

Chapter 114

(House Bill 155)

AN ACT concerning

Maryland Agricultural Land Preservation Foundation – Easement Termination

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

BY repealing and reenacting, with amendments,

Article – Agriculture

Section 2–514

Annotated Code of Maryland

(2016 Replacement Volume)

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

Article – Agriculture

2–514.

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

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

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

(2) The inquiry shall include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(II) LOCAL COMPREHENSIVE PLANNING AND ZONING;

(III) LOCAL PRIORITIES TO PRESERVE AGRICULTURAL LAND;

(IV) LOCAL PATTERNS OF DEVELOPMENT; AND

(V) ANY OTHER LAND USE MATTERS.

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

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

(F) (1) ON RECEIVING THE COUNTY GOVERNING BODY'S WRITTEN NOTICE TO APPROVE A REQUEST FOR TERMINATION, AS PROVIDED IN SUBSECTION (E)(2) OF THIS SECTION, THE FOUNDATION BOARD OF TRUSTEES MEMBERS AT

LARGE SHALL DETERMINE WHETHER IT IS FEASIBLE TO FARM THE LAND UNDER EASEMENT IN A PROFITABLE MANNER.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(ii) For purposes of this paragraph, the agricultural value of the land is determined by the appraisal method that was in effect at the time the easement was

acquired by the Foundation, either by the agricultural appraisal formula under § 2–511(d) of this subtitle or by an appraisal that determines the price as of the valuation date which a vendor, willing but not obligated to sell, would accept, and which a purchaser, willing but not obligated to buy, would pay for a farm unit with land comparable in quality and composition to the property being appraised.

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

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

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

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

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

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

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

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

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

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

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

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

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

Approved by the Governor, April 11, 2017.