Department of Legislative Services

Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 214 (Chair, Environmental Matters Committee)(By Request - Departmental - Agriculture)

Environmental Matters Education, Health, and Environmental Affairs

---

Maryland Agricultural Land Preservation Foundation - Critical Farms Fund and Program

---

This departmental bill modifies and clarifies implementation of the Maryland Agricultural Land Preservation Foundation's (MALPF) Critical Farms Program. MALPF is authorized to acquire and hold, by gift, purchase, devise, bequest, or grant real and personal property, or any interest therein, to implement the program. A Critical Farms Fund is established to finance the acquisition of agricultural land preservation easements on critical farms via the purchase of (1) easement options under specified authorities; and (2) fee simple interests in land to be subsequently resold with an agricultural land preservation easement in place. The fund is a continuing, nonlapsing revolving fund.

Fiscal Summary

State Effect: Potential increase in special and federal fund revenues and special fund expenditures in FY 2012 and future years due to the implementation of the Critical Farms Program. This estimate assumes an anticipated MALPF position is established in FY 2011, regardless of the bill, and that any program work is absorbed by that position.

Local Effect: The bill may result in an increase in workload for local agricultural land preservation staff to target properties and implement the program.

Small Business Effect: The Maryland Department of Agriculture (MDA) has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment, as discussed below.

Analysis

Bill Summary: The bill:

- deletes the Maryland Department of Planning's (MDP) responsibility for establishing a program and developing regulations;
- deletes a provision requiring MALPF and MDP to examine and identify specified easement acquisition options;
- shifts authority to determine if a property qualifies for the program from a county to MALPF, with county approval;
- clarifies MALPF must develop specified criteria for counties in consultation with MDP;
- requires the program to be separate and independent from the standard MALPF program;
- exempts property conveyed under the program from a specified excess personal property definition, excess real property requirements, and requirements governing the sale and transfer of property in the State Finance and Procurement Article;
- authorizes the Governor to include in the annual budget an appropriation to the Critical Farms Fund consistent with the Agricultural Stewardship Act of 2006 (Chapter 289); and
- requires MALPF to submit a specified report to the General Assembly if the Governor's proposed budget increases the Critical Farms Fund balance beyond $16.0 million.

The bill authorizes (1) Maryland Agricultural Land Preservation Funds to be used for costs associated with easement acquisitions approved by MALPF through the program; and (2) MALPF's Farmland Preservation Partnership Program to acquire easements via the program.

MALPF, in consultation with the Department of General Services (DGS), must develop a method for valuating an option to purchase an easement on property under the program and a procedure for purchasing an easement option from the owner or purchaser of a critical farm under the program.

The easement acquisition value of a property participating in the program must be valued as if it was not subject to any MALPF restriction and in accordance with the valuation requirements of the specific State easement program to which the easement may be sold. Participants must reimburse MALPF for the cost of the easement option after selling the easement, and MALPF must deposit these funds into the Critical Farms Fund. The bill authorizes MALPF to be reimbursed for expenses associated with the acquisition of an easement option.

If property is acquired with a fee simple interest, the property may be disposed through the program via sale, lease, exchange, or transfer. However, a perpetual agricultural land preservation easement must be imposed on all disposed property. All proceeds from the disposition of such property must be deposited in the Critical Farms Fund. MALPF is authorized to submit a disposition plan for property to the Board of Public Works when acquiring a fee simple interest in that property under the program. MALPF may require individuals who purchase land from the program to reimburse the program for specified expenses, but such funds must be deposited into the Critical Farms Fund.

Current Law: Chapter 155 of 2005 requires MALPF and MDP to establish a program to provide interim or emergency financing for the acquisition of agricultural preservation easements on critical farms that would otherwise be sold for nonagricultural uses. MALPF and MDP must develop criteria to be used by counties to consider when determining whether a property qualifies for the program. Chapter 155 outlines evaluation criteria and requires MALPF and MDP to examine options for easement acquisition on critical farms and identify those that will enable the Critical Farms Program to succeed. Explicit statutory authority does not exist for MALPF to use the Maryland Agricultural Land Preservation Fund for critical farm purposes; it may only be used for costs associated with MALPF staffing and administration, for reasonable expenses incurred by members of the MALPF board, and for consideration in the purchase of agricultural land preservation easements.

Chapter 448 of 2007 authorized MALPF to provide grants to counties to facilitate the program, subject to conditions jointly agreed upon by MALPF and the county.

The Agricultural Stewardship Act of 2006 (Chapter 289), among many other things, expressed the General Assembly's intent that (1) the Governor provide $20.0 million annually in general funds for MALPF over and above any other funding received from other sources; (2) MALPF be permitted to use this additional funding for existing programs, the Critical Farms Program, a Priority Preservation Areas Program, or an installment purchase agreement program; and (3) MALPF funds not used in a given fiscal year remain available in subsequent years.

MALPF's Farmland Preservation Partnership Program, established by Chapter 36 of 2010, seeks to form partnerships with public and private entities for the purpose of purchasing agricultural preservation easements on qualifying farms. Easements acquired through this program are not subject to MALPF's ranking, valuation, or development restrictions, except as determined by MALPF's board of trustees.

Background: MALPF, which was established by the General Assembly in 1977 and is part of MDA, purchases agricultural preservation easements that restrict development on prime farmland and woodland in perpetuity. In addition to funding from the State transfer tax, MALPF is funded with agricultural land transfer taxes, general obligation bond funds, local matching funds, and the U.S. Department of Agriculture's Federal Farmland Protection Program. MALPF settled on its first purchased easement in October 1980. As of January 2011, MALPF had cumulatively purchased or had a pending contract to purchase conservation easements on 2,080 farms covering 283,523 acres.

In accordance with Chapter 155 of 2005, MALPF and MDP submitted a report in January 2007 providing Critical Farms Program funding options and proposed bill language. The report recommended legislation to fully authorize MALPF to create and implement a program that:

- uses easement option contracts for emergency and interim or bridge financing and for fee simple purchases of critical farms and their resale, with an easement in place, to preserve agricultural land critical to the objectives of individual counties' and the State's land preservation objectives;
- acts as quickly as possible to protect highly productive farms in strategic locations at high risk of being lost to nonagricultural use in cooperation with county partners;
- has a revolving account which is allocated $4.0 million annually over four years;
- is allocated additional funds in response to a documented need based on increased demand and/or increased acquisition costs; and
- has a permanent MALPF staff position to develop, implement, and administer the program.

This bill generally implements the report's recommendations.

MDA advises that farming property is most at risk of being sold for development when its ownership is in transition. A property could be sold to settle an estate, fund a retirement, fund ongoing health care expenses, settle pressing debts, or simply leave farming. In many cases, landowners are not interested in selling an agricultural preservation easement to the State or are not in a position to do so. The program would enable MALPF to provide interim or emergency financing to a landowner wishing to sell an easement under a time constraint. MDA advises that, to qualify as critical, a property must be at high risk for being converted to nonagricultural uses and meet the State and county criteria for importance based on its size, highly productive soils, and strategic location.

State Revenues: The bill authorizes the solicitation of funds from other public and private sources on a project-specific basis for critical farm purchases. Therefore, special and federal fund revenues increase to the extent public and private contributions are made for critical farm purchases. Special fund revenues also increase to the extent the Critical Farms Fund is reimbursed from program participants for the cost of easement options. Furthermore, special fund revenues increase to the extent property is purchased and resold, and the subsequent resale price exceeds the purchase price plus the value of the easement. Under the bill, the difference would go to the Critical Farms Fund.

State Expenditures: The bill authorizes MALPF to initiate the program, which will involve acquiring and processing agricultural easement options (and potentially land in fee simple) and ultimately acquiring and monitoring new easements. Therefore, special fund expenditures increase to the extent critical farm acquisitions are made. MALPF can absorb any additional legal and transactional expenses associated with critical easements and a small marginal impact is anticipated on MALPF's easement monitoring workload. While the bill may increase MALPF's workload, this analysis assumes that the additional work could be absorbed by an anticipated part-time contractual staff person, as described below.

In the fiscal and policy note for Chapter 36 of 2010 (SB 95), which established the Farmland Preservation Partnership Program, Legislative Services estimated that MALPF required a part-time contractual employee in fiscal 2011 and 2012 to develop potential projects, process partnership requests, and respond to program inquiries. Furthermore, it was assumed that this contractual position would be replaced with a full-time regular position in fiscal 2014. To date, MALPF has not been authorized to fill this contractual position to implement that law. If this position is not filled as anticipated, the need for additional staff to administer the Critical Farms Program would be justified.

DGS advises that the bill's requirements can be absorbed within existing budgeted resources.

Small Business Effect: While MDA advises the bill has no impact on the State's small farming businesses, Legislative Services advises that several small farming businesses that wish to sell an easement under a time constraint may benefit.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Baltimore, Garrett, and Montgomery counties; Maryland Department of Agriculture; Board of Public Works; Department of General Services; Department of Legislative Services

Fiscal Note History: First Reader - February 14, 2011
ncs/lgc

Analysis by: Amanda Mock

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Maryland Agricultural Land Preservation Foundation Easements – Critical Farms Fund and Program

BILL NUMBER: HB 214

PREPARED BY: Maryland Department of Agriculture

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

The proposed legislation will have no impact on small business in Maryland.