

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1428 (Delegate Rose, *et al.*)
Environment and Transportation

Sustainable Growth and Agricultural Preservation Act - Application

This bill extends the deadline, from October 1, 2016, to October 1, 2021, by which a developer must obtain final approval of a preliminary plan for a residential subdivision in order to be exempt from specified land use and sewerage criteria established by Chapter 149 of 2012.

The bill takes effect June 1, 2016.

Fiscal Summary

State Effect: The bill does not materially affect State operations or finances.

Local Effect: Potential significant impact to the extent that a local government has a preliminary subdivision plan that is able to be finalized as a result of the bill's extension of the deadline for approval of a final plan, as discussed below. Otherwise, the bill does not materially affect local operations or finances.

Small Business Effect: Potential meaningful.

Analysis

Current Law:

The Sustainable Growth and Agricultural Preservation Act of 2012 (Chapter 149)

Chapter 149 of 2012 established a system of four growth tiers, which are based on specified land use characteristics, that may be adopted by local jurisdictions. The Act established

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. There are numerous exceptions from and conditions upon these restrictions, and the transfer of subdivision rights among specified agricultural property owners is authorized.

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), 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 the Maryland Department of Planning (MDP). A local jurisdiction may request a verification of the density by MDP, in consultation with the Maryland Sustainable Growth Commission. MDP must 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.

Exceptions and Exclusions

The 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.

Specifically, Chapter 149 established a grandfathering clause that excludes an application for the approval of a residential subdivision from the land use and sewerage criteria and restrictions applicable to each of the four growth tiers if certain conditions and steps are taken by specified dates. These grandfathering requirements include (1) the submission of a preliminary plan approval with specified required information to a local jurisdiction by October 1, 2012; (2) approval of a soil percolation test by the relevant local jurisdiction and necessary steps to obtain a soil percolation test, depending on the rules in a particular jurisdiction; and (3) *final approval of a preliminary plan by October 1, 2016*.

Local/Small Business Effect: The bill extends the deadline by which a developer must obtain final approval of a preliminary plan for a residential subdivision by five years. Thus, a local government or a small business that has a proposed housing development or other project has additional time to finalize a preliminary subdivision plan. MDP notes that the recent economic downturn may have impeded financing efforts and other efforts to obtain final approval for a preliminary plan. Because any proposed development is still required to have submitted a preliminary plan application by October 1, 2012, the bill only affects those proposed developments that are already in the pipeline.

Additional Information

Prior Introductions: None.

Cross File: Although designated as a cross file, SB 748 (Senator Ready - Education, Health, and Environmental Affairs) is not identical.

Information Source(s): Baltimore, Dorchester, Garrett, Montgomery counties; Maryland Department of the Environment; Department of Health and Mental Hygiene; Maryland Department of Planning; Department of Legislative Services

Fiscal Note History: First Reader - March 3, 2016
min/lgc

Analysis by: Kathleen P. Kennedy

Direct Inquiries to:
(410) 946-5510
(301) 970-5510