

Department of Legislative Services
Maryland General Assembly
2025 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 503

(The Speaker, *et al.*) (By Request - Administration)

Environment and Transportation

Education, Energy, and the Environment

Housing Development Act

This Administration bill requires the Department of Housing and Community Development (DHCD) to (1) establish housing production targets every 10 years, for the State, each county, and each municipality that exercises zoning or planning authority and (2) report each year on progress toward the targets. In addition, the bill establishes that (1) a housing development project application approval or denial is governed only by laws and regulations in effect when the complete application or substantially complete application was submitted and (2) once approved, a project has a vested right to the authorized use and development for at least 5 years. The bill also establishes a Housing Opportunities Made Equitable (HOME) Commission, staffed by DHCD, to (1) study factors that impact housing supply and affordability and (2) recommend ways to improve housing supply and affordability. **The bill takes effect June 1, 2025.**

Fiscal Summary

State Effect: DHCD can implement the bill with existing staff/resources, as discussed below. Revenues are not directly affected.

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 (DLS) concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary:

Housing Production Targets

Establishment

By January 1, 2026, and every 10 years thereafter, DHCD must establish housing production targets for (1) the State; (2) each county; and (3) each municipality that exercises zoning or planning authority. In establishing the housing production targets, DHCD must:

- analyze data and forecasts related to (1) employment demand; (2) housing demand; (3) population growth; or (4) any other related information;
- consult with each county and each municipality that exercises zoning or planning authority; and
- consult with the Maryland-National Capital Park and Planning Commission (M-NCPPC) about housing production targets that may be established within its jurisdiction.

DHCD may reevaluate and revise the established housing production targets.

Publishing and Reporting

DHCD must publish the current housing production targets – including a supporting basis for the targets – on its website and notify M-NCPPC and each applicable local jurisdiction of the targets in a timely manner. Within one month after publication of the targets, the department must submit a report on the information published, to the Governor and the General Assembly.

In addition, by January 1, 2027, and annually thereafter, DHCD must publish a report that:

- identifies the housing production targets for the State and each local jurisdiction;
- assesses the progress of the State and each local jurisdiction with meeting applicable housing production targets (considering housing production that has been approved or similarly authorized when determining progress); and
- provides a supporting basis for any alteration to an established housing production target.

The department may provide potential solutions, in the report, to assist the State or a local jurisdiction with meeting applicable housing production targets.

DHCD must (1) publish the report on its website and notify M-NCPPC and each applicable local jurisdiction of the report in a timely manner and (2) submit the report to the Governor and the General Assembly within one month after publication. The department is not required to provide an annual report in a year in which housing production targets are established (every 10 years) and reported on.

Regulations

The department may adopt regulations to carry out the bill's provisions related to (1) establishing and publishing the housing production targets and (2) reporting on the targets and progress toward the targets.

Applicable Laws/Regulations – and – Vested Right to Use and Development

Housing Development Project Application

The bill establishes that the approval, conditional approval, or denial of a housing development project application by a local jurisdiction or M-NCPPC must be governed only by the laws and regulations in effect (1) when the complete application or substantially complete application was submitted or (2) if the approval of a housing development project occurs in multiple stages, the date of the first complete application or substantially complete application submission for any process that may culminate in the final approval of the application. A zoning text amendment, application for rezoning, or other local equivalent may not be considered as a process that may culminate in the final approval of an application.

Housing Development Project

Once a housing development project has been approved, the project has a vested right to that authorized use and development for at least five years or a period granted by the local jurisdiction or M-NCPPC, whichever is longer. A local jurisdiction or M-NCPPC may extend the time period of the authorized use and development for a project.

Definitions

“Housing development project” means the new construction or substantial renovation of a residential real estate project.

“Housing development project application” means an application for a building permit, a certification, an authorization, a site plan approval, a subdivision approval, a conceptual plan, or any other determination by a local jurisdiction or M-NCPPC relating to a housing development project that has been submitted to a local jurisdiction or M-NCPPC in compliance with applicable requirements.

“Substantially complete application” means an application that satisfies a substantial majority of the application requirements, but may contain nonsubstantive errors, omissions, or similar inconsequential deficiencies.

Application and Effect of Provisions

These provisions of the bill relating to housing development project applications and housing development projects apply to local jurisdictions and M-NCPPC only to the extent that they do not conflict with a specified federal or State law or regulation, and may not be construed to:

- prevent the expiration of an approval of a housing development project application in accordance with the laws or regulations of the local jurisdiction or M-NCPPC; or
- limit the ability of a local jurisdiction or M-NCPPC to (1) apply health and safety laws or regulations that are necessary to address immediate threats to public safety; (2) execute a development rights and responsibilities agreement under Title 7, Subtitle 3 of the Land Use Article; or (3) approve a zoning text amendment, application for rezoning, or other local equivalent to increase the density of a housing development project beyond the maximum allowable amount at the time of complete application or substantially complete application submission.

Housing Opportunities Made Equitable Commission

The bill establishes the HOME Commission, staffed by DHCD. The commission must:

- study and make recommendations on ways the State and local governments can improve the housing supply and housing affordability; and
- identify and assess factors that impact the housing supply and housing affordability, including (1) labor and material costs; (2) taxes and fees; (3) access to financing and capital investment; (4) planning, zoning, and land use regulations; (5) State building standards; (6) appeals and other legal barriers; (7) permitting and approval processes; (8) the availability of land for housing; (9) creating and financing affordable housing; and (10) infrastructure.

By July 1, 2026, the commission must report its findings and recommendations to the Governor and the General Assembly.

A member of the task force may not receive compensation but is entitled to reimbursement for expenses under the standard State travel regulations, as provided in the State budget.

Current Law:

Development Rights

Vested Rights

The Supreme Court of Maryland, in *Prince George's County v. Sunrise Development Limited Partnership*, addressed the question of when a landowner has a vested right to an authorized use or development of their property, regardless of a subsequent change in zoning or other law or regulations that affects that authorized use or development. 330 Md. 297, 306-314 (1993). In the case, the court:

- discussed its prior cases, that generally establish, as a whole, that a landowner's right to a use or development of their property vests when there is publicly visible (or substantial) commencement of construction consistent with that authorized use or development, in good faith, under a valid permit, prior to a change in the law (or regulations); and
- clarified, in its holding, the standard for when there is sufficient commencement of construction, by establishing that "in order for rights to be vested before a change in the law, work done must be recognizable, on inspection of the property by a reasonable member of the public, as the commencement of construction of a building for a use permitted under the then current zoning."

Development Rights and Responsibilities Agreements

Title 7, Subtitle 3 of the Land Use Article authorizes local jurisdictions (with the exception of Montgomery and Prince George's counties) to, by local law, allow for development rights and responsibilities agreements to be entered into, by the jurisdiction, with persons having a legal or equitable interest in real property in the jurisdiction. An agreement must contain, among other things, the duration of the agreement, permissible uses of the property, density or intensity of the use of the property, other terms or conditions applicable to the development, and, if applicable, public benefits to be provided by the property owner (e.g., construction or financing of public facilities, dedication of a portion of the property for public use). Real property subject to an agreement is subject to the local laws and regulations governing the use, density, or intensity of the property in effect at the time of the agreement, unless compliance with subsequent laws or regulations is determined to be

essential to ensure public health, safety, or welfare. Title 24, Subtitle 3, and Title 25, Subtitle 5, of the Land Use Article establish separate, specified authorizations for development rights and responsibilities agreements in Montgomery and Prince George's counties, respectively.

The Supreme Court of Maryland, in a 2004 opinion, characterized Chapter 562 of 1995 – which first enacted Title 7, Subtitle 3 – as seeming to balance developers' and property owners' desires for more certainty and less monetary risk as they proceed with development, against local governments' desire to “receive greater public benefits on a more predictable schedule than might otherwise be attainable[.]” *Queen Anne's Conservation, Inc. v. County Comm'rs*, 382 Md. 306, 308-309 (2004).

Housing Expansion and Affordability Act of 2024

Chapter [122](#) of 2024 (the Housing Expansion and Affordability Act of 2024), among other things, requires local jurisdictions to allow specified densities and uses in certain zoning areas for “qualified projects” (residential construction or renovation projects that include specified amounts of affordable housing) on (1) specified property formerly owned by the State; (2) specified property currently or formerly owned by the federal government; (3) property within three-quarters of a mile of a rail station located in the State; and (4) 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.

Chapter 122 also prohibits a local jurisdiction from imposing any unreasonable limitation or requirements on a qualified project, 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 amounts to a *de facto* denial by having 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 or number of units of the qualified project.

Land Use – Generally

The regulation of land use in the State, through planning and zoning, is implemented by local governments, subject to applicable State law. Planning and zoning authority is delegated by the State to local governments primarily under the Land Use Article and, for certain counties, the Express Powers Act (Title 10 of the Local Government Article).

Both the Land Use Article and Express Powers Act contain the State's policy statement 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.

Division II of the Land Use Article establishes M-NCPPC (made up of the Montgomery County and Prince George's County planning boards) and governs planning and zoning within the Maryland-Washington Regional District (§ 20-101), which consists of (1) the entire area of Montgomery County, subject to certain limitations (relating to certain municipalities not subject to the planning and zoning authority of the county, unless by agreement, and other municipalities that have certain, limited planning and zoning authority) and (2) the entire area of Prince George's County, except for the City of Laurel as it existed on July 1, 2013.

Comprehensive Plans – Housing Element and Housing Vision

Local jurisdictions are required to enact, adopt, amend, and execute a comprehensive plan (to guide the implementation of land use controls and zoning) 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.

Background: DHCD indicates that (1) the current standard for when a landowner has a vested right to an authorized use or development, described in *Sunrise Development*, causes developers to be subject to land use regulatory changes for a significant portion of the development process and (2) ensuring that laws and regulations in effect at the time of a development project application do not change during the development process provides regulatory predictability, reducing risk of regulatory changes, which could facilitate financing for builders, accelerate housing production timelines, and reduce costs associated with regulatory change. DHCD indicates that the bill's vested rights provisions, along with the establishment of housing production targets every 10 years and the work of the HOME Commission, contribute toward addressing the State's housing crisis.

State Fiscal Effect: DHCD expects to implement its responsibilities under the bill (including establishing the housing production targets, reporting on progress toward the

HB 503/ Page 7

targets, and staffing the HOME Commission) through (1) refocusing of efforts of existing staff in its Office of Policy Development and (2) use of existing resources funded through a \$6.94 million U.S. Department of Housing and Urban Development grant awarded to the State (through the Pathways to Removing Obstacles to Housing grant competition) to, among other things, analyze barriers to housing and develop tools to support local governments.

Any expense reimbursements for HOME Commission members are assumed to be minimal and absorbable within existing budgeted resources.

Local Fiscal Effect: While the bill does not require local jurisdictions to take specific actions, it (1) requires the establishment (by DHCD, in consultation with the local jurisdictions) of housing production targets for local jurisdictions and (2) limits local jurisdictions' ability to apply new or revised laws or regulations to housing development project applications (once an application is submitted, until it is approved or denied) and housing development projects (once a project is approved, for at least five years after the approval). The extent to which these provisions may cause local jurisdictions to make changes to their land use/infrastructure planning, development approval, and/or housing policies and efforts, and the extent to which those changes have direct fiscal impacts (*e.g.*, administrative or other costs), cannot be reliably estimated at this time.

Presumably jurisdictions will make efforts, or continue efforts, to increase housing supply in their jurisdiction to meet the housing production targets and may change their approach to development approvals and/or land use planning to account for the minimum five-year vested right that will accompany development approvals. Some of those efforts/changes may be accomplished through policy or operational changes without additional cost, while others may have associated costs.

Because the housing production targets are targets and not requirements, any costs associated with efforts to increase housing production in response to the established targets are assumed to be incurred at local jurisdictions' discretion. In addition, because the bill largely does not affect a local jurisdiction's existing control over the developments it approves (albeit subject to the bill's requirement that laws and regulations in effect at the time an application is submitted apply to the approval or denial), and does not prevent the expiration of an approval of a project in accordance with the jurisdiction's laws or regulations, jurisdictions should retain the ability, under the bill, to ensure that development does not outpace existing or planned infrastructure capacity, through a jurisdiction's adequate public facilities ordinance (APFO) (if the jurisdiction has an APFO) or other growth management policies.

Additional Information

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

Designated Cross File: SB 430 (The President, *et al.*) (By Request - Administration) - Education, Energy, and the Environment.

Information Source(s): Department of Housing and Community Development; Maryland Department of Planning; Judiciary (Administrative Office of the Courts); Baltimore City; Harford, Montgomery, Talbot, and Wicomico counties; Maryland-National Capital Park and Planning Commission; Maryland Association of Counties; Maryland Municipal League; Department of Legislative Services

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Land Use - Regional Housing Infrastructure Gap (Housing for Jobs Act)

BILL NUMBER: HB 503

PREPARED BY: Brad Fallon, Deputy Legislative Officer, Office of the Governor

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

 WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

 X WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The Housing for Jobs Act is anticipated to have a positive effect on small businesses by creating more opportunities for small and emerging builders and related contractors in Maryland to participate in home building. The status quo, and the risk that home construction entails, preferences large, existing builders at the expense of small and emerging developers.

Further, the construction sector remains one of the primary sectors where Maryland GDP growth is underperforming national GDP growth (6.6% nationally vs. 3.1% in Maryland). This is unsurprising given that Maryland permits 39% fewer new housing units than it did before the 2008 recession (DHCD analysis of census data). Should construction increase, these contractors can be expected to have an increased workload.

The business community also makes a strong connection between the availability of the Maryland workforce and the availability and affordability of housing. In fact, Maryland has only 33 workers available for every 100 open jobs, making it difficult for businesses to operate at full capacity or grow in our state (US Chamber of Commerce). Contributing

to this is that the outmigration of Marylanders seems to be led by young Marylanders aged 17 - 34 who made up 65% of outmigration in 2022 with nearly 40,000 young Marylanders leaving the state that year alone, according to the US Census. When the Bureau of Labor Statistics surveyed populations of those who left, the top issues cited each year were housing costs and commute times.

Between 2019 and 2024, the number of houses for sale each month decreased by 59%. (DHCD analysis of Maryland Association of Realtors data). This has a direct impact on realtor businesses, land title businesses, home inspectors, and so on who are involved in the marketing and sale of residential property.

The State may be able to track the impact to small businesses by monitoring certain tax collections which can be expected to be impacted. Housing construction generates tax revenues for the State through multiple sources:

- Transfer tax on the sale of property
- Sales tax on construction materials
- Income tax on construction labor and legal, financial and insurance labor
- Property tax revenue on the completed construction

The average Maryland state tax revenue per one unit of housing built is approximately \$7,837 (see excel spreadsheet analysis).

Local governments also generate tax revenue from housing construction through transfer taxes, income taxes, property taxes, and through permitting, impact and inspection fees. The average local government tax revenue per one unit of housing built is approximately \$10,838 (see excel spreadsheet analysis).

If an additional 149,206 housing units were built in Maryland through the Housing for Jobs Act, that would have the following cumulative fiscal impact:

- State tax revenue: $\$7,837 \times 149,206 = \$1,169,280,804$
- Local tax revenue: $\$10,838 \times 149,206 = \$1,617,114,401$

If all of these units were constructed, they would be constructed incrementally over time. To estimate an annual increase in permitting activity from the Housing for Jobs Act, two data reference points were used:

- Annual permitting activity in Maryland before and after the 2008 recession. In the 9 counties impacted by the legislation, 20,020 building permits were issued annually before the '08 crash. Today, an average of 14,203 building permits are issued.
- Similar policy in New Jersey, called the Mount Laurel Doctrine, has increased building permit activity in the state by 23%. (Research found the Mount Laurel Doctrine has produced 70,000 units since 2015, or 7,700 units per year).