

HOUSE BILL 294

M1, M3

9lr0249
CF SB 273

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~~ Pena-Melnyk, Manno, Glenn, and Stein**

Introduced and read first time: January 29, 2009
Assigned to: Environmental Matters

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 18, 2009

CHAPTER _____

- 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~~ land on which the public facility will be located or the construction of the
14 facility; limiting the transfer of development rights to a priority funding area;
15 providing for the timing of certain reports; defining certain terms; and generally
16 relating to local government planning.
- 17 BY repealing and reenacting, with amendments,
18 Article – State Finance and Procurement
19 Section 5–7A–01
20 Annotated Code of Maryland
21 (2006 Replacement Volume and 2008 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY repealing and reenacting, with amendments,
2 Article 66B – Land Use
3 Section 1.01, 10.01, and 11.01
4 Annotated Code of Maryland
5 (2003 Replacement Volume and 2008 Supplement)

6 Preamble

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

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

16 WHEREAS, The visions are a now–familiar touchstone of Maryland land use
17 law and policy and have been in place without significant amendment for 16 years;
18 and

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

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

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

27 **Article – State Finance and Procurement**

28 5–7A–01.

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

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

32 (2) sensitive areas shall be protected;

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

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

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

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

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

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

13 (1) **QUALITY OF LIFE AND SUSTAINABILITY: A HIGH QUALITY OF**
14 **LIFE IS ACHIEVED THROUGH UNIVERSAL STEWARDSHIP OF THE LAND, WATER,**
15 **AND AIR RESULTING IN SUSTAINABLE COMMUNITIES AND PROTECTION OF THE**
16 **ENVIRONMENT;**

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

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

23 (4) **COMMUNITY DESIGN: COMPACT, MIXED-USE, WALKABLE**
24 **DESIGN CONSISTENT WITH EXISTING COMMUNITY CHARACTER AND LOCATED**
25 **NEAR AVAILABLE OR PLANNED TRANSIT OPTIONS IS ENCOURAGED TO ENSURE**
26 **EFFICIENT USE OF LAND AND TRANSPORTATION RESOURCES AND**
27 **PRESERVATION AND ENHANCEMENT OF NATURAL SYSTEMS, OPEN SPACES,**
28 **RECREATIONAL AREAS, AND HISTORICAL, CULTURAL, AND ARCHEOLOGICAL**
29 **RESOURCES;**

30 (5) **INFRASTRUCTURE: GROWTH AREAS HAVE THE WATER**
31 **RESOURCES AND INFRASTRUCTURE TO ACCOMMODATE POPULATION AND**
32 **BUSINESS EXPANSION IN AN ORDERLY, EFFICIENT, AND ENVIRONMENTALLY**
33 **SUSTAINABLE MANNER;**

34 (6) **TRANSPORTATION: A WELL-MAINTAINED, MULTIMODAL**
35 **TRANSPORTATION SYSTEM FACILITATES THE SAFE, CONVENIENT, AFFORDABLE,**

1 AND EFFICIENT MOVEMENT OF PEOPLE, GOODS, AND SERVICES WITHIN AND
2 BETWEEN POPULATION AND BUSINESS CENTERS;

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

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

10 (9) ENVIRONMENTAL PROTECTION: LAND AND WATER
11 RESOURCES, INCLUDING THE CHESAPEAKE AND COASTAL BAYS, ARE
12 CAREFULLY MANAGED TO RESTORE AND MAINTAIN HEALTHY AIR AND WATER,
13 NATURAL SYSTEMS, AND LIVING RESOURCES;

14 (10) RESOURCE CONSERVATION: WATERWAYS, FORESTS,
15 AGRICULTURAL AREAS, OPEN SPACE, NATURAL SYSTEMS, AND SCENIC AREAS
16 ARE CONSERVED;

17 (11) STEWARDSHIP: GOVERNMENT, BUSINESS ENTITIES, AND
18 RESIDENTS ARE RESPONSIBLE FOR THE CREATION OF SUSTAINABLE
19 COMMUNITIES BY COLLABORATING TO BALANCE EFFICIENT GROWTH WITH
20 RESOURCE PROTECTION; AND

21 (12) IMPLEMENTATION: STRATEGIES, POLICIES, PROGRAMS, AND
22 FUNDING FOR GROWTH AND DEVELOPMENT, RESOURCE CONSERVATION,
23 INFRASTRUCTURE, AND TRANSPORTATION ARE INTEGRATED ACROSS THE
24 LOCAL, REGIONAL, STATE, AND INTERSTATE LEVELS TO ACHIEVE THESE
25 VISIONS.

26 Article 66B - Land Use

27 1.01.

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

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

31 (2) Sensitive areas are protected.

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

1 (4) Stewardship of the Chesapeake Bay and the land is a universal
2 ethic.

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

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

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

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

11 **(1) QUALITY OF LIFE AND SUSTAINABILITY: A HIGH QUALITY OF**
12 **LIFE IS ACHIEVED THROUGH UNIVERSAL STEWARDSHIP OF THE LAND, WATER,**
13 **AND AIR RESULTING IN SUSTAINABLE COMMUNITIES AND PROTECTION OF THE**
14 **ENVIRONMENT;**

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

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

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

28 **(5) INFRASTRUCTURE: GROWTH AREAS HAVE THE WATER**
29 **RESOURCES AND INFRASTRUCTURE TO ACCOMMODATE POPULATION AND**
30 **BUSINESS EXPANSION IN AN ORDERLY, EFFICIENT, AND ENVIRONMENTALLY**
31 **SUSTAINABLE MANNER;**

32 **(6) TRANSPORTATION: A WELL-MAINTAINED, MULTIMODAL**
33 **TRANSPORTATION SYSTEM FACILITATES THE SAFE, CONVENIENT, AFFORDABLE,**

1 AND EFFICIENT MOVEMENT OF PEOPLE, GOODS, AND SERVICES WITHIN AND
2 BETWEEN POPULATION AND BUSINESS CENTERS;

3 (7) HOUSING: A RANGE OF HOUSING DENSITIES, TYPES, AND
4 SIZES PROVIDES RESIDENTIAL OPTIONS FOR CITIZENS OF ALL AGES AND
5 INCOMES;

6 (8) ECONOMIC DEVELOPMENT: ECONOMIC DEVELOPMENT AND
7 NATURAL RESOURCE-BASED BUSINESSES THAT PROMOTE EMPLOYMENT
8 OPPORTUNITIES FOR ALL INCOME LEVELS WITHIN THE CAPACITY OF THE
9 STATE'S NATURAL RESOURCES, PUBLIC SERVICES, AND PUBLIC FACILITIES ARE
10 ENCOURAGED;

11 (9) ENVIRONMENTAL PROTECTION: LAND AND WATER
12 RESOURCES, INCLUDING THE CHESAPEAKE AND COASTAL BAYS, ARE
13 CAREFULLY MANAGED TO RESTORE AND MAINTAIN HEALTHY AIR AND WATER,
14 NATURAL SYSTEMS, AND LIVING RESOURCES;

15 (10) RESOURCE CONSERVATION: WATERWAYS, FORESTS,
16 AGRICULTURAL AREAS, OPEN SPACE, NATURAL SYSTEMS, AND SCENIC AREAS
17 ARE CONSERVED;

18 (11) STEWARDSHIP: GOVERNMENT, BUSINESS ENTITIES, AND
19 RESIDENTS ARE RESPONSIBLE FOR THE CREATION OF SUSTAINABLE
20 COMMUNITIES BY COLLABORATING TO BALANCE EFFICIENT GROWTH WITH
21 RESOURCE PROTECTION; AND

22 (12) IMPLEMENTATION: STRATEGIES, POLICIES, PROGRAMS, AND
23 FUNDING FOR GROWTH AND DEVELOPMENT, RESOURCE CONSERVATION,
24 INFRASTRUCTURE, AND TRANSPORTATION ARE INTEGRATED ACROSS THE
25 LOCAL, REGIONAL, STATE, AND INTERSTATE LEVELS TO ACHIEVE THESE
26 VISIONS.

27 10.01.

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

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

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

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

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

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

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

25 (D) (1) (I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE
 26 THE MEANINGS INDICATED.

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

1 (III) "RESTRICTION" MEANS A RESTRICTION, MORATORIUM,
2 OR CAPACITY LIMITATION IMPOSED ON DEVELOPMENT AS A RESULT OF AN
3 ORDINANCE OR LAW ADOPTED UNDER THIS SECTION.

4 (2) (I) IF AN ADEQUATE PUBLIC FACILITY ORDINANCE HAS
5 RESULTED IN A RESTRICTION WITHIN A PRIORITY FUNDING AREA, A LOCAL
6 JURISDICTION SHALL REPORT ON THE RESTRICTION ON OR BEFORE JULY 1
7 EVERY 2 YEARS TO THE DEPARTMENT OF PLANNING.

8 (II) THE REPORT REQUIRED UNDER SUBPARAGRAPH (I) OF
9 THIS PARAGRAPH SHALL INCLUDE:

- 10 1. THE LOCATION OF THE RESTRICTION;
- 11 2. THE TYPE OF INFRASTRUCTURE AFFECTED BY
12 THE RESTRICTION;
- 13 3. THE PROPOSED RESOLUTION OF THE
14 RESTRICTION, IF AVAILABLE;

15 ~~3.~~ 4. THE ESTIMATED DATE FOR THE RESOLUTION OF
16 THE RESTRICTION, IF AVAILABLE;

17 ~~4.~~ 5. IF A RESTRICTION WAS LIFTED, THE DATE THE
18 RESTRICTION WAS LIFTED; AND

19 ~~5.~~ 6. THE RESOLUTION THAT LIFTED THE
20 RESTRICTION.

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

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

26 1. GEOGRAPHIC AREAS AND FACILITIES WITHIN
27 PRIORITY FUNDING AREAS THAT FAIL TO MEET LOCAL ADEQUATE PUBLIC
28 FACILITY STANDARDS; AND

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

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

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

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

5 (B) (1) (I) IN THIS SUBSECTION, THE FOLLOWING WORDS HAVE
6 THE MEANINGS INDICATED.

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

10 (III) “PUBLIC FACILITY” INCLUDES:

11 1. RECREATIONAL FACILITIES;

12 2. TRANSPORTATION FACILITIES AND TRANSIT
13 ORIENTED DEVELOPMENT; AND

14 3. SCHOOLS AND EDUCATIONAL FACILITIES.

15 (2) A LOCAL LEGISLATIVE BODY THAT EXERCISES AUTHORITY
16 GRANTED BY THIS ARTICLE MAY ESTABLISH A PROGRAM FOR THE TRANSFER OF
17 DEVELOPMENT RIGHTS WITHIN A PRIORITY FUNDING AREA TO ASSIST A LOCAL
18 JURISDICTION IN THE PURCHASE OF LAND FOR ~~A SCHOOL OR THE~~
19 CONSTRUCTION OF A PUBLIC FACILITY WITHIN A PRIORITY FUNDING AREA.

20 (3) PROCEEDS OF THE SALE OF DEVELOPMENT RIGHTS SHALL BE
21 USED TO ASSIST A LOCAL JURISDICTION IN:

22 (I) THE PURCHASE OF THE ~~PUBLIC SITE~~ LAND ON WHICH
23 THE PUBLIC FACILITY WILL BE LOCATED; OR

24 (II) THE CONSTRUCTION OF THE PUBLIC FACILITY.

25 (4) ANY DEVELOPMENT RIGHTS SOLD UNDER THE AUTHORITY OF
26 THIS SUBSECTION SHALL ONLY BE TRANSFERRED WITHIN A PRIORITY FUNDING
27 AREA.

28 SECTION 2. AND IT BE FURTHER ENACTED, That, as required by Article
29 66B, § 10.01, as enacted by Section 1 of this Act, a local jurisdiction’s initial report
30 shall be submitted on or before July 1, 2010, and the Department of Planning’s initial
31 report shall be prepared and published on or before January 1, 2011.

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

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.