisions – Baltimore County);
- 18 [(20)] (18) for Howard County only, Title 9, Subtitle 13 (Single–County
- 19 Provisions – Howard County);
- 20 [(21)] (19) for Talbot County only, Title 9, Subtitle 18 (Single–County
- 21 Provisions – Talbot County); and
- 22 [(22)] (20) Title 11, Subtitle 2 (Civil Penalty).
- 23 (c) This section supersedes any inconsistent provision of Division II of this
- 24 article.

[Subtitle 5. Growth Tiers.]

26 [1–501.

1 In this subtitle, “planning board”:

2 (1) means a planning board established under this article; and

3 (2) includes a planning commission or board established under
4 Division II of this article or Article 25A of the Code.]

5 [1–502.

6 On or before December 31, 2012, a local jurisdiction may adopt the mapped
7 growth tiers in accordance with this subtitle.]

8 [1–503.

9 Before adoption of the growth tiers, a local jurisdiction may submit the proposed
10 tiers and any relevant information to the Department of Planning for:

11 (1) technical assistance, review, and comment; and

12 (2) the opportunity for public review.]

13 [1–504.

14 After adoption of the growth tiers, the local jurisdiction shall provide to the
15 Department of Planning all information necessary to demonstrate the precise location
16 of the tiers, including, as appropriate:

17 (1) a map of the area showing planning and zoning characteristics of
18 each tier; and

19 (2) existing and planned water and sewer services.]

20 [1–505.

21 The Department of Planning may comment on the growth tiers adopted by the
22 local jurisdictions.]

23 [1–506.

24 (a) Subject to subsections (b), (c), and (d) of this section, a local jurisdiction
25 that chooses to adopt growth tiers is not required to adopt all of the tiers.

26 (b) A municipal corporation that exercises planning and zoning authority
27 shall adopt Tier I and may adopt Tier II.

1 (c) A county shall adopt Tiers I, III, and IV, and may adopt Tier II.

2 (d) If a local jurisdiction does not adopt all of the tiers authorized under this
3 section, the local jurisdiction shall document the reasons the jurisdiction is not
4 adopting a particular tier.]

5 [1-507.

6 (a) If the Department of Planning comments under § 1-505 of this subtitle
7 on any of the tiers or on an area within one of the tiers, the local legislative body or the
8 planning board shall hold at least one public hearing on the comments by the
9 Department of Planning.

10 (b) The local legislative body or the planning board shall review the mapped
11 growth tiers adopted by the local jurisdiction in light of the comments by the
12 Department of Planning.

13 (c) If the planning board holds the public hearing under subsection (a) of this
14 section, after the public hearing and the consideration of the comments by the
15 Department of Planning, the planning board shall recommend to the local jurisdiction
16 that either the tiers or an area within the tiers:

17 (1) be changed; or

18 (2) that the adopted tiers remain unchanged.

19 (d) If the planning board recommends that the tiers or an area within the
20 tiers be changed under subsection (c) of this section, the planning board shall provide
21 the recommended mapped growth tier changes to the local jurisdiction.]

22 [1-508.

23 (a) The growth tiers adopted by a local jurisdiction shall meet the following
24 criteria:

25 (1) Tier I areas are areas that are:

26 (i) served by public sewerage systems and mapped locally
27 designated growth areas; or

28 (ii) a municipal corporation that is a priority funding area that
29 is served by public sewerage systems;

30 (2) Tier II areas are areas that are:

31 (i) 1. planned to be served by public sewerage systems and
32 in the municipal growth element; or

- 1 2. mapped locally designated growth areas; and
- 2 (ii) needed to satisfy demand for development at densities
3 consistent with the long-term development policy after consideration of the capacity of
4 land areas available for development, including in-fill and redevelopment, within the
5 local jurisdiction;
- 6 (3) Tier III areas are areas that:
- 7 (i) are not planned for sewerage service and not dominated by
8 agricultural or forest land;
- 9 (ii) are not planned or zoned by a local jurisdiction for land,
10 agricultural, or resource protection, preservation, or conservation; and
- 11 (iii) are one of the following:
- 12 1. municipal corporations not served by a public
13 sewerage system;
- 14 2. rural villages as described in § 5-7B-03(f) of the State
15 Finance and Procurement Article;
- 16 3. mapped locally designated growth areas; or
- 17 4. areas planned and zoned for large lot and rural
18 development; and
- 19 (4) Tier IV areas are areas that are not planned for sewerage service
20 and are:
- 21 (i) areas planned or zoned by a local jurisdiction for land,
22 agricultural, or resource protection, preservation, or conservation;
- 23 (ii) areas dominated by agricultural lands, forest lands, or other
24 natural areas; or
- 25 (iii) rural legacy areas, priority preservation areas, or areas
26 subject to covenants, restrictions, conditions, or conservation easements for the benefit
27 of, or held by a State agency, as defined in § 9-206 of the Environment Article, or a
28 local jurisdiction for the purpose of conserving natural resources or agricultural land.
- 29 (b) A local jurisdiction shall strive to avoid creating a Tier III area that is
30 bounded on all sides by land in a Tier IV area.]

1 (a) A local jurisdiction that adopts growth tiers shall incorporate the tiers
2 into the comprehensive plan or an element of the plan:

3 (1) when the local jurisdiction conducts the 6-year review of the plan
4 under § 1-416(a) or § 3-301(a) of this article; and

5 (2) in accordance with the requirements of this section.

6 (b) If a local jurisdiction does not incorporate all of the growth tiers
7 authorized under this section into the comprehensive plan or an element of the plan,
8 the local jurisdiction shall state that a tier is not adopted.]

9 [5-104.

10 (a) (1) In this section the following words have the meanings indicated.

11 (2) “Community sewerage system” means a publicly or privately
12 owned sewerage system that serves at least two lots.

13 (3) “Major subdivision” has the meaning stated in § 9-206 of the
14 Environment Article.

15 (4) “On-site sewage disposal system” has the meaning stated in §
16 9-206 of the Environment Article.

17 (5) (i) “Planning board” means a planning board established under
18 this article.

19 (ii) “Planning board” includes a planning commission or board
20 established under Division II of this article or Article 25A of the Code.

21 (6) “Shared facility” has the meaning stated in § 9-206 of the
22 Environment Article.

23 (b) This section applies only to a residential major subdivision in a Tier III
24 area served by:

25 (1) on-site sewage disposal systems;

26 (2) a shared facility; or

27 (3) a community sewerage system.

28 (c) If a local jurisdiction establishes the growth tiers under Title 1, Subtitle 5
29 of this article, a residential major subdivision in a Tier III area may not be approved

1 unless the planning board has reviewed and recommended the approval of the major
2 subdivision in the Tier III area.

3 (d) (1) Before recommending the approval of a proposed major subdivision
4 in a Tier III area, the planning board shall hold at least one public hearing.

5 (2) The planning board shall conduct the public hearing in accordance
6 with its rules and procedures.

7 (e) The review of a residential major subdivision by the planning board shall
8 include:

9 (1) the cost of providing local governmental services to the residential
10 major subdivision unless a local jurisdiction's adequate public facilities law already
11 requires a review of government services; and

12 (2) the potential environmental issues or a natural resources
13 inventory related to the proposed residential major subdivision.

14 (f) The planning board shall recommend the proposed residential major
15 subdivision by resolution of the planning board.]

16 **[5-105.] 5-104.**

17 (a) After a planning commission begins to exercise control over subdivisions
18 under this subtitle, the authority of the planning commission over plats shall be
19 exclusive within the territory under its jurisdiction.

20 (b) Unless otherwise provided in this division, all statutory control over plats
21 or subdivisions granted by other statutes shall be considered transferred to the
22 planning commission of the local jurisdiction.

23 **Chapter 149 of the Acts of 2012**

24 **[SECTION 4. AND BE IT FURTHER ENACTED, That:**

25 (a) (1) It is the intent of the General Assembly that local jurisdictions
26 should use their existing comprehensive plan and zoning ordinance, if desired, to
27 create the tiers as provided in Article 66B, § 1.05 of the Code and Title 1, Subtitle 5 of
28 the Land Use Article, as enacted by this Act.

29 (2) The tiers may be adopted as an amendment to the comprehensive
30 plan under Article 66B, § 1.05 of the Code or Title 1, Subtitle 5 of the Land Use Article
31 and be included as an appendix that delineates the tiers and the comprehensive plan
32 land use categories and zoning ordinance districts that are included in each tier.

1 (b) This Act may not be construed to imply that local comprehensive plans,
2 including the land use and development regulation elements of the plans, may not be
3 amended in accordance with the process set forth in either State law or local law.]

4 [SECTION 5. AND BE IT FURTHER ENACTED, That, if requested by a local
5 jurisdiction to verify the actual overall yield for zoning in a Tier IV area under §
6 9–206(h) of the Environment Article, the Department of Planning shall:

7 (a) review the local zoning code, along with any relevant subdivision or
8 development regulations or rules, to help determine the overall development yield;

9 (b) request, if appropriate, information from the local jurisdiction to help
10 determine the overall yield of development in Tier IV;

11 (c) examine any additional information that the local jurisdiction provides
12 supporting qualification of the jurisdiction’s zoning districts; and

13 (d) discuss any discrepancies or questions with the local jurisdiction before
14 determining if the jurisdiction’s Tier IV area meets the overall actual yield of one
15 dwelling unit per 20 acres within the Tier IV area.]

16 [SECTION 6. AND BE IT FURTHER ENACTED, That:

17 (a) each local jurisdiction shall submit any definition or description of a
18 major or minor subdivision in the jurisdiction’s local ordinance or regulation to the
19 Department of Planning on or before December 31, 2012, in accordance with the
20 provisions of § 9–206 of the Environment Article; and

21 (b) the Department of Planning shall prepare a list of definitions and
22 descriptions of major and minor subdivisions submitted by local jurisdictions for
23 publication on the Web sites of the Department of Planning and the Department of the
24 Environment on or after December 31, 2012.]

25 [SECTION 7. AND BE IT FURTHER ENACTED, That the provisions of this
26 Act may not be construed to limit the authority granted to the Critical Area
27 Commission under Chapter 119 of the Acts of 2008 to adopt regulations under §
28 8–1806(b) of the Natural Resources Article.]

29 [SECTION 8. AND BE IT FURTHER ENACTED, That:

30 (a) on or before December 31, 2012, the Department of the Environment
31 shall propose regulations that establish nutrient offset requirements for new
32 residential major subdivisions within Tier III areas that are to be served by on-site
33 sewage disposal systems or shared systems;

1 (b) the Department shall consult with the counties and other stakeholder
2 groups during the drafting of the proposed regulations required under subsection (a) of
3 this section;

4 (c) the Department shall brief the House Environmental Matters Committee
5 and the Senate Education, Health, and Environmental Affairs Committee before the
6 submission of the proposed regulations required under subsection (a) of this section to
7 the Joint Committee on Administrative, Executive, and Legislative Review; and

8 (d) this section does not apply to, or limit the ability of the Department to
9 develop nutrient trading and offset programs related to Maryland's Chesapeake Bay
10 TMDL Watershed Implementation Plan.]

11 [SECTION 9. AND BE IT FURTHER ENACTED, That, on or before February
12 1, 2013, the Department of Planning, in consultation with the Department of the
13 Environment, shall report to the General Assembly, in accordance with § 2-1246 of
14 the State Government Article, on:

15 (a) the adoption of the tiers, as provided in Article 66B, § 1.05 of the Code
16 and Title 1, Subtitle 5 of the Land Use Article, as enacted by this Act, by each local
17 jurisdiction, including mapped areas of the tiers;

18 (b) each jurisdiction that has adopted or altered a local ordinance or
19 regulation in implementing the provisions of this Act, including a description of the
20 adopted or altered local ordinance or regulation; and

21 (c) each jurisdiction for which the Department of Planning has provided
22 comments on any of the tiers or an area within one of the tiers under Article 66B, §
23 1.05 of the Code and § 1-505 of the Land Use Article, as enacted by this Act.]

24 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
25 October 1, 2013.