

Department of Legislative Services
Maryland General Assembly
2019 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

Senate Bill 25

(Chair, Judicial Proceedings Committee)(By Request -
Departmental - Agriculture)

Judicial Proceedings

Environment and Transportation

**Real Property - Conservation Easements, Covenants, Restrictions, and
Conditions - Recording Notice**

This departmental bill allows for a specified notice to be recorded in applicable land records, and indexed in a specified manner, if an easement, covenant, restriction, or condition has been granted, devised, dedicated, reserved, or donated to the Maryland Agricultural Land Preservation Foundation (MALPF), the Maryland Historical Trust (MHT), the Maryland Environmental Trust (MET), a land trust that has executed a cooperative agreement with MET, a county, or the Department of Natural Resources (DNR).

Fiscal Summary

State Effect: The bill does not have a direct, material impact on State finances.

Local Effect: The bill does not directly affect local government finances.

Small Business Effect: The Maryland Department of Agriculture (MDA) has determined that this bill has minimal or no impact on small business (attached). The Department of Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Bill Summary: The bill establishes that if an easement, covenant, restriction, or condition has been granted, devised, dedicated, reserved, or donated to MALPF, MHT, MET, another specified "land trust," a county, or DNR, a notice of the easement, covenant, restriction, or

condition may be recorded in the land records of the county in which the property interest is located. “Land trust” means a qualified conservation organization that (1) is a qualified organization under a specified provision of the Internal Revenue Code and (2) has executed a cooperative agreement with MET.

The notice must:

- state the name and current address of the current holder of the easement, covenant, restriction, or condition;
- contain a statement that the easement, covenant, restriction, or condition is still in effect, as of the date of the notice;
- contain the recording information for (1) the original easement, covenant, restriction, or condition and (2) any associated amendment or corrective document; and
- state the name of the fee simple owner of the land encumbered by the original easement, covenant, restriction, or condition as of the date of the notice.

The notice also must be indexed among the land records under the name of (1) the holder of the easement, covenant, restriction, or condition and (2) the fee simple owner specified in the notice.

Failure to record a notice in accordance with the requirements of the bill, however, does not impair the rights or interests of the holders of the easement, covenant, restriction, or condition.

Current Law: Any restriction prohibiting or limiting the use of water or land areas, or any improvement or appurtenance thereto, for any of various specified purposes, whether drafted in the form of an easement, covenant, restriction, or condition, creates an incorporeal property interest, enforceable in both law and equity if the restriction is executed in compliance with the requirements for the execution of deeds or the execution of wills.

Background: MDA indicates that when a property interest has been conveyed to MALPF, MHT, MET, or DNR, the transaction is memorialized by an instrument that is recorded in the land records of the county in which the property interest is located. MDA advises that in recent years, however, title searches associated with refinancing or selling of properties have covered more limited timeframes than in the past, in some cases only going as far back as three to five years. This can result in a buyer not being aware of a conservation easement held by MALPF, MHT, MET, or DNR and potentially violating the terms of the easement. The bill allows for a notice of an easement to be entered in the land records by MALPF, MHT, MET, or DNR, and also a county or a land trust that has executed a

cooperative agreement with MET, indexed under the name of the current landowner, reaffirming the existence of the easement and increasing the likelihood that the easement will be included in a title search.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Agriculture; Department of Natural Resources; Maryland Department of Planning; Judiciary (Administrative Office of the Courts); Charles County; Department of Legislative Services

Fiscal Note History: First Reader - January 17, 2019
mm/lgc Third Reader - March 14, 2019
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ANALYSIS OF ECONOMIC IMPACT ON LOCAL GOVERNMENT

TITLE OF BILL: Conservation Easements – Notice of Easement Recordation

BILL NUMBER: SB 25

**PREPARED BY: Department of Agriculture
(Dept./Agency)**

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

 X WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON LOCAL GOVERNMENT

OR

 WILL HAVE MEANINGFUL ECONOMIC IMPACT ON LOCAL GOVERNMENT

PART B. ECONOMIC IMPACT ANALYSIS

N/A