

Department of Legislative Services
 Maryland General Assembly
 2024 Session

FISCAL AND POLICY NOTE
Enrolled - Revised

House Bill 538 (The Speaker, *et al.*) (By Request - Administration)
 Environment and Transportation Education, Energy, and the Environment

Land Use – Affordable Housing – Zoning Density and Permitting (Housing Expansion and Affordability Act of 2024)

This Administration bill requires local jurisdictions to allow (1) new manufactured homes and modular dwellings in zones that allow single-family residential uses and (2) increased densities and uses in specified zoning areas for “qualified projects” (which include specified amounts of affordable housing). The bill prohibits a local jurisdiction from imposing unreasonable limitations or requirements on a qualified project or requiring a qualified project to be reviewed at more than a specified number of public hearings. The bill also establishes a Historic Property Revitalization Director within the Department of Housing and Community Development (DHCD). **The bill takes effect January 1, 2025.**

Fiscal Summary

State Effect: General fund expenditures increase by \$73,700 in FY 2025. Future year expenditures reflect annualization and inflation. Revenues are not directly affected.

(in dollars)	FY 2025	FY 2026	FY 2027	FY 2028	FY 2029
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	73,700	130,200	135,900	141,900	148,100
Net Effect	(\$73,700)	(\$130,200)	(\$135,900)	(\$141,900)	(\$148,100)

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Local government finances may be affected, as discussed below. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: The Administration has determined that this bill has a meaningful impact on small business (attached). The Department of Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary:

New Manufactured Homes or Modular Dwellings

The bill requires a legislative body of a local jurisdiction to allow the placement of a new manufactured home or modular dwelling in a zone that allows single-family residential uses if the home or dwelling:

- meets a specified definition of a manufactured home and is, or will be after purchase, converted to real property in accordance with specified provisions of the Real Property Article, which includes attachment of the manufactured home to a permanent foundation;
- meets a specified definition of a modular dwelling, including that the modular dwelling is installed and set up according to the manufacturer's instructions on an approved foundation and support system; or
- is located on land (1) currently or previously owned by the federal government; (2) greater than 80 acres in size; and (3) that was the site of a former U.S. military reservation.

Housing Expansion and Affordability

The bill creates a new subtitle within the Land Use Article (Title 7, Subtitle 5, "Housing Expansion and Affordability") specifying local zoning requirements for specified affordable housing development statewide. The new subtitle, among other things, requires local jurisdictions to allow specified densities and uses in certain zoning areas, for "qualified projects" on (1) specified property formerly owned by the State; (2) specified property currently or formerly owned by the federal government; (3) property within three-quarters of a mile of a rail station located in the State; and (4) specified land that is wholly owned by a nonprofit organization or that includes improvements owned by an entity that is controlled by a nonprofit organization.

More specifically, "qualified project" means a residential project that consists of new construction or substantial renovation, and meets one of the four following criteria:

- ***Property Formerly Owned by the State*** – (1) is on property that was formerly owned by the State, consists of more than one building, includes at least one building that was built more than 50 years before the date of application for the project, and is appropriate for redevelopment as determined by the Secretary of Housing and Community Development; (2) contains at least 25% of units that are affordable

dwelling units; and (3) is deed-restricted to include 25% of units that are affordable dwelling units for a period of at least 40 years;

- ***Property Currently or Formerly Owned by the Federal Government*** – (1) is on property that is currently or was formerly owned by the federal government, is greater than 80 acres in size, and was the site of a former U.S. military reservation; (2) contains at least 25% of units that are affordable dwelling units; and (3) is deed-restricted to include 25% of units that are affordable dwelling units for a period of at least 40 years;
- ***Property within Three-quarters of a Mile of a Rail Station Located in the State*** – (1) is on property that is located within three-quarters of a mile of a rail station located in the State (subject to the exceptions discussed below); (2) contains at least 15% of units that are affordable dwelling units (unless a county or municipality, by December 31, 2024, has a requirement equal to or exceeding the minimum 15% requirement, in which case at least 20% of units must be affordable dwelling units); and (3) is deed-restricted to include 15% of units that are affordable dwelling units for a period of at least 40 years (unless a county or municipality, by December 31, 2024, has a requirement equal to or exceeding the 15% requirement, in which case, the requirement is 20%); or
- ***Land/Improvements Owned/Controlled by a Nonprofit Organization*** – (1) is on land, including land that is subject to a ground lease, that is wholly owned by a nonprofit organization or includes improvements owned by an entity that is controlled by a nonprofit organization; (2) contains at least 25% of units that are affordable dwelling units; and (3) is deed-restricted to include 25% of units that are affordable dwelling units for a period of at least 40 years.

A “qualified project” may not qualify under the “property within three-quarters of a mile of a rail station” criteria:

- if (1) the rail station is located on the campus of an institution of higher education as defined in § 10-101 of the Education Article or (2) only a portion of the property is located within three-fourths of a mile of the rail station; or
- in an area zoned for single-family residential use (1) on January 1, 2024, and (2) during any process to increase allowable density under the bill.

“Affordable” means that housing costs do not exceed 30% of a household’s income.

“Affordable dwelling unit” means a dwelling unit that is affordable to households earning 60% or less of the area median income.

“Rail station” means a present or planned (1) MARC station along the Penn, Camden, or Brunswick lines; (2) Baltimore Metro SubwayLink station; (3) Baltimore Light RailLink station; (4) Metrorail system station in the State; or (5) any other passenger rail station.

“Controlled by” means a business structure in which a nonprofit organization is a managing member, general partner, or otherwise controlling entity with a for-profit member or partner as demonstrated by an attorney licensed in the State.

“Nonprofit organization” means an organization that is qualified as tax-exempt under § 501(c)(3) of the Internal Revenue Code and has been designated as such for at least three years.

Densities and Uses

Under the new subtitle, a local jurisdiction must allow the density of a qualified project to exceed the density otherwise authorized in a district or zone as follows. A qualified project, in an area zoned:

- for single-family residential use, may include middle housing units;
- for multifamily residential use, (1) must have a density limit that exceeds by 30% the allowable density in that zone for uses that are not part of a qualified project and (2) may consist of mixed-use;
- for nonresidential use (or on land that is currently or was formerly owned by the federal government, is more than 80 acres in size, and was the site of a former U.S. military reservation), may consist of mixed-use, with density limits that do not exceed the highest allowable density in the local jurisdiction’s multifamily residential zones (provided that, in an area zoned for nonresidential use, the qualified project complies with the public health impact assessment requirement described below); and
- for mixed-use, (1) may include 30% more housing units than are allowed in that zone for uses that are not part of a qualified project, for projects that qualify under the “property within three-quarters of a mile of a rail station” and “land/improvements owned/controlled by a nonprofit organization” criteria, and (2) may consist of residential development with density limits that do not exceed the greater of the highest allowable density in the local jurisdiction’s residential zones or six units per gross acre, for projects that qualify under the “property formerly owned by the State” and “property currently or formerly owned by the federal government” criteria.

The bill establishes that (1) the increased density limits for qualified projects are in addition to increased density that is allowed or required by a local jurisdiction; (2) the increased

density limits for qualified projects are not further increased if a project meets the definition of a qualified project under more than one of the four criteria listed above; and (3) the bill's increased density limits do not apply in a district or zone located on agricultural land or conservation property.

“Middle housing” means (1) duplexes; (2) triplexes; (3) quadplexes; (4) cottage clusters; or (5) town houses.

“Cottage cluster” means a grouping of not fewer than four detached housing units per acre that (1) have a footprint of less than 900 square feet each and (2) include a common courtyard.

“Mixed-use” means any combination of a residential use with a recreational, office, dining, or retail use, and does not mean any combination of a residential use with an industrial or hazardous use.

Unreasonable Limitations or Requirements

Under the new subtitle, the bill prohibits a local jurisdiction from imposing any unreasonable limitation or requirements on a qualified project under the subtitle, including limitations on or requirements concerning (1) height; (2) setback; (3) bulk; (4) parking; (5) loading, dimensional, or area; or (6) similar requirements.

“Unreasonable limitation or requirement” includes any limitation or requirement that amounts to a *de facto* denial by having a substantial adverse impact on (1) the viability of an affordable housing development in a qualified project; (2) the degree of affordability of affordable dwelling units in a qualified project; or (3) the allowable density or number of units of the qualified project.

Public Hearings

Under the new subtitle, except as otherwise provided or required by State law, a local government is prohibited from requiring that a qualified project under the subtitle be reviewed at more than (1) two public hearings before the local governing body; (2) two public hearings before the planning commission; (3) one public hearing before a historic district commission or historic preservation commission; and (4) one public hearing before the board of appeals.

Public Health Impact Assessment

Before a qualified project is authorized to exceed the density in an area zoned for nonresidential use, the entity responsible for the qualified project must (1) conduct a public

health impact assessment and (2) receive approval of the public health impact assessment from DHCD. A public health impact assessment must evaluate potential public health impacts associated with the proximity of the qualified project to any health hazards within the area zoned for nonresidential use. DHCD may not approve a public health impact assessment if the assessment shows that residential use in the nonresidential zone would present a substantial risk to the health and safety of the residents. DHCD must adopt regulations to implement these requirements.

Historic Property Revitalization Director

The bill establishes a Historic Property Revitalization Director within DHCD and requires that a position identification number be created in DHCD for the director. The director must:

- support the work of the Smart Growth Subcabinet;
- collect and maintain from State agencies that own property an inventory of State-owned buildings that are greater than 50 years old to be used for prioritizing physical assessments and, if applicable, determining eligibility for the National Register of Historic Places;
- in consultation with the Smart Growth Subcabinet and to determine the highest and best value for the State's disposition of property, support studies and consultations relevant to (1) stabilization; (2) mothballing; (3) environmental impacts; (4) economic prospects; and (5) long-term ground leases;
- work with DHCD, the Department of Commerce, and other members of the Smart Growth Subcabinet to identify existing State and federal programs and financing mechanisms that may be leveraged to enhance the successful redevelopment of property; and
- work with the Department of General Services (DGS) Office of Real Estate during the disposition process of relevant property.

The director, in consultation with the Smart Growth Subcabinet, must submit an annual report to the General Assembly by October 1, 2026, and each October 1 thereafter, on the progress of the director's efforts. The director must receive a salary as provided in the State budget.

Current Law:

Land Use – Generally

State law specifies that it is the policy of the State that (1) the orderly development and use of land and structures requires comprehensive regulation through implementation of

planning and zoning controls and (2) planning and zoning controls must be implemented by local government. State law includes various provisions authorizing local governments to regulate the location, size, and use of structures through zoning regulations.

Land Use – Housing

Comprehensive Plans – Housing Element and Housing Vision

Under the Land Use Article, local jurisdictions are required to enact, adopt, amend, and execute a comprehensive plan that includes specified visions and elements. At least once every 10 years, each local jurisdiction must review its comprehensive plan and, if necessary, revise or amend the plan.

The comprehensive plan must include a housing “element” and implement a housing “vision”:

- *Housing Element* – the housing element may include goals, objectives, policies, plans, and standards, and must address the need for affordable housing within the local jurisdiction, including workforce housing and low-income housing; and
- *Housing Vision* – the housing vision is that a range of housing densities, types, and sizes provides residential options for citizens of all ages and incomes.

Development Mechanisms

Title 7, Subtitle 1 (Development Mechanisms) of the Land Use Article:

- authorizes and encourages a local jurisdiction – in order to encourage the preservation of natural resources or the provision of affordable housing and to facilitate orderly development and growth – to enact local laws providing for or requiring (1) the planning, staging, or provision of adequate public facilities and affordable housing; (2) off-site improvements or the dedication of land for public facilities essential for a development; (3) moderately priced dwelling unit programs; (4) mixed use developments; (5) cluster developments; (6) planned unit developments; (7) alternative subdivision requirements that meet minimum performance standards set by the local jurisdiction and reduce infrastructure costs; (8) floating zones; (9) incentive zoning; and (10) performance zoning;
- authorizes a legislative body of a local jurisdiction to enact local laws providing for the transfer, with or without consideration, of real property belonging to the local jurisdiction to a public or private entity, to use in developing or preserving affordable housing; and

- establishes that the authority granted under the subtitle is not intended to limit a local jurisdiction's authority to (1) exercise any planning and zoning powers not expressly authorized under the subtitle or (2) adopt other methods to facilitate orderly development and growth, encourage the preservation of natural resources, or provide affordable housing.

Inclusionary Zoning

Title 7, Subtitle 4 (Inclusionary Zoning) of the Land Use Article, authorizes a legislative body of a local jurisdiction – in order to promote the creation of housing that is affordable by individuals and families with low- or moderate-incomes – to enact local laws (1) imposing inclusionary zoning, and awarding density bonuses, to create affordable housing units and (2) restricting the use, cost, and resale of the housing created.

Historic Property

Inventory and Registers

The Maryland Historical Trust (MHT) is required to compile:

- a Maryland Inventory of Historic Properties that consists of districts, sites, buildings, structures, and other objects of known or potential value to the prehistory, history, upland and underwater archaeology, architecture, engineering, and culture of the State (statute also similarly requires MHT to direct and conduct a comprehensive statewide survey of historic properties in cooperation with units of the federal government, State units, political subdivisions, private organizations, and individuals); and
- a Maryland Register of Historic Properties to include all properties in the State that are listed in or eligible for listing in the National Register of Historic Places of the U.S. Department of the Interior.

MHT must adopt regulations specifying procedures and eligibility standards for including properties in the Maryland Register of Historic Places and the MHT director must determine whether a property is eligible to be listed in the National Register of Historic Places.

State Property

In cooperation with MHT and subject to available resources, each State unit must (1) establish a program to identify, document, and nominate to MHT each property owned or controlled by the State unit that appears to qualify for the Maryland Register of Historic Properties; (2) ensure that no property listed in or eligible to be listed in the Maryland Register of Historic Properties is inadvertently transferred, sold, demolished, destroyed, substantially altered, or allowed to deteriorate significantly; and (3) use any available historic building under its control to the extent prudent and practicable before acquiring, constructing, or leasing a building to carry out its responsibilities. If it is prudent, practicable, and in the State's best interest to do so, a State unit that transfers a surplus property listed in or eligible to be listed in the Maryland Register of Historic Properties must ensure that the transfer provides for the preservation or enhancement of the property.

Smart Growth Subcabinet

The Smart Growth Subcabinet consists of the secretaries of various agencies, including DHCD, Commerce, DGS, the Maryland Department of Planning, and others.

The subcabinet must:

- provide a forum for discussion of interdepartmental issues relating to activities that affect growth, development, neighborhood conservation, and resource management;
- work together to promote the understanding of smart growth;
- work together to create, enhance, support, and revitalize sustainable communities across the State;
- meet at least biannually with county and municipal elected leaders and planning officials to discuss local government issues relating to activities that affect smart growth, development, neighborhood conservation, and resource management;
- make recommendations to specified State agencies;
- evaluate and report annually to the Governor and the General Assembly on the implementation of the State's smart growth policy; and
- perform other duties assigned by the Governor.

Background: DHCD indicates that (1) the pace of new housing construction decreased after the 2008 housing recession and has never fully recovered and (2) housing costs have steadily risen over the past decade, with more significant increases in recent years in construction costs and mortgage rates. According to DHCD, 52% of renters and 23% of homeowners in Maryland spend more than 30% of their income on housing.

State Fiscal Effect:

Department of Housing and Community Development

DHCD general fund expenditures increase by \$73,674 in fiscal 2025, which accounts for the bill’s January 1, 2025, effective date, and by ongoing amounts in future years (which range from \$130,180 in fiscal 2026 to \$148,082 in fiscal 2029) to hire the Historic Property Revitalization Director. This estimate includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Position	1.0
Salaries and Fringe Benefits	\$66,688
Operating Expenses	<u>6,986</u>
Total FY 2025 State Expenditures	\$73,674

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses.

DHCD can implement the required approval process for public health impact assessments for qualified projects authorized to exceed the density in an area zoned for nonresidential use, including adoption of regulations, with existing budgeted resources.

Although the bill seeks to remove barriers to, and expedite, affordable housing projects that may receive funding under DHCD programs, the bill does not directly affect those programs or budgeted funding under the programs.

Other Agencies

The Smart Growth Subcabinet, Commerce, and DGS can consult/work with the Historic Property Revitalization Director, as specified, with existing budgeted resources.

Local Fiscal Effect:

Local Implementation

Based on information received from a small number of local jurisdictions, the bill is expected to be implemented, administratively, with existing resources in many jurisdictions, but some may require additional resources (e.g., an additional staff position or contractual services) to manage the review and inspection of qualified project development under the bill. Local jurisdictions also collect development-related fees from such development.

Infrastructure

Infrastructure spending by local jurisdictions may increase or accelerate to the extent the bill allows for development to outpace infrastructure capacity by allowing for greater development density than planned for by a local jurisdiction. The extent to which potential additional strain on infrastructure under the bill may result in increased/accelerated infrastructure spending, and the potential magnitude of that spending, cannot be reliably estimated and depends on the infrastructure capacity of an area in which a development is proposed, and the size and density of the proposed development(s).

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 484 (The President, *et al.*) (By Request - Administration) - Education, Energy, and the Environment.

Information Source(s): Anne Arundel, Charles, Frederick, Howard, Queen Anne's, St. Mary's, and Worcester counties; Baltimore City; Maryland Association of Counties; Maryland-National Capital Park and Planning Commission; cities of Greenbelt and Laurel; Maryland Municipal League; Town of La Plata; Department of Housing and Community Development; Maryland Department of Planning; Maryland Department of Transportation; Department of Commerce; Department of General Services; Department of Legislative Services

Fiscal Note History: First Reader - February 18, 2024
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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Land Use - Affordable Housing - Zoning Density and Permitting
(Housing Expansion and Affordability Act of 2024)

BILL NUMBER: HB0538

PREPARED BY: Brad Fallon

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

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

This legislation creates regulatory incentives for qualified residential projects that meet certain affordability, ownership, and/or location requirements. As such, this legislation can be expected to incentivize economic development as residential and mixed use projects are constructed.

The legislation seeks to address Maryland's estimated 96,000 housing unit shortage which adversely impacts the state's cost of living, business attractiveness, and competitiveness for skilled workforce. Both through direct investments and addressing a supply shortage, this legislation is anticipated to have a significant positive economic impact.