

SENATE BILL 273

M1, M3

9lr0248
CF HB 294

By: **The President (By Request – Administration) and Senators Della, King, Klausmeier, Lenett, Madaleno, and Rosapepe**

Introduced and read first time: January 23, 2009

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: March 12, 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~~ certain development rights to be used to
13 assist in the purchase of the site or the construction of the facility; requiring
14 that, for schools and educational facilities, the proceeds of the sale of
15 development rights be used to assist in the purchase of the land on which the
16 school or educational facility will be located; limiting the transfer of
17 development rights to a priority funding area; prohibiting the sale or transfer of
18 development rights associated with certain public land owned by a local
19 jurisdiction on a certain date under certain circumstances; providing for the
20 timing of certain reports; defining certain terms; and generally relating to local
21 government planning.

22 BY repealing and reenacting, with amendments,
23 Article – State Finance and Procurement
24 Section 5–7A–01

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 Annotated Code of Maryland
2 (2006 Replacement Volume and 2008 Supplement)

3 BY repealing and reenacting, with amendments,
4 Article 66B – Land Use
5 Section 1.01, 10.01, and 11.01
6 Annotated Code of Maryland
7 (2003 Replacement Volume and 2008 Supplement)

8 Preamble

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

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

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

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

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

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

29 **Article – State Finance and Procurement**

30 5–7A–01.

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

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

34 (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;**

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

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

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

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

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

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

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

Article 66B - Land Use

1.01.

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

[(1) Development is concentrated in suitable areas.

(2) Sensitive areas are protected.

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

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

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

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

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

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

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
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 RESTRICTION.

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

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

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

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

30 11.01.

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) (I) ~~PROCEEDS~~ EXCEPT AS PROVIDED IN SUBPARAGRAPH
21 (II) OF THIS PARAGRAPH, PROCEEDS OF THE SALE OF DEVELOPMENT RIGHTS
22 SHALL BE USED TO ASSIST IN:

- 23 ~~(H)~~ 1. THE PURCHASE OF THE PUBLIC SITE; OR
- 24 ~~(H)~~ 2. THE CONSTRUCTION OF THE FACILITY.

25 (II) FOR SCHOOLS AND EDUCATIONAL FACILITIES,
26 PROCEEDS OF THE SALE OF DEVELOPMENT RIGHTS SHALL BE USED TO ASSIST
27 IN THE PURCHASE OF THE LAND ON WHICH THE SCHOOL OR EDUCATIONAL
28 FACILITY WILL BE LOCATED.

29 (4) ANY DEVELOPMENT RIGHTS SOLD UNDER THE AUTHORITY OF
30 THIS SUBSECTION SHALL ONLY BE TRANSFERRED WITHIN A PRIORITY FUNDING
31 AREA.

1 **(5) DEVELOPMENT RIGHTS ASSOCIATED WITH EXISTING PUBLIC**
 2 **LAND THAT IS OWNED BY A LOCAL JURISDICTION ON OCTOBER 1, 2009, MAY**
 3 **NOT BE SOLD OR TRANSFERRED UNDER THIS SUBSECTION.**

4 SECTION 2. AND BE IT FURTHER ENACTED, That, as required by Article
 5 66B, § 10.01, as enacted by Section 1 of this Act, a local jurisdiction’s initial report
 6 shall be submitted on or before July 1, 2010, and the Department of Planning’s initial
 7 report shall be prepared and published on or before January 1, 2011.

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.