

# HOUSE BILL 861

M4, C5  
HB 1091/13 – ENV

4r2406  
CF SB 259

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By: **Delegates Fraser–Hidalgo, Arora, Barkley, Hixson, Kramer, Luedtke,  
McIntosh, Mizeur, and Waldstreicher**

Introduced and read first time: February 5, 2014

Assigned to: Environmental Matters

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## A BILL ENTITLED

1 AN ACT concerning

2 **Agriculture – Easements – Renewable Energy Generation Facilities**

3 FOR the purpose of requiring, on written request of a landowner in an application to  
4 purchase an easement, an easement to authorize the landowner to use the land  
5 subject to the easement for renewable energy generation under certain  
6 circumstances; requiring, on written request of a landowner, the Maryland  
7 Agricultural Land Preservation Foundation to amend an easement to authorize  
8 the landowner to use the land subject to the easement for renewable energy  
9 generation under certain circumstances; authorizing the Foundation to charge  
10 certain costs to cover certain expenses; requiring the Foundation to adopt  
11 certain regulations; providing for the application of this Act; declaring the  
12 intent of the General Assembly; defining a certain term; and generally relating  
13 to use of land under an easement held by the Maryland Agricultural Land  
14 Preservation Foundation.

15 BY repealing and reenacting, without amendments,  
16 Article – Agriculture  
17 Section 2–509  
18 Annotated Code of Maryland  
19 (2007 Replacement Volume and 2013 Supplement)

20 BY adding to  
21 Article – Agriculture  
22 Section 2–513(c)  
23 Annotated Code of Maryland  
24 (2007 Replacement Volume and 2013 Supplement)

25 BY repealing and reenacting, with amendments,  
26 Article – Agriculture  
27 Section 2–513(c)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Annotated Code of Maryland  
2 (2007 Replacement Volume and 2013 Supplement)

3 BY repealing and reenacting, without amendments,  
4 Article – Public Utilities  
5 Section 7–701(r)  
6 Annotated Code of Maryland  
7 (2010 Replacement Volume and 2013 Supplement)

8 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
9 MARYLAND, That the Laws of Maryland read as follows:

10 **Article – Agriculture**

11 2–509.

12 (a) (1) The Foundation shall follow the provisions under this section for  
13 the easement application process.

14 (2) The Foundation shall adopt regulations and procedures for:

15 (i) Evaluation of land for which application is made to sell an  
16 easement; and

17 (ii) Purchase of easements, including the purchase of easements  
18 under an installment purchase agreement.

19 (b) Regulations and procedures adopted by the Foundation for the purchase  
20 of easements shall provide that:

21 (1) One or more owners of land actively devoted to agricultural use  
22 may file an application with the county governing body requesting the purchase of an  
23 easement by the Foundation on the land owned by the applicants. The application  
24 shall include maps and descriptions of the current use of land for the proposed  
25 easement, and any other information required by the Foundation to evaluate the land  
26 for purchase of an easement.

27 (2) Upon receipt of an application to purchase an easement the local  
28 governing body shall refer the application and accompanying materials both to the  
29 agricultural preservation advisory board and to the county planning and zoning body.

30 (i) After the referral of an application, the agricultural  
31 preservation advisory board shall advise the county governing body as to whether or  
32 not the land for the proposed easement meets the qualifications established by the  
33 Foundation under subsection (d) of this section, and whether or not the advisory board  
34 recommends the purchase of the easement.

1 (ii) In making its recommendation, the county agricultural  
2 preservation advisory board shall:

3 1. Take into consideration criteria and standards  
4 established by the Foundation under this subtitle, current local regulations, local  
5 patterns of land development, the kinds of development pressures currently existing  
6 on the land for the proposed easement, State smart growth goals, and any locally  
7 established priorities for the preservation of agricultural land; and

8 2. Recommend for ranking any application that qualifies  
9 and meets the priorities established by the county governing body for the preservation  
10 of agricultural land.

11 (iii) After the referral of an application, the county planning and  
12 zoning body shall advise the local governing body as to whether or not the purchase of  
13 the easement is compatible with existing and approved county plans and overall  
14 county policy, and whether or not the planning and zoning body recommends the  
15 purchase of the easement.

16 (3) If either the agricultural preservation advisory board or the  
17 planning and zoning body recommends approval, the county governing body shall hold  
18 a public hearing on the application for the proposed easement. Adequate notice of the  
19 hearing shall be given to all owners whose land would be encumbered by the proposed  
20 easement and all owners whose land is contiguous to the land for the proposed  
21 easement.

22 (4) In deciding whether to approve the application, the county  
23 governing body shall receive the recommendation of the county agricultural  
24 preservation advisory board established under § 2-504.1 of this subtitle.

25 (5) (i) After the receipt of the application and the recommendations  
26 of the agricultural preservation advisory board and the county planning and zoning  
27 body, the county governing body shall render a decision as to whether or not the  
28 application shall be recommended to the Foundation for approval.

29 (ii) If the county governing body decides to recommend approval  
30 of the application, it shall notify the Foundation and forward to the Foundation:

31 1. The application and all accompanying materials,  
32 including the recommendations of the advisory board and county planning and zoning  
33 body;

34 2. A ranking of all applications based on:

35 A. The county governing body's locally established  
36 priorities as approved by the Foundation, which for purposes of enhancing competitive

1 bidding may include a system that ranks properties in ascending order with respect to  
2 the proportion obtained by dividing the asking price by the value of the easement; and

3 B. Guidelines adopted by the Foundation under  
4 subsection (d) of this section; and

5 3. A statement of the total current development rights  
6 on the land for the proposed easement, which shall include the total number of  
7 development rights that have been subdivided or transferred.

8 (iii) If the county governing body recommends denial of the  
9 application, it shall inform the Foundation and the applicants.

10 (c) Regulations and procedures adopted by the Foundation for the purchase  
11 and monitoring of easements may not require, in Garrett County or Allegany County,  
12 a natural gas rights owner or lessee to subordinate its interest to the Foundation's  
13 interest if the Foundation determines that exercise of the natural gas rights will not  
14 interfere with an agricultural operation conducted on land subject to an easement.

15 (d) Regulations and criteria developed by the Foundation relating to land  
16 which may be considered for purchase of an easement shall provide that:

17 (1) Subject to item (2) of this subsection, land shall meet productivity,  
18 acreage, and locational criteria determined by the Foundation to be necessary for the  
19 continuation of farming;

20 (2) As long as all other criteria are met, land that is at least 50 acres  
21 in size or is contiguous to other permanently preserved land shall qualify for purchase  
22 of an easement;

23 (3) The Foundation shall attempt to preserve the minimum number of  
24 acres which may reasonably be expected to promote the continued availability of  
25 agricultural suppliers and markets for agricultural goods;

26 (4) Land within the boundaries of a 10-year water and sewer service  
27 district may be considered for purchase of an easement only if that land is outstanding  
28 in productivity and is of significant size;

29 (5) Land may be considered for purchase of an easement only if the  
30 county regulations governing the land permit the activities listed under § 2-513(a) of  
31 this subtitle; and

32 (6) Land be evaluated for:

33 (i) Location in a priority preservation area of the county;

1 (ii) Soil and other land characteristics associated with  
2 agricultural and silvicultural productivity;

3 (iii) Agricultural and silvicultural production and contribution to  
4 the agricultural and silvicultural economy; and

5 (iv) Any other unique county considerations that support the  
6 goals of the program.

7 2-513.

8 (C) (1) IN THIS SUBSECTION, "TIER 1 RENEWABLE SOURCE" IS A  
9 SOURCE STATED IN § 7-701(R)(1), (2), (4), OR (9) OF THE PUBLIC UTILITIES  
10 ARTICLE.

11 (2) ANY EASEMENT ACQUIRED BY THE FOUNDATION AFTER  
12 SEPTEMBER 30, 2014, SHALL AUTHORIZE THE LANDOWNER TO USE THE LAND  
13 SUBJECT TO THE EASEMENT FOR THE GENERATION OF ELECTRICITY BY A  
14 FACILITY UTILIZING A TIER 1 RENEWABLE SOURCE PROVIDED THAT:

15 (I) THE FACILITY OCCUPIES NO MORE THAN 5% OR 5  
16 ACRES, WHICHEVER IS LESS AND NOT INCLUDING ANY TEMPORARY IMPACTS  
17 NECESSARY FOR CONSTRUCTION OF THE FACILITY, OF EACH PARCEL SUBJECT  
18 TO THE EASEMENT;

19 (II) THE FOUNDATION DETERMINES THAT AUTHORIZING  
20 THE LANDOWNER TO USE THE LAND SUBJECT TO THE EASEMENT FOR THE  
21 GENERATION OF ELECTRICITY BY A FACILITY UTILIZING A TIER 1 RENEWABLE  
22 SOURCE WILL NOT:

23 1. INTERFERE SIGNIFICANTLY WITH THE  
24 AGRICULTURAL USE OF THE LAND SUBJECT TO THE EASEMENT; AND

25 2. INTERFERE WITH STATE, LOCAL, OR FEDERAL  
26 RESTRICTIONS PLACED ON FUNDS USED BY THE FOUNDATION TO PURCHASE  
27 THE EASEMENT; AND

28 (III) FOR GENERATION OF ELECTRICITY FROM WIND, THE  
29 GENERATING STATION'S WIND TURBINES ARE NOT LOCATED:

30 1. IN AN AREA WHERE THE WIND TURBINES COULD  
31 CREATE DOPPLER RADAR INTERFERENCE FOR MISSIONS AT THE PATUXENT  
32 RIVER NAVAL AIR STATION; AND

1                                   **2. WITHIN A 46-MILE RADIUS MEASURED FROM**  
2 **LOCATION 38.29667N, 76.37668W.**

3                   **(3) ON THE WRITTEN REQUEST OF A LANDOWNER, THE**  
4 **FOUNDATION SHALL AMEND AN EASEMENT TO AUTHORIZE THE LANDOWNER TO**  
5 **USE THE LAND SUBJECT TO THE EASEMENT FOR GENERATION OF ELECTRICITY**  
6 **BY A FACILITY UTILIZING A TIER 1 RENEWABLE SOURCE PROVIDED THAT:**

7                                   **(I) THE FACILITY OCCUPIES NO MORE THAN 5% OR 5**  
8 **ACRES, WHICHEVER IS LESS AND NOT INCLUDING ANY TEMPORARY IMPACTS**  
9 **NECESSARY FOR CONSTRUCTION OF THE FACILITY, OF EACH PARCEL SUBJECT**  
10 **TO THE EASEMENT;**

11                                   **(II) THE FOUNDATION DETERMINES THAT AUTHORIZING**  
12 **THE LANDOWNER TO USE THE LAND SUBJECT TO THE EASEMENT FOR THE**  
13 **GENERATION OF ELECTRICITY BY A FACILITY UTILIZING A TIER 1 RENEWABLE**  
14 **SOURCE WILL NOT:**

15                                   **1. INTERFERE SIGNIFICANTLY WITH THE**  
16 **AGRICULTURAL USE OF THE LAND SUBJECT TO THE EASEMENT; AND**

17                                   **2. INTERFERE WITH STATE, LOCAL, OR FEDERAL**  
18 **RESTRICTIONS PLACED ON FUNDS USED BY THE FOUNDATION TO PURCHASE**  
19 **THE EASEMENT; AND**

20                                   **(III) FOR GENERATION OF ELECTRICITY FROM WIND, THE**  
21 **GENERATING STATION'S WIND TURBINES ARE NOT LOCATED:**

22                                   **1. IN AN AREA WHERE THE WIND TURBINES COULD**  
23 **CREATE DOPPLER RADAR INTERFERENCE FOR MISSIONS AT THE PATUXENT**  
24 **RIVER NAVAL AIR STATION; AND**

25                                   **2. WITHIN A 46-MILE RADIUS MEASURED FROM**  
26 **LOCATION 38.29667N, 76.37668W.**

27                   **(4) THE FOUNDATION MAY CHARGE REASONABLE COSTS TO**  
28 **COVER ANY EXPENSES RELATING TO THE FOUNDATION'S RESPONSIBILITY TO**  
29 **AMEND ANY EASEMENT, AS REQUIRED UNDER THIS SUBSECTION, AND TO**  
30 **MONITOR THE ENFORCEMENT AND COMPLIANCE OF THE EASEMENT.**

31                   **(5) THE FOUNDATION SHALL ADOPT REGULATIONS TO CARRY**  
32 **OUT THE PROVISIONS OF THIS SUBSECTION.**



1           SECTION 3. AND BE IT FURTHER ENACTED, That it is the intent of the  
2 General Assembly that if land subject to an easement is used for the generation of  
3 electricity in accordance with this Act, that the majority of raw materials used as Tier  
4 1 renewable sources under § 7-701(r)(4) and (9) of the Public Utilities Article originate  
5 from the farm subject to the easement.

6           SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect  
7 July 1, 2014.