

# MARYLAND MUNICIPAL LEAGUE

## ~ FINAL LEGISLATIVE REPORT ~

### *2009 LEGISLATION AFFECTING MUNICIPALITIES*

#### *Economic and Community Development*

##### Community Development

Community Legacy – Neighborhood Intervention – HB 1414. Chapter 657 of 2001 established the Community Legacy Program to create a process and funding source for several types of revitalization projects. Community legacy projects include those that help create or preserve housing opportunities, support demolition of buildings or improvements to enhance land use, and develop public infrastructure (e.g., parking, landscaping) related to a community legacy project. Chapter 314 of 2003 required no less than 10% of the Community Legacy Financial Assistance Fund to be used for neighborhood intervention projects. House Bill 1414, a departmental bill, makes three changes to the neighborhood intervention project component of the Community Legacy Program. The bill:

- reorganizes the application process for three similar neighborhood intervention projects into one;
- alters, from a minimum of 10% to a maximum of 15%, the total amount of funding from the Community Legacy Financial Assistance Fund that may be directed to the neighborhood projects; and
- in case of an emergency or when urgent approval is required, authorizes the Secretary of DHCD to approve a project without the approval of the Community Legacy Board; and caps at 10% the money in the fund that may be reserved for emergency or urgent approval projects.

Business and Economic Development – BRAC Community Enhancement Act – HB 1429. House Bill 1429 changes the effective date of a 10-year BRAC Revitalization and Incentive Zone from the date the Secretary of Business and Economic Development designates a zone to the date the first property in a zone becomes a qualified property. The bill also changes the annual date by which local jurisdictions must notify the State Department of Assessments and Taxation (SDAT) regarding qualified properties from November 1 to February 1, and the annual date that SDAT calculates payments to local jurisdictions from December 1 to March 1.

##### Economic Development

Municipal Corporations – Tax Increment Financing – Application of Bond Proceeds – SB 39. Tax increment financing (TIF) is a method of public project financing whereby the increase in the property tax revenue generated by new commercial development in a specific area, the TIF district, pays for bonds issued to finance site improvements, infrastructure, and other project costs located on public property. Senate Bill 39 expands the authority of a municipal corporation to use TIF to encourage redevelopment in revitalization areas; mixed use centers; blighted areas; and developed areas and growth areas, as defined in a county or municipal corporation land use plan, through the installation of specified infrastructure improvements (e.g., streets, utilities, and park facilities).

Transit-Oriented Development/Tax Increment Financing – SB 274/HB 300. Senate Bill 274/House Bill 300 authorize certain counties and municipalities to finance the costs of infrastructure improvements located in or supporting a transit-oriented development (TOD), including the cost for operation and maintenance of

infrastructure improvements. The Maryland Economic Development Corporation (MEDCO) may enter into agreements with certain counties and municipalities to use proceeds from a special taxing district, including tax incremental financing, to repay debt service on bonds issued by MEDCO on behalf of TOD projects.

## Miscellaneous

Infrastructure Loan Program - SB 931/HB 1331. The Local Government Infrastructure Finance (LGIF) program provides an efficient and economical means for local governments to access affordable capital in order to finance essential infrastructure projects. The LGIF program is particularly suitable for local governments that do not issue bonds routinely, for those with limited access to the capital marketplace, or for those for which managing the complexities of public financing on their own is inconvenient or expensive. The LGIF program allows local governments to access the Community Development Authorities' bonding authority and expertise to make these investments affordable and efficient. The LGIF program previously used private municipal bond insurers to provide credit enhancements to achieve affordable interest rates for local government sponsors. However, recently many bond insurers either went out of business, do not insure small issues, or now have rates that are not affordable to local governments.

To overcome the loss of bond insurers, Senate Bill 931/House Bill 1331 authorize the creation of a capital debt reserve fund to back bonds issued by the LGIF program. The reserve fund would be used to pay the principal and interest on the bonds, notes, and other obligations of CDA. The capital debt reserve fund would be replenished through the use of operating reserves as well as existing authority to intercept local government payments from the State should a payment fail. As a final contingency, these bills authorize the use of State bond funds to recapitalize the debt reserve fund.

Creation of State Debt - Community Development Administration - Local Government Infrastructure Finance Program - SB 932/HB 1330. Senate Bill 932/House Bill 1330 authorize up to \$2 million to replenish the debt reserve fund. The authority to issue the bonds is enabling only, and the proceeds would serve as a loan to the CDA that would be repaid within five years.

## Environment

### Energy

Maryland Environmental Service - Energy Generation Projects - SB 14. Senate Bill 14 in part allows counties and municipalities to enter into energy projects and other agreements with MES without regard to certain limitations or other provisions regulating the procurement or awarding of public contracts.

Maryland Building Performance Standards - Energy Conservation and Efficiency - SB 625. Senate Bill 625 requires the Department of Housing and Community Development (DHCD) to adopt the International Energy Conservation Code (IECC) and to consider changes to the International Building Code (IBC) to enhance energy conservation and efficiency before adopting a subsequent version of the Maryland Building Performance Standard (MBPS). DHCD may adopt energy conservation requirements that are more stringent, but not less stringent, than in the IECC. The bill also requires that local governments implement and enforce the most current MBPS and any modifications within 6 months of adoption by the State. A local jurisdiction may also adopt a local amendment to the MBPS as long as the amendment does not weaken any energy conservation and efficiency provisions in the MBPS.

Jane E. Lawton Conservation Fund - Renewable Energy Projects - HB 1442. The Jane E. Lawton Conservation Loan Program, administered by the Maryland Energy Administration (MEA), was established in 2008 to provide financial assistance in the form of low interest loans to nonprofit organizations, local jurisdictions, and eligible businesses, for improvements or modifications that enhance the energy efficiency and reduce the operating expenses of a structure. The Jane E. Lawton Conservation Fund consists of money appropriated in

the State budget to the program, money received from any public or private source, interest and investment earnings, and loan repayments and prepayments. The fund is used to pay the expenses of the program and provide loans to eligible borrowers and projects. Loans from the fund may be used for the costs of implementing projects; the costs of procuring necessary technology, equipment, licenses, or materials; and the costs of construction, rehabilitation, or modification, including the purchase and installation of any necessary machinery, equipment, or furnishings.

House Bill 1442 expands the purposes of the Jane E. Lawton Conservation Loan Program and eligible projects under the program to include the development and use of renewable energy resources, including installation of infrastructure for renewable energy generation by local jurisdictions and nonprofit organizations. The Act also specifies additional local government entities eligible to receive loans under the program; allows a loan to be deposited in a revolving loan fund of a county's economic development commission to provide capital for renewable energy infrastructure projects; and authorizes local jurisdictions to offer excess electricity generated from a project financed under the program for trade on the wholesale market.

Clean Energy Loan Program - HB 1567. The Maryland Energy Administration administers several programs aimed at encouraging energy efficiency and renewable energy projects in the State. House Bill 1567 authorizes a county or municipal corporation to enact an ordinance or resolution establishing a Clean Energy Loan Program to provide loans to residential and commercial property owners for the financing of energy efficiency and certain renewable energy projects. A property owner must repay a loan through a surcharge on the owner's property tax bill.

Under the bill, a county or municipal corporation that establishes a Clean Energy Loan Program may issue bonds to provide financing for loans made through the program. An ordinance or resolution establishing a program must specify eligibility requirements and the terms and conditions of the bond issuance, in accordance with the local government's procedures for authorization to sell bonds. Bonds may be issued through competitive or negotiated sale and may utilize fixed or variable interest rates.

## Forestry

Sustainable Forestry Act of 2009 - SB 549. Enacted in 1991, the Forest Conservation Act provides a set of minimum standards that developers must follow when designing a new project that affects forest land. Local governments are responsible for making sure these standards are met but may choose to implement even more stringent criteria. If there is no local agency in place to review development plans, DNR does so. In general, the Act calls for a minimum amount of forest cover on development sites based upon the site's zoning. Senate Bill 549 seeks to encourage sustainable management of the State's forest resources. Among other things, the bill:

- requires local agricultural preservation advisory boards and forest conservation district boards to meet annually with each other;
- modifies right-to-farm provisions to include silvicultural (forestry) operations;
- renames the Forest Advisory Commission as the Sustainable Forestry Council and specifies its purpose;
- modifies the allowable uses of the Forest or Park Reserve Fund to include offsetting the costs to DNR for developing and implementing a forest health emergency contingency program;
- expands the Woodland Incentives Fund's revenue sources and uses;
- authorizes local forestry boards to impose fees to offset specified costs;

- modifies the issues that may be addressed within the land use element of a local jurisdiction's comprehensive plan to include forestry, and modifies the State Economic Growth, Resource Protection, and Planning Policy to include the promotion of sustainable forestry management;
- encourages the provision of incentives to promote in-state production of renewable energy, with consideration being given to biomass-fueled facilities; and
- requires DNR to develop specified strategies, plans, recommendations, programs, and reports.

Natural Resources - Roadside Trees - Protection and Enforcement - SB 581. A person generally must obtain a permit from DNR in order to cut down or trim a roadside tree. Cutting or clearing of public utility rights-of-way or land for licensed electric generating stations is exempt from the Forest Conservation Act, subject to specified conditions including conducting the cutting or clearing so as to minimize the loss of forest. Senate Bill 581 authorizes local jurisdictions to adopt laws concerning the planting, care, and protection of roadside trees that (1) are more stringent than State requirements if they do not conflict with current law; and (2) do not apply to specified cutting, clearing, and maintenance of public utility rights-of-way. Local governments with local roadside tree laws are authorized to issue stop work orders against violators of the local laws. DNR may authorize local governments to enforce specified roadside tree laws. Local jurisdictions are prohibited from issuing building permits that will result in specified impacts on roadside trees until a DNR permit is obtained. The bill establishes a penalty for trimming, cutting, removing, or injuring a roadside tree or failing to obtain a permit that may not exceed \$2,000 for a first offense and \$5,000 for a second or subsequent offense.

Natural Resources - No Net Loss of Forest Policy - Forest Conservation Act - SB 666. Senate Bill 666 requires DNR to cooperate with forestry-related stakeholder groups to determine the meaning of no net loss of forests for any State policy and to develop proposals for creating a State policy on no net loss of forests. By December 1, 2011, DNR is required, in consultation with forestry-related stakeholder groups, to submit a report on policies to achieve no net loss of forests in the State. The bill amends several provisions of the Forest Conservation Act, including (1) increasing the fee-in-lieu contribution rate to State and local Forest Conservation Funds; (2) limiting the exemptions for forest clearing associated with a single lot, a linear project, and a dwelling house to a maximum disturbance of 20,000 (instead of 40,000) square feet of forest; (3) limiting the exemption for construction of dwelling houses to owners and their children; (4) eliminating an exemption for areas that were previously developed and covered by paved surface; and (4) requiring that priority be given to specified trees, shrubs, plants, and areas for retention and protection, unless a variance is granted.

Agriculture - Emerald Ash Borer Grant Fund - HB 796. HB 796 creates an Emerald Ash Borer Grant Fund to help local governments, businesses, and organizations purchase authorized equipment to remove, dispose of, and replace trees infested by the emerald ash borer that are located within emerald ash borer quarantine areas. The Secretary of Agriculture is authorized to administer the fund and must establish grant application procedures. Grants may not exceed the amount a specified entity has appropriated to finance purchases of equipment to remove, dispose of, and replace infested trees in specified areas.

## Miscellaneous

Environment - Permit Applications - Notice Requirements - SB 47/HB 1078. A number of bills were introduced to enhance public notice of the environmental permitting process. Senate Bill 47/House Bill 1078 require MDE to post notice of applications for certain permits on the department's web site and also require MDE to provide a method for interested persons to electronically request additional notices related to particular permit applications. The following permits are subject to the bills requirement: ambient air quality control, landfills/incinerators, discharge pollutants, structures used for sewage sludge storage or distribution, controlled hazardous substance facilities, hazardous materials facilities, and low-level nuclear waste facilities.

Environment – Water Pollution Control – Incentives and Penalties – SB 408. The bill increases from \$1,000 to \$5,000 the maximum penalty for a violation of any of the water pollution laws in Title 9 of the Environment Article.

Environment – Sewage Sludge Utilization Permits – Local Notice – HB 1058. When MDE receives an application for a permit to utilize sewage sludge, it must mail a copy of the permit to the county and any municipal corporation where the sewage sludge utilization site is to be located and to any county within one mile of the site. House Bill 1058 requires a copy of the permit to be mailed to the appropriate county's executive and legislative body, the executive of any municipal corporation where the sewage sludge utilization site is to be located, and to the executive and legislative body of any county within one mile of the site.

## *Fiscal Affairs*

### Property Taxes

Property Tax – Homestead Tax Credit – Eligibility – SB 87. Under current law, homeowners are required to file an application with the State Department of Assessments and Taxation (SDAT) to qualify for the homestead property tax credit program. When a property transfers between January 1 and July 1 and the deed is not recorded until after July 1, the new property owner has 60 days from the date of transfer to submit an application to receive the homestead property tax credit. Along with the application, the property owner must submit a copy of the deed and request that the date of the deed be used as the date of transfer rather than the recordation date.

Senate Bill 87 extends to September 1 the deadline for filing an application for the homestead property tax credit program when a property transfers to a new owner between January 1 and July 1 and the deed is not recorded until after July 1. In addition, Senate Bill 87 authorizes SDAT to reinstate the homestead property tax credit to a homeowner who fails to file the required application for the tax credit by a specified deadline.

Tax – Property – Exempt Manufacturing Personal Property Application Deadline – SB 88. Except for property used exclusively for charitable or educational purposes or property owned by a housing authority, property tax on wholly exempt property is abated for the taxable year that follows the date on which the property became exempt. If an owner of property subject to an exemption on June 30 files an application for abatement with SDAT on or before the following September 1, the tax is abated for the taxable year.

Senate Bill 88 specifies that the property tax exemption for manufacturing personal property will be granted for a taxable year, if the owner files an application with SDAT for an exemption within six months of receiving the first assessment notice for the taxable year that includes the manufacturing personal property.

Property Tax Assessment – Home Improvements – SB 538. Real property is valued and assessed once every three years. No adjustments are made in the interim, except in the case of (1) a zoning change; (2) a substantial change in property use; (3) substantially completed improvements which add at least \$50,000 in value to the property; or (4) a prior erroneous assessment.

Senate Bill 538 alters one of the property revaluation criteria by specifying that substantially completed improvements to real property that add at least \$100,000 in value to a dwelling will trigger a real property revaluation.

Property Tax Credit – Marine Trade Waterfront Property – SB 644. Senate Bill 644 authorizes a local government to grant a property tax credit for “marine trade waterfront property.” Marine trade waterfront property is defined as real property that (1) is adjacent to the tidal waters of the State; (2) is used primarily for an activity or business that requires direct access to, or location in, marine waters due to the nature of the activity or business; and (3) for the most recent three-year period, has produced an average annual gross

income of at least \$1,000. Marine trade waterfront property includes marinas, boat ramps, boat hauling and repair facilities, fishing facilities, and any other boating facilities; and land that is adjacent to or under improvements used primarily for an activity or business that requires access to, or location in, marine waters due to the nature of the activity or business.

Property Tax Credit – Seniors – HB 781. Current law authorized Baltimore City, counties, and municipalities to grant a tax credit against the county or municipal property tax imposed on real property that is owned and used as the principal residence of an individual who is at least 70 years old and of limited income. House Bill 781 lowers the minimum age requirement from 70 to 65 years of age for this property tax credit.

### Miscellaneous

Municipal Corporations and Taxing Districts – Financial Audits - SB 146/HB 19. Municipal corporations and State-created taxing districts must have an annual, independent audit conducted by a certified public accountant. However, municipal corporations and taxing districts with annual revenues below \$50,000 in the prior four fiscal years may petition the Office of Legislative Audits for a waiver allowing an audit to occur once every four years instead. Senate Bill 146/House Bill 19 increase the eligibility threshold for a municipal corporation or State-created special taxing district to receive an audit every four years to \$250,000.

Program Open Space (POS) – Use of Funds – Indoor and Outdoor Recreational Facilities – SB 163. Senate Bill 163 clarifies the permissible use of local POS funds for indoor and outdoor recreation and open space purposes. If an indoor facility is funded with local POS funds, it must incorporate, to the maximum extent practicable, the nonstructural site design practices in the Maryland Stormwater Design Manual. Indoor facilities greater than 7,500 square feet must also meet or exceed a specified green building rating. The bill also alters State reimbursement provisions so that if a local governing body uses local POS funds for an indoor recreational facility located outside a priority funding area, the State must reimburse the local jurisdiction 50% of the total project cost. Further, if a local jurisdiction uses local POS funds for the acquisition of land inside a priority funding area and agrees to limit the amount of impervious surface on the land to no more than 10%, the State must reimburse the local jurisdiction 90% of the total project cost. The bill also requires the Maryland Department of Planning to evaluate, and report on, the degree to which specified State goals are being effectively addressed by the local POS process.

Transfer Tax – Program Open Space Bonds – Land and Easement Acquisition – HB 783. House Bill 783 authorizes \$70 million in bond funds for DNR's POS land acquisition program and authorizes the transfer of up to \$5 million of this amount to the Maryland Department of Agriculture's (MDA) Maryland Agricultural Land Preservation Fund (MALPF). DNR is required to use these POS bond funds for State land acquisition that is supported by current appraisals and presents a unique opportunity due to reduced price, extraordinary location, or environmental value. MDA is required to use these POS bond funds for the purchase of easements that present a unique opportunity due to reduced price, extraordinary location, or agricultural value. Property transfer tax revenue must be used to pay principal and interest on the POS bonds prior to any other distribution. The bill specifies that transfer tax revenues allocated to only State POS land acquisition and MALPF, to the extent any debt service is attributable to MALPF, must be reduced by an amount equal to the debt service for the fiscal year.

Business Regulation – Home Builders Guaranty Fund – Fee – SB 377/HB 662. Legislation passed in 2008 instructs the Consumer Protection Division of the Office of the Attorney General to establish a Home Builder Guaranty Fund to compensate claimants for an actual loss that results from an act or omission by a registered home builder. Home Builder Guaranty Fund fees are collected by the building and permits department of the county in which the construction takes place. No provision exists that allows counties to retain a portion of the fee to cover administrative costs. Senate Bill 377/House Bill 662 permit local governments to retain up to 2% of the fees collected to cover administrative costs. The Acts also specify that municipalities, in addition to

counties, must collect the fee, and that the fee must be on a per-house or, for multi-unit developments, a per-unit basis.

Government Units – Local Debt Policies – SB 458/HB 811. Senate Bill 458/House Bill 811 clarify the reporting requirements of local governments and public corporations and authorities that are authorized to issue debt. The bills also require local governments to adopt debt policies consistent with State and local laws, and constitutional requirements.

Tax Amnesty Program – SB 552. Senate Bill 552 requires the Comptroller to declare an amnesty period for delinquent taxpayers from September 1, 2009, through October 30, 2009, for civil penalties and one-half of the interest due and attributable to the nonpayment, nonreporting, or underreporting of income taxes, withholding taxes, sales and use taxes, or admissions and amusement taxes. Taxpayers may qualify for the amnesty provided under the bill if the delinquent tax, together with one-half of any interest due, is paid during the amnesty period or if the taxpayer during the amnesty period enters into a payment agreement with the Comptroller to pay the full amount due before January 1, 2011.

Local Government – Deposits of Unexpended or Surplus Money – SB 617/HB 1191. The Federal Deposit Insurance Corporation (FDIC) insures deposits in most banks and savings and loan associations located in the United States. Depositors are protected against the loss of their deposits if an FDIC-insured bank or savings and loan association fails. In October 2008, FDIC deposit insurance was temporarily increased from \$100,000 to \$250,000 per depositor through December 31, 2009. Senate Bill 617/House Bill 1191 alter the maximum amount of unexpended or surplus funds that a local government may deposit into a financial institution from \$100,000 to the amount equal to the applicable FDIC maximum insurance coverage limit.

Cooperative Purchasing Agreements – Requirements and Expansion of Use – HB 533. House Bill 533 promotes intergovernmental cooperative purchasing by requiring State Executive Branch agencies and local governments to facilitate participation by State and local agencies and nonprofit organizations in service and supply contracts. However, contracts for capital construction and improvements, as well as contracts valued at less than \$100,000 are exempt. Moreover, State and local governments may exempt any contract for which they determine that intergovernmental purchasing (1) is not in their best interest; (2) undermines the contract's timing or effect; or (3) interferes with the ability to meet minority business enterprise or other related goals.

Real Property – Notice of Foreclosure – Notice to Local Governments – HB 640. In an action to foreclose a lien on real property, current law requires the person authorized to make the sale of the property to notify the county or municipal corporation where the property is located at least 15 days before the sale. Within 10 days of receiving this notification, the local government must notify that person of any outstanding liens, charges, taxes, or assessments on the property.

House Bill 640 affords local governments the opportunity to receive an earlier notice of foreclosure on residential property. The Act authorizes a county or municipal corporation to enact a local law that requires notice to be given to the local government when a foreclosure action is filed on residential property located in the jurisdiction. The local law must require the person authorized to make the sale to notify the local government within five days after filing an order to docket or a complaint to foreclose the mortgage or deed of trust. The notice must provide the name and contact information of the person authorized to make the sale, the street address of the subject residential property, and the names and addresses, if known, of all owners of the residential property.

Water Quality and Drinking Water Quality Revolving Loan Funds – Use of Funds – HB 1417. The American Recovery and Reinvestment Act of 2009 provides a substantial amount of federal funding for water quality and drinking water infrastructure improvements in Maryland. The two primary federal funding sources for water policy in the State are the Clean Water State Loan Fund and the Drinking Water State Loan Fund. To make use of this federal stimulus funding for water quality and drinking water enhancements, House Bill 1417

establishes certain accounts within the Maryland Water Quality Financing Administration at MDE and expands the existing authorized uses of Water Quality Loan Fund and Drinking Water Loan Fund money.

### *Land Use*

Smart Green & Growing - Planning Visions - SB 273/HB 294. Senate Bill 273/House Bill 294 replace the State's 8 existing planning visions with 12 new visions. The 12 new visions address quality of life and sustainability; public participation; growth areas; community design; infrastructure; transportation; housing; economic development; environmental protection; resource conservation; stewardship; and implementation.

The bills also address two local government planning tools: adequate public facilities ordinances (APFOs) and transfer of development rights (TDR) programs. As to the first tool, generally local governments enact 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. The bills require specified local jurisdictions to report to the Maryland Department of Planning (MDP) on APFOs restrictions in priority funding areas (PFAs) every two years. The report must include information about the location of the restriction; infrastructure affected by the restriction; estimated date for resolving the restriction; the proposed resolution of the restriction, if available; date a restriction was lifted, as applicable; and terms of the resolution that removed the restriction. In addition, the bills require MDP to report on the statewide impact of APFOs every two years. The report 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.

Smart Green & Growing - Measures and Indicators - SB 276/HB 295. These bills make several administrative and substantive changes to State law governing the annual report that local planning commissions are required to prepare. Specifically, the bills make the annual report requirement applicable to charter counties and Baltimore City so that all local jurisdictions are expressly required to submit this report. The bills provide for a specific date, July 1, by when each planning commission must file the annual report with the local legislative body and require the annual report to state which ordinances or regulations have been adopted or changed to implement the planning visions. The Maryland Department of Planning (MDP) is authorized to submit comments on an annual report. Senate Bill 276/House Bill 295 lists the following measures and indicators that must be included in the annual report:

- the amount and share of growth being located inside and outside PFAs;
- the net density of growth being located inside and outside PFAs;
- the creation of new lots and issuance of building permits inside and outside PFAs;
- the development capacity analysis;
- the number of acres preserved using local agricultural land preservation funding; and
- specified information on achieving the statewide goal of increasing growth within PFAs.

A county or municipal corporation that issues fewer than 50 building permits for new residential units per year is not required to include this information in their annual report.

The bills authorize MDP to adopt regulations that detail the manner in which the measures and indicators are to be submitted and transmitted in the annual report. MDP must also develop measures and indicators that will be collected by MDP and consider which measures and indicators can be collected by the National Center for Smart Growth Research and Education (National Center). On or before January 1 of each year, MDP, in consultation with the National Center, must submit a report to the Governor and the General Assembly on the measures and indicators collected. All of this information must be posted on the National Center's web site. Lastly, the Task Force on the Future for Growth and Development, in consultation with local governments, the National Center, and other stakeholders, must recommend by July 1, 2009 additional measures and indicators to be collected by the State, the National Center, or a local jurisdiction in specified categories of information.

The more substantive changes made by Senate Bill 276/House Bill 295 involves the establishment of land use goals and the inclusion in the annual report of measures and indicators to demonstrate compliance with the land use goals. As to the land use goals, the bills state that the statewide land use goal is to increase the current percentage of growth located within PFAs, and to decrease the percentage of growth located outside PFAs. A local jurisdiction is required to develop a percentage goal toward achieving the statewide goal. If all the land within the boundaries of a municipal corporation is a PFA, the municipality is not required to establish a local goal for achieving the statewide goal.

Smart Green & Growing – Smart and Sustainable Growth – SB 280/HB 297. The Maryland Court of Appeals ruled in *David Trail, et al. v. Terrapin Run, LLC et al.*, 403 Md. 523 (2008), that a special exception could be granted to a local comprehensive plan even if it did not strictly conform to the comprehensive plan.

Senate Bill 280/House Bill 297 expressly overturn the Court of Appeals ruling in *Terrapin Run* by requiring that specified actions taken by local governments, including the granting of a special exception, must be “consistent with” their local comprehensive plans. The bills define what is “consistent with,” or having “consistency with,” a comprehensive plan to mean generally that an action taken by a local government related to local planning, water and sewer plan review, annexation requirements, and critical area growth allocations will “further, and not be contrary to” specified items in the plan. The specified items are policies, timing of the implementation of the plan, timing of development, timing of rezoning, development patterns, land uses, and densities or intensities. The bills create a separate definition of “consistency” for ordinances and regulations applicable within PFAs that omits land uses and densities and intensities so that these items do not interfere with the ability of a local jurisdiction to enact ordinances related to planned unit developments, mixed uses, and density bonuses within a PFA.

In addition, the bills expressly require local jurisdictions to enact, adopt, amend, and execute a comprehensive plan. Lastly, the bills require members of local government planning commissions and boards of appeal to complete an educational course on the role of the comprehensive plan, proper standards for special exceptions and variances as applicable, and the jurisdiction's own land use ordinances and regulations. The Task Force on the Future for Growth and Development is required to develop recommendations on the educational course for local jurisdictions, and MDP is required to develop an online planning education course for local jurisdictions by January 1, 2010. Local jurisdictions are authorized to develop their own educational course in lieu of MDP's education course.

Municipal Corporations – Small Parcel Annexations – SB 350/HB 220. Senate Bill 350/House Bill 220 exempt proposed municipal annexations of parcels of land that are five acres or less, and that are part of a lot containing at least one other parcel that has been part of the municipal corporate area for at least three years, from the requirements that consent be obtained from a specified percentage of area residents and property owners and that the proposed annexation be subject to a referendum. A municipal corporation, however, may not annex a total of more than 25 acres under the exceptions of the bills, and the bills do not apply to land zoned for agricultural use. Provisions of the bills terminate September 30, 2011.

Construction Permits – Expiration Dates – SB 958/HB 921. This legislation extends through June 30, 2010, the duration of approved State, county, and municipal permits for proposed construction and development that

were approved on or after January 1, 2008. The bills do not apply to several specified issued permits or permit approvals. By December 31, 2009, the Maryland Department of Planning must report to the General Assembly on the impact of the bills, whether the extension period should be lengthened, and what other alternatives might be available to the State and local jurisdictions. The bills do not affect the authority of the State, a county, or a municipal corporation to revoke or modify a permit and do not affect the obligation of permit holders to pay any applicable renewal fees. Affected permits may be cancelled if the State, a county, or a municipal corporation determines that the permit presents a threat to the public health, safety, or welfare of its citizens.

Agricultural Land Preservation – Condemnation of Land Under Easement – HB 1418. House Bill 1418 makes condemnation of land under a Maryland Agricultural Land Preservation Fund easement, for economic development, residential development, or parkland purposes, subject to approval by the Board of Public Works (BPW) after review and recommendation by MALPF. Condemnation of easement land for roads, water lines or pipelines, sewer lines or pipelines, power transmission lines or natural gas pipelines, and stormwater or drainage facilities is not subject to BPW approval. The condemning authority, which is expanded to include any governmental authority, must demonstrate that a greater public purpose exists than that served by the MALPF easement and there is no reasonable alternative site.

### Legal Affairs

LGTCa Notice of Claim – SB 974/HB 1378. The Local Government Tort Claims Act (LGTCa) limits the liability of a local government to \$200,000 per individual claim and \$500,000 per total claims that arise from the same occurrence for damages from tortious acts or omissions. By providing that a local government is liable for the tortious acts or omissions of its employees acting within the scope of employment, the LGTCa prevents local governments from asserting a common law claim of governmental immunity from liability for such acts of its employees. An action for unliquidated damages against an entity covered by the LGTCa or its employees may not be brought unless notice of the claim meeting specific requirements is given within 180 days of the injury. Except for statutory notice requirements for Baltimore City, the LGTCa does not contain any specific provisions exclusively devoted to notice to a local government that is not a county.

Senate Bill 974/House Bill 1378 clarify to whom notice must be given for claims under the LGTCa by creating a clear distinction between notice given to counties and notice given to other local governments under the LGTCa. Under the bill, if the defendant local government is a county, the notice must be given to the county commissioners or the county council, unless otherwise specified in statute. If the notice is to be given to a defendant local government that is not a county, the notice must be given to the corporate authorities of the defendant local government.

Environmental Standing – SB 1065/HB 1569. Senate Bill 1065/House Bill 1569 expand standing for individuals and associations and organizations in bringing challenges related to a license to dredge and fill on State wetlands, and permits issued under the Environment Article pertaining to ambient air quality control, landfills/incinerators, discharge pollutants, structures used for sewage sludge storage or distribution, controlled hazardous substance facilities, hazardous materials facilities, low-level nuclear waste facilities, water appropriation and use, nontidal wetlands, gas and oil drilling, surface mining, and private wetlands. Standing is also provided to persons to participate in certain buffer zone variance actions in the Chesapeake and Atlantic Coastal Bays Critical Area.

The bills provide that federal tests for standing must be used to determine whether a party may contest a determination by MDE or Board of Public Works (BPW) when making determinations on the issuance, denial, renewal, or revision of the covered permits and license.

Federal law is broader than State law in its determination of standing. Under federal law, a party has standing if its use and enjoyment of the area is affected by the challenged action/decision or if the party has a particular interest in the property affected. Federal law also makes little distinction between individual and group

standing. Under federal case law, in order to have standing, “a plaintiff must show (1) it has suffered an ‘injury in fact’ that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.”

Federal case law requires an association to meet a three-part test in order to have standing. Under the test, an association has standing if (1) one or more members of the association have standing as individuals; (2) the interests that the association seeks to protect in the case are germane to the association’s purpose; and (3) neither the claim asserted nor the relief requested requires the participation of the member with individual standing in the lawsuit.

Environment - Limitation of Actions - Political Subdivisions - HB 420. Legislation passed in 2008 established a three-year statute of limitations for violations of most environmental violations in order to improve the State’s ability to successfully prosecute or sue violators where delayed discovery of violations would prevent a court action from being instituted under current law. The general statute of limitations in the Courts and Judicial Proceedings Article for prosecution of a misdemeanor is one year. House Bill 420 extends the same three-year statute of limitations to suits brought by local governments for civil penalties for environmental violations.

### *Personnel*

State Retirement and Pension System - Participating Governmental Units - SB 226/HB473. Senate Bill 226/House Bill 473 require employees of local governments whose employer choose to participate in the State retirement and pension system as a participating governmental unit (PGU) to elect participation by the effective date of the authorizing legislation of the local government. Under current law, PGU employees typically have either six months or one year from the effective date to decide whether to participate in a State plan. The bills also make technical changes to reflect the fact that, due to statutory changes over the past decade, PGUs may join or withdraw from either the Correctional Officers’ Retirement System or the Law Enforcement Officers’ Pension System.

Unemployment Insurance - Eligibility - Part Time Work - SB 270/HB 310. Senate Bill 270/House Bill 310 makes an individual whose availability to work is restricted to part-time work eligible for unemployment benefits, if the individual works predominantly throughout the year on a part-time basis for at least 20 hours per week. A part-time worker is eligible for benefits based on wages predominantly earned from part-time work; must be actively seeking part-time work; must be available for part-time work for at least the number of hours worked at the part-time worker’s previous employment; cannot impose any other restrictions on the part-time worker’s ability or availability to work; and must be in a labor market in which a reasonable demand exists for part-time work. A qualified part-time worker with a disability may not have the disability used as a disqualifying factor. A part-time worker is not considered to be unemployed if working all hours for which the part-time worker is available.

Unemployment Insurance - Recreational Sports Officials - Coverage - SB 470. Senate Bill 470 exempts officiating services performed by recreational sports officials from unemployment insurance coverage. Recreational sports officials include individuals who contract to perform officiating services at sporting events sponsored by a county government, municipal government, or government-affiliated entity. A recreational sports official does not include any individual who performs officiating services directly for a nonprofit or governmental organization and is considered covered for purposes of unemployment insurance.

Unemployment Insurance - Maximum Benefit - Increase - SB 576/HB740. Senate Bill 576/House Bill 740 increase the maximum allowed weekly benefit amount from \$380 to \$410 for claims establishing a new benefit year on or after October 4, 2009. For claims establishing a new benefit year on or after October 3, 2010, the maximum weekly benefit is increased from \$410 to \$430.

State Retirement and Pension System – Military Service Credit – Clarification and Simplification – SB 591/HB 975. Senate Bill 591/House Bill 975 conform State pension law to reflect recent changes to the federal Uniformed Services Employment and Reemployment Rights Act of 1994 and the Heroes Earnings Assistance and Relief Tax Act of 2007. Among other mostly technical changes, the bills entitle members of State or local retirement and pension plans who are killed in the line of duty while serving in the military to death and disability benefits provided by their plans as if they had returned to work and then died or become disabled.

Workers Compensation – Death Benefits for Partially Dependent Individuals – Payment – SB 863/HB 899. Surviving spouses who were partially dependent at the time of the covered employee’s death are entitled to a death benefit for the period of partial dependency or until \$60,000 has been paid. Senate Bill 863/House Bill 899 increase the maximum workers’ compensation payment to partially dependent or partially self-supporting individuals to \$75,000. The bills also require the Workers’ Compensation Commission (WCC) to conduct a study on statutory provisions related to death benefit payments to individuals dependent on a covered employee. The study must determine legislative changes that would provide fair and equitable benefits to wholly dependent individuals and partially dependent individuals and provide for coordination among all of the death benefit provisions. WCC must report its findings and recommendations to the Senate Finance Committee and the House Economic Matters Committee by December 1, 2009. The bills apply to any claims filed for death benefits on or after September 1, 2007.

Injured Workers’ Insurance Fund – Regulation and Status – SB 959. Senate Bill 959 specifies that, with certain exceptions, IWIF is subject to the same insurance law requirements as any authorized domestic workers’ compensation insurer in the State. Since IWIF operates as a third-party administrator, IWIF must register with the Maryland Insurance Commissioner and is subject to State insurance law provisions related to such entities. IWIF must serve as a competitive insurer in the marketplace for workers’ compensation insurance, guarantee the availability of such insurance in the State, serve as the insurer of last resort, and engage only in the business of workers’ compensation insurance. However, IWIF is not required to pay the premium tax charged to other insurers in the State or join the National Council on Compensation Insurance. Also, although IWIF’s rates are not subject to regulation by the Insurance Commissioner, the Insurance Commissioner is required to examine IWIF at least once every five years to determine whether IWIF’s rate making practices produce actuarially sound rates and are not excessive, inadequate, or unfairly discriminatory.

## *Public Safety*

### Police Issues

Freedom of Association and Assembly Protection Act of 2009 – SB 266/HB 311. Senate Bill 266/House Bill 311 establish the responsibilities of law enforcement agencies relating to investigations affecting First Amendment activities and the rights of persons, groups, and organization engaged in First Amendment activities. These activities include constitutionally protected speech or association; or conduct related to freedom of speech, free exercise of religion, freedom of the press, the right to assemble; or the right to petition the government.

The bills prohibit a law enforcement agency from conducting a “covert investigation” of a person, a group, or an organization engaged in First Amendment activities, unless the law enforcement agency’s chief or designee makes a written finding in advance, or as soon as is practicable afterwards, that the covert investigation is justified because:

- it is based on a reasonable, articulable suspicion that the person, group, or organization is planning or engaged in criminal activity; and
- a less intrusive method of investigation is not likely to yield satisfactory results.

Under the bills, membership or participation in a group or organization engaged in First Amendment activities does not alone establish reasonable, articulable suspicion of criminal activity. The bills require that a law enforcement agency conduct all investigations involving First Amendment activities for a legitimate law

enforcement objective and, in the process of conducting the investigation, safeguard the constitutional rights and liberties of all persons. A law enforcement agency may not investigate, prosecute, disrupt, interfere with, harass, or discriminate against a person engaged in a First Amendment activity to punish, retaliate against, or prevent or hinder the person from exercising constitutional rights. An investigation involving First Amendment activities must be terminated when logical leads have been exhausted or no legitimate law enforcement objective justifies the continuance of the investigation.

The bills also direct that information maintained in a criminal intelligence file be evaluated for the reliability of the source of the information and the validity and accuracy of the information. A law enforcement agency must accurately classify intelligence information in its databases to properly reflect the purpose for which the information is collected. When a law enforcement agency lists in a database a specific crime for which an individual, a group, or an organization is under suspicion, the agency must ensure that the classification is accurate based on the information available to the agency at the time.

By January 1, 2010, DSP and all other law enforcement agencies in Maryland covered under the bills must adopt regulations or policies governing the conduct of covert investigations of persons, groups, or organizations engaged in First Amendment activities and the collection, dissemination, retention, database inclusion, purging, and auditing of intelligence information relating to persons, groups, or organizations engaged in First Amendment activities.

Public Safety - SWAT Team Activation and Deployment - Reports - SB 447/HB 1267. Senate Bill 447/House Bill 1267 require that, beginning January 1, 2010, a law enforcement agency that maintains a SWAT team report the following information to the Governor's Office of Crime Control and Prevention (GOCCP) and the appropriate county or municipal governing body, on a biannual basis:

- the number of times the team was activated and deployed by the law enforcement agency in the previous six months;
  - the name of the county and/or municipality and zip code of the location where the team was deployed for each activation;
  - the reason for each activation and deployment;
  - the legal authority, including type of warrant, if any, for each activation and deployment;
- And
- the result of each activation and deployment.

A summary of the biannual reports must be prepared each year by GOCCP and submitted to the Governor, the General Assembly, and each law enforcement agency by September 1.

Public Safety - Electronic Control Devices - Requirements - SB 850/HB 539. Electronic control devices, such as stun guns and devices made by TASER International, Inc., are employed to disrupt the body's electrical system, and to temporarily incapacitate the person. Senate Bill 850/House Bill 539 among their provisions require entrance-level and annual in-service training for police officers in the proper use of electronic control devices.

## Vehicle Laws

Speed Monitoring Systems - SB 277. Senate Bill 277 expands statewide the authorization for the use of speed monitoring systems in school zones. In school zones, local law enforcement agencies or their contractors may issue citations or warnings to vehicle owners for speeding at least 12 miles per hour above the posted speed

limit. The maximum fine for a citation is \$40. The bill allows Montgomery County to retain its authority to use speed monitoring systems in specified residential areas, although the speed tolerance is raised from 10 to 12 miles per hour.

Any fines or penalties collected by the District Court from school zone speed monitoring systems are remitted to the Comptroller and distributed to various transportation-related funds. Fines or penalties that are collected from uncontested citations accrue to the local governments that have implemented the speed zone systems. The bill authorizes local jurisdictions to use any revenues generated from school zone automated speed enforcement in excess of the amount necessary to recover implementation costs solely for public safety purposes, including pedestrian safety programs. However, if after recovering implementation costs the balance of revenues generated exceeds 10% of the local jurisdiction's total revenues for the fiscal year, then any amount above 10% must be remitted to the Comptroller and deposited in the general fund of the State.

Senate Bill 277 also authorizes State and local law enforcement agencies or their contractors to issue citations or warnings for speeding at least 12 miles per hour above the posted speed limit in highway work zones that are set up on expressways or controlled access highways where the speed limit is 45 miles per hour or greater.

### **Miscellaneous**

Commercial Real Property - Action to Abate Drug Nuisance - Repeal of Prior Notice Requirement - SB 159/HB 99. Under the State's drug-related nuisance abatement statute, a "nuisance" is a property that is used (1) by persons who assemble for the specific purpose of illegally administering a controlled dangerous substance; (2) for the illegal manufacture or distribution of a controlled dangerous substance or controlled paraphernalia; or (3) for the storage or concealment of a controlled dangerous substance in sufficient quantity to indicate an intent to manufacture, distribute, or dispense a controlled dangerous substance or controlled paraphernalia. A community association, State's Attorney, or city or county attorney or solicitor is authorized to bring an action to abate a nuisance when residential property is being used for certain illegal drug activities. A plaintiff must give the tenant and owner of record of commercial property 45 days' notice before bringing an abatement action. Senate Bill 159/House Bill 99 reduce the number of days of notice that must be given to the tenant and owner of commercial property before an action to abate a drug nuisance may be filed. In Baltimore City, the prior notice period is shortened from 45 days to 15 days; in all other jurisdictions, 30 days' notice must be given.

Secondhand Precious Metal Object Dealers and Pawnbrokers - Electronic Reporting - SB 597. Senate Bill 597 requires secondhand precious metal object dealers, including pawnbroker dealers, to submit required transaction information to law enforcement units electronically, rather than by paper record. The Governor's Office of Crime Control and Prevention (GOCCP) may authorize the primary law enforcement unit to require paper reporting from dealers in its jurisdiction for one year if the law enforcement unit does not have an electronic reporting system in place. Conversely, GOCCP may authorize a local law enforcement unit to receive records electronically even if the primary law enforcement unit cannot do so. By December 1, 2009, GOCCP, in consultation with the Department of Labor, Licensing, and Regulation and local law enforcement units, must report to specified legislative committees regarding the appropriate scope of licensing and reporting requirements for the sale of secondhand items in Maryland by all participants in the secondhand industry.