

Department of Legislative Services
 Maryland General Assembly
 2006 Session

FISCAL AND POLICY NOTE
 Revised

House Bill 1141

(Delegate McIntosh, *et al.*)

Environmental Matters

Education, Health, and Environmental Affairs

Land Use - Local Government Planning

This bill makes several changes regarding local government planning in the State. In general, it • modifies provisions regarding the required elements of local comprehensive plans; • modifies provisions relating to annexation; • authorizes and encourages joint planning by local governments; • modifies provisions governing priority funding areas; and • establishes a Task Force on the Future for Growth and Development in Maryland.

The bill applies prospectively.

Fiscal Summary

State Effect: General fund expenditures could increase by \$443,100 in FY 2007 to handle the additional planning functions. Future year estimates are annualized, adjusted for inflation, and reflect ongoing operating costs. Revenues would not be directly affected.

(in dollars)	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	443,100	552,500	584,200	618,000	654,200
Net Effect	(\$443,100)	(\$552,500)	(\$584,200)	(\$618,000)	(\$654,200)

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

Local Effect: Local expenditures could increase, perhaps significantly, to handle the additional planning requirements. Local finances would be affected to the extent the bill impacts the number of annexations and associated development that otherwise would occur. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Minimal direct impact on small businesses.

Analysis

Bill Summary: The bill:

- requires municipalities that exercise zoning authority to include a municipal growth element in their comprehensive plans and to consult with counties when developing the element;
- requires local governments to include a water resources element in their local comprehensive plans and directs MDE to provide data and technical assistance to local governments and to review the element;
- requires municipalities to adopt annexation plans for areas proposed to be annexed and, beginning October 1, 2009, requires that such plans be consistent with municipal growth elements except under specified conditions;
- modifies provisions governing the use of land during the five-year time period following an annexation by incorporating a density measure and linking it to the zoning ordinance;
- repeals specified provisions regarding annexation outlines;
- requires MDP to provide technical assistance to a municipality, upon request, in developing the municipal growth element;
- authorizes municipalities and counties to enter into joint planning agreements in order to coordinate implementation of a municipal growth element;
- provides that areas annexed by a municipality after September 30, 2006, must satisfy specified requirements under the priority funding area (PFA) law;
- includes municipalities in the provisions governing the designation of PFAs;
- expands the sensitive areas element required under current law by modifying the definition of “sensitive areas” to include wetlands and certain agricultural and forest lands;
- requires MDE and DNR to review the sensitive areas element;
- requires local governments to include required plan elements in their comprehensive plans by October 1, 2009, except under specified conditions, and provides that local governments that are not in compliance with this requirement may not change the zoning classification of a property until compliance is achieved;
- encourages local governments to enter into joint planning processes and encourages regional coordination among local governments; and
- establishes a task force, to be staffed by MDP, on the future for growth and development in Maryland. The task force must report its findings and recommendations to the General Assembly and the Governor by December 1, 2007.

Current Law:

Planning and Zoning – Generally

Article 66B governs zoning and planning in the State. Local planning commissions are required to develop and approve a plan that must: (1) be recommended to the local legislative body for adoption; and (2) serve as a guide to public and private actions and decisions relating to development. The plan, at a minimum, must contain a statement of goals and standards, a land use plan element, a transportation plan element, a community facilities plan element, a mineral resources plan element under specified conditions, recommendations for land development regulations, recommendations for the designation of areas of critical concern, and a sensitive area element. For charter counties and Baltimore City, the plan must include a transportation plan element, a mineral resources plan element under specified circumstances, recommendations for land development regulations, and a sensitive areas element. Plans must be reviewed and if necessary, revised and amended, at least once every six years. MDE reviews the mineral resources plan elements. Neither MDE nor DNR is required to review the sensitive areas elements. The State agency most directly involved with local comprehensive planning is MDP.

Each county is required to have a water, sewer, and waste plan or a plan with adjoining counties that is approved by MDE and covers at least a 10-year period. The county plan is a comprehensive plan for adequately providing throughout the county (including all towns, municipal corporations, and sanitary districts in the county) the following facilities and services: water supply systems, sewerage systems, solid waste disposal systems, solid waste acceptance facilities, and systematic collection and disposal of solid waste.

Annexations

The legislative body of every municipal corporation in the State may enlarge its corporate boundaries as provided for in statute. In order to be annexed to a municipality, the area must be contiguous and adjoining to the existing municipal corporate area and not located in another municipality. Certain procedural requirements exist. Among other things, a municipality's annexation resolution must provide that individuals residing in the area to be annexed and their property will be added to the corporate boundaries of the municipality. In addition to the resolution, but not part of it, the legislative body of the municipality must provide a proposed outline for the extension of services and public facilities into the area proposed to be annexed. The outline must contain a description of the land use pattern proposed for the area to be annexed, which may include any county master plan already in effect for the area, so as to demonstrate the available land for public facilities that may reasonably be considered to be necessitated by the proposed use. The outline must also contain a statement describing the schedule for extending to the area to be annexed each municipal service performed within the municipality at the

time of annexation and a statement as to the general methods by which the municipality anticipates to finance the extension of municipal services into the area.

For five years, a municipality annexing land may not place that land in a zoning classification which permits land use substantially different from the land's use specified in the current adopted master plan or general plan (if applicable) of the county or agency having planning or zoning authority over the land.

Background: In 1997, the General Assembly enacted Governor Glendening's Smart Growth and Neighborhood Revitalization legislative package in an effort to reduce the impact of urban sprawl on the environment and encourage growth in existing communities. The initiative, which was designed to protect Maryland's green spaces and to preserve the State's rural areas, aims to manage growth by restricting State funding to designated PFAs. The Smart Growth legislation established certain areas as PFAs and allowed counties to designate additional areas if they meet minimum criteria. **Exhibit 1** lists the areas initially established as PFAs and areas eligible for county designation.

Exhibit 1
Smart Growth – Priority Funding Areas

Areas Initially Established by Law

Areas Eligible for County Designation

Municipalities

Areas with industrial zoning

Baltimore City

Areas with employment as the principal use which are served by, or planned for, a sewer system

Areas inside the Baltimore and Washington beltways

Existing communities within county-designated growth areas which are served by a water or sewer system and which have an average density of 2 or more units per acre

Neighborhoods designated for revitalization by the Department of Housing and Community Development

Rural villages

Enterprise and Empowerment Zones

Other areas within county-designated growth areas that, among other things, have a permitted density of 3.5 or more units per acre for new residential development

Certified Heritage Areas within county-designated growth areas

Source: Maryland Department of Planning

The Eastern Shore of Maryland has experienced several large and controversial annexations over the past two years. Some municipalities have grown by 50% to over 200% in land area via annexation. According to MDP, such annexations will obviously lead to significant increases in population over various timeframes (over 400% in at least one instance). In addition, several annexations of note were in rural areas with limited development pressure. The lack of infrastructure and other public services has also been an issue with some annexations. There has been concern that annexations are sometimes used to avoid county adequate public facility ordinances.

Annexations in Maryland have not traditionally been the growth issue that they are in many other states. Historically, annexations have mostly occurred per smart growth principles. Maryland, unlike many states, has a significant amount of its urban and suburban land outside of municipalities. Counties in the central part of the State, which is also the most populated region, are more likely to be the purveyors of key urban services (e.g., central water and sewer service) than are municipalities. This contrasts with much of the growth on Maryland's Eastern Shore where municipalities tend to be the providers of central water and sewer service.

Most annexations bypass the comprehensive planning process. Annexations essentially serve as future growth areas for municipalities. Local governments (counties and municipalities) are required by State planning laws to plan for future growth. However, municipalities are not required to include future annexation areas in their comprehensive plans and, according to MDP, most do not.

Comprehensive plans are to address land use, infrastructure, environmental, community and other issues as they relate to the location, size, and type of future development. Most comprehensive plan updates take well over a year before there is a draft plan. In addition, there is a significant public review and comment process that must occur before a plan is legally adopted. This process adds more time to the comprehensive planning process. Annexations, by contrast, can occur at a much faster pace. This can lead to less public review and planning for annexations and their associated development.

State Expenditures: General fund expenditures could increase by a total of \$443,122 in fiscal 2007, which accounts for the bill's October 1, 2006 effective date. Future year expenditures reflect: (1) full salaries with 4.6% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

Maryland Department of Planning

General fund expenditures could increase by an estimated \$193,940 in fiscal 2007. This estimate reflects the cost of hiring four planners to provide technical assistance to municipalities in developing their municipal growth elements and related analyses, review the new comprehensive plan elements, and staff the task force established by the

bill. It includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. The estimate assumes that most of the municipalities with planning and zoning authority would request technical assistance from MDP in developing their municipal growth elements.

Positions	4
Salaries and Fringe Benefits	\$184,460
Equipment/Operating Expenses	<u>9,480</u>
MDP Expenditures	\$193,940

Maryland Department of the Environment

MDE estimates that costs would increase by \$286,446 in fiscal 2007 to hire six staff, primarily to provide data and technical assistance to local governments in the development of their water resources elements. MDE’s out-year estimates average \$378,529 from fiscal 2008 through 2011. MDE’s estimate assumes that one natural resources planner would be dedicated to each of the three major water-resources regions in the State, one water resources engineer would provide support in all three regions, one water resources engineer would serve as a division leader, and one office secretary would provide administrative support.

If most local governments request technical assistance in the development of their water resources elements, Legislative Services concurs that the bill would result in a significant increase in workload for MDE. However, without any actual experience under the bill, the need for six additional staff is unclear at this time. Assuming existing staff could provide leadership and administrative support, MDE could most likely begin implementing the bill with four additional staff – three natural resources planners (one per region) and one water resources engineer to provide support in all three regions. Accordingly, general fund expenditures could increase by \$200,291 in fiscal 2007. This estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses. To the extent four additional staff proves insufficient, MDE may request additional staff through the annual budget process.

Positions	4
Salaries and Fringe Benefits	\$166,505
Equipment/Other Operating Expenses	<u>33,786</u>
MDE Expenditures	\$200,291

Department of Natural Resources

DNR estimates that costs would increase by \$99,375 in fiscal 2007 to hire two natural resource biologists to work with local governments in developing sensitive areas elements. Legislative Services notes that, although the bill provides DNR with review authority over the sensitive areas element (along with MDE), local jurisdictions already incorporate this element into their plans. Thus, the bill might not require as much work as DNR anticipates.

Accordingly, Legislative Services estimates that general fund expenditures within DNR could increase by an estimated \$48,891 in fiscal 2007. This estimate reflects the cost of hiring one natural resource biologist to work with local governments and review sensitive areas elements. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	1
Salary and Fringe Benefits	\$42,646
Equipment/Other Operating Expenses	<u>6,245</u>
DNR Expenditures	\$48,891

Local Fiscal Effect:

Direct Costs to Implement Planning Provisions

Local governments would likely incur additional costs to implement the bill's planning requirements. Both counties and municipalities would be required to develop the water resources element. Although MDE is directed to provide data and technical assistance to local governments in the development of the water resources element, some local governments may still need to hire a consulting firm. Accordingly, costs could be significant for some local governments.

Municipalities could also incur significant costs to develop the municipal growth element, conduct related analyses, and develop the annexation plans required under the bill. Most of the approximately 120 municipalities with planning and zoning authority would likely request technical assistance from MDP in order to develop their municipal growth elements. According to the Maryland Municipal League (MML), the annexation plans would require significantly more analysis than the outlines required under current law. Although counties would be required to be consulted by municipalities in developing the municipal growth element, the Maryland Association of Counties (MACo) advises that most counties should be able to handle that with existing resources.

Indirect Fiscal Effects

To the extent the bill has an impact on the number of annexations and associated development that otherwise would occur, local finances could be affected. MACo advises that, in general, unplanned development puts a strain on county public facilities and infrastructure, such as schools and roads. To the extent the bill reduces the number of municipal annexations that are beyond the growth planning currently envisioned by county governments, it could relieve pressures for public facilities and infrastructure triggered by that annexation-driven growth. MML advises, however, that it is unclear how municipal growth will be impacted due to the bill's changes. MDP advises that the bill is unlikely to result in a decrease in annexations and associated development; rather, the bill would establish a more elaborate planning process so that future growth is better planned.

Small Business Effect: Although the bill would have a minimal direct impact on small businesses, small businesses could be affected to the extent the bill has an impact on growth that otherwise would occur. Any such impact cannot be predicted. However, as noted above, MDP advises that the bill is unlikely to result in a decrease in annexations and associated development.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of the Environment, Department of Natural Resources, Maryland Department of Planning, Maryland Mediation and Conflict Resolution Office, Maryland Association of Counties, Maryland Municipal League, Anne Arundel County, Garrett County, Montgomery County, Prince George's County, Maryland-National Capital Park and Planning Commission, Department of Legislative Services

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