

## Maryland Legislative Update April 2009

**General Assembly Adjourns Facing Future Budget Deficits ...** The Maryland General Assembly adjourned on April 13<sup>th</sup> with a balanced budget that relies on a combination of: federal stimulus payments (\$2.5 billion in FY 2009 and 2010); fund transfers (\$1.8 billion over two years); and \$840 million in cuts. It is anticipated that the State budget will again face an \$1 million budget deficit when the General Assembly returns in January 2010. Republicans objected to heavy reliance on temporary federal stimulus monies for ongoing spending commitments. Tax increases were not part of the budget balancing scheme and it is unlikely that taxes would be increased in the 2010 election year Session. However, tax changes that may be characterized as closing "corporate tax loopholes" or making corporations "pay their fair share" are always a possibility. A joint legislative task force will be named during the interim to recommend substantial changes (reductions) in State aid to local governments as part of next year's budget balancing solution.

### Smart Growth Reforms Top the Governor's 2009 Agenda

Governor O'Malley was successful in passing four bills designed to strengthen the original Smart Growth legislation of the 1990's. Emphasis is on protecting the Chesapeake Bay and air quality by limiting development to areas already served by critical infrastructure.

**[SB 273/HB 294](#) Smart, Green, and Growing - Local Government Planning - Planning Visions.** Updates the 1992 Smart Growth elements/visions that are included in comprehensive plans. To keep up with current growth and development patterns, additional visions include: environmental protection, public participation, community design, multi-modal transportation, and available infrastructure. Effective October 1, 2009.

**[SB 274/HB 300](#) Tax Increment Financing and Special Taxing Districts - Transit-Oriented Development.** Makes TOD implementation more feasible by giving local governments more flexibility with project financing for public infrastructure projects through tax increment financing (TIF) and special taxing districts. MD Economic Development Corporation (MEDCO) may issue bonds on behalf of TOD projects with debt service being paid by the proceeds from special taxing districts, including TIFs. Effective June 1, 2009.

**[SB 276/HB 295](#) Smart, Green, and Growing - Annual Report - Smart Growth Measures and Indicators and Implementation of Planning Visions.** Directs Dept of Planning to develop quantitative information about land use goals, markers, trends, forecasts and metrics that will assist local governments and regional planning organizations in their planning efforts. Efforts to establish specific goals requiring 80% of residential growth to be located within PFAs by Oct. 1, 2012 or risk having construction permits denied were defeated. Likewise, requirements to report on the decrease in vehicle miles traveled (VMTs) per capita were deleted from the final version of the bill. As passed, the bill requires local planning commissions to develop their own percentage goals towards achieving a state land use goal that would increase development in PFAs and preserve land outside PFAs, and report annually on various land use measures. Effective June 1, 2009.

Legislation that would have established specific reductions in VMTs failed. **[SB 539/HB 992](#) Driver Relief Act of 2009.**

**[SB 280/HB 297](#) Smart, Green, and Growing - Smart and Sustainable Growth Act of 2009.** Overturns the Court of Appeals ruling in *Terrapin Run* that held local governments' zoning laws are not required to strictly adhere to comprehensive plans; and requires local zoning laws and ordinances to be consistent with the comprehensive plan. The final version, with the support of NAIOP, ensured that out-of-date comprehensive plans do not impede approvals for mixed-use development projects. Effective July 1, 2009.

## Expanding Associations' Right to Challenge Environmental Permits Results in an Unexpected Benefit for Business

[HB 1569/SB 1065](#) **Standing - Miscellaneous Environmental Protection Proceedings and Judicial Review.** Effective January 1, 2010, a specific list of environmental permits will be subject to challenge by individuals or associations with an attenuated interest in the permit action. Environmental permits affected by these changes to the standing law, include: air quality, landfills, water discharge, sewage sludge, controlled hazardous substances, hazardous material facility, low-level nuclear waste, water appropriation, wetlands, waterway construction, drilling for oil and gas, surface mining, and critical area variances for development in the buffer zone.

This compromise legislation will allow specific permits to be resolved more quickly and at lesser expense than is the case today, despite the granting of legal standing to associations. Challenges may be based on even the threat of negative impact to aesthetic, recreational or conservational interests. However, the time consuming and expensive contested case hearing process before the Office of Administrative Hearings is no longer available. Challengers now have to appeal the MD Dept of Environment's (MDE) permit decisions directly to the circuit court where a judge can only review the record which was the basis for MDE's decisions. Record review by the courts rarely overturns an agency decision and a permit is typically issued while the challenge is before the circuit court.

## Greenhouse Gas Reduction Act

[SB 278/HB 315](#) **Greenhouse Gas Emissions Reduction Act of 2009.** The O'Malley Administration scored an early victory in requiring a 25% reduction in greenhouse gas emissions from 2006 levels to be achieved by 2020. Manufacturers are exempt from the bill. MDE must present its emissions reduction plan by 2012, and the General Assembly must reaffirm its commitment to the goal during the 2016 Session. Transportation-related strategies are likely to be a significant element of the reduction plan. Effective October 1, 2009.

## Extension Granted for Development Approvals

[HB 921/SB 958](#) **Construction Permits - Expiration Dates.** Some relief is granted to the credit-starved real estate sector by extending development and construction permit approvals obtained on or after Jan. 1, 2008 until June 30, 2010, allowing time for an economic recovery. Permit renewal fees must be paid, however. Permit extensions do not apply to State sediment control or stormwater permits, or local water appropriations, water discharge or water and sewer permits. Effective date is when signed by the Governor (last scheduled bill signing date is May 21<sup>st</sup>).

## NOT Passed by the General Assembly:

- Costly Requirement to Conduct an Environmental Justice Review** of the population living and working within a two mile radius of a proposed project requiring environmental permitting. [SB 4/HB 1054](#)
- New Impervious Surface Tax on All Commercial Property** to finance cost of counties' stormwater management plans. [SB 672/HB 1457](#)
- Tax Controlling Interest Transactions Under \$1 Million** and requiring LLCs to disclose the name and address of organizers, members, managers, and authorized persons when articles of organization are filed. [HB 983 /SB 727](#).
- Terminate Funding for the Intercounty Connector** with the first phase (I-270 to Georgia Ave.) expected to open at the end of 2010. [HB 27/ SB 753](#)
- Tax Indemnity Mortgages in Montgomery County** which would add approximately 1% to the transactional cost of financing IDOTs. [HB 824](#)
- Tax Commercial Real Estate at a Higher Rate** than residential property in Montgomery County. [HB 838](#)

For copies of any legislation, go to the Maryland General Assembly website <http://mlis.state.md.us/>

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