

---

By: **Chairman, Environmental Matters Committee**

Introduced and read first time: January 30, 2002

Assigned to: Environmental Matters

---

A BILL ENTITLED

1 AN ACT concerning

2                                   **State Economic Growth, Resource Protection, and Planning Commission -**  
3                                   **Program Evaluation - Option 1**

4 FOR the purpose of requiring the Secretary of Planning to create a citizen's advisory  
5 body for certain purposes; requiring the Department of Planning to track the  
6 progress of State, regional, and local planning; requiring the Office of Smart  
7 Growth to present annual Smart Growth Awards; transferring responsibility for  
8 certain planning functions from the State Economic Growth, Resource  
9 Protection, and Planning Commission to the Department of Planning;  
10 terminating the Office of Smart Growth after a certain date subject to the  
11 evaluation and reestablishment provisions of the Maryland Program Evaluation  
12 Act; making the Department of Planning and the Office of Smart Growth  
13 subject to a joint evaluation under the Maryland Program Evaluation Act;  
14 providing for a delayed effective date; and generally relating to planning  
15 functions within State agencies.

16 BY repealing and reenacting, with amendments,  
17 Article 66B - Land Use  
18 Section 3.06  
19 Annotated Code of Maryland  
20 (1998 Replacement Volume and 2001 Supplement)

21 BY repealing and reenacting, with amendments,  
22 Article - State Finance and Procurement  
23 Section 5-203, 5-307, 5-7A-02, and 5-7B-05  
24 Annotated Code of Maryland  
25 (2001 Replacement Volume)

26 BY repealing and reenacting, with amendments,  
27 Article - State Government  
28 Section 8-403 and 9-1405  
29 Annotated Code of Maryland  
30 (1999 Replacement Volume and 2001 Supplement)

1 BY adding to  
2 Article - State Government  
3 Section 9-1407  
4 Annotated Code of Maryland  
5 (1999 Replacement Volume and 2001 Supplement)

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

8 **Article 66B - Land Use**

9 3.06.

10 (a) (1) When a local jurisdiction first adopts the zoning powers conferred by  
11 this article, the planning commission shall recommend the boundaries of the various  
12 original districts and appropriate regulations to be enforced in those districts.

13 (2) The planning commission shall make a preliminary report and hold  
14 at least one public hearing on the preliminary report before submitting its final  
15 report.

16 (3) The local legislative body may not hold a public hearing or take  
17 action until it has received the final report of the planning commission.

18 (b) To implement the plan, the planning commission shall periodically  
19 recommend to the appropriate public officials:

20 (1) Programs for public structures, improvements, and land acquisitions;  
21 and

22 (2) Financing programs.

23 (c) (1) Except as provided in paragraph (2) of this subsection, only the local  
24 legislative body that has adopted the plan may adopt regulations implementing the  
25 visions stated in § 1.01 of this article in a plan.

26 (2) This subsection does not limit the Department of Planning[, the  
27 State Economic Growth, Resource Protection, and Planning Commission, or any  
28 subcommittee of the State Economic Growth, Resource Protection, and Planning  
29 Commission] from exercising any authority granted under the State Finance and  
30 Procurement Article.

31 **Article - State Finance and Procurement**

32 5-203.

33 (a) The Secretary is responsible for the budget of the Department.

34 (b) The Secretary may adopt regulations for the Department.

1 (c) (1) The Secretary may create any citizens' advisory body that the  
2 Secretary considers necessary for the operation of the Department.

3 (2) THE SECRETARY SHALL CREATE A CITIZENS' ADVISORY BODY TO  
4 PREPARE AN ADVISORY OPINION REGARDING FUNDING FOR GROWTH-RELATED  
5 PROJECTS NOT WITHIN PRIORITY FUNDING AREAS UPON THE REQUEST OF THE  
6 BOARD OF PUBLIC WORKS IN ACCORDANCE WITH § 5-7B-05 OF THIS ARTICLE.

7 (d) The Secretary shall have a seal.

8 (e) (1) The Secretary is responsible for the comprehensive planning of  
9 programs and services of the Department.

10 (2) The Secretary shall review and approve or disapprove the plans of  
11 the units in the Department.

12 (f) The Secretary or a staff member of the Department designated by the  
13 Secretary shall have access to information that relates to State planning in the  
14 possession of any unit of the State government, of a regional government, or of a local  
15 government.

16 (g) If the entry is made in a manner so as to cause no unnecessary injury, the  
17 Secretary or a staff member of the Department designated by the Secretary may  
18 enter, at any reasonable hour, on any land in order to make examinations and surveys  
19 that relate to State planning.

20 (h) After providing adequate public notice, the Secretary shall hold hearings  
21 on matters of State planning whenever it is in the public interest to do so.

22 (i) In the interest of intergovernmental cooperation, the Secretary shall  
23 attend:

24 (1) meetings of regional planning commissions;

25 (2) interstate planning conferences; and

26 (3) other planning conferences.

27 (j) The Secretary may contract for professional or consultant services for work  
28 related to State planning as provided in the State budget.

29 (k) The Secretary may exercise any power necessary and proper to discharge  
30 the Secretary's duties.

31 5-307.

32 (a) Each year, no later than 60 days before the General Assembly convenes for  
33 its regular session, the Department shall submit a report to the Governor.

34 (b) The annual report shall include:

1 (1) a summary and description of the nature of every section of the State  
2 Development Plan that has been:

3 (i) added, deleted, or revised since the last annual report; and

4 (ii) filed by the Governor under § 5-605 of this title;

5 (2) a summary of each important study wholly or partly completed by the  
6 Department since the last annual report; [and]

7 (3) summaries of the work of the DEPARTMENT [and of the State  
8 Economic Growth, Resource Protection, and Planning Commission]; AND

9 (4) A SECTION THAT TRACKS THE PROGRESS OF STATE, REGIONAL, AND  
10 LOCAL PLANNING IN ACHIEVING:

11 (I) THE PLANNING POLICIES SET FORTH IN § 5-7A-01 OF THIS  
12 TITLE AND IN ARTICLE 66B, § 1.01 OF THE CODE; AND

13 (II) THE PLANNING OBJECTIVES SET FORTH IN ARTICLE 66B, § 3.05  
14 OF THE CODE.

15 (c) The Department shall distribute copies of the annual report:

16 (1) subject to § 2-1246 of the State Government Article, to the General  
17 Assembly;

18 (2) to the head of each department of the State government;

19 (3) to the head of each local or regional planning agency in the State; and

20 (4) on request, to any federal agency.

21 (d) The Department shall make copies of the annual report available for  
22 general distribution or sale.

23 5-7A-02.

24 (a) (1) Except as provided in paragraph (2) of this subsection, with respect to  
25 a State public works, transportation, or major capital improvement project funded  
26 through State or federal funds, the State may not provide State funding for the  
27 project if the project is not consistent with:

28 (i) the State Economic Growth, Resource Protection, and Planning  
29 Policy established in § 5-7A-01 of this subtitle; or

30 (ii) the local plan of the jurisdiction in which the project is located.

31 (2) The State may provide State funding for a State public works,  
32 transportation, or major capital improvement project funded through State or federal  
33 funds which is not consistent with the policy or plan under paragraph (1) of this

1 subsection if the State determines that extraordinary circumstances exist that  
2 warrant proceeding with the project and that no reasonably feasible alternative  
3 exists.

4 (b) (1) Except as provided in paragraph (2) of this subsection with respect to  
5 a local construction project involving the use of State funds, grants, loans, loan  
6 guaranties, or insurance, a local jurisdiction may not approve or construct the project  
7 unless the project is consistent with the local plan.

8 (2) A local jurisdiction may approve and construct a local construction  
9 project which is inconsistent with the local plan under paragraph (1) of this  
10 subsection if the local jurisdiction determines that extraordinary circumstances exist  
11 that warrant proceeding with the project and that no reasonably feasible alternative  
12 exists.

13 (c) By December 1, 1992 the Governor shall establish procedures for review of  
14 State projects under subsection (a) of this section, and each local jurisdiction shall  
15 establish procedures for the review of local projects under subsection (b) of this  
16 section, to:

17 (1) ensure that the projects are consistent with their respective policy  
18 and plans; and

19 (2) evaluate extraordinary circumstances under subsections (a)(2) and  
20 (b)(2) of this section, respectively.

21 (d) Each local jurisdiction shall report on or before February 1 of each year to  
22 the [State Economic Growth, Resource Protection, and Planning Commission]  
23 DEPARTMENT OF PLANNING on the number and type of projects approved under  
24 subsection (b)(2) of this section during the preceding calendar year, including a  
25 description of the extraordinary circumstances existing and the alternatives  
26 considered, together with any additional information required by the [Commission]  
27 DEPARTMENT OF PLANNING.

28 5-7B-05.

29 (a) (1) The State may provide funding for a growth-related project not in a  
30 priority funding area if:

31 (i) the Board of Public Works determines that extraordinary  
32 circumstances exist in accordance with the requirements of paragraph (2) of this  
33 subsection; or

34 (ii) the Board of Public Works approves the project as a  
35 transportation project that meets the requirements of paragraph (3) of this  
36 subsection.

37 (2) In order to determine that extraordinary circumstances exist under  
38 paragraph (1) of this subsection, the Board shall determine by a majority vote that:

1 (i) the failure to fund the project in question creates an extreme  
2 inequity, hardship, or disadvantage that clearly outweighs the benefits from locating  
3 a project in a priority funding area; and

4 (ii) there is no reasonable alternative for the project in a priority  
5 funding area in another location within the county or an adjacent county.

6 (3) The Board of Public Works may approve a transportation project  
7 under paragraph (1)(ii) of this subsection if the transportation project:

8 (i) maintains the existing transportation system, if the  
9 Department of Transportation and the Department of Planning determine the project  
10 does not serve to significantly increase highway capacity;

11 (ii) serves to connect priority funding areas, if:

12 1. the Department of Transportation and the Department of  
13 Planning determine that adequate access control or other measures are in place to:

14 A. prevent development that is inconsistent with §  
15 5-7A-01(1), (2), and (3) of this title; and

16 B. maintain the viability of the project while concomitantly  
17 constraining development which potentially detracts from main street business areas;  
18 and

19 2. the Department of Transportation and the Department of  
20 Planning have first determined whether alternative transportation modes, such as  
21 mass transit and transportation demand management, provide a reasonable  
22 alternative to the project and that no reasonable alternative exists;

23 (iii) has the sole purpose of providing control of access by the  
24 Department of Transportation along an existing highway corridor; or

25 (iv) due to its operational or physical characteristics, must be  
26 located away from other development.

27 (b) (1) A request for approval by the Board under subsection (a) of this  
28 section may be made at the request of the governing body of the local jurisdiction in  
29 which the project is located or the Secretary with approval authority over the project.

30 (2) When making a request to the Board of Public Works, the applicant  
31 shall:

32 (i) identify the extraordinary circumstances that require State  
33 funds for the project; and

34 (ii) demonstrate that no feasible alternatives exist to making an  
35 exception to the requirements of this subtitle.

1 (3) The Board of Public Works, at its discretion, may require remedial  
2 actions to mitigate any negative impacts of the proposed project.

3 (c) (1) When a request is made to the Board of Public Works for an exception  
4 under this section, the Board of Public Works may request from the [State Economic  
5 Growth, Resource Protection, and Planning Commission] DEPARTMENT OF  
6 PLANNING an advisory opinion on the request for the exception.

7 (2) Upon receiving a request for an advisory opinion under this  
8 subsection, the [Commission] DEPARTMENT OF PLANNING, if requested by a member  
9 of the public, shall hold a public meeting to gather information relevant to the  
10 advisory opinion.

## 11 **Article - State Government**

12 8-403.

13 (a) On or before December 15 of the 2nd year before the evaluation date of a  
14 governmental activity or unit, the Legislative Policy Committee, based on a  
15 preliminary evaluation, may waive as unnecessary the evaluation required under this  
16 section.

17 (b) Except as otherwise provided in subsection (a) of this section, on or before  
18 the evaluation date for the following governmental activities or units, an evaluation  
19 shall be made of the following governmental activities or units and the statutes and  
20 regulations that relate to the governmental activities or units:

21 (1) Acupuncture, State Board of (§ 1A-201 of the Health Occupations  
22 Article: July 1, 2004);

23 (2) Adolescent Pregnancy, Governor's Council on (Article 49D, § 21 of the  
24 Code: July 1, 2003);

25 (3) Amusement Ride Safety, State Advisory Board (§ 3-303 of the  
26 Business Regulation Article: July 1, 2003);

27 (4) Apprenticeship and Training Council (§ 11-403 of the Labor and  
28 Employment Article: July 1, 2003);

29 (5) Architects, State Board of (§ 3-201 of the Business Occupations and  
30 Professions Article: July 1, 2012);

31 (6) Athletic Commission, State (§ 4-201 of the Business Regulation  
32 Article: July 1, 2010);

33 (7) Audiologists, Hearing Aid Dispensers, and Speech-Language  
34 Pathologists, State Board of Examiners for (§ 2-201 of the Health Occupations  
35 Article: July 1, 2003);

1 (8) Banking Board (§ 2-201 of the Financial Institutions Article: July 1,  
2 2011);

3 (9) Barbers, State Board of (§ 4-201 of the Business Occupations and  
4 Professions Article: July 1, 2010);

5 (10) Boiler Rules, Board of (Article 48, § 169 of the Code: July 1, 2002);

6 (11) Cemetery Oversight, Office of (§ 5-201 of the Business Regulation  
7 Article: July 1, 2006);

8 (12) Children, Youth, and Families, Office for (Article 49D, § 1 of the  
9 Code: July 1, 2003);

10 (13) Chiropractic Examiners, State Board of (§ 3-201 of the Health  
11 Occupations Article: July 1, 2011);

12 (14) Collection Agency Licensing Board, State (§ 7-201 of the Business  
13 Regulation Article: July 1, 2011);

14 (15) Cosmetologists, State Board of (§ 5-201 of the Business Occupations  
15 and Professions Article: July 1, 2010);

16 (16) Counselors and Therapists, State Board of Professional (§ 17-201 of  
17 the Health Occupations Article: July 1, 2003);

18 (17) Dental Examiners, State Board of (§ 4-201 of the Health Occupations  
19 Article: July 1, 2005);

20 (18) Dietetic Practice, State Board of (§ 5-201 of the Health Occupations  
21 Article: July 1, 2004);

22 (19) Docking Masters, State Board of (§ 5.5-201 of the Business  
23 Occupations and Professions Article: July 1, 2009);

24 [(20) Economic Growth, Resource Protection, and Planning Commission,  
25 State (§ 5-702 of the State Finance and Procurement Article: July 1, 2002);]

26 [(21)] (20) Electricians, State Board of Master (§ 6-201 of the Business  
27 Occupations and Professions Article: July 1, 2002);

28 [(22)] (21) Electrologists, State Board of (§ 6-201 of the Health  
29 Occupations Article: July 1, 2003);

30 [(23)] (22) Engineers, Board of Examining (§ 4-1 of the Public Local  
31 Laws of Baltimore City: July 1, 2002);

32 [(24)] (23) Engineers, State Board for Professional (§ 14-201 of the  
33 Business Occupations and Professions Article: July 1, 2012);

- 1 [(25)] (24) Environmental Sanitarians, State Board of (§ 11-201 of the  
2 Environment Article: July 1, 2002);
- 3 [(26)] (25) Financial Regulation, Office of the Commissioner of (§ 2-101  
4 of the Financial Institutions Article: July 1, 2011);
- 5 [(27)] (26) Foresters, State Board of (§ 7-201 of the Business  
6 Occupations and Professions Article: July 1, 2003);
- 7 [(28)] (27) Health Care Commission, Maryland (§ 19-103 of the  
8 Health - General Article: July 1, 2007);
- 9 [(29)] (28) Health Services Cost Review Commission, State (§ 19-202 of  
10 the Health - General Article: July 1, 2007);
- 11 [(30)] (29) Heating, Ventilation, Air-Conditioning, and Refrigeration  
12 Contractors, State Board of (§ 9A-201 of the Business Regulation Article: July 1,  
13 2012);
- 14 [(31)] (30) Home Improvement Commission, Maryland (§ 8-201 of the  
15 Business Regulation Article: July 1, 2011);
- 16 [(32)] (31) Horse Industry Board, Maryland (§ 2-701 of the Agriculture  
17 Article: July 1, 2005);
- 18 [(33)] (32) Individuals with Disabilities, Office for (§ 9-1102 of the State  
19 Government Article: July 1, 2003);
- 20 [(34)] (33) Insurance Commissioner and Administration (§§ 2-101 and  
21 2-103 of the Insurance Article: July 1, 2002);
- 22 [(35)] (34) Interior Designers, State Board of Certified (§ 8-201 of the  
23 Business Occupations and Professions Article: July 1, 2003);
- 24 [(36)] (35) Labor and Industry, Division of (Title 2 of the Labor and  
25 Employment Article: July 1, 2003);
- 26 [(37)] (36) Land Surveyors, State Board for Professional (§ 15-201 of the  
27 Business Occupations and Professions Article: July 1, 2012);
- 28 [(38)] (37) Landscape Architects, State Board of Examiners of (§ 9-201  
29 of the Business Occupations and Professions Article: July 1, 2012);
- 30 [(39)] (38) Law Examiners, State Board of (§ 10-201 of the Business  
31 Occupations and Professions Article: July 1, 2003);
- 32 [(40)] (39) Maryland-Bred Race Fund Advisory Committee (§ 11-531 of  
33 the Business Regulation Article: July 1, 2010);
- 34 [(41)] (40) Morticians, State Board of (§ 7-201 of the Health Occupations  
35 Article: July 1, 2001);

- 1 [(42)] (41) Nursing, State Board of (§ 8-201 of the Health Occupations  
2 Article: July 1, 2002);
- 3 [(43)] (42) Nursing Home Administrators, State Board of Examiners of  
4 (§ 9-201 of the Health Occupations Article: July 1, 2002);
- 5 [(44)] (43) Occupational Safety and Health Advisory Board (§ 5-302 of  
6 the Labor and Employment Article: July 1, 2003);
- 7 [(45)] (44) Occupational Therapy Practice, State Board of (§ 10-201 of  
8 the Health Occupations Article: July 1, 2003);
- 9 [(46)] (45) Optometry, State Board of Examiners in (§ 11-201 of the  
10 Health Occupations Article: July 1, 2012);
- 11 [(47)] (46) Pharmacy, State Board of (§ 12-201 of the Health  
12 Occupations Article: July 1, 2002);
- 13 [(48)] (47) Physical Therapy Examiners, State Board of (§ 13-201 of the  
14 Health Occupations Article: July 1, 2011);
- 15 [(49)] (48) Physician Assistant Advisory Committee (§ 15-201 of the  
16 Health Occupations Article: July 1, 2003);
- 17 [(50)] (49) Physician Quality Assurance, State Board of (§ 14-201 of the  
18 Health Occupations Article: July 1, 2002);
- 19 [(51)] (50) Pilots, State Board of (§ 11-201 of the Business Occupations  
20 and Professions Article: July 1, 2002);
- 21 (51) PLANNING, DEPARTMENT OF (§ 5-201 OF THE STATE FINANCE AND  
22 PROCUREMENT ARTICLE: JULY 1, 2007);
- 23 (52) Plumbing, State Board of (§ 12-201 of the Business Occupations and  
24 Professions Article: July 1, 2012);
- 25 (53) Podiatric Medical Examiners, State Board of (§ 16-201 of the Health  
26 Occupations Article: July 1, 2011);
- 27 (54) Prevailing Wage Rates, Advisory Council on (§ 17-203 of the State  
28 Finance and Procurement Article: July 1, 2003);
- 29 (55) Psychologists, State Board of Examiners of (§ 18-201 of the Health  
30 Occupations Article: July 1, 2002);
- 31 (56) Public Accountancy, State Board of (§ 2-201 of the Business  
32 Occupations and Professions Article: July 1, 2003);
- 33 (57) Racing Commission, State (§ 11-201 of the Business Regulation  
34 Article: July 1, 2010);

1 (58) Real Estate Appraisers and Home Inspectors, State Commission of (§  
2 16-201 of the Business Occupations and Professions Article: July 1, 2002);

3 (59) Real Estate Commission, State (§ 17-201 of the Business  
4 Occupations and Professions Article: July 1, 2011);

5 (60) Real Estate Hearing Board (§ 17-325 of the Business Occupations  
6 and Professions Article: July 1, 2001);

7 (61) Respiratory Care Professional Standards Committee, State  
8 (§ 14-5A-05 of the Health Occupations Article: July 1, 2005);

9 (62) Security Systems Technicians, Licensing and Regulation of (§ 18-201  
10 of the Business Occupations and Professions Article: July 1, 2003);

11 (63) SMART GROWTH, OFFICE OF (§ 9-1401 OF THE STATE GOVERNMENT  
12 ARTICLE: JULY 1, 2007);

13 [(63)] (64) Social Work Examiners, State Board of (§ 19-201 of the  
14 Health Occupations Article: July 1, 2003);

15 [(64)] (65) Standardbred Race Fund Advisory Committee, Maryland (§  
16 11-625 of the Business Regulation Article: July 1, 2010);

17 [(65)] (66) Tobacco Authority (§ 7-201 of the Agriculture Article: July 1,  
18 2005);

19 [(66)] (67) Veterinary Medical Examiners, State Board of (§ 2-302 of the  
20 Agriculture Article: July 1, 2010);

21 [(67)] (68) Waterworks and Waste Systems Operators, State Board of  
22 (§ 12-201 of the Environment Article: July 1, 2010); and

23 [(68)] (69) Well Drillers, State Board of (§ 13-201 of the Environment  
24 Article: July 1, 2010).

25 9-1405.

26 (a) In addition to any other powers and duties imposed by law, the Office has  
27 the powers and duties set forth in this section.

28 (b) The Office shall:

29 (1) review State assistance programs related to smart growth to  
30 determine their applicability, if any, to projects that are consistent with the State's  
31 smart growth policy;

32 (2) promote interagency consensus and cooperation on projects that are  
33 consistent with the State's smart growth policy and resolve conflicting agency  
34 positions on projects in an expedited manner;

1 (3) provide advisory and technical assistance to local jurisdictions and to  
2 the public in preparing, financing, and developing smart growth and neighborhood  
3 conservation projects;

4 (4) gather and disseminate information to the public, including local  
5 jurisdictions, nonprofit organizations, and developers on how to develop projects that  
6 are consistent with the State's smart growth policy;

7 (5) provide a single point of access for members of the public, including  
8 local jurisdictions, nonprofit organizations, developers, and community and  
9 homeowners' associations who need assistance or guidance in navigating the  
10 processes and regulations of State agencies on projects that are consistent with the  
11 State's smart growth policy;

12 (6) work with local governments in expediting review of projects that  
13 both the local government and the State agree are consistent with the State's smart  
14 growth policy;

15 (7) provide effective public information on smart growth programs and  
16 educational activities, including relationships with the National Center for Smart  
17 Growth Education and Research at the University of Maryland College Park, and  
18 coordination of smart growth outreach efforts to local governments, the general  
19 public, and other interest groups;

20 (8) coordinate the efforts of the Executive Branch to provide input to the  
21 General Assembly on legislation that concerns smart growth and neighborhood  
22 conservation;

23 (9) in coordination with the Subcabinet, recommend to the Governor  
24 changes to State law and regulations necessary to advance the policy of smart growth;  
25 [and]

26 (10) report to the Governor and, in accordance with § 2-1246 of the State  
27 Government Article, to the General Assembly on or before December 1, 2001 and each  
28 December 1 thereafter on the activities of the Office and the implementation of smart  
29 growth projects in the preceding calendar year; AND

30 (11) PRESENT SMART GROWTH AWARDS EACH YEAR TO RECOGNIZE  
31 PROJECTS AND ACTIVITIES IN THE STATE THAT DISPLAY OUTSTANDING  
32 CHARACTERISTICS AND PRINCIPLES OF MARYLAND'S SMART GROWTH AND  
33 NEIGHBORHOOD CONSERVATION PROGRAMS.

34 9-1407.

35 SUBJECT TO THE EVALUATION AND REESTABLISHMENT PROVISIONS OF THE  
36 MARYLAND PROGRAM EVALUATION ACT, THIS SUBTITLE SHALL TERMINATE AND BE  
37 OF NO EFFECT AFTER JULY 1, 2008.

38 SECTION 2. AND BE IT FURTHER ENACTED, That the evaluations of the  
39 Department of Planning and the Office of Smart Growth that are required under §

1 8-403 of the State Government Article on or before July 1, 2007 shall be conducted  
2 concurrently and recommendations shall be presented in a single report.

3 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take  
4 effect July 1, 2003.