
By: **Senator Green**

Introduced and read first time: February 4, 2005

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Smart Growth - Priority Funding Areas - Development Criteria and Permit**
3 **Allocation**

4 FOR the purpose of requiring county planning authorities to adopt certain land
5 development criteria; requiring county planning authorities to adopt certain
6 annual permit allocation charts; requiring certain annual permit allocation
7 charts to include certain provisions; requiring county boards of appeals to take
8 certain laws into account when exercising certain powers; altering certain
9 exceptions for State-financed projects from the requirement to fund projects
10 only in Priority Funding Areas; requiring the Department of Planning to adopt
11 certain regulations; and generally relating to Smart Growth.

12 BY repealing and reenacting, with amendments,
13 Article 66B - Land Use
14 Section 1.03(a), 3.05(a), 4.06(c), and 4.07(h)
15 Annotated Code of Maryland
16 (2003 Replacement Volume and 2004 Supplement)

17 BY repealing and reenacting, with amendments,
18 Article - State Finance and Procurement
19 Section 5-7A-02
20 Annotated Code of Maryland
21 (2001 Replacement Volume and 2004 Supplement)

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

24 **Article 66B - Land Use**

25 1.03.

26 (a) (1) When developing a comprehensive plan for a charter county, a
27 planning commission shall include:

28 (i) A transportation plan element which shall:

1 1. Propose the most appropriate and desirable patterns for
 2 the general location, character, and extent of the channels, routes, and terminals for
 3 transportation facilities, and for the circulation of persons and goods on a schedule
 4 that extends as far into the future as is reasonable;

5 2. Provide for bicycle and pedestrian access and travelways;
 6 and

7 3. Include an estimate of the probable utilization of any
 8 proposed improvement;

9 (ii) If current geological information is available, a mineral
 10 resources plan element that:

11 1. Identifies undeveloped land that should be kept in its
 12 undeveloped state until the land can be used to provide or assist in providing a
 13 continuous supply of minerals, as defined in § 15-801(i) of the Environment Article;

14 2. Identifies appropriate postexcavation uses for the land
 15 that are consistent with the county's land planning process;

16 3. Incorporates land use policies and recommendations for
 17 regulations:

18 A. To balance mineral resource extraction with other land
 19 uses; and

20 B. To the extent feasible, to prevent the preemption of
 21 mineral resources extraction by other uses; and

22 4. Has been reviewed by the Department of the Environment
 23 to determine whether the proposed comprehensive plan is consistent with the
 24 programs and goals of the Department;

25 (III) BEGINNING ON JANUARY 1, 2006, AN ELEMENT THAT REQUIRES
 26 THE ADOPTION OF A RESIDENTIAL BUILDING PERMIT ALLOCATION CHART, WHICH
 27 SHALL:

28 1. ESTABLISH A GOAL FOR THE NUMBER OF RESIDENTIAL
 29 BUILDING PERMITS THE COUNTY INTENDS TO GRANT EACH YEAR, IN ORDER TO
 30 PROVIDE AN ORDERLY AND PREDICTABLE PLANNING ENVIRONMENT;

31 2. SPECIFY THE MAXIMUM NUMBER OF RESIDENTIAL
 32 BUILDING PERMITS AVAILABLE TO BE GRANTED FOR PROJECTS WITHIN THE
 33 COUNTY FOR EACH YEAR; AND

34 3. BE PUBLISHED BY JANUARY 15 OF EACH YEAR.

1 [(iii)] (IV) An element which contains the planning commission's
 2 [recommendation] CRITERIA for land development regulations to implement the
 3 comprehensive plan and which [encourages] REQUIRES:

4 1. Streamlined review of applications for development,
 5 including permit review and subdivision plat review within the areas designated for
 6 growth in the comprehensive plan;

7 2. The use of flexible development regulations to promote
 8 innovative and cost-saving site design and protect the environment; [and]

9 3. Economic development in areas designated for growth in
 10 the comprehensive plan through the use of innovative techniques; and

11 4. A DESCRIPTION OF THE LOCATION, USE, AND CAPACITY
 12 OF EXISTING PUBLIC FACILITIES AND UTILITIES THAT INCLUDES AN APPROXIMATE
 13 TIMETABLE THAT FORECASTS THE NEED TO EXPAND EXISTING PUBLIC FACILITIES
 14 AND UTILITIES OR TO CREATE NEW PUBLIC FACILITIES AND UTILITIES; AND

15 [(iv)] (V) A sensitive areas element that contains goals, objectives,
 16 principles, policies, and standards designed to protect sensitive areas from the
 17 adverse effects of development.

18 (2) The channels, routes, travelways, and terminals required under
 19 paragraph (1)(i) of this subsection may include all types of highways or streets, bicycle
 20 ways, sidewalks, railways, waterways, airways, routings for mass transit, and
 21 terminals for people, goods, and vehicles related to highways, airways, waterways,
 22 and railways.

23 (3) The mineral resources plan element required under paragraph (1)(ii)
 24 of this subsection shall be incorporated in:

25 (i) Any new comprehensive plan adopted after July 1, 1986 for all
 26 or any part of a jurisdiction; and

27 (ii) Any amendment or addition that is adopted after July 1, 1986
 28 to a comprehensive plan that was in effect on July 1, 1985.

29 3.05.

30 (a) (1) A planning commission shall make and approve a plan which the
 31 commission shall recommend to the local legislative body for adoption.

32 (2) The plan shall:

33 (i) Serve as a guide to public and private actions and decisions to
 34 insure the development of public and private property in appropriate relationships;
 35 and

1 (ii) Include any areas outside of the boundaries of the plan which,
2 in the planning commission's judgment, bear relation to the planning responsibilities
3 of the commission.

4 (3) (i) The elements of the plan may be expressed in words, graphics,
5 or any other appropriate form.

6 (ii) 1. The elements of the plan shall be interrelated.

7 2. Each element shall describe how it relates to each of the
8 other elements and to the statement of objectives, principles, policies, and standards.

9 (4) The plan shall contain at a minimum the following elements:

10 (i) A statement of goals and objectives, principles, policies, and
11 standards, which shall serve as a guide for the development and economic and social
12 well-being of the local jurisdiction;

13 (ii) A land use plan element, which:

14 1. Shall propose the most appropriate and desirable patterns
15 for the general location, character, extent, and interrelationship of the uses of public
16 and private land, on a schedule that extends as far into the future as is reasonable;
17 and

18 2. May include public and private, residential, commercial,
19 industrial, agricultural, and recreational land uses;

20 (iii) A transportation plan element which shall:

21 1. Propose the most appropriate and desirable patterns for
22 the general location, character, and extent of the channels, routes, and terminals for
23 transportation facilities, and for the circulation of persons and goods on a schedule
24 that extends as far into the future as is reasonable;

25 2. Provide for bicycle and pedestrian access and travelways;
26 and

27 3. Include an estimate of the probable utilization of any
28 proposed improvement;

29 (iv) A community facilities plan element, which:

30 1. Shall propose the most appropriate and desirable patterns
31 for the general location, character, and extent of public and semipublic buildings,
32 land, and facilities on a schedule that extends as far into the future as is reasonable;
33 and

34 2. May include parks and recreation areas, schools and other
35 educational and cultural facilities, libraries, churches, hospitals, social welfare and

1 medical facilities, institutions, fire stations, police stations, jails, or other public office
2 or administrative facilities;

3 (v) If current geological information is available, a mineral
4 resources plan element that:

5 1. Identifies undeveloped land that should be kept in its
6 undeveloped state until the land can be used to provide or assist in providing a
7 continuous supply of minerals, as defined in § 15-801(i) of the Environment Article;

8 2. Identifies appropriate post-excavation uses for the land
9 that are consistent with the county's land planning process;

10 3. Incorporates land use policies and recommendations for
11 regulations:

12 A. To balance mineral resource extraction with other land
13 uses; and

14 B. To the extent feasible, to prevent the preemption of
15 mineral resources extraction by other uses; and

16 4. Has been reviewed by the Department of the Environment
17 to determine whether the proposed plan is consistent with the programs and goals of
18 the Department;

19 (VI) BEGINNING ON JANUARY 1, 2006, AN ELEMENT WHICH
20 REQUIRES THE ADOPTION OF A RESIDENTIAL BUILDING PERMIT ALLOCATION
21 CHART, WHICH SHALL:

22 1. ESTABLISH A GOAL FOR THE NUMBER OF RESIDENTIAL
23 BUILDING PERMITS THE COUNTY INTENDS TO GRANT EACH YEAR, IN ORDER TO
24 PROVIDE AN ORDERLY AND PREDICTABLE PLANNING ENVIRONMENT;

25 2. SPECIFY THE MAXIMUM NUMBER OF RESIDENTIAL
26 BUILDING PERMITS AVAILABLE TO BE GRANTED FOR PROJECTS WITHIN THE
27 COUNTY FOR EACH YEAR; AND

28 3. BE PUBLISHED BY JANUARY 15 OF EACH YEAR;

29 [(vi)] (VII) An element which shall contain the planning
30 commission's [recommendation] CRITERIA for land development regulations to
31 implement the plan and which [encourages] REQUIRES the following:

32 1. Streamlined review of applications for development,
33 including permit review and subdivision plat review within the areas designated for
34 growth in the plan;

35 2. The use of flexible development regulations to promote
36 innovative and cost-saving site design and protect the environment; [and]

1 in its plan the designation of areas on the tidal water or in close proximity to the tidal
2 water for the following purposes:

- 3 1. Loading and unloading finfish and shellfish;
- 4 2. Processing finfish and shellfish; and
- 5 3. Docking and mooring commercial fishing boats and
6 vessels.

7 (ii) The designated areas under subparagraph (i) of this paragraph
8 shall be geographically located to:

- 9 1. Facilitate the commercial harvesting of finfish and
10 shellfish; and
- 11 2. Assure reasonable access to the waterways of the State by
12 commercial watermen.

13 4.06.

14 (c) (1) A hearing examiner shall render a written recommendation in the
15 time, manner, and form required by the local legislative body.

16 (2) A LOCAL LEGISLATIVE BODY SHALL REQUIRE ALL HEARING
17 EXAMINERS TO TAKE INTO ACCOUNT §§ 1.03 AND 3.05 OF THIS ARTICLE WHEN
18 RENDERING ANY RECOMMENDATION.

19 4.07.

20 (h) (1) In exercising its powers, a board of appeals may, in conformity with
21 the provisions of this article:

22 (i) Wholly or partly reverse the order, requirement, decision, or
23 determination from which the appeal is taken;

24 (ii) Wholly or partly affirm the order, requirement, decision, or
25 determination from which the appeal is taken;

26 (iii) Modify the order, requirement, decision, or determination from
27 which the appeal is taken; or

28 (iv) Issue a new order, requirement, decision, or determination.

29 (2) The board shall have all the powers of the administrative officer from
30 whom the appeal is taken.

31 (3) A BOARD OF APPEALS SHALL TAKE INTO ACCOUNT §§ 1.03 AND 3.05
32 OF THIS ARTICLE WHEN EXERCISING ANY POWER LISTED IN THIS SUBSECTION.

Article - State Finance and Procurement

2 5-7A-02.

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

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

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

10 (2) The State may provide State funding for a State public works,
11 transportation, or major capital improvement project funded through State or federal
12 funds which is not consistent with the policy or plan under paragraph (1) of this
13 subsection if the State determines that [extraordinary circumstances exist that
14 warrant proceeding with the project]:

15 (I) AN EXTREME INEQUITY, HARDSHIP, OR DISADVANTAGE WOULD
16 CLEARLY OUTWEIGH THE BENEFITS OF LOCATING A PROJECT IN A PRIORITY
17 FUNDING AREA; and

18 (II) that no reasonably feasible alternative exists.

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

23 (2) A local jurisdiction may approve and construct a local construction
24 project which is inconsistent with the local plan under paragraph (1) of this
25 subsection if the local jurisdiction determines that [extraordinary circumstances
26 exist that warrant proceeding with the project]:

27 (I) AN EXTREME INEQUITY, HARDSHIP, OR DISADVANTAGE WOULD
28 CLEARLY OUTWEIGH THE BENEFITS OF LOCATING A PROJECT IN A PRIORITY
29 FUNDING AREA; and

30 (II) that no reasonably feasible alternative exists.

31 (c) By December 1, 1992 the Governor shall establish procedures for review of
32 State projects under subsection (a) of this section, and each local jurisdiction shall
33 establish procedures for the review of local projects under subsection (b) of this
34 section, to:

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

1 (2) evaluate [extraordinary circumstances] EXTREME INEQUITIES,
2 HARDSHIPS, OR DISADVANTAGES under subsections (a)(2) and (b)(2) of this section,
3 respectively.

4 (d) Each local jurisdiction shall report on or before February 1 of each year to
5 the State Economic Growth, Resource Protection, and Planning Commission on the
6 number and type of projects approved under subsection (b)(2) of this section during
7 the preceding calendar year, including a description of the [extraordinary
8 circumstances] EXTREME INEQUITIES, HARDSHIPS, OR DISADVANTAGES existing and
9 the alternatives considered, together with any additional information required by the
10 Commission.

11 (E) THE DEPARTMENT SHALL ADOPT REGULATIONS TO ASSURE THAT LOCAL
12 JURISDICTIONS AND STATE AGENCIES ARE COMPLYING WITH THE STATE ECONOMIC
13 GROWTH, RESOURCE PROTECTION, AND PLANNING POLICY UNDER § 5-7A-01 OF THIS
14 SUBTITLE.

15 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
16 October 1, 2005.