

# SUMMARY OF SB 236 SUSTAINABLE GROWTH AND AGRICULTURAL PRESERVATION ACT OF 2012

(Prepared by MACo 2012-01-26)

## ORIGIN OF THE BILL

During the 2011 Session, Governor Martin O'Malley announced a proposal that would have prohibited developments of 5 or more housing units on septic systems. Legislation was introduced later in that Session to codify the Governor's proposal [HB 1107/SB 846]. Based on numerous concerns raised about the proposal, the bills did not pass and instead a task force was formed to study the issue. The Task Force on Sustainable Growth and Wastewater Disposal met over the summer and fall of 2011 and released a set of recommendations to Governor O'Malley in December. SB 236 is based partly on the recommendations of that Task Force.

## SUMMARY OF THE BILL OF THE BILL

### MDE Subdivision Approval Authority

The bill grants the Maryland Department of the Environment (MDE) authority to approve residential subdivision plats for both "major" and "minor" subdivisions. The bill uses each local government's definition for major and minor subdivisions as of January 1 of this year. Starting at the end of 2012, MDE may only approve minor subdivisions on septic or any subdivision on public sewer unless a local government has adopted the "four tier" system in its comprehensive plan.

There are two grandfathering provisions in the bill for projects "in the pipeline." Both are contingent upon filing the subdivision application and recording the subdivision plat by certain dates. The bill also authorizes MDE to establish nutrient offset requirements for all new subdivisions.

### Four Tier System

If a local government has adopted the four tier system as part of its comprehensive plan, the local government may have some additional flexibility to have major subdivisions on septic.

### *TIER I*

Tier I areas are Priority Funding Areas (PFAs) not subject to comment by the Maryland Department of Planning (MDP). All new subdivisions in a Tier I area must be on public sewer.

### *TIER II*

Tier II areas are locally designated growth areas needed to satisfy demand for development or PFAs subject to MDP comment. Tier II allows minor subdivisions on septic systems.

### *TIER III*

Tier III areas are zoned for large lot rural development, not planned for sewer, and not targeted for agricultural or natural resource protection. Tier III allows minor subdivisions on septic systems, or major subdivisions on septic systems if: (1) the subdivision has been approved by the local planning board; and (2) MDE has determined, in a one-time consultation with MDP, that the local government's Tier III and IV areas meet the applicable criteria.

### *TIER IV*

Tier IV areas are (1) planned or zoned for land preservation or resource conservation; (2) are areas dominated by agricultural or natural lands; or (3) are Rural Legacy areas, Priority Preservation Areas, or lands marked by the State for agricultural or ecological preservation. Tier IV allows minor subdivisions on septic systems. Major subdivisions on septic systems are also allowed if the zoning in the cumulative Tier IV area provides a minimum yield of one home per 25 acres.

### *CONSULTATION WITH MDP*

MDE must make a one-time consultation with MDP for advice when a local government submits its first subdivision plat to ensure that the local government's Tier III and IV areas meet the required criteria and, if applicable, is consistent with the local government's municipal growth element, priority preservation element, and water resources element. Another one-time consultation is required when the local government amends its Tier III or Tier IV area.

### Subdivision Restrictions on Minor Subdivisions

The bill includes prohibitions against further subdividing minor subdivisions or remainders unless the land is in a PFA and designated for public sewer within 10 years. Land may still be subdivided in stages if the number of total lots, plats, and building sites are fixed in the initial subdivision.

### Use of Community Systems and Shared Facilities

The bill allows the use of community systems or shared facilities in certain instances but requires the system be under the control of a governmental entity or public corporate entity, such as Maryland Environmental Services. MDE must establish nutrient offset requirements for shared facilities and community systems.

### **TASK FORCE RECOMMENDATIONS NOT IN THE BILL**

Besides the tier proposal to limit septic systems, the Task Force also recommended increasing the Chesapeake Bay Restoration Fee (BRF or "flush tax") and requiring all new septic systems or replacement septic systems that were enhancing capacity to be equipped with best available technology (BAT) for nitrogen removal. Neither of these recommendations is in SB 236. The

BRF increase is in a separate Administration bill, SB 240. The BAT provisions will likely be implemented through regulation.

#### **REFERENCES TO “LAND USE ARTICLE”**

One confusing aspect of SB 236 is that it references both the existing land use article, 66B, and a separate “Land Use Article.” The Land Use Article is a revised and recompiled version of Article 66B and Article 28 and will be introduced as separate legislation this Session. This is part of an update process called code revision where the old and poorly organized versions of the 1957 Code Articles (the black code books) are replaced with a better organized and more readable version (the maroon code books). This Session, local land use provisions will be re-codified in the new Land Use Article and the Articles 66B and 28 will disappear. Code revision is not supposed to make substantive changes to the law, only better organize and present it and code revision bills, like the Land Use Article, typically pass as a matter of course. The provisions of SB 236 are drafted to both versions of the Articles, in anticipation of the change.