

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 863

(Delegate Barve, *et al.*)

Environment and Transportation

State Agricultural and Conservation Property Interests - Solar Facilities (Right to Solar Farm)

This bill authorizes up to 3% of land subject to various State conservation programs to be used for the generation of electricity from solar energy, subject to specified conditions. Generally, the solar facility can occupy no more than 25% of the land subject to the conservation program/easement, including permanent roads or structures, but not including any temporary impacts. The bill applies to land and/or interests in land held by the Maryland Agricultural Land Preservation Foundation (MALPF), the Maryland Environmental Trust (MET), and the Rural Legacy Board (RLB).

The bill takes effect July 1, 2017.

Fiscal Summary

State Effect: General fund revenues from sales and income taxes and special fund revenues from property taxes increase beginning as early as FY 2018 to the extent that additional solar facilities are built in the State; however, the bill does not necessarily cause *additional* facilities. Special fund revenues increase for MALPF by 5% of any new lease payments as provided for under current law. Special fund revenues for MET increase from any new lease payments as provided for in the bill. While not required by the bill, it is assumed that special fund revenues increase for RLB if its land interests are used for solar energy facilities. While the bill may have an operational impact on the Maryland Department of Agriculture (MDA) and the Department of Natural Resources (DNR), the agencies can implement the bill with existing resources.

Local Effect: Local government revenues from property taxes increase to the extent that additional solar facilities are built in their jurisdictions due to the bill. The amount cannot be reliably estimated at this time.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary/Current Law:

Maryland Agricultural Land Preservation Foundation

Current Law: Generally, an owner of agricultural land whose application to sell an easement has been approved by the county in which the land is located may sell an easement to MALPF on the contiguous acreage of the agricultural land, subject to specified requirements. The following uses are permitted on MALPF easement properties:

- any farm use;
- the operation of any machinery used in farm production or primary processing of agricultural products; and
- all normal agricultural operations performed with good husbandry practices that do not cause bodily injury or directly endanger human health, including, but not limited to, the sale of farm products produced on the farm where such sales are made.

Generally, MALPF easement properties may not be used for commercial, industrial, or residential purposes unless MALPF determines the purposes are farm- and forest-related uses and home occupations. Commercial agricultural uses the MALPF allows include the growing of field crops, vegetables, and fruit; dairy and livestock operations, including chickens; and managing land for forest resources.

Through June 30, 2019, a written request of a landowner, with a favorable recommendation of the local agricultural advisory board and if not prohibited by federal, State, and local laws, may be approved by MALPF to amend an existing easement to authorize the landowner to use the land subject to the agricultural easement for the generation of electricity by a facility utilizing an authorized renewable energy source, provided that:

- the facility occupies no more than 5% or five acres, whichever is less, of the land subject to the easement, including permanent roads or structures that are necessary for access for operation and maintenance purposes and not including any temporary impacts necessary for construction of the facility;

- MALPF determines that the use does not interfere significantly with the agricultural use of the land subject to the easement and does not interfere with State, local, or federal restrictions placed on funds used by MALPF to purchase the easement; and
- for the generation of electricity from wind, the generating station's wind turbines are not located in an area where wind turbines could create Doppler radar interference for missions at the Patuxent River Naval Air Station and do not exceed a specified maximum height depending on the turbines' proximity to the Patuxent Naval Air Station.

All easements purchased by MALPF after June 30, 2014, must authorize the landowner to request approval from MALPF (through June 30, 2019) for the generation of electricity under the same conditions and requirements.

MALPF may charge reasonable costs to cover any expenses related to its responsibility to amend an easement and to monitor the enforcement and compliance of the easement.

A facility owner who uses land subject to an easement for the generation of electricity, on operation of the facility, must remit an annual payment of 5% of any lease payment paid to the landowner to the Maryland Agricultural Land Preservation Fund. In addition, a lease executed by a facility owner and a landowner must include provisions to require a facility owner to remove the facility if it is no longer intended to be used to generate electricity.

MALPF is prohibited from approving the use of land subject to an easement for the generation of electricity after June 30, 2019; however, if approved by MALPF prior to July 1, 2019, such land may still be used for the approved purpose.

The Bill: The above provisions governing the generation of electricity from certain renewable energy sources (which includes solar) on agricultural land are altered to create separate criteria for solar facilities. Generally, existing requirements for MALPF approval continue to apply, including local approval, except that:

- the solar facility can occupy up to 25% of the land subject to the easement (as opposed to 5%);
- MALPF does not need to determine that authorizing the solar facility will not interfere significantly with the agricultural use of the land subject to the easement (MALPF must make this determination under current law); and
- the prohibition on approvals after June 30, 2019, for all currently eligible renewable sources, does not apply to a solar facility.

Maryland Environmental Trust

Current Law: MET is established to conserve, improve, stimulate, and perpetuate the aesthetic, natural, health and welfare, scenic, and cultural qualities of the environment, including, but not limited to, land, water, air, wildlife, scenic qualities, open spaces, buildings or any interest therein, and other appurtenances pertaining in any way to the State.

Subject to specified limitations, MET may improve, sell, convey, assign, lease, or otherwise transfer or dispose of any property or interest in property that it holds and enter into any related contract, easement, or other legal arrangement, including the authority to lease properties for various commercial and residential uses consistent with the purpose of the trust and on terms and conditions the trustees deem appropriate. Any lease the trustees make must be in immediate furtherance of the purposes of MET and not merely for investment purposes. Notwithstanding any provision of law to the contrary, a lease MET makes may not be subject to redemption at the option of the tenant, unless expressly provided.

The Bill: MET's existing authority to enter into specified financial arrangements on terms and conditions the trustees deem appropriate is expanded to explicitly include leasing properties for the generation of electricity from solar energy, subject to the same size requirements as those described above for MALPF.

Rural Legacy Program

Current Law: RLB in DNR administers the Rural Legacy Program. The program provides funds to local governments and land trusts to purchase interests in real property from willing sellers, including easements, transferable development rights, and fee estates, focused in designated Rural Legacy Areas. The program must encourage partnerships among the federal, State, and local governments and nonprofit land trust organizations and encourage local land conservation initiatives.

The Bill: Any interest in land that the board acquires may be used or sold for the generation of electricity by a facility using solar energy, subject to the same size requirements as facilities as those described above for MALPF.

Background:

Land Conservation Programs

MALPF, which was established by the General Assembly in 1977 and is part of MDA, purchases agricultural land 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 Farmland Protection Program.

MET was first established in 1967 and has four focus areas: (1) acquiring, and holding in perpetuity, conservation easements; (2) serving as a steward of land protected by such easements; (3) providing training, technical assistance, and support to nonprofit land trusts in the State; and (4) education and outreach. Conservation easements are primarily donated by landowners, who benefit from tax advantages as a result of donating the easements. Under an easement, the landowner gives up most or all rights to develop and subdivide the land, in perpetuity.

The Rural Legacy Program, established in 1997 and administered by DNR, supplements State land preservation programs in order to preserve key areas before escalating land values render protection impossible or before the land is lost to development.

Amount of Land Subject to Easement

Combined, MALPF, MET, and the Rural Legacy Program collectively reported 513,100 acres of private land under easement as of August 2015. The bill allows for up to 3% of this land to be used for solar energy, assuming all other requirements are met. This equates to a maximum possible size of 15,400 acres, or about 24 square miles, which is just under a third of the size of Baltimore City. While solar technology is rapidly evolving, a 2013 National Renewable Energy Laboratories report estimated the land required for solar facilities at about eight acres per megawatt. At that level, the bill potentially allows for 1,925 megawatts of new solar capacity, as compared to existing solar capacity of approximately 683 megawatts. Continued advancements will increase the capacity per acre in the future.

Small Business Effect: Some companies involved in the solar energy installation supply chain are small businesses. These businesses may benefit from the increased access to land on which to build solar facilities. However, the bill does not necessarily increase the overall amount of solar capacity installed in the State. Small businesses that own land subject to the affected conservation programs benefit to the extent that they receive additional revenue from solar facilities than under current conservation practices. Small businesses that currently benefit from land that is not developed are also negatively impacted if the lands are developed under the bill.

Additional Information

Prior Introductions: None.

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Cross File: None.

Information Source(s): Maryland Department of Agriculture; Department of Natural Resources; National Renewable Energy Laboratories; Department of Legislative Services

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