

Department of Legislative Services
Maryland General Assembly
2024 Session

FISCAL AND POLICY NOTE
Third Reader

Senate Bill 274

(Chair, Education, Energy, and the Environment
Committee)(By Request - Departmental - Planning)

Education, Energy, and the Environment

Environment and Transportation

**Charter Counties - Comprehensive Plans - Affirmatively Furthering Fair
Housing**

This departmental bill establishes that charter counties (including Baltimore City) and certain code counties have a duty to affirmatively further fair housing through their housing and urban development programs. The bill also requires the counties to include an assessment of fair housing in the housing element of a comprehensive plan enacted or amended on or after January 1, 2025. The Maryland Department of Planning (MDP) and the Department of Housing and Community Development (DHCD) must provide specified technical assistance upon request.

Fiscal Summary

State Effect: The bill's requirements can be implemented with existing resources. Revenues are not affected.

Local Effect: The bill is not expected to have a direct, material impact on local government finances.

Small Business Effect: MDP has determined that the bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment.

Analysis

Bill Summary:

Comprehensive Plans – Affirmatively Furthering Fair Housing

The bill establishes that charter counties (including Baltimore City) – and, pursuant to §§ 1-401(b)(1) and 1-402 of the Land Use Article, code counties that exercise land use powers under the Express Powers Act (Title 10 of the Local Government Article) – have a duty to affirmatively further fair housing through their housing and urban development programs. The housing element of a charter or affected code county’s comprehensive plan that is enacted or amended on or after January 1, 2025, must include an assessment of fair housing to ensure that the county is affirmatively furthering fair housing. On request of a county, MDP, in consultation with DHCD, must provide technical assistance for the purpose of developing the housing element of the comprehensive plan. The bill does not require a county to take, or prohibit a county from taking, a specific action to affirmatively further fair housing.

“Affirmatively further fair housing” means to take meaningful actions, in addition to actions aimed at combating discrimination, to (1) overcome patterns of segregation and (2) foster inclusive communities free from barriers that restrict access to housing and opportunity based on protected characteristics. Affirmatively further fair housing includes to take meaningful actions that, taken together (1) address significant disparities in housing needs and access to opportunity; (2) replace segregated living patterns with truly integrated and balanced living patterns; (3) transform racially and ethnically concentrated areas of poverty into areas of opportunity; and (4) foster and maintain compliance with civil rights and fair housing laws. “Meaningful action” means a significant action that is designed and can be reasonably expected to achieve a material positive change by, for example, increasing fair housing choice or decreasing disparities in access to opportunity.

Specified Assessments/Analyses Must Be Incorporated

A charter county that completed or revised an Assessment of Fair Housing under the federal Department of Housing and Urban Development’s (HUD) most recently published Affirmatively Furthering Fair Housing Rule, or an analysis of impediments to fair housing prior to the Affirmatively Furthering Fair Housing Rule, must incorporate the assessment or analysis into the housing element of the county’s comprehensive plan, by reference, as described in the section above. This provision applies only to a comprehensive plan that is amended on or after January 1, 2024.

Current Law: Local jurisdictions must enact, adopt, amend, and execute a comprehensive plan; the plan must include provisions and elements specified in statute. At least once every

10 years, each planning commission must review the comprehensive plan and, if necessary, revise or amend the plan to include all required elements and visions.

Chapters 713 and 714 of 2019 require that comprehensive plans include a housing element that addresses the need for affordable housing within the jurisdiction, including specified workforce housing and low-income housing.

Comprehensive plan requirements applicable to charter counties (including Baltimore City) and code counties that exercise land use powers under the Express Powers Act are established separately, in a different part of the Land Use Article than the requirements applicable to remaining counties and municipalities. Chapters 751 and 752 of 2021 established, for the remaining counties and municipalities, under their housing element requirements, the same affirmatively furthering fair housing provisions that this bill establishes for charter and certain code counties, including the duty to affirmatively further fair housing through the jurisdictions' housing and urban development programs.

Chapters 751 and 752 also, among other things, require DHCD to (1) administer its programs and activities related to housing and community development to affirmatively further fair housing and (2) require political subdivisions and housing authorities to affirmatively further fair housing.

Background:

Chapter 751 and 752 Resources

MDP's website includes a [page](#) with background information regarding Chapters 751 (HB 90) and 752, including a [resource page](#) to assist counties and municipalities in complying with the law.

Federal Affirmatively Furthering Fair Housing Rule

The Fair Housing Act of 1968 declared that it is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States and, among other things, required that HUD programs and activities be administered in a manner that affirmatively furthers the policies of the Act.

HUD's recent implementation of the Fair Housing Act's mandate has included the 2015 implementation, and subsequent suspension and repeal (in 2018 and 2020, respectively), of a 2015 Affirmatively Furthering Fair Housing Rule, and the implementation of a 2021 interim final rule ("Restoring Affirmatively Furthering Fair Housing Definitions and Certifications"). The 2021 interim rule does not require any particular fair housing planning

process, but HUD program participants (recipients of federal funding) must certify that they will meet the Fair Housing Act’s affirmatively furthering fair housing mandate.

On February 9, 2023, HUD published a *proposed* affirmatively furthering fair housing rule (the final version of the rule is not yet published), intended to replace the 2021 interim rule, which builds on and refines the 2015 rule, to further the objective of requiring program participants to proactively take meaningful actions to overcome patterns of segregation, promote fair housing choice, eliminate disparities in opportunities, and foster inclusive communities free from discrimination. The proposed rule requires program participants to submit an equity plan to HUD every five years – a modified, streamlined version of an assessment of fair housing performed under the 2015 rule. Prior to the 2015 rule, HUD required program participants to prepare an analysis of impediments to fair housing choice.

Additional Information

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

Designated Cross File: HB 17 (Chair, Environment and Transportation Committee)(By Request - Departmental - Planning) - Environment and Transportation.

Information Source(s): Anne Arundel, Dorchester, Frederick, Harford, Montgomery, Prince George’s, and Wicomico counties; Department of Housing and Community Development; Maryland Department of Planning; U.S. Department of Housing and Urban Development; Department of Legislative Services

Fiscal Note History: First Reader - January 23, 2024
km/sdk Third Reader - February 13, 2024

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: **Charter Counties - Comprehensive Plans - Affirmatively
Furthering Fair Housing**

BILL NUMBER: SB0274

PREPARED BY: Maryland Department of Planning

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

 X WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESS

OR

 WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

There is no economic impact on small businesses in this proposal. Targeted towards charter counties and the inclusion of fair housing in their comprehensive plans.