

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 538 (The Speaker, *et al.*) (By Request - Administration)
Environment and Transportation

Land Use – Affordable Housing – Zoning Density and Permitting (Housing
Expansion and Affordability Act of 2024)

This Administration bill requires local jurisdictions to allow (1) new manufactured homes in zones that allow single-family residential uses and (2) increased densities and uses in specified zoning areas for qualified affordable housing projects. The bill prohibits a jurisdiction from imposing unreasonable limitations or requirements on a qualified affordable housing project or requiring a project to be reviewed at more than one public hearing before specified entities. A jurisdiction also may not deny a permit for, or impose unreasonable restrictions or limitations on, a State-funded affordable housing project based on an element of an adequate public facilities law. **The bill's provision related to State-funded affordable housing projects terminates September 30, 2039.**

Fiscal Summary

State Effect: The bill is not expected to directly affect State finances. Although the bill seeks to remove barriers to, and expedite, affordable housing projects that may receive funding under Department of Housing and Community Development (DHCD) programs, the bill does not directly affect those programs or budgeted funding under the programs.

Local Effect: Local government finances may be affected, as discussed below. **This bill may impose a mandate on a unit of local government.**

Small Business Effect: The Administration has determined that this bill has a meaningful impact on small business (attached). The Department of Legislative Services concurs with this assessment.

Analysis

Bill Summary:

New Manufactured Homes

The bill requires a legislative body of a local jurisdiction to allow the placement of a new manufactured home in a zone that allows single-family residential uses if the manufactured home:

- meets a specified definition of a manufactured home under the Commercial Law Article, specifically, a structure that is (1) transportable in one or more sections; (2) 8 body feet or more in width or 40 body feet or more in length, in traveling mode, or 320 or more square feet when erected on site (unless the manufacturer voluntarily files a specified certification under federal law); and (3) built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities; and
- is or will be after purchase, converted to real property in accordance with specified provisions of the Real Property Article, which includes attachment of the manufactured home to a permanent foundation.

Housing Expansion and Affordability

The bill creates a new subtitle within the Land Use Article (Title 7, Subtitle 5, “Housing Expansion and Affordability”) specifying local zoning requirements for specified affordable housing development statewide. The new subtitle, among other things, requires local jurisdictions to allow specified densities and uses in certain zoning areas, for qualified projects on (1) specified property formerly owned by the State; (2) property within one mile of a rail station located in the State; and (3) specified land that is wholly owned by a nonprofit organization or that includes improvements owned by an entity that is controlled by a nonprofit organization.

More specifically, “qualified project” means a residential project that consists of new construction or substantial renovation, and meets one of the three following criteria:

- *Property Formerly Owned by the State* – (1) is on property that was formerly owned by the State, consists of more than one building, includes at least one building that was built more than 50 years before the date of application for the project, and is appropriate for redevelopment as determined by the Secretary of Housing and Community Development; (2) contains at least 50% of units that are affordable

- dwelling units; and (3) is deed-restricted to include 50% of units that are affordable dwelling units for a period of at least 40 years;
- *Property within One Mile of a Rail Station Located in the State* – (1) is on property that is located within one mile of a rail station located in the State; (2) contains at least 25% of units that are affordable dwelling units; and (3) is deed-restricted to include 25% of units that are affordable dwelling units for a period of at least 40 years; or
- *Land/Improvements Owned/Controlled by a Nonprofit Organization* – (1) is on land, including land that is subject to a ground lease, that is wholly owned by a nonprofit organization or includes improvements owned by an entity that is controlled by a nonprofit organization; (2) contains at least 50% of units that are affordable dwelling units; and (3) is deed-restricted to include 50% of units that are affordable dwelling units for a period of at least 40 years.

“Affordable” means that housing costs do not exceed 30% of a household’s income.

“Affordable dwelling unit” means a dwelling unit that is affordable to households earning 60% or less of the area median income.

“Rail station” means a present or planned (1) MARC station along the Penn, Camden, or Brunswick lines; (2) Baltimore Metro SubwayLink station; (3) Baltimore Light RailLink station; (4) Metrorail system station in the State; or (5) any other passenger rail station.

“Nonprofit organization” means an organization that is tax-exempt under § 501(c)(3) of the Internal Revenue Code.

Densities and Uses

Under the new subtitle, a local jurisdiction must allow the density of a qualified project to exceed the density otherwise authorized in a district or zone as follows. A qualified project, in an area zoned:

- exclusively for single-family residential use, may include middle housing units;
- exclusively for multifamily residential use, (1) must have a density limit that exceeds by 30% the allowable density in that zone for uses that are not part of a qualified project and (2) may consist of mixed-use;
- exclusively for nonresidential use, may consist of mixed-use, with density limits that do not exceed the highest allowable density in the local jurisdiction’s multifamily residential zones; and
- for mixed-use, may include 30% more housing units than are allowed in that zone for uses that are not part of a qualified project.

“Middle housing” means (1) duplexes; (2) triplexes; (3) quadplexes; (4) cottage clusters; or (5) town houses.

“Cottage cluster” means a grouping of not fewer than four detached housing units per acre that (1) have a footprint of less than 900 square feet each and (2) include a common courtyard.

“Mixed-use” means a combination of housing, retail, and office space.

Unreasonable Limitations or Requirements

Under the new subtitle, the bill prohibits a local jurisdiction from imposing any unreasonable limitation or requirements on a qualified project under the subtitle, including limitations on or requirements concerning (1) height; (2) setback; (3) bulk; (4) parking; (5) loading, dimensional, or area; or (6) similar requirements.

“Unreasonable limitation or requirement” includes any limitation or requirement that has a substantial adverse impact on (1) the viability of an affordable housing development in a qualified project; (2) the degree of affordability of affordable dwelling units in a qualified project; or (3) the allowable density of the qualified project.

Public Hearings

Under the new subtitle, except as otherwise provided or required by State law, a local government is prohibited from requiring that a qualified project under the subtitle be reviewed at more than one public hearing before each of the following: (1) the local governing body; (2) the planning commission; (3) a historic district commission or historic preservation commission; and (4) the board of appeals.

Restriction on Use of Adequate Public Facilities Laws

The bill prohibits a local jurisdiction – in making a decision on a permit application for a State-funded affordable housing project – from using an element of an adequate public facility law to:

- deny the permit; or
- unreasonably restrict or limit the development of the project, including any restriction or limitation that may result in a substantial adverse impact on (1) the viability of the affordable housing development; (2) the degree of affordability of the affordable dwelling units; or (3) the allowable density of the project.

This provision of the bill terminates September 30, 2039.

“State-funded affordable housing project” includes any residential project that is funded:

- with federal low-income housing tax credits (awarded to developers of qualified rental projects via a competitive application process administered by DHCD); or
- under specified subtitles of the Housing and Community Development Article: (1) Title 4, Subtitle 2, “Community Development Administration”; (2) Title 4, Subtitle 4, “Rental Housing Program”; and (3) Title 4, Subtitle 12, “Partnership Rental Housing Program.”

“Adequate public facility law” means a local law providing for or requiring the planning, staging, or provision of adequate public facilities, as authorized under Title 7, Subtitle 1 of the Land Use Article.

Current Law:

Land Use – Generally

State law specifies that it is the policy of the State that (1) the orderly development and use of land and structures requires comprehensive regulation through implementation of planning and zoning controls and (2) planning and zoning controls must be implemented by local government. State law includes various provisions authorizing local governments to regulate the location, size, and use of structures through zoning regulations.

Land Use – Housing

Comprehensive Plans – Housing Element and Housing Vision

Under the Land Use Article, local jurisdictions are required to enact, adopt, amend, and execute a comprehensive plan that includes specified visions and elements. At least once every 10 years, each local jurisdiction must review its comprehensive plan and, if necessary, revise or amend the plan.

The comprehensive plan must include a housing “element” and implement a housing “vision”:

- *Housing Element* – the housing element may include goals, objectives, policies, plans, and standards, and must address the need for affordable housing within the local jurisdiction, including workforce housing and low-income housing; and
- *Housing Vision* – the housing vision is that a range of housing densities, types, and sizes provides residential options for citizens of all ages and incomes.

Development Mechanisms

Title 7, Subtitle 1 (Development Mechanisms) of the Land Use Article (to which the bill's provision relating to State-funded affordable housing projects and a local jurisdiction's adequate public facility law is added):

- authorizes and encourages a local jurisdiction – in order to encourage the preservation of natural resources or the provision of affordable housing and to facilitate orderly development and growth – to enact local laws providing for or requiring (1) the planning, staging, or provision of adequate public facilities and affordable housing; (2) off-site improvements or the dedication of land for public facilities essential for a development; (3) moderately priced dwelling unit programs; (4) mixed use developments; (5) cluster developments; (6) planned unit developments; (7) alternative subdivision requirements that meet minimum performance standards set by the local jurisdiction and reduce infrastructure costs; (8) floating zones; (9) incentive zoning; and (10) performance zoning;
- authorizes a legislative body of a local jurisdiction to enact local laws providing for the transfer, with or without consideration, of real property belonging to the local jurisdiction to a public or private entity, to use in developing or preserving affordable housing; and
- establishes that the authority granted under the subtitle is not intended to limit a local jurisdiction's authority to (1) exercise any planning and zoning powers not expressly authorized under the subtitle or (2) adopt other methods to facilitate orderly development and growth, encourage the preservation of natural resources, or provide affordable housing.

Inclusionary Zoning

Title 7, Subtitle 4 (Inclusionary Zoning) of the Land Use Article, authorizes a legislative body of a local jurisdiction – in order to promote the creation of housing that is affordable by individuals and families with low- or moderate-incomes – to enact local laws (1) imposing inclusionary zoning, and awarding density bonuses, to create affordable housing units and (2) restricting the use, cost, and resale of the housing created.

Adequate Public Facility Laws

In defining “adequate public facility law,” the bill cites the provision under Title 7, Subtitle 1, mentioned above, that authorizes and encourages a local jurisdiction to enact local laws providing for or requiring the planning, staging, or provision of adequate public facilities and affordable housing. According to the Maryland Department of Planning (MDP), adequate public facilities laws, often referred to as adequate public facilities ordinances (APFOs), are an effort to phase the provision of public facilities consistent with

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a locally adopted comprehensive plan. An APFO ties development approvals under zoning and subdivision ordinances to specifically defined public facility standards for infrastructure such as roads, water and wastewater systems, and schools.

Background: DHCD indicates that (1) the pace of new housing construction decreased after the 2008 housing recession and has never fully recovered and (2) housing costs have steadily risen over the past decade, with more significant increases in recent years in construction costs and mortgage rates. According to DHCD, 52% of renters and 23% of homeowners in Maryland spend more than 30% of their income on housing.

Local Fiscal Effect:

Local Implementation

The bill is expected to be implemented with existing resources in many jurisdictions, based on information received from a small number of jurisdictions, though at least one jurisdiction has indicated a potential need for an additional development review staff person if the bill increases affordable housing development. Local jurisdictions also collect additional development review fees for any additional affordable housing development that occurs as a result of the bill.

Infrastructure

The bill may increase or accelerate infrastructure spending by local jurisdictions to the extent that the bill allows for development to outpace infrastructure capacity by (1) allowing for greater development density than planned for by a local jurisdiction and (2) potentially preventing a local jurisdiction's APFO from delaying development when infrastructure is at capacity. An MDP [document](#) addressing APFOs indicates both that an APFO (1) can help to maintain the fiscal integrity of a government by helping to reduce the demands of excessive borrowing to finance new facilities that are demanded by unexpected growth and (2) must be accompanied by a plan and a commitment to provide facilities to support growth in a reasonable manner.

The extent to which potential additional strain on infrastructure under the bill may result in acceleration of infrastructure spending, and the potential magnitude of that spending, cannot be reliably estimated and depends on the infrastructure capacity of an area in which a development is proposed, and the size and density of the proposed development(s).

For background purposes, every two years, pursuant to a requirement in Title 7, Subtitle 1 of the Land Use Article, if an APFO has resulted in a restriction within a [priority funding area](#), the local jurisdiction must report on the restriction to MDP and the department must publish a report every two years on the statewide impacts of APFOs, including

identification of (1) geographic areas and facilities within priority funding areas that fail to meet local adequate public facility standards and (2) improvements to facilities scheduled or proposed in the local jurisdiction's capital improvement program. MDP's most recent [report](#) (pages 10 through 13) on APFOs reported that 14 counties and 25 municipalities had enacted APFOs, and the department received reports of APFO restrictions in priority funding areas in 7 counties for 2021 and 2022 – Anne Arundel, Baltimore, Calvert, Frederick, Harford, Howard, and Montgomery counties.

Additional Information

Recent Prior Introductions: Similar legislation has not been introduced within the last three years.

Designated Cross File: SB 484 (The President, *et al.*) (By Request - Administration) - Education, Energy, and the Environment.

Information Source(s): Anne Arundel, Charles, Frederick, Howard, St. Mary's, Queen Anne's, and Worcester counties; Maryland Association of Counties; Maryland-National Capital Park and Planning Commission; cities of Greenbelt and Laurel; Maryland Municipal League; Town of La Plata; Department of Housing and Community Development; Maryland Department of Planning; Maryland Department of Transportation; Department of Legislative Services

Fiscal Note History: First Reader - February 18, 2024
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Analysis by: Joanne E. Tetlow

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

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Land Use - Affordable Housing - Zoning Density and Permitting
(Housing Expansion and Affordability Act of 2024)

BILL NUMBER: HB0538

PREPARED BY: Brad Fallon

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

☐ 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

This legislation creates regulatory incentives for qualified residential projects that meet certain affordability, ownership, and/or location requirements. As such, this legislation can be expected to incentivize economic development as residential and mixed use projects are constructed.

The legislation seeks to address Maryland's estimated 96,000 housing unit shortage which adversely impacts the state's cost of living, business attractiveness, and competitiveness for skilled workforce. Both through direct investments and addressing a supply shortage, this legislation is anticipated to have a significant positive economic impact.