

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
First Reader

House Bill 1168 (Delegate Adams)
Environment and Transportation

Agricultural Land Preservation Easements - Surface Mining

This bill authorizes a landowner whose land is subject to a Maryland Agricultural Land Preservation Foundation (MALPF) easement to use the land for noncoal surface mining activities (irrespective of the terms of the easement) in accordance with applicable State law, if the land is adjacent to a parcel of land that is covered by a valid noncoal surface mining permit issued under State law. The bill must be construed to apply retroactively and be applied to and interpreted to affect any agricultural preservation easement granted to MALPF before July 1, 2018. **The bill takes effect July 1, 2018.**

Fiscal Summary

State Effect: Special fund expenditures may increase by an indeterminate amount. General fund revenues may increase by an indeterminate amount.

Local Effect: Local government expenditures and revenues may increase by an indeterminate amount.

Small Business Effect: Meaningful.

Analysis

Current Law: With respect to any agricultural land preservation easement purchased by MALPF, the easement and county regulations governing the use of the land must permit (1) any farm use of the land; (2) operation at any time of any machinery used in farm production or the primary processing of agricultural products; and (3) all normal agricultural operations performed in accordance with good husbandry practices which do

not cause bodily injury or directly endanger human health, including, but not limited to, sale of farm products produced on the farm where such sales are made.

A landowner whose land is subject to an easement may not use the land for any commercial, industrial, or residential purpose except (1) as determined by MALPF, for farm- and forest-related uses and home occupations or (2) other specified purposes.

Background: MALPF's Standard Deed of Easement prohibits all manner of on-site surface excavation and mining, including drilling, except for customary agricultural uses consistent with the soil conservation and water quality plan for the land. Under the standard deed, the grantor also may not grant any rights of way, easements, or rights of entry, or physically establish roadways across the land for the purposes of surface or subsurface excavation and mining, including drilling, on the land or other lands.

The Maryland Department of the Environment, which regulates noncoal surface mining, indicates that it does not have data on the number of agricultural easements adjacent to surface mines in the State, but that there are approximately 300 total noncoal surface mines in the State.

State Expenditures: Special fund expenditures may increase due to (1) potential reimbursement of federal funding used in the past for MALPF easement purchases and/or (2) increased costs of appraisals of land prior to easement purchases.

In past years, MALPF used funding from the U.S. Department of Agriculture's Farm and Ranchlands Protection Program (FRPP) in purchasing easements, and MALPF indicates that use of an easement property for surface mining will violate the terms of that federal funding and could require reimbursement of the federal funding. MALPF indicates that \$19.5 million of federal funding was used in past years for easement purchases.

MALPF expects that the bill's allowance of surface mining activities on easement properties (under certain circumstances) increases costs for appraisals of properties, in counties where noncoal surface mining occurs, prior to MALPF's purchase of easements. It is unclear to what extent those costs increase, but, for context, MALPF estimates that the current average cost of an appraisal is \$1,507, and MALPF spent approximately \$277,000 overall for appraisals during the most recent easement acquisition cycle (which covers two fiscal years).

MALPF's operations and easement purchases are funded with special funds from the Maryland Agricultural Land Preservation Fund, which is supported by revenues from the State transfer tax. Presumably, if expenditures increase significantly as a result of the bill, unless additional general funds are provided to cover those costs, fewer easements are likely purchased by MALPF due to the decrease in available special funds.

State Revenues: General fund revenues may increase due to increased income tax revenues if the bill results in fewer landowners, who donate or partially donate an easement to MALPF, claiming federal income tax deductions for their donations. MALPF indicates that the bill's allowance of surface mining activities on land subject to a MALPF easement (under certain circumstances) may prevent future grantors of MALPF easements, including those who do not intend to conduct surface mining activities, from claiming a charitable deduction for donation of a conservation easement on their federal income tax returns. A farm owner who discounts the purchase price of an agricultural land preservation easement (which can help ensure that the farm is chosen for an easement purchase during MALPF's easement acquisition process) can claim the difference between the full value of the easement and the discounted price as a donation of a conservation easement. The federal deduction flows through and reduces Maryland adjusted gross income, therefore reducing State and local income taxes. According to MALPF, federal law states that a charitable contribution deduction for a conservation easement gift is not available if at any time there may be extraction or removal of minerals by any surface mining method.

Local Expenditures: Local government expenditures are expected to be affected in a similar manner as State expenditures – potentially increasing expenditures for reimbursement of federal funding and/or increased costs of appraisals – though likely to a lesser extent than State expenditures. The MALPF easement acquisition process includes local government participation and local matching funding for a portion of the easement purchases. Local governments have the option to pay for appraisals of properties for easement purchases beyond the number of appraisals MALPF pays for (the total amount of local government expenditures for appraisals during the most recent acquisition cycle was approximately \$32,000) and MALPF indicates that there has been at least a limited amount of use of FRPP funding by local governments for matching purchases of easements in the past.

Local Revenues: Similar to the effect on State general fund revenues, local government revenues may increase due to increased income tax revenues if the bill results in fewer landowners, who donate or partially donate an easement to MALPF, claiming federal income tax deductions for their donations.

Small Business Effect: Any small business that would like to use land subject to a MALPF easement, which is adjacent to land covered by a valid surface mining permit, for surface mining activities, may benefit from the bill.

As described above, MALPF indicates that the bill's allowance of surface mining activities on land subject to a MALPF easement (under certain circumstances) may prevent future grantors of MALPF easements, including those who do not intend to conduct surface mining activities, from claiming charitable deductions for donations of conservation easements on their federal income tax returns. Small businesses may, therefore, be

meaningfully impacted by no longer being able to deduct the donative value of easements granted to MALPF on their federal income tax returns.

Additional Information

Prior Introductions: None.

Cross File: SB 1125 (Senator Eckardt) - Rules.

Information Source(s): Maryland Department of Agriculture; Maryland Department of the Environment; Department of Legislative Services

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nb/lgc

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