Department of Legislative Services

Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 273 (The President, *et al.*) (By Request - Administration)
Education, Health, and Environmental Affairs Environmental Matters

Smart, Green, and Growing - Local Government Planning - Planning Visions

This Administration bill amends the State's planning visions and requires local planning commissions to take these visions into consideration when developing specified planning documents. The bill requires specified local jurisdictions to submit a report to the Maryland Department of Planning (MDP) by July 1 every two years if an adequate public facility ordinance (APFO) results in a restriction in a priority funding area (PFA), with the first report submitted by July 1, 2010. MDP is required to submit a report by January 1 every two years on the statewide impacts of APFOs, with the first report submitted by January 1, 2011.

The bill authorizes local jurisdictions to establish transfer of development rights (TDR) programs within PFAs, to purchase land for public facilities in PFAs. Proceeds from the sale of these development rights must be used for specified land or site acquisition and facility construction in the PFA. However, the bill prohibits development rights associated with land owned by a local jurisdiction as of October 1, 2009, from being sold or transferred by a TDR program.

Fiscal Summary

State Effect: MDP can absorb the additional reporting requirements with existing budgeted resources.

Local Effect: Local expenditures may increase to comply with a reporting requirement. **This bill may impose a mandate on a unit of local government**

Small Business Effect: The Administration has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary: A "public facility" includes recreational facilities, transportation facilities and transit oriented development, and schools and educational facilities.

The bill replaces the State's 8 existing planning visions with 12 new visions that address quality of life and sustainability, public participation, growth areas, community design, infrastructure, transportation, housing, economic development, environmental protection, resource conservation, stewardship, and implementation approaches.

Local jurisdiction reports on PFAs and APFOs must include information about the location of the restriction; infrastructure affected by the restriction; the proposed resolution of the restriction, if available; estimated date for resolving the restriction, if available; date a restriction was lifted, as applicable; and terms of the resolution that removed the restriction.

The MDP report on the statewide impact of APFOs has to identify (1) geographic areas and facilities within PFAs that do not meet local adequate public facility standards; and (2) scheduled or proposed improvements to facilities in local capital improvement programs.

Current Law: Article 66B governs zoning and planning in the State and gives significant authority to local governments. Two laws provide for additional State involvement: the Maryland Economic Growth, Resource Protection, and Planning Act of 1992 (the Planning Act), and the Smart Growth and Neighborhood Conservation Act of 1997 (Priority Funding Areas Act).

The Planning Act sought to organize and direct comprehensive planning, regulating, and funding by State, county, and municipal governments in furtherance of a specific economic growth and resource protection policy. This Act is organized around eight statutory vision statements which must be pursued in county and municipal comprehensive plans, where priorities for land use, economic growth, and resource protection are established. The visions must also be followed by the State in undertaking its various programs. Both State and local funding decisions on public construction projects must adhere to the visions.

The State sought to strengthen its efforts to control sprawl, enhance land use, and control pollution with the Priority Funding Areas Act. This Act capitalized on the influence of State expenditures on economic growth and development by directing State spending to PFAs. The broad purpose of PFAs is to focus State spending to make the most efficient and effective use of existing infrastructure; preserve existing neighborhoods; and preserve Maryland's fields, farms, and open spaces. The Act 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. Most State programs that encourage or support growth and development are affected by this Act, including economic development assistance and the construction of public schools, State highways, and water and wastewater facilities. The Act allows funds to be allocated for projects outside PFAs under certain conditions, such as when the project is required to protect public health or safety.

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

Current law authorizes local jurisdictions to establish TDR programs to encourage the preservation of natural resources and facilitate orderly growth and development in the State.

Background:

Transfer of Development Rights

Local governments have a variety of tools at their disposal to develop and preserve land; among these are zoning, subdivision, and development procedures. One technique, used often for land preservation, is TDRs. Under TDR programs, residents who occupy certain areas in a county (sending areas) are precluded from selling their land to developers. In exchange, these landowners are awarded TDRs which may be sold on the open market to developers. These rights are applied by developers to designated receiving areas (areas where the county is attempting to foster development). Generally, developers who purchase TDRs are allowed an increased density in these areas. Active TDR programs currently exist in Calvert and Montgomery counties.

Adequate Public Facility Ordinances

Local governments have enacted APFOs to ensure that infrastructure necessary to support proposed new development is built concurrently with, or prior to, that new development. APFOs are an effort to time the provision of public facilities (water, sewer, schools, roads, and emergency services) to be consistent with development demand and local comprehensive plans. While APFOs can be a strong tool to influence and guide growth, they are more frequently used when certain public facilities have already reached capacity. When communities have weak comprehensive plans or weak comprehensive plan implementation, APFOs may prompt sprawl development inadvertently.

Task Force on the Future for Growth and Development

The Task Force on the Future for Growth and Development in Maryland (established by Chapter 381 of 2006 and modified by Chapter 626 of 2007) is charged with studying a wide range of smart growth and land use issues impacting Maryland. The task force is required to advise the Smart Growth Subcabinet until it terminates in December 2010. The task force released a report in January 2009 providing detailed recommendations for action at various levels of State and local government. The bill is a direct result of the report’s recommendations.

The Administration advises the State planning visions have never been modernized to reflect and keep pace with current growth and development patterns and trends or Maryland’s commitment to smart growth. The bill implements a key recommendation of the task force by modernizing the visions to include public participation, economic development, housing, sustainability, and multimodal transportation as well as broader resource conservation and environmental protection goals.

Local Fiscal Effect: This analysis assumes the new visions are amended into local jurisdiction's planning documents as part of the regularly scheduled six-year plan review cycle. However, local expenditures may increase minimally in local jurisdictions with APFOs to comply with the reporting requirement. These local jurisdictions are required to submit a report every two years providing specified information about APFO-prompted restrictions in PFAs. Local jurisdictions may benefit from the opportunity to use TDR programs to purchase land for and construct public facilities.

Additional Information

Prior Introductions: None.

Cross File: HB 294 (The Speaker, *et al.*) (By Request - Administration) - Environmental Matters.

Information Source(s): Kent, Montgomery, Washington, and Worcester counties; City of Laurel; Maryland Association of Counties; Maryland Department of Planning; Department of Housing and Community Development; Department of Natural Resources; Department of Legislative Services

Fiscal Note History: First Reader - February 17, 2009
mam/ljm Revised - Senate Third Reader - April 6, 2009

Analysis by: Amanda Mock

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Smart, Green, and Growing - Local Government Planning - Planning Visions

BILL NUMBER: SB 273

PREPARED BY: Governor's Legislative Office

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

__X__ WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

____ WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.