

**Department of Legislative Services**  
Maryland General Assembly  
2018 Session

**FISCAL AND POLICY NOTE**  
**Third Reader - Revised**

House Bill 1390

(Delegates Lafferty and Jalisi)

Environment and Transportation

Education, Health, and Environmental Affairs

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**Land Use - Development Rights and Responsibilities Agreements - Enhanced  
Public Benefits**

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This bill, under provisions applicable to local jurisdictions other than Montgomery and Prince George’s counties, requires a development rights and responsibilities agreement (DRRA) to include a description of the “enhanced public benefit” that supports the agreement and the proposed development of the real property. “Enhanced public benefit” is defined as an improvement that benefits the public and exceeds the improvements a person would be required to provide under local planning, zoning, and environmental laws, including (1) parklands, open space, and afforestation; (2) multimodal transportation facilities; (3) traffic safety improvements; (4) infrastructure; (5) stormwater management; (6) stream restoration; (7) public school facilities; (8) affordable housing; and (9) public safety facilities.

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**Fiscal Summary**

**State Effect:** The bill does not directly affect State finances.

**Local Effect:** Local government finances may be affected, as discussed below.

**Small Business Effect:** Potential meaningful.

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## Analysis

### Current Law:

#### *DRRA Authority, In General*

Under provisions applicable to local jurisdictions other than Montgomery and Prince George's counties (which are subject to separate DRRA provisions), the local governing body of a local jurisdiction may, by local law, establish procedures and requirements for the consideration and execution of DRRAs. A DRRA is an agreement between a local governing body and a person having a legal or equitable interest in real property to establish conditions under which development may proceed for a specified time.

#### *Required DRRA Contents*

A DRRA must include (1) a legal description of the real property subject to the agreement; (2) the names of the persons with a legal or equitable interest in the real property subject to the agreement; (3) the duration of the agreement; (4) the permissible uses of the real property; (5) the density or intensity of the use of the real property; (6) the maximum height and size of the structures to be located on the real property; (7) a description of the permits required or already approved for the development of the real property; (8) a statement that the proposed development is consistent with the comprehensive plan and development regulations of the local jurisdiction; (9) a description of the conditions, terms, restrictions, or other requirements determined by the local governing body of the local jurisdiction to be necessary to ensure the public health, safety, or welfare; and (10) to the extent practicable, provisions for the dedication of a portion of the real property for public use, protection of sensitive areas, preservation and restoration of historic structures, and construction or financing of public facilities.

#### *Applicable Local Laws, Rules, Regulations, and Policies*

The local laws, rules, regulations, and policies governing the use, density, or intensity of the real property subject to an agreement are the local laws, rules, regulations, and policies in force at the time the parties execute the agreement. However, if the local jurisdiction determines that compliance with local laws, rules, regulations, and policies, enacted or adopted after the effective date of an agreement is essential to ensure the public health, safety, or welfare, an agreement may not prevent a local government from requiring a person to comply with those local laws, rules, regulations, and policies.

### *Duration of an Agreement*

An agreement is void after five years unless another duration is established in the agreement or the agreement is extended by amendment.

### *Amendment Requirements*

After a public hearing, the parties to an agreement may amend the agreement by mutual consent. However, unless the planning commission of the local jurisdiction determines whether the proposed amendment is consistent with the comprehensive plan of the local jurisdiction, the parties may not amend an agreement.

**Background:** In a November 2017 opinion (*Blentlinger, LLC v. Cleanwater Linganore, Inc.*, 456 Md. 272 (2017)), the Maryland Court of Appeals held that, based on the plain language and legislative history of the DRRA statute, as well as relevant case law, a DRRA is not required to confer an enhanced public benefit on a local governing body in order to be valid.

**Local Fiscal Effect:** Because DRRAs are a method of facilitating development projects and associated economic and public benefits, entering into a DRRA (and the content of the DRRA) can impact local government finances, at least indirectly, through tax revenues or the level of public infrastructure and services the local government must provide. The bill's requirement that a DRRA include a description of the enhanced public benefit that supports the agreement, therefore, may affect local government finances in any instances where an enhanced public benefit would not otherwise be included in a DRRA in the absence of the bill. However, because a DRRA is a negotiated agreement, it is unclear whether the bill's requirement has a material net impact on local government finances in those instances (*e.g.*, if the local government may make additional concessions in exchange for the enhanced public benefit).

**Small Business Effect:** Any small business developers that enter into DRRAs may be meaningfully affected by the bill's requirement in any instances where an enhanced public benefit would not otherwise be included in a DRRA in the absence of the bill. Similar to the discussion above, however, it is unclear whether the inclusion of an enhanced public benefit in a DRRA in those instances materially affects the net balance of the benefits and concessions exchanged between the developer and the local government.

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## **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Maryland Department of Planning; Maryland Department of the Environment; Department of Natural Resources; Anne Arundel, Frederick, Garrett, and Montgomery counties; Maryland Association of Counties; City of Rockville; NAIOP (Maryland Chapter); Department of Legislative Services

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