

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE

House Bill 722 (Montgomery County Delegation)
Environmental Matters

Montgomery County - Real Property - Enforceability of Recorded Covenants and
Restrictions - Agricultural Activities and Structures
MC 16-12

This bill prevents the enforcement of any provision of a recorded covenant or restriction recorded in the land records of Montgomery County that prohibits or restricts agricultural activity on agricultural property, the construction of an agricultural structure on agricultural property, or commercial or business activity to the extent that it has the effect of prohibiting or restricting the establishment and operation of agricultural activity on agricultural property. The bill does not limit local zoning regulations.

The bill applies retroactively and must be applied to and interpreted to affect any recorded covenants and restrictions whether recorded before or after the bill's effective date.

The bill takes effect June 1, 2012.

Fiscal Summary

State Effect: Special fund expenditures increase in FY 2013 to the extent that an increased number of landowners litigate with the Maryland Department of Agriculture (MDA) to determine whether MDA has the authority to approve or disapprove of a specified land use. The bill may also impact the value of conservation easements, and MDA may be required to reimburse federal funds already granted. Despite the bill's June 1, 2012 effective date, any fiscal impact is unlikely to occur in FY 2012.

Local Effect: Montgomery County revenues and expenditures are not anticipated to be affected.

Small Business Effect: Meaningful.

Analysis

Bill Summary: The bill defines “agricultural activity” as an activity included in the definition of “agriculture” or “farming” in the local zoning code. “Agricultural property” is defined as property located in Montgomery County that is encumbered by a recorded transfer of a development rights (TDR) easement established in accordance with a program for the TDR rights under Article 28 of the Maryland Code. The bill applies only to property encumbered with a TDR easement. The bill further defines “agricultural structure” as a structure, as defined in the local zoning code, that is used for an agricultural activity. Finally, “recorded covenants and restrictions” means any instrument of writing that is recorded in the land records of Montgomery County and that governs or legally restricts the use of real property.

Current Law/Background:

Definitions: As noted above, the bill refers to several words defined in the Montgomery County local zoning code. While the Montgomery County zoning code defines “farm,” it does not define “farming,” the language used in the bill.

“Agriculture” means the business, science, and art of cultivating and managing the soil, composting, growing, harvesting, and selling crops and livestock and the products of forestry, horticulture, and hydroponics; breeding, raising, or managing livestock, including horses, poultry, fish, game, and fur-bearing animals, dairying, beekeeping, and similar activities, and equestrian events and activities. Agriculture includes processing on the farm of an agricultural product in the course of preparing the product for market and may or may not cause a change in the natural form or state of the product.

“Farm” means a tract of land, with or without associated buildings, that is devoted to agriculture, as defined above.

“Structure” means an assembly of materials forming a construction for occupancy or use including, among others, buildings, stadiums, gospel and circus tents, reviewing stands, platforms, stagings, observation towers, radio and television broadcasting towers, telecommunications facilities, water tanks, trestles, piers, wharves, open sheds, coal bins, shelters, fences, walls, signs, power line towers, pipelines, railroad tracks, and poles.

The Agricultural Reserve and Transfer of Development Rights: TDR easements exist solely within Montgomery County’s Agricultural Reserve. Created in 1981 as an effort

to preserve the county's agricultural industry, the reserve provides 93,000 acres for farming. The stated intent of the reserve's zoning requirements is to promote agriculture as the primary land use. All agricultural operations are permitted at any time, and no agricultural use can be subject to a restriction on the grounds that it interferes with other uses permitted in the zone. However, any use that is not exclusively agricultural in nature is subject to specified zoning regulations.

To combat decreased land values caused by the reserve's restrictive zoning requirements, Montgomery County created the TDR program to compensate landowners. The program allows owners of undeveloped land to sell those development rights to owners of property outside the reserve. The purchasers of the development rights are then allowed to exceed the zoning restrictions on their own land. Once transferred, owners of land within the reserve are prohibited from developing the land, thus increasing the likelihood that the land will be used for agricultural purposes.

Maryland Agricultural Land Preservation Fund: Many State and local agencies buy conservation easements. One such program is the Maryland Agricultural Land Preservation Fund (MALPF), which was established by the General Assembly in 1977 and is part of MDA. It 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, 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 the end of fiscal 2011, MALPF had cumulatively purchased 2,043 farms covering 279,223 acres.

State Expenditures: Special fund expenditures increase in fiscal 2013 to the extent that additional landowners with both TDR and MALPF easements litigate to determine whether MDA has the ability to approve or disapprove of specified land use. The increase in special fund expenditures is not quantifiable as the extent to which the bill will increase litigation is unknown, though the economic benefits of unencumbered properties will incentivize land owners to litigate. Additionally, the federal government may rescind funding if a plot is used in such a way that it fails to meet MALPF's standards. In such cases, MALPF may lose future federal funding and be required to reimburse federal funds already granted.

The Maryland Department of Planning notes that the bill does not have a fiscal impact on the agency but would decrease the agency's ability to enforce various easements held for preservation and agricultural purposes on properties located in Montgomery County.

Small Business Effect: There is a meaningful impact for small businesses involved in agricultural activity on specified property within Montgomery County's Agricultural Reserve as the bill will prevent the enforcement of covenants or restrictions which may

restrict their agricultural-related business. For example, a land owner who wishes to build a fence to keep livestock may do so regardless of any covenant or restriction placed upon the property by a homeowners association.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Agriculture, Board of Public Works, Maryland Department of Planning, Judiciary (Administrative Office of the Courts), Montgomery County, Department of Legislative Services

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ncs/kdm

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