

SENATE BILL 259

M4, C5
SB 796/13 – EHE & FIN

4lr1737

By: **Senator Middleton**

Introduced and read first time: January 17, 2014

Assigned to: Education, Health, and Environmental Affairs and Finance

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)
28 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2007 Replacement Volume and 2013 Supplement)

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

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

9 **Article – Agriculture**

10 2–509.

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

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

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

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

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

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

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

29 (i) After the referral of an application, the agricultural
30 preservation advisory board shall advise the county governing body as to whether or
31 not the land for the proposed easement meets the qualifications established by the
32 Foundation under subsection (d) of this section, and whether or not the advisory board
33 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 [(c)] (D) Purchase of an easement by the Foundation does not grant the
2 public any right of access or right of use of the subject property.

3 Article – Public Utilities

4 7–701.

5 (r) “Tier 1 renewable source” means one or more of the following types of
6 energy sources:

7 (1) solar energy, including energy from photovoltaic technologies and
8 solar water heating systems;

9 (2) wind;

10 (3) qualifying biomass;

11 (4) methane from the anaerobic decomposition of organic materials in
12 a landfill or wastewater treatment plant;

13 (5) geothermal, including energy generated through geothermal
14 exchange from or thermal energy avoided by, groundwater or a shallow ground source;

15 (6) ocean, including energy from waves, tides, currents, and thermal
16 differences;

17 (7) a fuel cell that produces electricity from a Tier 1 renewable source
18 under item (3) or (4) of this subsection;

19 (8) a small hydroelectric power plant of less than 30 megawatts in
20 capacity that is licensed or exempt from licensing by the Federal Energy Regulatory
21 Commission;

22 (9) poultry litter–to–energy;

23 (10) waste–to–energy;

24 (11) refuse–derived fuel; and

25 (12) thermal energy from a thermal biomass system.

26 SECTION 2. AND BE IT FURTHER ENACTED, That § 2–513(c) of the
27 Agriculture Article as enacted by Section 1 of this Act applies to any easement
28 acquired by the Maryland Agricultural Land Preservation Foundation before, on, or
29 after the effective date of this Act.

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.