

HOUSE BILL 155

M4

7lr0112

By: **Chair, Environment and Transportation Committee (By Request –
Departmental – Agriculture)**

Introduced and read first time: January 18, 2017

Assigned to: Environment and Transportation

Committee Report: Favorable

House action: Adopted with floor amendments

Read second time: February 22, 2017

CHAPTER _____

1 AN ACT concerning

2 **Maryland Agricultural Land Preservation Foundation – Easement Termination**

3 FOR the purpose of altering the procedures for terminating an easement purchased by the
4 Maryland Agricultural Land Preservation Foundation; establishing certain criteria
5 to be considered by a county governing body and the Foundation for approving or
6 denying the termination of an easement; providing for the effect of the county
7 governing body's denial of a request for the termination of an easement; requiring
8 the Board of Public Works to approve the easement's fair market value under certain
9 circumstances; providing for the application of this Act; and generally relating to the
10 termination of an easement held by the Maryland Agricultural Land Preservation
11 Foundation.

12 BY repealing and reenacting, with amendments,

13 Article – Agriculture

14 Section 2–514

15 Annotated Code of Maryland

16 (2016 Replacement Volume)

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

Article – Agriculture

20 2–514.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 [(a) It is the intent of the General Assembly that any easement whose purchase is
2 approved by the Board of Public Works on or before September 30, 2004, be held by the
3 Foundation for as long as profitable farming is feasible on the land under easement, and
4 an easement may be terminated only in the manner and at the time specified in this section.

5 (b) Except as provided in subsection (h) of this section, any time after 25 years
6 from the date of purchase of an easement, the landowner may request that the easement
7 be reviewed for possible termination of the easement.

8 (c) (1) Upon a request for review of an easement for termination, an inquiry
9 shall be conducted by the Foundation to determine the feasibility of profitable farming on
10 the subject land.

11 (2) The inquiry shall include:

12 (i) On-site inspection of the subject land; and

13 (ii) A public hearing conducted by the Foundation board within the
14 county containing the subject land after adequate public notice.

15 (3) The inquiry shall be concluded and a decision reached by the
16 Foundation within 180 days after the request for termination, unless the landowner
17 requests a hearing under subsection (h) of this section.

18 (d) An easement may be terminated only with the approval of the governing body
19 of the county containing the subject land. In deciding whether to approve the request for
20 termination, the county governing body shall receive the recommendation of the county
21 agricultural preservation advisory board established under § 2-504.1 of this subtitle. The
22 decision of the county governing body shall be made after the public hearing required in
23 subsection (c) of this section. The county governing body shall notify the Foundation of its
24 decision within 90 days after the conclusion of the public hearing required in subsection (c)
25 of this section.

26 (e) Upon the affirmative vote of a majority of the Foundation members at-large,
27 and upon the approval of the Secretary and the State Treasurer, the request for termination
28 shall be approved, and the landowner shall be notified.]

29 **(A) (1) THIS SECTION APPLIES ONLY TO EASEMENTS APPROVED FOR**
30 **PURCHASE BY THE BOARD OF PUBLIC WORKS ON OR BEFORE SEPTEMBER 30, 2004.**

31 **(2) ALL EASEMENTS APPROVED FOR PURCHASE BY THE BOARD OF**
32 **PUBLIC WORKS ON OR AFTER OCTOBER 1, 2004, ARE PERPETUAL AND NOT**
33 **ELIGIBLE FOR TERMINATION.**

1 (B) AN EASEMENT APPROVED BY THE BOARD OF PUBLIC WORKS ON OR
2 BEFORE SEPTEMBER 30, 2004, AND HELD BY THE FOUNDATION MAY BE
3 TERMINATED ONLY UNDER EXTRAORDINARY CIRCUMSTANCES AND IN THE MANNER
4 SPECIFIED IN THIS SECTION.

5 (C) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION,
6 AFTER 25 YEARS FROM THE DATE OF PURCHASE OF AN EASEMENT, A LANDOWNER
7 MAY REQUEST THAT THE EASEMENT BE REVIEWED FOR POSSIBLE TERMINATION,
8 SUBJECT TO THE REQUIREMENTS OF THIS SECTION.

9 (2) A LANDOWNER IS NOT ELIGIBLE TO TERMINATE ANY EASEMENT:

10 (I) PURCHASED USING AN INSTALLMENT PURCHASE
11 AGREEMENT, AS PROVIDED IN § 2-510(K) OF THIS SUBTITLE; OR

12 (II) APPROVED FOR PURCHASE BY THE BOARD OF PUBLIC
13 WORKS ON OR AFTER OCTOBER 1, 2004.

14 (D) (1) IF AN ELIGIBLE LANDOWNER REQUESTS THAT THE FOUNDATION
15 REVIEW AN EASEMENT FOR TERMINATION, THE FOUNDATION SHALL FIRST
16 REQUEST THAT THE COUNTY GOVERNING BODY OF THE COUNTY CONTAINING THE
17 LAND UNDER EASEMENT REVIEW THE EASEMENT FOR TERMINATION.

18 (2) SUBJECT TO ALL OTHER REQUIREMENTS OF THIS SECTION, AN
19 EASEMENT MAY BE TERMINATED ONLY IF THE COUNTY GOVERNING BODY OF THE
20 COUNTY CONTAINING THE LAND UNDER EASEMENT:

21 (I) CONDUCTS A PUBLIC HEARING ON THE TERMINATION
22 REQUEST AFTER ADEQUATE PUBLIC NOTICE; AND

23 (II) AFTER THE PUBLIC HEARING, APPROVES THE
24 TERMINATION REQUEST.

25 (3) THE DECISION OF THE COUNTY GOVERNING BODY SHALL BE IN
26 WRITING AND MAY BE BASED ON:

27 (I) THE COUNTY AGRICULTURAL PRESERVATION ADVISORY
28 BOARD'S RECOMMENDATION TO APPROVE OR DENY THE TERMINATION REQUEST;

29 (II) LOCAL COMPREHENSIVE PLANNING AND ZONING;

30 (III) LOCAL PRIORITIES TO PRESERVE AGRICULTURAL LAND;

31 (IV) LOCAL PATTERNS OF DEVELOPMENT; AND

1 (v) ANY OTHER LAND USE MATTERS.

2 (E) (1) IF THE COUNTY GOVERNING BODY DENIES THE REQUEST FOR
3 TERMINATION, THE TERMINATION REVIEW PROCESS ENDS AND THE FOUNDATION IS
4 NOT REQUIRED TO CONTINUE TO CONSIDER THE REQUEST FOR TERMINATION.

5 (2) IF THE COUNTY GOVERNING BODY APPROVES THE REQUEST FOR
6 TERMINATION, THE COUNTY GOVERNING BODY SHALL NOTIFY THE FOUNDATION OF
7 ITS DECISION IN WRITING.

8 (F) (1) ON RECEIVING THE COUNTY GOVERNING BODY'S WRITTEN
9 NOTICE TO APPROVE A REQUEST FOR TERMINATION, AS PROVIDED IN SUBSECTION
10 (E)(2) OF THIS SECTION, THE FOUNDATION BOARD OF TRUSTEES MEMBERS AT
11 LARGE SHALL DETERMINE WHETHER IT IS FEASIBLE TO FARM THE LAND UNDER
12 EASEMENT IN A PROFITABLE MANNER.

13 (2) PROFITABLE FARMING IS FEASIBLE ON THE LAND IF AN
14 AGRICULTURAL COMMODITY OR PRODUCT MAY BE PRODUCED ON THE LAND AND
15 SOLD FOR PROFIT.

16 (3) THE FOUNDATION BOARD OF TRUSTEES MEMBERS AT LARGE
17 SHALL PRESUME THAT IT IS FEASIBLE TO FARM THE SUBJECT LAND IN A
18 PROFITABLE MANNER AND THE LANDOWNER HAS THE BURDEN TO REBUT THIS
19 PRESUMPTION.

20 (4) THE DETERMINATION OF THE BOARD OF TRUSTEES MEMBERS AT
21 LARGE SHALL BE IN WRITING AND MAY BE BASED ON:

22 (I) AN EXPERT OPINION AS TO WHETHER PROFITABLE
23 FARMING ON THE LAND IS FEASIBLE;

24 (II) THE EFFECT OF ANY NONAGRICULTURAL DEVELOPMENT
25 ADJACENT TO THE LAND;

26 (III) WHETHER MARKETS EXIST FOR ANY AGRICULTURAL
27 PRODUCTS THAT CAN BE PRODUCED ON THE LAND;

28 (IV) THE PROFITABILITY OF NEARBY FARMS, IF THIS
29 INFORMATION IS READILY AVAILABLE TO THE BOARD OF TRUSTEES MEMBERS AT
30 LARGE;

31 (V) ANY INFORMATION THE LANDOWNER ASKS THE BOARD OF
32 TRUSTEES MEMBERS AT LARGE TO CONSIDER; AND

1 **(VI) ANY ADDITIONAL INFORMATION THE BOARD OF TRUSTEES**
2 **MEMBERS AT LARGE DEEM RELEVANT TO DETERMINE WHETHER IT IS FEASIBLE TO**
3 **FARM THE LAND IN A PROFITABLE MANNER.**

4 **(G) (1) IF THE BOARD OF TRUSTEES MEMBERS AT LARGE DENY THE**
5 **REQUEST FOR TERMINATION BECAUSE THEY DETERMINE THAT IT IS FEASIBLE TO**
6 **FARM THE LAND IN A PROFITABLE MANNER, THE TERMINATION REVIEW PROCESS**
7 **ENDS AND THE FOUNDATION IS NOT REQUIRED TO CONTINUE TO CONSIDER THE**
8 **REQUEST FOR TERMINATION.**

9 **(2) IF THE BOARD OF TRUSTEES MEMBERS AT LARGE APPROVE THE**
10 **REQUEST FOR TERMINATION, THE SECRETARY AND STATE TREASURER SHALL**
11 **REVIEW THE REQUEST.**

12 **(H) (1) IF BOTH THE COUNTY GOVERNING BODY AND THE BOARD OF**
13 **TRUSTEES MEMBERS AT LARGE APPROVE A REQUEST FOR TERMINATION, AN**
14 **EASEMENT SHALL BE TERMINATED ONLY IF BOTH THE SECRETARY AND THE STATE**
15 **TREASURER APPROVE THE REQUEST FOR TERMINATION.**

16 **(2) THE SECRETARY AND THE STATE TREASURER'S DESIGNEE**
17 **SERVING ON THE BOARD OF TRUSTEES MAY APPROVE OR DENY THE REQUEST FOR**
18 **TERMINATION.**

19 **[(f)] (I) (1)** If the request for termination is approved, two fair market value
20 appraisals of the subject land shall be ordered by the Department of General Services at
21 the direction of the Foundation at the expense of the landowner requesting termination of
22 the easement.

23 **(2)** The subject land shall be appraised as of the date of the approval of the
24 request for termination.

25 **(3)** The Department of General Services shall review the two appraisals
26 and shall determine, **SUBJECT TO APPROVAL OF THE BOARD OF PUBLIC WORKS**, the
27 fair market value of the subject land and shall issue a written statement as to the approved
28 fair market value to the Foundation.

29 **(4) (I)** Upon receipt of the written statement from the Department of
30 General Services, the Foundation shall issue a notification to the landowner of the approved
31 fair market value.

32 **(II) THE LANDOWNER SHALL HAVE NOT MORE THAN 30 DAYS**
33 **FROM THE DATE OF THE NOTIFICATION TO ELECT TO REPURCHASE THE EASEMENT**
34 **FOR THE FAIR MARKET VALUE AS DETERMINED BY THE DEPARTMENT OF GENERAL**
35 **SERVICES.**

1 (5) (i) 1. No more than 180 days following the notification required
2 under paragraph (4) of this subsection, the landowner may repurchase the easement by
3 paying to the Foundation the difference between the approved fair market value and the
4 agricultural value of the subject land.

5 2. For purposes of this paragraph, the fair market value is
6 the same as set forth under § 2–511(b) of this subtitle.

7 (ii) For purposes of this paragraph, the agricultural value of the land
8 is determined by the appraisal method that was in effect at the time the easement was
9 acquired by the Foundation, either by the agricultural appraisal formula under § 2–511(d)
10 of this subtitle or by an appraisal that determines the price as of the valuation date which
11 a vendor, willing but not obligated to sell, would accept, and which a purchaser, willing but
12 not obligated to buy, would pay for a farm unit with land comparable in quality and
13 composition to the property being appraised.

14 (iii) 1. In the case of the termination of an easement that was
15 originally purchased under a matching allotted purchase, the Foundation shall distribute
16 to the contributing county a portion of the repurchase payment received under
17 subparagraph (i) of this paragraph that is equal to the percentage of the original easement
18 purchase price contributed by the county.

19 2. A. From the funds distributed to a county under this
20 subparagraph, the county shall deposit in the county’s special account for its agricultural
21 land preservation program an amount that is at least equal to the percentage of the original
22 easement purchase price that was paid out of the special account.

23 B. If any of the funds deposited in the county’s special
24 account have not been expended or committed within 3 years from the date of deposit into
25 the special account, the county collector shall remit those funds to the Comptroller for
26 deposit in the Maryland Agricultural Land Preservation Fund as provided in § 13–306(d)
27 of the Tax – Property Article.

28 3. The county shall deposit the balance of the funds
29 distributed to it under this subparagraph in the county’s general fund.

30 4. If an easement is terminated, the Foundation shall deposit
31 its portion of the repurchase payment in the Maryland Agricultural Land Preservation
32 Fund as provided under § 2–505 of this subtitle.

33 **[(g)] (J)** If the request for termination is denied, or if the landowner fails to
34 **ELECT TO** repurchase the easement within **[180] 30** days of the notification required under
35 subsection **[(f)(4)] (I)(4)** of this section, **OR FAILS TO REPURCHASE THE EASEMENT**
36 **WITHIN 180 DAYS OF THE NOTIFICATION**, the landowner may not again request
37 termination of the easement until five years after his last request for termination.

1 [(h) A landowner may not terminate an easement purchased using an installment
2 purchase agreement, as provided in § 2–510(k) of this subtitle.]

3 [(i) (K) (1) This subsection applies only to easements that the Foundation
4 acquires on or before September 30, 2004.

5 (2) Before deciding on a request for termination of an easement, the
6 Foundation shall provide a landowner with the opportunity for a hearing.

7 (3) The landowner may appeal any Foundation denial directly to the circuit
8 court of the county where the land is located.

9 (4) The circuit court shall hear and determine the appeal on the record
10 made in accordance with § 10–222 of the State Government Article.

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to any
12 easement that is eligible for termination and acquired by the Maryland Agricultural Land
13 Preservation Foundation on or before September 30, 2004.

14 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 October 1, 2017.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.