

CF 7r1926

By: The Speaker (Administration)

Introduced and read first time: January 27, 1997

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **"Smart Growth" and Neighborhood Conservation - "Smart Growth" Areas**

3 FOR the purpose of enhancing the Economic Growth, Resource Protection, and Planning
4 Act of 1992 by setting priorities for certain State spending so as to preserve existing
5 neighborhoods and agricultural, natural, and rural resources; establishing priority
6 funding areas in the State; providing that certain State agencies may not approve
7 certain projects which are not in priority funding areas after a certain date;
8 providing for certain exceptions; authorizing the Board of Public Works to grant
9 exceptions under certain circumstances; requiring the Maryland Office of Planning
10 to establish a collaborative process with local governments for the determination of
11 priority funding areas; defining certain terms; requiring that priority funding areas
12 maps and descriptions be updated periodically; providing that a decision to fund or
13 not to fund a project is not subject to certain administrative actions; providing that
14 this Act does not create a private cause of action; providing that this Act shall not
15 apply to certain projects; and generally relating to "smart growth" and the
16 establishment of priority funding areas.

17 BY repealing and reenacting, without amendments,
18 Article - Transportation
19 Section 2-103.1(a)(4) and (5)
20 Annotated Code of Maryland
21 (1993 Replacement Volume and 1996 Supplement)

22 BY adding to
23 Article - State Finance and Procurement
24 Section 5-7B-01 through 5-7B-08, inclusive, to be under the new subtitle "Subtitle
25 7B. Priority Funding Areas"; and 7-314(o)
26 Annotated Code of Maryland
27 (1995 Replacement Volume and 1996 Supplement)

28 Preamble

29 WHEREAS, The General Assembly enacted the Economic Growth, Resource
30 Protection, and Planning Act of 1992 (the 1992 Act) which established the State
31 Economic Growth, Resource Protection, and Planning Policy (the State Policy); and

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1 WHEREAS, The State Policy provides that "development shall be concentrated
2 in suitable areas" and that "in rural areas, growth shall be directed to existing population
3 centers and resource areas shall be protected"; and

4 WHEREAS, If current patterns of development continue unchanged, Maryland
5 will lose over 500,000 acres of farms and open spaces, will have abandoned many existing
6 and historic neighborhoods, and will spend millions of taxpayer dollars building costly
7 new infrastructure; and

8 WHEREAS, The 1992 Act is based on the recognition that State spending plays a
9 significant role in guiding growth and facilitating development; and

10 WHEREAS, The 1992 Act was an important first step in directing State spending
11 in a way that furthers the State Policy in that it requires certain projects funded through
12 State or federal funds to be consistent with the local plans of the jurisdictions in which the
13 projects are located; and

14 WHEREAS, In order to effectuate the State Policy adopted by the General
15 Assembly in 1992, the State needs to build on the 1992 Act by focusing spending in those
16 areas, including those parts of locally designated growth areas, that constitute the most
17 efficient and effective use of the taxpayer dollars and which will serve to best preserve
18 existing neighborhoods and Maryland's fields, farms, and open spaces; now, therefore,

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

21 **Article - Transportation**

22 2-103.1.

23 (a) (4) "Major capital project" means any new, expanded, or significantly
24 improved facility or service that involves planning, environmental studies, design,
25 right-of-way, construction, or purchase of essential equipment related to the facility or
26 service.

27 (5) "Minor capital project" means any project for the preservation or
28 rehabilitation of an existing facility or service, including the planning, design,
29 right-of-way, construction, or purchase of equipment essential to the facility or service,
30 and generally not requiring the preparation of an environmental impact assessment.

31 **Article - State Finance and Procurement**

32 SUBTITLE 7B. PRIORITY FUNDING AREAS.

33 5-7B-01.

34 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
35 INDICATED.

36 (B) "FUNDING" INCLUDES ANY FORM OF ASSURANCE, GUARANTEE, GRANT
37 PAYMENT, CREDIT, TAX CREDIT, OR OTHER ASSISTANCE, INCLUDING A LOAN, LOAN
38 GUARANTEE, OR REDUCTION IN THE PRINCIPAL OBLIGATION OF, OR RATE OF
39 INTEREST PAYABLE ON, A LOAN OR A PORTION OF A LOAN.

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1 (C) (1) "PROJECT" MEANS:

2 (I) ANY MAJOR CAPITAL PROJECT AS DEFINED IN § 2-103.1(A)(4) OF
3 THE TRANSPORTATION ARTICLE, EXCEPT EXISTING TRANSPORTATION FACILITIES
4 PROJECTS AS DEFINED IN § 4-101(I) OF THE TRANSPORTATION ARTICLE;

5 (II) FUNDING BY THE DEPARTMENT OF HOUSING AND
6 COMMUNITY DEVELOPMENT FOR:

7 1. CONSTRUCTION OR PURCHASE OF NEWLY CONSTRUCTED
8 SINGLE FAMILY HOMES OR PURCHASE OF LOANS FOR NEWLY CONSTRUCTED
9 SINGLE FAMILY HOMES UNDER ARTICLE 83B, §§ 2-201 THROUGH 2-208, §§ 2-601
10 THROUGH 2-614, OR §§ 2-1001 THROUGH 2-1007 OF THE CODE;

11 2. ACQUISITION OR CONSTRUCTION OF NEWLY
12 CONSTRUCTED MULTIFAMILY RENTAL HOUSING UNDER ARTICLE 83B, §§ 2-201
13 THROUGH 2-208, §§ 2-501 THROUGH 2-510, OR §§ 2-801 THROUGH 2-810 OF THE CODE;
14 OR

15 3. STATE-FUNDED NEIGHBORHOOD REVITALIZATION
16 PROJECTS UNDER ARTICLE 83B, TITLE 4 OF THE CODE;

17 (III) FUNDING BY THE DEPARTMENT OF BUSINESS AND ECONOMIC
18 DEVELOPMENT UNDER ANY OF THE FOLLOWING:

19 1. THE MARYLAND INDUSTRIAL LAND ACT, AUTHORIZED
20 UNDER ARTICLE 83A, TITLE 5, SUBTITLE 7 OF THE CODE;

21 2. THE MARYLAND INDUSTRIAL AND COMMERCIAL
22 REDEVELOPMENT FUND, AUTHORIZED UNDER ARTICLE 83A, TITLE 5, SUBTITLE 8 OF
23 THE CODE;

24 3. THE MARYLAND INDUSTRIAL DEVELOPMENT FINANCING
25 AUTHORITY, AUTHORIZED UNDER ARTICLE 83A, TITLE 5, SUBTITLE 9 OF THE CODE;

26 4. THE MARYLAND SMALL BUSINESS DEVELOPMENT
27 FINANCING AUTHORITY, AUTHORIZED UNDER ARTICLE 83A, TITLE 5, SUBTITLE 10
28 OF THE CODE;

29 5. THE MARYLAND ENERGY FINANCING ACT, AUTHORIZED
30 UNDER ARTICLE 83A, TITLE 6, SUBTITLE 4 OF THE CODE; AND

31 6. THE ECONOMIC DEVELOPMENT OPPORTUNITIES
32 PROGRAM FUND, AUTHORIZED UNDER § 7-314 OF THE STATE FINANCE AND
33 PROCUREMENT ARTICLE; AND

34 (IV) FUNDING BY THE DEPARTMENT OF THE ENVIRONMENT, FOR
35 ANY PROJECT UNDER:

36 1. §§ 9-1601 THROUGH 9-1605 (WATER QUALITY REVOLVING
37 LOAN FUND) OF THE ENVIRONMENT ARTICLE;

38 2. §§ 9-420 THROUGH 9-426 (WATER SUPPLY FINANCIAL
39 ASSISTANCE PROGRAM) OF THE ENVIRONMENT ARTICLE; AND

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1 3. THE FOLLOWING PROGRAMS AUTHORIZED UNDER TITLE
2 9, SUBTITLE 3, PART VI OF THE ENVIRONMENT ARTICLE:

- 3 A. BIOLOGICAL NUTRIENT REMOVAL;
- 4 B. THE SUPPLEMENTAL ASSISTANCE PROGRAM;
- 5 C. THE STORMWATER CONTROL COST-SHARE PROGRAM;
- 6 AND
- 7 D. SMALL CREEKS AND ESTUARIES RESTORATION.

8 (2) "PROJECT" DOES NOT INCLUDE FUNDING BY THE DEPARTMENT OF
9 HOUSING AND COMMUNITY DEVELOPMENT FOR ANY PROJECT FINANCED WITH THE
10 PROCEEDS OF REVENUE BONDS ISSUED BY THE COMMUNITY DEVELOPMENT
11 ADMINISTRATION IF:

12 (I) THE SECRETARY OF HOUSING AND COMMUNITY
13 DEVELOPMENT DETERMINES THAT APPLICATION OF THIS SECTION:

- 14 1. CONFLICTS WITH ANY PROVISION OF FEDERAL OR STATE
15 LAW APPLICABLE TO THE ISSUANCE OR TAX-EXEMPT STATUS OF THE BONDS;
- 16 2. CONFLICTS WITH ANY PROVISION OF ANY TRUST
17 AGREEMENT BETWEEN THE COMMUNITY DEVELOPMENT ADMINISTRATION AND
18 ANY TRUSTEE; OR
- 19 3. WOULD OTHERWISE PROHIBIT FINANCING OF AN
20 EXISTING PROJECT, OR FINANCING PROVIDED TO CURE OR PREVENT ANY DEFAULT
21 UNDER EXISTING FINANCING; OR

22 (II) THE REVENUE BONDS ARE ISSUED UNDER A TRANSFER OF
23 THE MARYLAND STATE CEILING TO THE ADMINISTRATION BY A COUNTY UNDER
24 TITLE 13, SUBTITLE 8 OF THE FINANCIAL INSTITUTIONS ARTICLE.

25 (D) "TECHNICAL ASSISTANCE" MEANS THE PROVISION OF ADVICE,
26 CONSULTATION, TRAINING, INFORMATION, OR DESIGN, OR ARCHITECTURAL,
27 ORGANIZATIONAL, OR MANAGEMENT ASSISTANCE.

28 5-7B-02.

29 THE FOLLOWING AREAS SHALL BE CONSIDERED STATE PRIORITY FUNDING
30 AREAS UNDER THIS SUBTITLE:

31 (1) A MUNICIPAL CORPORATION, INCLUDING BALTIMORE CITY,
32 PROVIDED THAT ALL AREAS ANNEXED AFTER JANUARY 1, 1997 SHALL SATISFY THE
33 PROVISIONS OF ITEM (8) OF THIS SECTION;

34 (2) A DESIGNATED NEIGHBORHOOD, AS DEFINED IN ARTICLE 83B, §
35 4-202 OF THE CODE;

36 (3) AN ENTERPRISE ZONE AS DESIGNATED UNDER ARTICLE 83A, § 5-401
37 OF THE CODE, OR BY THE UNITED STATES GOVERNMENT;

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1 (4) A CERTIFIED HERITAGE AREA AS DEFINED IN §§ 13-1101 AND 13-1111
2 OF THE FINANCIAL INSTITUTIONS ARTICLE;

3 (5) THOSE AREAS OF THE STATE LOCATED BETWEEN INTERSTATE
4 HIGHWAY 495 AND THE DISTRICT OF COLUMBIA;

5 (6) THOSE AREAS OF THE STATE LOCATED BETWEEN INTERSTATE
6 HIGHWAY 695 AND BALTIMORE CITY;

7 (7) AREAS ZONED AS INDUSTRIAL OR THE EQUIVALENT WHICH ARE
8 SERVED BY PUBLIC OR COMMUNITY WATER AND SEWER SYSTEMS; AND

9 (8) AN AREA WITHIN A LOCALLY DESIGNATED GROWTH THAT MEETS
10 THE FOLLOWING CRITERIA:

11 (I) 1. THE AREA IS SERVED BY PUBLIC OR COMMUNITY WATER
12 AND SEWER SERVICE; AND

13 2. IN ANY PART OF THE AREA SERVED BY PUBLIC OR
14 COMMUNITY WATER AND SEWER SERVICE THAT IS DESIGNATED BY THE LOCAL
15 GOVERNMENT FOR RESIDENTIAL USE OR DEVELOPMENT:

16 A. THERE IS REQUIRED AN AVERAGE DENSITY OF 2.0 UNITS
17 PER ACRE; OR

18 B. THERE IS IN PRACTICE AN AVERAGE DENSITY OF 2.0
19 UNITS PER ACRE; OR

20 (II) 1. THE AREA IS PLANNED TO BE SERVED BY PUBLIC OR
21 COMMUNITY WATER AND SEWER SERVICE WITHIN 6 YEARS UNDER THE ADOPTED
22 CAPITAL IMPROVEMENT PLAN OF THE LOCAL JURISDICTION AND THE APPROVED
23 WATER AND SEWER PLAN IN WHICH THE AREA IS LOCATED; AND

24 2. IN ANY PART OF THE AREA PLANNED TO BE SERVED BY
25 PUBLIC OR COMMUNITY WATER AND SEWER SERVICE THAT IS DESIGNATED BY THE
26 LOCAL GOVERNMENT FOR RESIDENTIAL USE OR DEVELOPMENT:

27 A. THERE IS REQUIRED AN AVERAGE DENSITY OF 3.5 UNITS
28 PER ACRE; OR

29 B. THERE IS IN PRACTICE AN AVERAGE DENSITY OF 3.5
30 UNITS PER ACRE.

31 5-7B-03.

32 NOTWITHSTANDING ANY OTHER PROVISIONS OF LAW THAT MAY BE
33 INCONSISTENT WITH THIS SUBTITLE, AND EXCEPT AS OTHERWISE PROVIDED IN
34 THIS SUBTITLE, BEGINNING OCTOBER 1, 1998, THE STATE MAY NOT PROVIDE
35 FUNDING FOR A PROJECT IF THE PROJECT IS NOT LOCATED WITHIN A STATE
36 PRIORITY FUNDING AREA.

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1 5-7B-04.

2 (A) THE STATE MAY PROVIDE FUNDING FOR A PROJECT NOT IN A STATE
3 PRIORITY FUNDING AREA IF THE BOARD OF PUBLIC WORKS DETERMINES THAT
4 EXTRAORDINARY CIRCUMSTANCES EXIST WHICH WARRANT PROCEEDING WITH
5 THE PROJECT AND THAT NO REASONABLY FEASIBLE ALTERNATIVE EXISTS.

6 (B) A REQUEST FOR APPROVAL BY THE BOARD UNDER SUBSECTION (A) OF
7 THIS SECTION MAY BE MADE AT THE REQUEST OF THE GOVERNING BODY OF THE
8 LOCAL JURISDICTION IN WHICH THE PROJECT IS LOCATED OR THE SECRETARY
9 WITH APPROVAL AUTHORITY OVER THE PROJECT.

10 (C) (1) WHEN A REQUEST IS MADE TO THE BOARD OF PUBLIC WORKS FOR
11 AN EXCEPTION UNDER THIS SECTION, THE BOARD OF PUBLIC WORKS MAY REQUEST
12 FROM THE STATE ECONOMIC GROWTH, RESOURCE PROTECTION, AND PLANNING
13 COMMISSION AN ADVISORY OPINION ON THE REQUEST FOR THE EXCEPTION.

14 (2) UPON RECEIVING A REQUEST FOR AN ADVISORY OPINION UNDER
15 THIS SUBSECTION, THE COMMISSION MAY, IN ITS DISCRETION, HOLD A PUBLIC
16 MEETING TO GATHER INFORMATION RELEVANT TO THE ADVISORY OPINION.

17 5-7B-05.

18 THE STATE MAY PROVIDE FUNDING FOR A PROJECT NOT IN A STATE PRIORITY
19 FUNDING AREA WITHOUT RECEIVING APPROVAL FROM THE BOARD OF PUBLIC
20 WORKS AS PROVIDED UNDER § 5-7B-04 OF THIS SUBTITLE FOR:

21 (1) A TRANSPORTATION PROJECT THAT:

22 (I) MAINTAINS THE EXISTING TRANSPORTATION SYSTEM,
23 PROVIDED THE DEPARTMENT OF TRANSPORTATION AND THE OFFICE OF PLANNING
24 DETERMINE THE PROJECT DOES NOT SERVE TO INCREASE HIGHWAY CAPACITY;

25 (II) SERVES TO CONNECT STATE PRIORITY FUNDING AREAS,
26 PROVIDED THAT:

27 1. THE DEPARTMENT OF TRANSPORTATION AND THE
28 OFFICE OF PLANNING DETERMINE THAT ADEQUATE ACCESS CONTROL MEASURES
29 ARE IN PLACE TO:

30 A. PREVENT DEVELOPMENT THAT IS INCONSISTENT WITH §
31 5-7A-01(1), (2), AND (3) OF THIS TITLE; AND

32 B. MAINTAIN THE VIABILITY OF THE PROJECT WHILE
33 CONCOMITANTLY CONSTRAINING DEVELOPMENT WHICH POTENTIALLY DETRACTS
34 FROM MAIN STREET BUSINESS AREAS; AND

35 2. THE DEPARTMENT OF TRANSPORTATION IN
36 CONSULTATION WITH THE OFFICE OF PLANNING HAS FIRST CONSIDERED WHETHER
37 ALTERNATIVE TRANSPORTATION MODES SUCH AS MASS TRANSIT PROVIDE A
38 REASONABLE ALTERNATIVE TO THE PROJECT AND DETERMINED THAT NO SUCH
39 REASONABLE ALTERNATIVE EXISTS;

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1 (III) HAS THE SOLE PURPOSE OF PROVIDING CONTROL OF ACCESS
2 BY THE DEPARTMENT OF TRANSPORTATION ALONG AN EXISTING HIGHWAY
3 CORRIDOR; OR

4 (IV) DUE TO ITS OPERATIONAL OR PHYSICAL CHARACTERISTICS,
5 MUST BE LOCATED AWAY FROM OTHER DEVELOPMENT;

6 (2) A PROJECT THAT IS REQUIRED TO PROTECT PUBLIC HEALTH OR
7 SAFETY; OR

8 (3) A PROJECT INVOLVING FEDERAL FUNDS, TO THE EXTENT
9 COMPLIANCE WITH THIS SUBTITLE WOULD CONFLICT OR BE INCONSISTENT WITH
10 FEDERAL LAW.

11 5-7B-06.

12 (A) THE OFFICE OF PLANNING SHALL:

13 (1) BY REGULATION AND IN CONSULTATION WITH THE STATE
14 ECONOMIC GROWTH, RESOURCE PROTECTION, AND POLICY COMMISSION,
15 ESTABLISH A COLLABORATIVE PROCESS WITH LOCAL JURISDICTIONS FOR THE
16 DEVELOPMENT, AND PERIODIC UPDATING, OF MAPS AND DESCRIPTIONS OF STATE
17 PRIORITY FUNDING AREAS;

18 (2) IN THE CASE OF A DISPUTE, DETERMINE THE LOCATION OF A STATE
19 PRIORITY FUNDING AREA;

20 (3) ESTABLISH A PROCESS FOR THE REVIEW OF PROJECTS BY THE
21 APPROPRIATE STATE AGENCIES AND THE OFFICE OF PLANNING FOR COMPLIANCE
22 WITH THIS SUBTITLE; AND

23 (4) PROVIDE TO EACH STATE AGENCY AND UNIT OF STATE
24 GOVERNMENT, AS APPROPRIATE, AS WELL AS LOCAL GOVERNMENTS, THE
25 LOCATION OF STATE PRIORITY FUNDING AREAS.

26 (B) THE COLLABORATIVE PROCESS DESCRIBED IN SUBSECTION (A) OF THIS
27 SECTION SHALL ENSURE THAT EACH COUNTY AND MUNICIPALITY HAS THE
28 OPPORTUNITY TO SUBMIT A MAP AND DESCRIPTION OF THE JURISDICTION'S
29 PRIORITY FUNDING AREAS, WHICH SHALL BE CONSISTENT WITH THE LOCAL
30 COMPREHENSIVE PLAN AND THE CRITERIA SET FORTH IN § 5-7B-02 OF THIS
31 SUBTITLE.

32 5-7B-07.

33 EACH STATE AGENCY SUBJECT TO THIS SUBTITLE SHALL REPORT ANNUALLY
34 TO THE OFFICE OF PLANNING ON THE IMPLEMENTATION OF THIS SUBTITLE IN A
35 FORM APPROVED BY THE OFFICE OF PLANNING.

36 5-7B-08.

37 (A) THIS SECTION MAY NOT BE CONSTRUED TO CREATE A PRIVATE CAUSE OF
38 ACTION FOR ANY PERSON OR LOCAL GOVERNMENT.

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1 (B) A DECISION TO FUND A PROJECT OR NOT TO FUND A PROJECT AS
2 REQUIRED UNDER THIS SUBTITLE SHALL NOT BE SUBJECT TO TITLE 10, SUBTITLE 2
3 (ADMINISTRATIVE PROCEDURE ACT - CONTESTED CASES) OF THE STATE
4 GOVERNMENT ARTICLE.

5 (C) THIS SUBTITLE MAY NOT BE CONSTRUED TO PREVENT AN AGENCY FROM
6 PROVIDING TECHNICAL ASSISTANCE IN AN AREA THAT IS NOT A PRIORITY FUNDING
7 AREA.

8 7-314.

9 (O) IN THE CASE OF AN ECONOMIC DEVELOPMENT OPPORTUNITY LOCATED
10 OUTSIDE A PRIORITY FUNDING AREA AS ESTABLISHED UNDER TITLE 5, SUBTITLE 7B
11 OF THIS ARTICLE, THE DEPARTMENT SHALL FIRST COMPLY WITH THE PROVISIONS
12 OF THAT SUBTITLE BEFORE MAKING A REQUEST FOR APPROVAL BY THE
13 LEGISLATIVE POLICY COMMITTEE UNDER THIS SECTION.

14 SECTION 2. AND BE IT FURTHER ENACTED, That no provision of this Act
15 shall apply to any project or program for which approval has been granted or a
16 commitment made before October 1, 1998, or for which a valid permit or State
17 commitment for a grant, loan, loan guarantee, or insurance for a capital project, or for
18 which final review under the National Environmental Policy Act or the Maryland
19 Environmental Policy Act is completed by October 1, 1998, or for which final review
20 through the State Clearinghouse for Intergovernmental Assistance is completed by
21 January 1, 1999.

22 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 October 1, 1997.