

SENATE BILL 276

M1, L1

9lr0229
CF HB 295

By: **The President (By Request - Administration) and Senators Della, 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: April 2, 2009

CHAPTER _____

1 AN ACT concerning

2 **Smart, Green, and Growing - Annual Report - Smart Growth Goals,**
3 **Measures, and Indicators and Implementation of Planning Visions**

4 FOR the purpose of ~~requiring making certain provisions concerning a certain annual~~
5 ~~report applicable to certain local jurisdictions to file an annual report; requiring~~
6 ~~a certain annual report to be filed on or before a certain date; requiring local~~
7 ~~jurisdictions a certain annual report to include certain information about smart~~
8 ~~growth measures and indicators and information about implementation of the~~
9 ~~certain planning visions in a certain annual report; making certain findings~~
10 ~~concerning land use goals; providing for a certain statewide land use goal;~~
11 ~~requiring certain local jurisdictions to develop a certain goal towards achieving~~
12 ~~a certain statewide land use goal; requiring a certain annual report to include~~
13 ~~certain measures and indicators; exempting certain municipal corporations from~~
14 ~~certain requirements to establish a certain local goal and to include certain~~
15 ~~information in a certain annual report; requiring authorizing the Department of~~
16 ~~Planning to adopt certain regulations before a certain date on the concerning~~
17 ~~the submission and transmission of measures and indicators in a certain annual~~
18 ~~report; requiring a planning commission to hold a hearing on the annual report;~~
19 ~~requiring the Department to consider certain factors when developing the~~
20 ~~measures and indicators perform certain duties regarding the collection of~~
21 ~~certain measures and indicators by certain persons; requiring the Department,~~
22 ~~in consultation with the National Center for Smart Growth, to prepare a certain~~
23 ~~annual report; requiring the Task Force on the Future for Growth and~~
24 ~~Development to make certain recommendations on or before a certain date;~~

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 providing for the date of ~~the~~ a certain annual report; requiring the Department
2 to provide technical assistance to local jurisdictions under certain
3 circumstances; requiring the National Center, in consultation with the
4 Department, to display certain information on a certain website; defining
5 certain terms; and generally relating to annual reports and smart growth goals,
6 measures, and indicators.

7 BY repealing and reenacting, with amendments,
8 Article 66B – Land Use
9 Section 1.02, 2.13, and 3.09
10 Annotated Code of Maryland
11 (2003 Replacement Volume and 2008 Supplement)

12 BY adding to
13 Article 66B – Land Use
14 Section 3.10
15 Annotated Code of Maryland
16 (2003 Replacement Volume and 2008 Supplement)

17 Preamble

18 WHEREAS, Advancement of public policy objectives like Smart and Sustainable
19 Growth are helped by the application and analysis of broadly accepted and reliable
20 information about land use goals, indicators, trends, forecasts, and metrics; and

21 WHEREAS, Despite its critical importance, limited comprehensive quantitative
22 information exists to measure how Maryland is growing at the State, regional, and, at
23 times, local levels. While some measures and indicators exist statewide, additional
24 ones are needed; and

25 WHEREAS, BayStat is charged with tracking and assessing the progress of
26 governmental programs to improve the health of the Chesapeake Bay, tracking and
27 assessing the enforcement of laws and regulations to curb the pollution of the
28 Chesapeake Bay, providing a forum for the exchange and continuous analysis of data
29 that will generate new insights for cleaning up the Chesapeake Bay, and identifying
30 and making recommendations for the establishment of measurable goals in the
31 process of Chesapeake Bay restoration; and

32 WHEREAS, The National Center for Smart Growth Research and Education at
33 the University of Maryland College Park was established to provide leadership and
34 State assistance through research, education, and service on issues pertinent to Smart
35 Growth and is a repository for State, local, and comparative national data on land use
36 issues and regularly collects data from the State, local governments, and other states,
37 the federal government, and the private sector; and

38 WHEREAS, Better quantitative information about land use goals, indicators,
39 trends, forecasts, and metrics will assist the State and local governments in their
40 efforts to provide accurate and timely data to the public and policymakers for

1 informational purposes and tracking efforts at BayStat about the efficacy and
 2 cost-effectiveness of governmental programs to restore the vitality of the Chesapeake
 3 Bay and growth and development patterns; and

4 WHEREAS, Some indicators or measures are more appropriately collected by
 5 the State and some indicators should be collected by local governments; and

6 WHEREAS, Since 1970, Article 66B, § 3.09 of the Code has required an annual
 7 report for all local governments with planning authority except for charter counties;
 8 and

9 WHEREAS, The Task Force on the Future for Growth and Development
 10 recommended that the Department of Planning work with local governments and
 11 other stakeholders, including the Task Force itself, to jointly develop a set of Smart
 12 and Sustainable Growth indicators that can be used at the local, regional, and State
 13 levels; now, therefore,

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

16 **Article 66B – Land Use**

17 1.02.

18 (a) Except as provided in this section, this article does not apply to charter
 19 counties.

20 (b) The following sections of this article apply to a charter county:

21 (1) § 1.00(j) (Definition of “sensitive areas”);

22 (2) § 1.01 (Visions);

23 (3) § 1.03 (Charter county – Comprehensive plans);

24 (4) § 3.09 (ANNUAL REPORT – PREPARATION AND FILING);

25 (5) § 3.10 (ANNUAL REPORT – ~~MEASURES~~ SMART GROWTH
 26 GOALS, MEASURES, AND INDICATORS);

27 [(4)] (6) § 4.01(b)(2) (Regulation of bicycle parking);

28 [(5)] (7) § 5.03(d) (Easements for burial sites);

29 [(6)] (8) § 7.02 (Civil penalty for zoning violation);

30 [(7)] (9) § 10.01 (Adequate Public Facilities Ordinances);

1 [(8)] **(10)** § 11.01 (Transfer of Development Rights);

2 [(9)] **(11)** § 12.01 (Inclusionary Zoning);

3 [(10)] **(12)** Except in Montgomery County or Prince George’s County, §
4 13.01 (Development rights and responsibilities agreements);

5 [(11)] **(13)** For Baltimore County only, § 14.02; and

6 [(12)] **(14)** For Howard County only, § 14.06.1.

7 (c) This section supersedes any inconsistent provision of Article 28 of the
8 Code.

9 2.13.

10 (a) Except as provided in subsection (b) of this section, §§ 3.01 through 8.15
11 of this article do not apply in Baltimore City.

12 (b) The following sections of this article apply to Baltimore City:

13 (1) § 1.00(j) (Definition of “sensitive areas”);

14 (2) § 1.01 (Visions);

15 (3) § 1.03 (Charter county – Comprehensive plans);

16 (4) § **3.09 (ANNUAL REPORT – PREPARATION AND FILING);**

17 (5) § **3.10 (ANNUAL REPORT – ~~MEASURES~~ SMART GROWTH**
18 **GOALS, MEASURES, AND INDICATORS);**

19 [(4)] **(6)** § 4.01(b)(2) (Regulation of bicycle parking);

20 [(5)] **(7)** § 5.03(d) (Easements for burial sites);

21 [(6)] **(8)** § 7.02 (Civil penalty for zoning violation);

22 [(7)] **(9)** § 10.01 (Adequate Public Facilities Ordinances);

23 [(8)] **(10)** § 11.01 (Transfer of Development Rights);

24 [(9)] **(11)** § 12.01 (Inclusionary Zoning); and

1 [(10)] (12) § 13.01 (Development Rights and Responsibilities
2 Agreements).

3 3.09.

4 (A) **IN THIS SECTION, “PLANNING COMMISSION” INCLUDES A PLANNING**
5 **COMMISSION OR BOARD ESTABLISHED UNDER ARTICLE 25A OR ARTICLE 28 OF**
6 **THE CODE.**

7 [(a)] (B) A planning commission shall prepare, adopt, and file an annual
8 report, **ON OR BEFORE ~~MARCH~~ JULY 1 OF EACH YEAR FOR THE PREVIOUS**
9 **CALENDAR YEAR**, with the local legislative body.

10 [(b)] (C) The annual report shall:

11 (1) Index and locate on a map all changes in development patterns
12 which occurred during the period covered by the report, including land use,
13 transportation, community facilities patterns, zoning map amendments, and
14 subdivision plats;

15 (2) State whether these changes are or are not consistent with:

16 (i) Each other;

17 (ii) The recommendations of the last annual report;

18 (iii) The adopted plans of the local jurisdiction;

19 (iv) The adopted plans of all adjoining local jurisdictions; and

20 (v) The adopted plans of State and local jurisdictions that have
21 responsibility for financing or constructing public improvements necessary to
22 implement the local jurisdiction’s plan; [and]

23 (3) Contain statements and recommendations for improving the
24 planning and development process within the local jurisdiction; **AND**

25 (4) **STATE WHICH ORDINANCES OR REGULATIONS HAVE BEEN**
26 **ADOPTED OR CHANGED TO IMPLEMENT THE VISIONS IN § 1.01 OF THIS ARTICLE**
27 **AS REQUIRED UNDER § 1.03(E) OR § 4.09 OF THIS ARTICLE.**

28 (D) ~~(1) THE PLANNING COMMISSION SHALL HOLD A PUBLIC HEARING~~
29 ~~ON THE ANNUAL REPORT WITHIN 60 DAYS AFTER THE REPORT HAS BEEN~~
30 ~~SUBMITTED TO THE LOCAL LEGISLATIVE BODY.~~

~~(2) (I) THE PUBLIC HEARING SHALL INCLUDE AN OPPORTUNITY FOR CITIZENS TO COMMENT ON THE REPORT.~~

~~(H) THE PUBLIC HEARING REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION MAY BE COMBINED WITH A REGULARLY SCHEDULED MEETING OF THE PLANNING COMMISSION.~~

~~(3) THE DEPARTMENT OF PLANNING MAY SUBMIT COMMENTS ON THE REPORT.~~

~~[(c)] (E)~~ The local legislative body shall review the annual report and direct that any appropriate and necessary studies and other actions be undertaken to insure the continuation of a viable planning and development process.

[(d)] ~~(F)~~ (E) (1) The annual report shall be made available for public inspection.

(2) A copy of the report shall be mailed to the Secretary of the Department of Planning.

~~(3) THE DEPARTMENT OF PLANNING MAY SUBMIT COMMENTS ON THE REPORT.~~

3.10.

(A) (1) IN THIS SECTION, THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(2) “NATIONAL CENTER” MEANS THE NATIONAL CENTER FOR SMART GROWTH RESEARCH AND EDUCATION AT THE UNIVERSITY OF MARYLAND COLLEGE PARK.

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

(B) (1) THE GENERAL ASSEMBLY FINDS THAT:

(I) IN ADDITION TO REPORTING ON PAST LAND USE INDICATORS AND MEASURES, LOCAL JURISDICTIONS SHOULD STRIVE TO ACHIEVE FUTURE LAND USE GOALS THAT IMPLEMENT AND ACHIEVE THE VISIONS IN § 1.01 OF THIS ARTICLE;

(II) A STATEWIDE LAND USE GOAL THAT EMBODIES THE VISIONS IN § 1.01 OF THIS ARTICLE AND SMART AND SUSTAINABLE GROWTH SHOULD BE ESTABLISHED;

1 **(III) THE VISIONS IN § 1.01 OF THIS ARTICLE WILL NOT BE**
2 **REALIZED UNLESS LOCAL JURISDICTIONS SET THEIR OWN GOAL TO MAKE**
3 **INCREMENTAL PROGRESS TOWARDS ACHIEVING A STATEWIDE LAND USE GOAL;**
4 **AND**

5 **(IV) RESOURCES ARE NECESSARY TO ACHIEVE A STATEWIDE**
6 **GOAL, INCLUDING FUNDING NECESSARY FOR INFRASTRUCTURE INSIDE THE**
7 **PRIORITY FUNDING AREAS AND LAND PRESERVATION OUTSIDE THE PRIORITY**
8 **FUNDING AREAS.**

9 **(2) (I) THE STATEWIDE LAND USE GOAL IS TO INCREASE THE**
10 **CURRENT PERCENTAGE OF GROWTH LOCATED WITHIN THE PRIORITY FUNDING**
11 **AREAS AND TO DECREASE THE PERCENTAGE OF GROWTH LOCATED OUTSIDE**
12 **THE PRIORITY FUNDING AREAS.**

13 **(II) LOCAL JURISDICTIONS SHALL DEVELOP A PERCENTAGE**
14 **GOAL TOWARDS ACHIEVING THE STATEWIDE GOAL.**

15 ~~(B)~~ **(C) (1) EXCEPT AS PROVIDED IN ~~PARAGRAPH (2)~~ PARAGRAPHS**
16 **(2) AND (3) OF THIS SUBSECTION, THE ANNUAL REPORT REQUIRED TO BE FILED**
17 **UNDER § 3.09 OF THIS ARTICLE SHALL INCLUDE ~~INFORMATION ON THE~~**
18 **FOLLOWING MEASURES AND INDICATORS, ~~IF APPLICABLE, ADOPTED IN~~**
19 **ACCORDANCE WITH SUBSECTION (C) OF THIS SECTION.;**

20 **(I) THE AMOUNT AND SHARE OF GROWTH THAT IS BEING**
21 **LOCATED INSIDE AND OUTSIDE THE PRIORITY FUNDING AREAS;**

22 **(II) THE NET DENSITY OF GROWTH THAT IS BEING LOCATED**
23 **INSIDE AND OUTSIDE THE PRIORITY FUNDING AREAS;**

24 **(III) THE CREATION OF NEW LOTS AND THE ISSUANCE OF**
25 **RESIDENTIAL AND COMMERCIAL BUILDING PERMITS INSIDE AND OUTSIDE THE**
26 **PRIORITY FUNDING AREAS;**

27 **(IV) THE DEVELOPMENT CAPACITY ANALYSIS, UPDATED**
28 **ONCE EVERY 3 YEARS OR WHEN THERE IS A SIGNIFICANT CHANGE IN ZONING OR**
29 **LAND USE PATTERNS;**

30 **(V) THE NUMBER OF ACRES PRESERVED USING LOCAL**
31 **AGRICULTURAL LAND PRESERVATION FUNDING, IF APPLICABLE; AND**

32 **(VI) THE FOLLOWING INFORMATION ON ACHIEVING THE**
33 **STATEWIDE GOAL STATED UNDER SUBSECTION (B)(2) OF THIS SECTION:**

- 1 **1. THE LOCAL GOAL;**
 2 **2. THE TIMEFRAME FOR ACHIEVING THE LOCAL**
 3 **GOAL;**
 4 **3. THE RESOURCES NECESSARY FOR**
 5 **INFRASTRUCTURE INSIDE THE PRIORITY FUNDING AREAS AND LAND**
 6 **PRESERVATION OUTSIDE THE PRIORITY FUNDING AREAS; AND**
 7 **4. ANY INCREMENTAL PROGRESS MADE TOWARDS**
 8 **ACHIEVING THE LOCAL GOAL.**

9 **(2) IF ALL LAND WITHIN THE BOUNDARIES OF A MUNICIPAL**
 10 **CORPORATION IS A PRIORITY FUNDING AREA, THE MUNICIPAL CORPORATION IS**
 11 **NOT REQUIRED TO:**

12 **(I) ESTABLISH A LOCAL GOAL FOR ACHIEVING THE**
 13 **STATEWIDE GOAL STATED UNDER SUBSECTION (B)(2) OF THIS SECTION; OR**

14 **(II) INCLUDE INFORMATION IN THE ANNUAL REPORT ON A**
 15 **LOCAL GOAL AS REQUIRED UNDER PARAGRAPH (1)~~(IX)~~(VI) OF THIS**
 16 **SUBSECTION.**

17 ~~(2)~~ **(3) (I) A COUNTY OR MUNICIPAL CORPORATION THAT**
 18 **ISSUES FEWER THAN 50 BUILDING PERMITS FOR NEW RESIDENTIAL UNITS PER**
 19 **YEAR IS NOT REQUIRED TO INCLUDE INFORMATION IN THE ANNUAL REPORT ON**
 20 **MEASURES AND INDICATORS LISTED UNDER PARAGRAPH (1) OF THIS**
 21 **SUBSECTION.**

22 ~~(3)~~ **(II) A COUNTY OR MUNICIPAL CORPORATION SHALL**
 23 **PROVIDE THE DEPARTMENT OF PLANNING DOCUMENTATION ANNUALLY THAT**
 24 **LESS THAN 50 BUILDING PERMITS FOR NEW RESIDENTIAL UNITS ARE ISSUED.**

25 ~~(c)~~ **(D) (1) THE IN ACCORDANCE WITH TITLE 2, SUBTITLE 5 AND**
 26 **TITLE 10, SUBTITLE 1 OF THE STATE GOVERNMENT ARTICLE, THE**
 27 **DEPARTMENT OF PLANNING ~~SHALL~~ MAY ADOPT REGULATIONS THAT ~~IDENTIFY~~**
 28 **MEASURES AND INDICATORS THAT A LOCAL JURISDICTION IS REQUIRED TO**
 29 **COLLECT AND INCLUDE DETAIL THE MANNER IN WHICH THE MEASURES AND**
 30 **INDICATORS REQUIRED UNDER SUBSECTION (C) OF THIS SECTION ARE**
 31 **SUBMITTED AND TRANSMITTED IN THE ANNUAL REPORT.**

32 **(2) ~~WHEN DEVELOPING THE MEASURES AND INDICATORS, THE~~**
 33 **~~DEPARTMENT OF PLANNING SHALL:~~**

1 ~~(I) TAKE INTO ACCOUNT DIFFERENCES IN LOCAL~~
 2 ~~JURISDICTIONS;~~

3 ~~(II) CONSIDER MEASURES AND INDICATORS THAT CAN BE~~
 4 ~~USED AT THE LOCAL, REGIONAL, AND STATE LEVEL; AND~~

5 ~~(III) CONSIDER WHICH MEASURES OR INDICATORS MAY BE~~
 6 ~~COLLECTED BY THE STATE AND WHICH MEASURES OR INDICATORS MAY BE~~
 7 ~~COLLECTED BY THE LOCAL JURISDICTION; AND~~

8 ~~(IV) CONSIDER THE CAPACITY OF THE LOCAL JURISDICTION~~
 9 ~~TO COLLECT THE MEASURES OR INDICATORS AND THE RELEVANCE OF THE~~
 10 ~~INDICATOR OR MEASURE TO A PARTICULAR JURISDICTION. THE DEPARTMENT~~
 11 ~~OF PLANNING SHALL:~~

12 (I) DEVELOP MEASURES AND INDICATORS THAT WILL BE
 13 COLLECTED BY THE DEPARTMENT; AND

14 (II) CONSIDER WHICH MEASURES OR INDICATORS CAN BE
 15 COLLECTED BY THE NATIONAL CENTER.

16 ~~(D) THE MEASURES AND INDICATORS SHALL BE LIMITED TO THE~~
 17 ~~FOLLOWING CATEGORIES OF INFORMATION:~~

18 ~~(1) THE AMOUNT AND SHARE OF GROWTH THAT IS BEING~~
 19 ~~LOCATED INSIDE AND OUTSIDE THE PRIORITY FUNDING AREAS;~~

20 ~~(2) THE DENSITY OF GROWTH THAT IS BEING LOCATED INSIDE~~
 21 ~~AND OUTSIDE THE PRIORITY FUNDING AREAS;~~

22 ~~(3) THE CREATION OF NEW LOTS AND THE ISSUANCE OF~~
 23 ~~BUILDING PERMITS INSIDE AND OUTSIDE THE PRIORITY FUNDING AREAS;~~

24 ~~(4) THE HOUSING CHOICES, INCLUDING AFFORDABILITY;~~

25 (E) ON OR BEFORE JANUARY 1 OF EACH YEAR, THE DEPARTMENT OF
 26 PLANNING, IN CONSULTATION WITH THE NATIONAL CENTER, SHALL SUBMIT A
 27 REPORT TO THE GOVERNOR AND GENERAL ASSEMBLY, IN ACCORDANCE WITH §
 28 2-1246 OF THE STATE GOVERNMENT ARTICLE, ON THE MEASURES AND
 29 INDICATORS COLLECTED UNDER THIS SECTION.

30 ~~(5) THE IMPACT OF GROWTH ON THE ENVIRONMENT, INCLUDING~~
 31 ~~LAND, AIR, AND WATER;~~

32 ~~(6) AGRICULTURAL PRESERVATION;~~

- 1 ~~(7) DEVELOPMENT CAPACITY ANALYSIS;~~
 2 ~~(8) THE FISCAL COST OF GROWTH;~~
 3 ~~(9) THE JOB AND HOUSING BALANCE;~~
 4 ~~(10) THE IMPACT OF TRANSPORTATION ON GROWTH;~~
 5 ~~(11) THE IMPACT OF GROWTH ON BUSINESS, INCLUDING JOB~~
 6 ~~CREATION, FISCAL IMPACT, AGRIBUSINESS, TOURISM, AND FORESTRY; AND~~
 7 ~~(12) THE IMPACT OF GROWTH ON CULTURAL AND HISTORIC~~
 8 ~~RESOURCES.~~

9 SECTION 2. AND BE IT FURTHER ENACTED, That:

10 (a) After consulting with local governments, the National Center for Smart
 11 Growth Research and Education at the University of Maryland College Park, and
 12 other stakeholders, the Task Force on the Future for Growth and Development, as
 13 established by Chapter 381 of the Acts of the General Assembly of 2006, as amended
 14 by Chapter 626 of the Acts of the General Assembly of 2007, shall make
 15 recommendations, on or before July 1, 2009, on ~~the identification of~~ additional
 16 measures and indicators that the State, the National Center, or a local jurisdiction
 17 should be required to collect in the following categories of information:

- 18 (1) Housing choices, including affordability;
 19 (2) The impact of growth on the environment, including land, air, and
 20 water;
 21 (3) The fiscal cost of growth;
 22 (4) The job and housing balance;
 23 (5) The impact of transportation on growth;
 24 (6) The impact of growth on business, including job creation, fiscal
 25 impact, agribusiness, tourism, and forestry; and
 26 (7) The impact of growth on cultural and historic resources.

27 (b) The Department of Planning shall:

- 28 ~~(1) adopt regulations as required by Section 1 of this Act on or before~~
 29 ~~July 1, 2010; and~~

1 ~~(2)~~ provide BayStat, the National Center, and other entities with the
2 data provided in the annual reports required by Section 1 of this Act.

3 (c) The Department of Planning shall provide technical assistance to local
4 jurisdictions concerning the collection of measures that a local jurisdiction is required
5 to collect.

6 (d) The first annual report that includes measures and indicators, as
7 required under Section 1 of this Act shall be filed on or before ~~March~~ July 1, 2011.

8 (e) The National Center, in consultation with the Department of Planning,
9 shall display the information collected in accordance with this Act on the National
10 Center’s Maryland Smart Growth Measures and Indicators website.

11 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 June 1, 2009.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.