

ADMINISTRATION BILLS

SB 264 – State Employees – Collective Bargaining – Negotiations – “The Fair Share Act”

While an exclusive representative bargains for all members of a particular bargaining unit, only a portion of these individuals pays union membership dues to the representing organization. A service fee is paid by an employee to his or her bargaining unit’s exclusive representative to offset costs attributable to the collective bargaining process. Generally, this fee is less than the fee charged for union dues. This bill applies to the 32,427 State employees in nine Executive Branch bargaining units with exclusive representatives. Union membership dues for State employees typically range from \$9 to \$15 per biweekly pay period but exceed \$19 per pay period for certain unions. Twenty-three states either require state employees to pay a service fee or permit the fee to be mandated through collective bargaining.

This Administration bill authorizes the State to collectively bargain with the exclusive representative of a bargaining unit for service fees from State employees who are not members of that exclusive representative. Thus, employees who are in a bargaining unit but are not members of any employee organization must pay the service fee if a fee is successfully negotiated. Likewise, under the bill, employees who are dues-paying members of an employee organization that is not the exclusive representative must also pay any negotiated service fee. An employee who has religious objections to paying the service fee will be allowed instead to pay an amount not to exceed the service fee to a charitable organization, while furnishing written proof of such a payment. The bill does not apply to the State’s public four-year higher education institutions or Baltimore City Community College. The bill takes effect July 1, 2009.

SB 271 / HB 312 - Aquaculture - Shellfish - Leasing

In its 2007 interim report, the Oyster Advisory Commission found that the greatest opportunity for expanding the economic production of oysters in Maryland is through privatization and aquaculture. The Commission is a diverse group of scientists, watermen, anglers, businessmen, economists, environmental advocates, and elected officials. At the Governor’s request, the Maryland Department of Agriculture (MDA), in consultation with the Maryland Department of Natural Resources (DNR), the Maryland Department of the Environment (MDE), the Department of Health and Mental Hygiene (DHMH), the Maryland Aquaculture Coordinating Council, and the Board of Public Works, developed and published the *Maryland Shellfish Aquaculture Plan: Enhancing the Environment through Private Sector Investment* in September of 2008. Several of the plan’s recommendations about how to develop a sustainable shellfish industry while creating opportunity for prospective shellfish growers to establish aquaculture businesses in Maryland waters, as well as recommendations from the Oyster Advisory Commission, were implemented in Senate Bill 271/House Bill 312.

Specifically, the bills require DNR to establish, via regulation in consultation with the Oyster Advisory Commission, public shellfish fishery areas in the Chesapeake Bay on which leasing is prohibited. The bills establish, via regulation, Aquaculture Enterprise Zones (AEZ) for aquaculture leasing and submerged land aquaculture leases by October 1, 2009. In addition to a lease within an AEZ, there are also submerged land and demonstration leases. Submerged land

leases are any land lying beneath the waters of the State. Demonstration leases are of submerged land for the purpose of demonstrating the ecological benefits of growing shellfish or for research or education. These leases may not be located within 50 feet of a shoreline or pier without permission of the riparian owner; 150 feet of a public shellfish fishery, registered pound net site, oyster sanctuary or reserve, or federal navigation channel; in any waterbody less than 300 feet wide, or in an SAV protection zone.

AEZs are areas of the bay pre-approved for the leasing of submerged land or the water column. The bills also define a submerged aquatic vegetation (SAV) protection zone as an area of SAV with a density greater than 10% as mapped in aerial surveys in one or more of the three years preceding the designation of an AEZ or an application for an aquaculture, submerged land, or demonstration lease. AEZs may not be located within 50 feet of a shoreline or pier without permission of the riparian owner; 150 feet of a public shellfish fishery, registered pound net site, oyster sanctuary or reserve, or federal navigation channel; in any waterbody less than 300 feet wide, or in an SAV protection zone. DNR must consult with MDE and the Wetlands Administrator of the Board of Public Works (BPW) on the establishment of AEZs. DNR must consider how an AEZ may conflict with other uses and hold public hearings in specified areas before adopting regulations. The bill exempts a leaseholder in an AEZ from obtaining water quality approval or a tidal wetlands permit from MDE. The bills set aside 25% of each AEZ for active tidal fish licensees for the first two years. A person who wishes to obtain a water column lease outside of an AEZ must apply for a tidal wetlands license through MDE. MDE, in consultation with BPW, is required to adopt regulations streamlining the processing of water column leases by October 1, 2009.

The bills authorize DNR to issue aquaculture demonstration leases for up to five acres of submerged land to educational and non-profit entities for educational, conservation, or ecological purposes. Shellfish in demonstration lease areas may not be harvested for commercial or consumption purposes.

In the Atlantic Coastal Bays, DNR is authorized to establish submerged land areas that are pre-approved, not approved, or may be approved for leasing, with consideration being given to potential conflicts with other uses. Setbacks from the Assateague Island National Seashore are required, and will be established via regulation. DNR is required to continue to monitor SAV in the Atlantic Coastal Bays to reevaluate and determine an appropriate baseline SAV level, and establish an appropriate SAV Protection Zone. The bill prohibits the use of hydraulic escalator dredge to harvest shellfish in the Atlantic Coastal Bays.

The Department may deny a lease application for reasonable cause and include any conditions in a lease. If an applicant for an aquaculture lease within an AEZ or a submerged land lease meets the necessary requirements, the Department shall survey the area and issue the lease. An applicant for a submerged land lease shall mark the proposed area with a stake; and the Department shall advertise the application, and notify the property owners directly in front of the proposed activity as well as the Chair of the Oyster Committee in the county in which the proposed activity is located. The bills provide for protest provisions for proposed submerged land leases, as well as require the Department to hold public informational meetings upon request.

Aquaculture and submerged land leases are limited to a term of 20 years, for any size area as long as it is actively used (excluding demonstration leases), and at an annual rental rate and with an aquaculture development surcharge determined by DNR. Proceeds from the rental rates will be credited to DNR's Fisheries Research and Development Fund; and proceeds from the aquaculture development surcharge will go to MDA for development of, and training and grants for shellfish aquaculture. Active use requirements include annually planting at least ¼ of the leased area at a minimum density of one million shellfish seed per acre, or any other requirements established by the Department. The Department may waive the active use requirements on a showing that conditions not present at the time of lease execution prevent active use. Existing leaseholders have the right of first refusal with respect to future leases of the leased area. All leaseholders must properly mark each lease area and comply with regulations established by DHMH in consultation with MDE to carry out the mandate of the National Shellfish Sanitation Program (NSSP). Leaseholders must also submit a report to DNR on the use of their lease by January 1 annually or risk termination of the lease.

Leaseholders may not place items on SAV; plant or harvest shellfish within 500 yards of any stationary blind or blind site that is occupied and being used for hunting migratory waterfowl; sublease; transfer a lease without prior Departmental approval; or harvest shellfish between sunset and sunrise. Shellfish planted or harvested from a lease is subject to inspection by the Department; and a person may not import or possess within the State shellfish taken from waters outside the waters of the State for planting in the waters of the State without the approval of the Department.

The bills authorize the Department to sell or remove seed oysters from oyster seed areas if it is done under disease protocols, as well as authorizing the State to sell unlimited amounts of oyster seed or spat. Previously, the State could not sell more than 50% of seed oysters in excess of one million bushels produced annually in seed areas.

To enable these changes to existing shellfish laws, the bills repeal antiquated lease law, including restrictions on leasing in certain counties and certain areas of certain counties.

There are provisions to continue to allow existing leases, so long as those leases are adequately proven to be actively used and comply with NSSP requirements. There is also uncodified language expressing legislative intent to continue to establish Maryland as a leading producer of aquaculturally grown, high quality shellfish. The legislation takes effect June 1, 2009.

[SB 273 / HB 294 - Smart, Green, and Growing - Local Government Planning - Planning Visions](#)

These Administration bills replace the State's eight existing planning visions with 12 new visions that address quality of life and sustainability, public participation, growth areas, community design, infrastructure, transportation, housing, economic development, environmental protection, resource conservation, stewardship, and implementation approaches. The bill requires local planning commissions to take these visions into consideration when developing specified planning documents.

Local governments enact adequate public facility ordinances (APFOs) to ensure that infrastructure necessary to support proposed new development is built concurrently or prior to the 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 submit a report to the Maryland Department of Planning (MDP) by July 1 every two years if an APFO results in a restriction in a priority funding area (PFA), with the first report submitted by July 1, 2010. 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 every two years on the statewide impact of APFOs, with the first report submitted by January 1, 2011. The report must 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.

The bills also authorize local jurisdictions to establish transfer of development rights (TDR) programs within PFAs, to purchase land for public facilities in PFAs. Generally, under TDR programs, residents who occupy certain areas in a county (sending areas) are precluded from selling their land to developers. In exchange, these landowners are awarded TDRs which may be sold on the open market to developers. These rights are applied by developers to designated receiving areas (areas where the county is attempting to foster development). Under the bills, proceeds from the sale of development rights in PFAs must be used for site acquisition and facility construction in PFAs; however, if the public facility is a school or educational facility, the proceeds may be used only for land acquisition. In addition, the bills prohibit development rights associated with land owned by a local jurisdiction on October 1, 2009, from being sold or transferred under the bills after the bills take effect on October 1, 2009.

SB 276 / HB 295 - Smart, Green, and Growing - Annual Report - Smart Growth Goals, Measures, and Indicators and Implementation of Planning Visions

These Administration bills make the annual report requirement apply to charter counties and Baltimore City so that all jurisdictions' local planning commissions must submit an annual report to local legislative bodies by July 1. The annual report must state which ordinances or regulations were adopted or changed to implement the State's planning visions. By July 1, 2009, and after consultation with specified entities, the Task Force on the Future for Growth and Development must recommend measure and indicator information that should be collected. Local jurisdictions submitting proof of less than 50 building permits for new residential units being issued in a given year are exempt from providing measure and indicator information in their annual reports. Exemptions concerning submittal of annual report information and establishing land use goals are provided for municipal corporations located entirely within a PFA.

As to the measures and indicators, Senate Bill 276/House Bill 295 list the following items 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.

The bills specify that a statewide land use goal should be established to increase the current percentage of growth located within PFAs and to decrease the percentage of growth located outside PFAs. Local jurisdictions have to develop a percentage goal toward achieving the statewide land use 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. The Maryland Department of Planning (MDP) is authorized to adopt regulations. 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. The bills take effect June 1, 2009.

SB 278 / HB 315 - Greenhouse Gas Emissions Reduction Act of 2009

These Administration bills require the State to develop plans, adopt regulations, and implement programs to reduce greenhouse gas (GHG) emissions 25% from 2006 levels by 2020. The Maryland Department of the Environment (MDE) is required to implement various measures designed to ensure that the GHG reductions produce economic benefits for the State and do not adversely affect specified communities or economic interests. MDE must publish a GHG emissions inventory for the year 2006, a "business as usual" projection of GHG emissions for the year 2020, and a triennial inventory update beginning in 2011. The bills also require an academic study of the economic impact of the GHG emissions reductions on the manufacturing sector, with oversight provided by a newly created task force. Finally, the bill requires several reports on the need for, and progress toward, the 2020 GHG reduction goal and any additional goal later prescribed by law. The final GHG reduction plan may not require emissions reductions for the State's manufacturing sector or otherwise impose additional costs to the sector that are not already required under current law or associated with the Regional Greenhouse Gas Initiative. In developing and implementing the plan, MDE must consider the impact on rural communities of any transportation-related measures, consider whether the measures would result in an increase in electricity costs to consumers in the State and, consider the impact of the plan on the ability of the State to attract, expand, and retain commercial aviation services and to conserve, protect, and retain agriculture. MDE must ensure that the GHG reductions do not directly cause a loss of existing manufacturing jobs in the State.

<u>Key Dates under the Greenhouse Gas Emissions Reduction Act of 2009</u>	<u>Action</u>
June 1, 2011	Publish 2006 inventory and 2020 business as usual projection
December 31, 2011	MDE deadline to submit proposed reduction plan to Governor and General Assembly, following public workshops
Calendar 2011	MDE to publish 2011 inventory
January 1, 2012	MDE deadline to approve manufacturer GHG reduction plans for voluntary early action credits
December 31, 2012	MDE deadline to adopt final reduction plan
Calendar 2014	MDE to publish 2014 inventory
October 1, 2015	Deadline for submission of independent academic study of economic impact on manufacturing sector
October 1, 2015	MDE deadline for submission of report on progress toward 2020 reduction goal and other recommendations and analyses
December 31, 2016	Termination of the 2020 reduction goal
Calendar 2017	MDE to publish 2017 inventory
October 1, 2020	MDE deadline for submission of report on progress toward 2020 reduction goal, and toward achieving reductions needed by 2050 based on contemporary science
December 31, 2020	State deadline to reduce GHG emissions by 25% below 2006 level, unless otherwise specified
Calendar 2020	MDE to publish 2020 inventory
Calendar 2023	MDE to publish 2023 inventory
October 1, 2025	MDE deadline for submission of report on progress toward any further reduction goals required, if applicable, and toward achieving reductions needed by 2050 based on contemporary science

The goal to reduce GHG emissions 25% below 2006 levels by 2020 terminates on December 31, 2016. The legislation takes effect October 1, 2009.

[SB 280 / HB 297 - Smart, Green, and Growing - Smart and Sustainable Growth Act of 2009](#)

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 from a local comprehensive plan even if it did not strictly conform to the comprehensive plan. However, the broad language of the majority opinion was seen by many to mean that local land use ordinances and regulations need not be consistent with the locally adopted comprehensive plan. This ambiguity had the potential to undermine Article 66B and the central role that comprehensive plans play in State land use laws and associated decisions regarding specific development projects.

These Administration bills 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 Priority Funding Areas (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. The legislation takes effect July 1, 2009.