

# HOUSE BILL 294

M1, M3

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CF SB 273

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By: **The Speaker (By Request – Administration) and Delegates Ali, Barve, Beidle, Benson, Cane, Carr, V. Clagett, Feldman, Frush, Gaines, Gilchrist, Gutierrez, Guzzone, Healey, Hecht, Howard, Hucker, Lafferty, Lee, Mizeur, Montgomery, Niemann, and Pena–Melnyk**

Introduced and read first time: January 29, 2009

Assigned to: Environmental Matters

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## A BILL ENTITLED

1 AN ACT concerning

2 **Smart, Green, and Growing – Local Government Planning – Planning Visions**

3 FOR the purpose of revising the planning visions for the State’s Economic Growth,  
4 Resource Protection, and Planning Policy and for local comprehensive planning;  
5 requiring local jurisdictions to report on certain restrictions that are the result  
6 of an adequate public facilities ordinance; specifying the contents of the local  
7 jurisdiction’s report; requiring the Department of Planning to prepare a report  
8 on the statewide impacts of adequate public facilities ordinances; specifying the  
9 contents of the Department’s report; authorizing a certain local legislative body  
10 to establish a transfer of development rights program within a priority funding  
11 area to assist in the purchase of land for public facilities; requiring the proceeds  
12 of the sale of the development right to be used to assist in the purchase of the  
13 site or the construction of the facility; limiting the transfer of development  
14 rights to a priority funding area; providing for the timing of certain reports; and  
15 generally relating to local government planning.

16 BY repealing and reenacting, with amendments,  
17 Article – State Finance and Procurement  
18 Section 5–7A–01  
19 Annotated Code of Maryland  
20 (2006 Replacement Volume and 2008 Supplement)

21 BY repealing and reenacting, with amendments,  
22 Article 66B – Land Use  
23 Section 1.01, 10.01, and 11.01  
24 Annotated Code of Maryland  
25 (2003 Replacement Volume and 2008 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



## 1 Preamble

2 WHEREAS, The “Eight Visions” that form the basis of planning in Maryland  
3 were first adopted by Maryland in the 1992 Economic Growth, Resource Protection,  
4 and Planning Act; and

5 WHEREAS, Local jurisdictions are required to implement the visions through  
6 the Plan and § 4.09 of Article 66B of the Code requires that jurisdictions “shall ensure  
7 that the implementation of the provisions of the plan that comply with §§ 1.01  
8 (visions) and 3.05(a)(4)(vi) and (viii) (the land use and sensitive areas elements) are  
9 achieved through the adoption of applicable zoning ordinances ... subdivision  
10 ordinances ... and other land use ordinances ... that are consistent with the plan”; and

11 WHEREAS, The visions are a now-familiar touchstone of Maryland land use  
12 law and policy and have been in place without significant amendment for 16 years;  
13 and

14 WHEREAS, The visions have never been modernized to reflect and keep pace  
15 with current growth and development patterns and trends or Maryland’s commitment  
16 to Smart Growth; and

17 WHEREAS, The Task Force on the Future of Growth and Development in  
18 Maryland recommended that a new set of visions to guide growth and development in  
19 Maryland be adopted to help achieve Smart and Sustainable Growth; now, therefore,

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

22 **Article – State Finance and Procurement**

23 5–7A–01.

24 The State Economic Growth, Resource Protection, and Planning Policy is [that]  
25 **THE FOLLOWING:**

26 [(1) development shall be concentrated in suitable areas;

27 (2) sensitive areas shall be protected;

28 (3) in rural areas, growth shall be directed to existing population  
29 centers and resource areas shall be protected;

30 (4) stewardship of the Chesapeake Bay and the land shall be a  
31 universal ethic;

32 (5) conservation of resources, including a reduction in resource  
33 consumption, shall be practiced;

1           (6) to encourage the achievement of paragraphs (1) through (5) of this  
2 subsection, economic growth shall be encouraged and regulatory mechanisms shall be  
3 streamlined;

4           (7) adequate public facilities and infrastructure are available or  
5 planned in areas where growth is to occur; and

6           (8) funding mechanisms shall be addressed to achieve this policy.]

7           **(1) QUALITY OF LIFE AND SUSTAINABILITY: A HIGH QUALITY OF**  
8 **LIFE IS ACHIEVED THROUGH UNIVERSAL STEWARDSHIP OF THE LAND, WATER,**  
9 **AND AIR RESULTING IN SUSTAINABLE COMMUNITIES AND PROTECTION OF THE**  
10 **ENVIRONMENT;**

11           **(2) PUBLIC PARTICIPATION: CITIZENS ARE ACTIVE PARTNERS IN**  
12 **THE PLANNING AND IMPLEMENTATION OF COMMUNITY INITIATIVES AND ARE**  
13 **SENSITIVE TO THEIR RESPONSIBILITIES IN ACHIEVING COMMUNITY GOALS;**

14           **(3) GROWTH AREAS: GROWTH IS CONCENTRATED IN EXISTING**  
15 **POPULATION AND BUSINESS CENTERS, GROWTH AREAS ADJACENT TO THESE**  
16 **CENTERS, OR STRATEGICALLY SELECTED NEW CENTERS;**

17           **(4) COMMUNITY DESIGN: COMPACT, MIXED-USE, WALKABLE**  
18 **DESIGN CONSISTENT WITH EXISTING COMMUNITY CHARACTER AND LOCATED**  
19 **NEAR AVAILABLE OR PLANNED TRANSIT OPTIONS IS ENCOURAGED TO ENSURE**  
20 **EFFICIENT USE OF LAND AND TRANSPORTATION RESOURCES AND**  
21 **PRESERVATION AND ENHANCEMENT OF NATURAL SYSTEMS, OPEN SPACES,**  
22 **RECREATIONAL AREAS, AND HISTORICAL, CULTURAL, AND ARCHEOLOGICAL**  
23 **RESOURCES;**

24           **(5) INFRASTRUCTURE: GROWTH AREAS HAVE THE WATER**  
25 **RESOURCES AND INFRASTRUCTURE TO ACCOMMODATE POPULATION AND**  
26 **BUSINESS EXPANSION IN AN ORDERLY, EFFICIENT, AND ENVIRONMENTALLY**  
27 **SUSTAINABLE MANNER;**

28           **(6) TRANSPORTATION: A WELL-MAINTAINED, MULTIMODAL**  
29 **TRANSPORTATION SYSTEM FACILITATES THE SAFE, CONVENIENT, AFFORDABLE,**  
30 **AND EFFICIENT MOVEMENT OF PEOPLE, GOODS, AND SERVICES WITHIN AND**  
31 **BETWEEN POPULATION AND BUSINESS CENTERS;**

32           **(7) HOUSING: A RANGE OF HOUSING DENSITIES, TYPES, AND SIZES**  
33 **PROVIDES RESIDENTIAL OPTIONS FOR CITIZENS OF ALL AGES AND INCOMES;**

1           **(8) ECONOMIC DEVELOPMENT: ECONOMIC DEVELOPMENT AND**  
 2 **NATURAL RESOURCE-BASED BUSINESSES THAT PROMOTE EMPLOYMENT**  
 3 **OPPORTUNITIES FOR ALL INCOME LEVELS WITHIN THE CAPACITY OF THE**  
 4 **STATE'S NATURAL RESOURCES, PUBLIC SERVICES, AND PUBLIC FACILITIES ARE**  
 5 **ENCOURAGED;**

6           **(9) ENVIRONMENTAL PROTECTION: LAND AND WATER**  
 7 **RESOURCES, INCLUDING THE CHESAPEAKE AND COASTAL BAYS, ARE**  
 8 **CAREFULLY MANAGED TO RESTORE AND MAINTAIN HEALTHY AIR AND WATER,**  
 9 **NATURAL SYSTEMS, AND LIVING RESOURCES;**

10           **(10) RESOURCE CONSERVATION: WATERWAYS, FORESTS,**  
 11 **AGRICULTURAL AREAS, OPEN SPACE, NATURAL SYSTEMS, AND SCENIC AREAS**  
 12 **ARE CONSERVED;**

13           **(11) STEWARDSHIP: GOVERNMENT, BUSINESS ENTITIES, AND**  
 14 **RESIDENTS ARE RESPONSIBLE FOR THE CREATION OF SUSTAINABLE**  
 15 **COMMUNITIES BY COLLABORATING TO BALANCE EFFICIENT GROWTH WITH**  
 16 **RESOURCE PROTECTION; AND**

17           **(12) IMPLEMENTATION: STRATEGIES, POLICIES, PROGRAMS, AND**  
 18 **FUNDING FOR GROWTH AND DEVELOPMENT, RESOURCE CONSERVATION,**  
 19 **INFRASTRUCTURE, AND TRANSPORTATION ARE INTEGRATED ACROSS THE**  
 20 **LOCAL, REGIONAL, STATE, AND INTERSTATE LEVELS TO ACHIEVE THESE**  
 21 **VISIONS.**

22   **Article 66B - Land Use**

23    1.01.

24           In addition to the requirements of § 3.05(c) of this article, a commission shall  
 25 implement the following visions through the plan described in § 3.05 of this article:

26           [(1) Development is concentrated in suitable areas.

27           (2) Sensitive areas are protected.

28           (3) In rural areas, growth is directed to existing population centers  
 29 and resource areas are protected.

30           (4) Stewardship of the Chesapeake Bay and the land is a universal  
 31 ethic.

32           (5) Conservation of resources, including a reduction in resource  
 33 consumption, is practiced.

1           (6) To assure the achievement of items (1) through (5) of this section,  
2 economic growth is encouraged and regulatory mechanisms are streamlined.

3           (7) Adequate public facilities and infrastructure under the control of  
4 the county or municipal corporation are available or planned in areas where growth is  
5 to occur.

6           (8) Funding mechanisms are addressed to achieve these visions.]

7           **(1) QUALITY OF LIFE AND SUSTAINABILITY: A HIGH QUALITY OF**  
8 **LIFE IS ACHIEVED THROUGH UNIVERSAL STEWARDSHIP OF THE LAND, WATER,**  
9 **AND AIR RESULTING IN SUSTAINABLE COMMUNITIES AND PROTECTION OF THE**  
10 **ENVIRONMENT;**

11           **(2) PUBLIC PARTICIPATION: CITIZENS ARE ACTIVE PARTNERS IN**  
12 **THE PLANNING AND IMPLEMENTATION OF COMMUNITY INITIATIVES AND ARE**  
13 **SENSITIVE TO THEIR RESPONSIBILITIES IN ACHIEVING COMMUNITY GOALS;**

14           **(3) GROWTH AREAS: GROWTH IS CONCENTRATED IN EXISTING**  
15 **POPULATION AND BUSINESS CENTERS, GROWTH AREAS ADJACENT TO THESE**  
16 **CENTERS, OR STRATEGICALLY SELECTED NEW CENTERS;**

17           **(4) COMMUNITY DESIGN: COMPACT, MIXED-USE, WALKABLE**  
18 **DESIGN CONSISTENT WITH EXISTING COMMUNITY CHARACTER AND LOCATED**  
19 **NEAR AVAILABLE OR PLANNED TRANSIT OPTIONS IS ENCOURAGED TO ENSURE**  
20 **EFFICIENT USE OF LAND AND TRANSPORTATION RESOURCES AND**  
21 **PRESERVATION AND ENHANCEMENT OF NATURAL SYSTEMS, OPEN SPACES,**  
22 **RECREATIONAL AREAS, AND HISTORICAL, CULTURAL, AND ARCHEOLOGICAL**  
23 **RESOURCES;**

24           **(5) INFRASTRUCTURE: GROWTH AREAS HAVE THE WATER**  
25 **RESOURCES AND INFRASTRUCTURE TO ACCOMMODATE POPULATION AND**  
26 **BUSINESS EXPANSION IN AN ORDERLY, EFFICIENT, AND ENVIRONMENTALLY**  
27 **SUSTAINABLE MANNER;**

28           **(6) TRANSPORTATION: A WELL-MAINTAINED, MULTIMODAL**  
29 **TRANSPORTATION SYSTEM FACILITATES THE SAFE, CONVENIENT, AFFORDABLE,**  
30 **AND EFFICIENT MOVEMENT OF PEOPLE, GOODS, AND SERVICES WITHIN AND**  
31 **BETWEEN POPULATION AND BUSINESS CENTERS;**

32           **(7) HOUSING: A RANGE OF HOUSING DENSITIES, TYPES, AND**  
33 **SIZES PROVIDES RESIDENTIAL OPTIONS FOR CITIZENS OF ALL AGES AND**  
34 **INCOMES;**

1           **(8) ECONOMIC DEVELOPMENT: ECONOMIC DEVELOPMENT AND**  
2 **NATURAL RESOURCE-BASED BUSINESSES THAT PROMOTE EMPLOYMENT**  
3 **OPPORTUNITIES FOR ALL INCOME LEVELS WITHIN THE CAPACITY OF THE**  
4 **STATE'S NATURAL RESOURCES, PUBLIC SERVICES, AND PUBLIC FACILITIES ARE**  
5 **ENCOURAGED;**

6           **(9) ENVIRONMENTAL PROTECTION: LAND AND WATER**  
7 **RESOURCES, INCLUDING THE CHESAPEAKE AND COASTAL BAYS, ARE**  
8 **CAREFULLY MANAGED TO RESTORE AND MAINTAIN HEALTHY AIR AND WATER,**  
9 **NATURAL SYSTEMS, AND LIVING RESOURCES;**

10           **(10) RESOURCE CONSERVATION: WATERWAYS, FORESTS,**  
11 **AGRICULTURAL AREAS, OPEN SPACE, NATURAL SYSTEMS, AND SCENIC AREAS**  
12 **ARE CONSERVED;**

13           **(11) STEWARDSHIP: GOVERNMENT, BUSINESS ENTITIES, AND**  
14 **RESIDENTS ARE RESPONSIBLE FOR THE CREATION OF SUSTAINABLE**  
15 **COMMUNITIES BY COLLABORATING TO BALANCE EFFICIENT GROWTH WITH**  
16 **RESOURCE PROTECTION; AND**

17           **(12) IMPLEMENTATION: STRATEGIES, POLICIES, PROGRAMS, AND**  
18 **FUNDING FOR GROWTH AND DEVELOPMENT, RESOURCE CONSERVATION,**  
19 **INFRASTRUCTURE, AND TRANSPORTATION ARE INTEGRATED ACROSS THE**  
20 **LOCAL, REGIONAL, STATE, AND INTERSTATE LEVELS TO ACHIEVE THESE**  
21 **VISIONS.**

22 10.01.

23           (a) To encourage the preservation of natural resources or the provision of  
24 affordable housing and to facilitate orderly development and growth, a local  
25 jurisdiction that exercises authority granted by this article may enact, and is  
26 encouraged to enact, ordinances or laws providing for or requiring:

27           (1) The planning, staging, or provision of adequate public facilities and  
28 affordable housing;

29           (2) Off-site improvements or the dedication of land for public facilities  
30 essential for a development;

31           (3) Moderately priced dwelling unit programs;

32           (4) Mixed use developments;

33           (5) Cluster developments;

- 1 (6) Planned unit developments;
- 2 (7) Alternative subdivision requirements that:
  - 3 (i) Meet minimum performance standards set by the local
  - 4 jurisdiction; and
  - 5 (ii) Reduce infrastructure costs;
- 6 (8) Floating zones;
- 7 (9) Incentive zoning; and
- 8 (10) Performance zoning.

9 (b) Notwithstanding any other provision of law, a local legislative body that  
 10 exercises authority granted by this article may enact ordinances or laws providing for  
 11 the transfer, with or without consideration, of real property belonging to the local  
 12 jurisdiction to a public or private entity, to use in developing or preserving affordable  
 13 housing.

14 (c) The authority provided under this section is not intended to limit a local  
 15 jurisdiction’s authority to:

- 16 (1) Exercise any planning and zoning powers not expressly authorized
- 17 under this section; or
- 18 (2) Adopt other methods to:
  - 19 (i) Facilitate orderly development and growth;
  - 20 (ii) Encourage the preservation of natural resources; or
  - 21 (iii) Provide affordable housing.

22 (D) (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE  
 23 THE MEANINGS INDICATED.

24 (II) “PRIORITY FUNDING AREA” HAS THE MEANING STATED  
 25 IN § 5-7B-02 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

26 (III) “RESTRICTION” MEANS A RESTRICTION, MORATORIUM,  
 27 OR CAPACITY LIMITATION IMPOSED ON DEVELOPMENT AS A RESULT OF AN  
 28 ORDINANCE OR LAW ADOPTED UNDER THIS SECTION.

29 (2) (I) IF AN ADEQUATE PUBLIC FACILITY ORDINANCE HAS  
 30 RESULTED IN A RESTRICTION WITHIN A PRIORITY FUNDING AREA, A LOCAL

1 JURISDICTION SHALL REPORT ON THE RESTRICTION ON OR BEFORE JULY 1  
2 EVERY 2 YEARS TO THE DEPARTMENT OF PLANNING.

3 (II) THE REPORT REQUIRED UNDER SUBPARAGRAPH (I) OF  
4 THIS PARAGRAPH SHALL INCLUDE:

- 5 1. THE LOCATION OF THE RESTRICTION;
- 6 2. THE TYPE OF INFRASTRUCTURE AFFECTED BY  
7 THE RESTRICTION;
- 8 3. THE ESTIMATED DATE FOR THE RESOLUTION OF  
9 THE RESTRICTION;
- 10 4. IF A RESTRICTION WAS LIFTED, THE DATE THE  
11 RESTRICTION WAS LIFTED; AND
- 12 5. THE RESOLUTION THAT LIFTED THE  
13 RESTRICTION.

14 (3) (I) THE DEPARTMENT OF PLANNING SHALL PREPARE AND  
15 PUBLISH A REPORT ON THE STATEWIDE IMPACTS OF ADEQUATE PUBLIC  
16 FACILITIES ORDINANCES ON OR BEFORE JANUARY 1 EVERY 2 YEARS.

17 (II) THE REPORT REQUIRED UNDER SUBPARAGRAPH (I) OF  
18 THIS PARAGRAPH SHALL INCLUDE THE IDENTIFICATION OF:

19 1. GEOGRAPHIC AREAS AND FACILITIES WITHIN  
20 PRIORITY FUNDING AREAS THAT FAIL TO MEET LOCAL ADEQUATE PUBLIC  
21 FACILITY STANDARDS; AND

22 2. IMPROVEMENTS TO FACILITIES SCHEDULED OR  
23 PROPOSED IN THE LOCAL JURISDICTION'S CAPITAL IMPROVEMENT PROGRAM.

24 11.01.

25 (A) A local legislative body that exercises authority granted by this article  
26 may establish a program for the transfer of development rights to:

27 (1) Encourage the preservation of natural resources; and

28 (2) Facilitate orderly growth and development in the State.



1           **(B) (1) IN THIS SUBSECTION, “PRIORITY FUNDING AREA” HAS THE**  
2 **MEANING STATED IN § 5-7B-02 OF THE STATE FINANCE AND PROCUREMENT**  
3 **ARTICLE.**

4           **(2) A LOCAL LEGISLATIVE BODY THAT EXERCISES AUTHORITY**  
5 **GRANTED BY THIS ARTICLE MAY ESTABLISH A PROGRAM FOR THE TRANSFER OF**  
6 **DEVELOPMENT RIGHTS WITHIN A PRIORITY FUNDING AREA TO ASSIST IN THE**  
7 **PURCHASE OF LAND FOR A SCHOOL OR PUBLIC FACILITY WITHIN A PRIORITY**  
8 **FUNDING AREA.**

9           **(3) PROCEEDS OF THE SALE OF DEVELOPMENT RIGHTS SHALL BE**  
10 **USED TO ASSIST IN:**

11                   **(I) THE PURCHASE OF THE PUBLIC SITE; OR**

12                   **(II) THE CONSTRUCTION OF THE FACILITY.**

13           **(4) ANY DEVELOPMENT RIGHTS SOLD UNDER THE AUTHORITY OF**  
14 **THIS SUBSECTION SHALL ONLY BE TRANSFERRED WITHIN A PRIORITY FUNDING**  
15 **AREA.**

16           SECTION 2. AND IT BE FURTHER ENACTED, That, as required by Article  
17 66B, § 10.01, as enacted by Section 1 of this Act, a local jurisdiction’s initial report  
18 shall be submitted on or before July 1, 2010, and the Department of Planning’s initial  
19 report shall be prepared and published on or before January 1, 2011.

20           SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
21 October 1, 2009.