

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

Senate Bill 826 (Senator Pipkin, *et al.*)
Education, Health, and Environmental Affairs

Local and Regional Planning and Land Use Powers - Prohibition on Restriction

This bill prohibits the Maryland Department of Planning (MDP), the Office of Smart Growth (OSG), the Special Secretary of Smart Growth, or the Smart Growth Subcabinet from adopting any regulation or taking any action that restricts the planning and land use powers of any local government or regional planning agency.

The bill takes effect June 1, 2012.

Fiscal Summary

State Effect: MDP general fund expenditures increase, potentially significantly, in FY 2012 and future years to the extent the bill results in legal challenges to MDP's authority to express the State's position on local land use actions. However, any impact cannot be reliably estimated at this time. Revenues are not affected.

Local Effect: The bill is not expected to materially affect local finances.

Small Business Effect: None.

Analysis

Current Law: The powers of zoning and planning, including the power to adopt zoning ordinances and a comprehensive plan, and grant special exceptions and planning variances, are part of the police power of the State. The General Assembly has designated planning and zoning powers to local governments in varying degrees and with certain requirements through several statutes. The General Assembly may revoke a local jurisdiction's power of zoning if the local jurisdiction fails to adopt certain elements in its

comprehensive plan. The General Assembly has not designated to local jurisdictions the powers of water and sewer planning, which relate to local land use and can affect a local jurisdiction's land use decisions.

MDP, a cabinet-level agency, is responsible for planning matters concerning the resources and development of the State. MDP must function as an advisory, consultative, and coordinating agency that (1) harmonizes its planning activities with the planning activities of local governments; and (2) cooperates with and assists local governments in the execution of their planning functions, to harmonize their planning activities with the State development plan. MDP provides planning technical assistance, including land use plans and other planning work, to local governments.

MDP must prepare and periodically revise a State Development Plan that promotes the general welfare and prosperity of the people of the State through coordinated development of the State. The plan must be based on studies of governmental, economic, physical, and social conditions and trends. The plan must embody MDP's policy recommendations regarding the economic and physical development of the State.

Background:

Smart Growth Subcabinet

The Smart Growth Subcabinet was established in 2001 (Chapter 566) to promote smart growth policy. Specifically, the 13-member Smart Growth Subcabinet must (1) provide a forum for discussion of interdepartmental issues; (2) work together using all available resources to promote the understanding of smart growth; (3) in coordination with State agencies, evaluate and report annually to the Governor and the General Assembly on the implementation of the State's smart growth policy; and (4) perform other duties assigned by the Governor.

Office of Smart Growth

Chapter 566 of 2001 established OSG as part of the Executive Department to coordinate and implement the State's smart growth policy. The head of OSG is the Special Secretary of Smart Growth; however, this position has been vacant since 2003 and the Secretary of Planning is leading the State's smart growth efforts. Although OSG exists in statute, OSG staff has been working on MDP programs and operating out of MDP's Baltimore office since June 2003. The proposed fiscal 2013 State budget does not include funding for OSG, and it transfers two OSG positions to the Governor's Office.

State Development Plan

Over the past four years, MDP has worked with State agencies, local governments, private industry, and the general public to develop the State's first comprehensive development plan, known as PlanMaryland. PlanMaryland is a policy framework for growth and preservation in the State and a blueprint to help guide State agencies in their decision making on programs and funding for growth and preservation. MDP released a draft plan in April 2011 and subsequently sought public input through open houses, targeted meetings, and an online comment tool. MDP released a revised draft plan in September 2011 that reflected public feedback and established an additional public comment period. The final PlanMaryland document was submitted to Governor O'Malley in December 2011. On December 19, 2011, the Governor accepted PlanMaryland and filed Executive Order 01.01.2011.22, which outlines a process for implementing the plan.

PlanMaryland proposes focusing State financial assistance in specific geographic areas and aligning State regulations and procedures. The plan calls for targeting State financial assistance to specific places that are designated for growth, revitalization, land preservation and resource conservation, and maintaining public services and quality of life. The plan anticipates a future local-State effort to identify planning areas that reflect local feedback and data from existing State mapping tools. To streamline State regulations and procedures, the plan proposes that (1) State capital spending and noncapital plans, programs, and procedures be realigned and focused to achieve the objectives; and (2) MDP collaborate with other State agencies to incorporate PlanMaryland into other strategic State plans for major needs, such as transportation.

The Governor's executive order on implementing PlanMaryland clarifies the plan's purpose; specifies a multiple stakeholder process for developing planning areas and associated planning area guidelines; and outlines other implementation requirements, which are summarized below.

- The Smart Growth Subcabinet, which is composed primarily of the heads of State agencies, must coordinate implementation of the plan among State agencies and report on progress.
- State agencies must review and then modify and align their plans, programs, and policies with the plan and within future State planning areas.
- State agencies must submit a report on their efforts, which includes implementation work plans, timelines, and performance tracking methods, in June 2012.
- The Smart Growth Subcabinet must review the State agency work plans, timelines, and tracking methods and prepare a report summarizing how each State agency proposes to implement the plan by August 2012.

There is some concern that PlanMaryland may lead to efforts to weaken local government planning and zoning authority and reduce State aid to some local jurisdictions. However, the Attorney General advises that PlanMaryland is simply a policy plan, not a law, and it cannot void a local government's planning and zoning authority.

State Expenditures: MDP advises that, while it has not and cannot adopt regulations that restrict or usurp local land use decisions, the bill could be interpreted as conflicting with MDP's existing authority to assist in coordinating intergovernmental land use planning and intervene in local land use proceedings to express the State's views. The bill may force MDP to defend its actions against legal challenges claiming it does not have the authority to review and comment on local comprehensive plans, or evaluate the consistency of local zoning with local comprehensive plans, because MDP may be perceived as restricting the planning and zoning authority of local governments or regional planning agencies.

MDP general fund expenditures increase, potentially significantly, in fiscal 2012 and future years to the extent the bill results in legal challenges to MDP's authority and MDP requires another assistant Attorney General position. However, any impact cannot be reliably estimated at this time.

Additional Information

Prior Introductions: SB 21 and HB 8 of the 2011 special session, similar bills, were referred to the Senate Rules Committee and the House Rules and Executive Nominations Committee, respectively, but no further action was taken on either bill.

Cross File: None.

Information Source(s): Baltimore City; Howard, Montgomery, and Prince George's counties; Maryland Department of Planning; Department of Legislative Services

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mc/lgc

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