

Department of Legislative Services
Maryland General Assembly
2013 Session

FISCAL AND POLICY NOTE

House Bill 106

(Delegate McDermott, *et al.*)

Environmental Matters

Sustainable Growth and Agricultural Preservation Act of 2012 - Repeal

This bill repeals the Sustainable Growth and Agricultural Preservation Act of 2012 (Chapter 149, SB 236), such that various water, sewer, and land use provisions within the Environment Article and the Land Use Article (formerly Article 66B) conform to the language in effect prior to the enactment of Chapter 149.

Fiscal Summary

State Effect: Special fund revenues may increase for several agencies beginning in FY 2014 to the extent that the development and sale of new residential property increases under the bill's repeal of existing 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 increase to the extent that the repeal results in the elimination of significant reductions in nutrient effluent from septic systems and stormwater runoff that may have occurred under current law. Maryland Department of Planning (MDP) workloads may decrease in FY 2014 until resources are fully diverted to other priorities.

Local Effect: Local government revenues increase to the extent that the collection of local taxes and fees associated with the development, sale, or value of new residential property increases. Local expenditures may decrease beginning in FY 2014 to the extent that fewer planning resources are needed; in some jurisdictions, expenditures may increase in FY 2014 to take actions consistent with the repeal of Chapter 149. Local expenditures increase to implement other measures necessary to achieve State and federal environmental mandates and for additional services provided to new residential development and infrastructure.

Small Business Effect: Meaningful.

Analysis

Bill Summary: By repealing the provisions of Chapter 149 of 2012, the bill reestablishes several subtitles within Title 9 of the Environment Article and Title 1 and Title 5 of the Land Use Article (formerly codified in Article 66B) with the language in effect prior to the enactment of Chapter 149. The following summary is a general description of these requirements and restrictions in effect prior to the enactment of Chapter 149.

In accordance with the previous language of Title 9 of the Environment Article, 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 that the Maryland Department of the Environment (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 conforms to the plans submitted to MDE and to any revision of the plans MDE approves, and that is necessary to preserve public health.

MDE is authorized to conduct surveys and research to carry out specified water supply, sewerage, and refuse disposal system provisions, and to specify the location for any sewerage treatment facility discharge point that is included in any county plan. MDE must adopt 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.

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.

In accordance with the former language of Article 66B, now Title 5 of the Land Use Article, the bill reestablishes the jurisdiction of local planning commissions with respect to their control over plats and subdivisions.

The summary provided above is a description of several laws in effect prior to the enactment of Chapter 149, but does not summarize the provisions repealed by the bill. More information on the numerous provisions of law repealed by Chapter 149 can be found in the brief summary of the current provisions of Chapter 149 below.

Current Law: Chapter 149 of 2012 establishes four growth tiers based on specified land use characteristics, which may be adopted by local jurisdictions. A jurisdiction is prohibited from authorizing 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 Act. A jurisdiction that does not adopt a growth tier may still 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 Act establishes land use and sewerage criteria and restrictions applicable to each of the four tiers. The Act also generally restricts property within residential minor subdivisions from further subdivision. Finally, the Act establishes numerous exceptions from and conditions upon these restrictions, and allows for the transfer of subdivision rights among specified agricultural property owners.

For a more detailed description of Chapter 149 and the provisions that are repealed under the bill please see the bill summary in the Fiscal and Policy Note available at: http://mgaleg.maryland.gov/2012rs/fnotes/bil_0006/sb0236.pdf.

State/Local Fiscal Effect: A reliable estimate of the overall fiscal impact of the repeal of Chapter 149 of 2012 on the State and local governments cannot be made, as numerous provisions in Chapter 149 have highly uncertain impacts on the patterns of residential development from which several sources of government revenues are derived. However, general descriptions as to the potential effect of the various provisions within Chapter 149 and the types of resulting fiscal impacts from their repeal are provided below.

Impacts on the Timing, Patterns, Level, and Value of Residential Development

Several provisions of Chapter 149 of 2012 likely result in an interruption in the pace of future residential development statewide. Chapter 149 establishes additional tasks for local planning agencies involving external coordination within the jurisdiction and with MDP for matters such as density verifications. Additionally, for residential major subdivisions in rural areas that may be designated as Tier III areas, Chapter 149 generally requires that planning boards conduct specified fiscal and environmental reviews. Finally, significant permitting delays may occur in the short term for some jurisdictions to implement the law's requirements without significant additional resources being dedicated to planning and development review tasks. Thus, the repeal of Chapter 149 eliminates any potential interruption in residential development that may occur for a few years beginning in fiscal 2014. However, some jurisdictions may experience little or no interruption to the extent that numerous lots subdivided prior to the enactment of Chapter 149 or pursuant to the Act's grandfathering provisions are already available for development; according to MDP, as of February 1, 2013, there were 57,827 subdivided, undeveloped lots outside of priority funding areas (PFAs) in Maryland.

The geographic patterns of residential development may also change due to Chapter 149. The system of progressively more restrictive land use tiers established by the Act is estimated to redirect growth from more rural areas where less dense residential development is typical (generally classified as Tier III under Chapter 149) to PFAs and areas with more dense residential development that can be easily serviced by existing public sewer systems (Tiers I or II under Chapter 149). Jurisdictions with a greater than average share of residential development occurring within PFAs or connected to public sewer are expected to experience an increase in demand for residential development under the Act. 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 are likely under Chapter 149 to experience a significant decrease in the number of new residential subdivisions. Therefore, the repeal of Chapter 149 avoids this geographic shift in residential development and reinstates the prevailing patterns of development in the years preceding fiscal 2013.

Chapter 149 is expected to affect the overall level of residential growth due to several restrictions. For example, counties that have not adopted the required growth tiers are prohibited from approving residential major subdivisions not being served by public sewer. Additionally, the Act may have the effect of slowing residential development because of the imposition of restrictions and requirements that the development community is unaccustomed to. Finally, because Chapter 149 imposes additional restrictions on major subdivisions, the level of overall residential development is expected to fall unless the number of minor subdivisions increases to the extent necessary to offset the loss from major subdivisions. Thus, the bill's repeal of these various

restrictions may result in additional overall growth in residential development beginning in fiscal 2014.

Chapter 149 may also 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 land use tier, if any, a property is, or may 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. Conversely, the value of properties located within areas that are designated as Tier I and II areas may increase significantly. Therefore, the repeal of Chapter 149 may reverse any recent changes in land value, and may avoid future changes in value, caused by the relatively greater restrictions on the more rural, undeveloped, and natural areas of the State.

However, while the restrictions under Chapter 149 may cause a change in the geographic pattern of residential development, as well as a reduction in the level of development, particularly in the short term, it is estimated that the *value* of the existing housing stock could remain unchanged or even increase in the future under Chapter 149. 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. Thus, the bill's repeal of Chapter 149 may result in a net decrease in the value of the housing stock, although values may revert to previous State trends and prevailing national trends in land and housing values.

Revenue Sources Impacted by Changes in Residential Development Patterns

The various impacts on future residential development discussed above from Chapter 149 of 2012 is expected to 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 2014. Thus, the repeal of Chapter 149 avoids these fiscal impacts in the future.

State transfer tax revenues increase in any fiscal year and for any jurisdiction in which new residential development is greater under the bill than it would be under Chapter 149. 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 increase in fiscal 2014 may be minimal due to the delayed effect of Chapter 149 as a result of its grandfathering provisions.

The State transfer tax primarily funds Program Open Space, which is administered by the Department of Natural Resources, and which provides funds for State and local

conservation acquisitions and the development of public outdoor recreational sites, facilities, and open space. The transfer tax also supports the Maryland Agricultural Land Preservation Foundation. Therefore, these programs may realize an increase in revenues. However, this may be offset to the extent that the value of agricultural lands and open spaces causes acquisition costs to rise.

Any increase in the overall extent of future residential development may also result in an increase 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 offset by a decrease in the number of subdivision plat filings that may have resulted from the requirement in Chapter 149 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.

In any fiscal year in which the statewide assessable base of residential property changes due to the repeal of the potential effects of Chapter 149 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 increases in the value of rural and undeveloped lands may be partially or fully offset by decreases 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 increase in the future growth of residential development may result in an increase in future property tax revenues for affected counties. Additionally, other 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 revenues 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 jurisdictionwide tax increases. However, because these revenues are directly targeted to offsetting the cost of services provided to new development, any increase in these revenues will be associated with a corresponding increase in future expenditures, thus mitigating the overall fiscal impact on the jurisdiction and its current residents.

The net effect on local expenditures varies by jurisdiction and depends on whether Chapter 149 has been implemented on the date the bill takes effect for each jurisdiction. Expenditures and workloads increase for jurisdictions that have already adopted new tier maps to hold hearings and revise planning documents. According to MDP, 11 counties,

Baltimore City, and 61 municipal corporations have adopted tier maps, while 12 counties and 49 municipal corporations have not yet done so. However, for all jurisdictions, expenditures may decrease as the repeal of Chapter 149 may prevent the future need for posting notice, holding hearings, conducting specified environmental and fiscal reviews, communicating and coordinating on planning and zoning matters with State and local agencies, and potentially for serving as a “controlling authority” for new shared facilities or community sewage disposal systems.

Bay Restoration Costs Increase

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 Total Maximum Daily Load (bay TMDL), may increase. Chapter 149 is estimated to 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. Therefore, a repeal of Chapter 149 will prevent these reductions and the savings for the State and local governments required to comply with the State’s Watershed Implementation Plan (WIP). The WIP establishes that all nutrient impacts from future growth be offset if the bay TMDL is to be met. For contextual purposes, recent estimates of the cost of implementing the Phase II WIP associated with the bay TMDL are about \$6.2 billion between calendar 2010 and 2017 and \$14.4 billion through calendar 2025.

Small Business Effect: The repeal of Chapter 149 may have a meaningful beneficial impact on many small business residential developers, homebuilders, and associated contractors. However, the bill may also have a meaningful adverse 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 decrease in the demand for their services, particularly in the short term.

Additional Information

Prior Introductions: None.

Cross File: SB 391 (Senator Pipkin, *et al.*) – Education, Health, and Environmental Affairs.

Information Source(s): Kent and Worcester counties, Baltimore City, Maryland Department of Agriculture, Department of Natural Resources, Maryland Department of

Planning, Maryland Department of the Environment, Maryland Association of Counties, Maryland Municipal League, 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 4, 2013
ncs/lgc

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