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By: **Delegates Guns and Pitkin**

Introduced and read first time: February 11, 2000

Assigned to: Environmental Matters

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A BILL ENTITLED

1 AN ACT concerning

2                                   **Natural Resources - Transferable Development Rights - Rural Legacy**  
3                                   **Program**

4 FOR the purpose of authorizing the Rural Legacy Board in the Department of  
5 Natural Resources to transfer certain development rights from certain Rural  
6 Legacy Areas to certain areas within a priority funding area in a certain  
7 manner; authorizing that certain funds may be used for the purchase of certain  
8 development rights in certain situations; providing that certain information be  
9 contained in the instrument of purchase of certain development rights;  
10 restricting how transferable development rights may be resold through the  
11 Rural Legacy Program; providing for the allocation of proceeds derived from the  
12 transfer of development rights; modifying a criteria for the Board to consider  
13 when evaluating the overall quality and completeness of a Rural Legacy Plan;  
14 defining certain terms; and generally relating to the transfer of development  
15 rights from Rural Legacy Areas.

16 BY repealing and reenacting, with amendments,  
17 Article - Natural Resources  
18 Section 5-9A-01, 5-9A-02, 5-9A-04, and 5-9A-05  
19 Annotated Code of Maryland  
20 (1997 Replacement Volume and 1999 Supplement)

21 BY repealing and reenacting, without amendments,  
22 Article - Natural Resources  
23 Section 5-9A-03  
24 Annotated Code of Maryland  
25 (1997 Replacement Volume and 1999 Supplement)

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

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**Article - Natural Resources**

2 5-9A-01.

3 (a) The General Assembly declares that:

4 (1) Sprawl development and other modifications to the landscape in  
5 Maryland continue at an alarming rate, consuming land rich in natural resource,  
6 agricultural, and forestry value, adversely affecting water quality, wetlands and  
7 habitat, threatening resource-based economies and cultural assets, and rending the  
8 fabric of rural life;

9 (2) Current State, county, and local land conservation programs help to  
10 limit the effect of sprawl development but lack sufficient funding and focus to  
11 preserve key areas before escalating land values make their protection impossible or  
12 the land is lost to development; and

13 (3) A grant program that leverages available funding, focuses on  
14 preservation of strategic resources, including those resources threatened by sprawl  
15 development, streamlines real property acquisition procedures to expedite land  
16 preservation, TAKES ADVANTAGE OF INNOVATIVE PRESERVATION TECHNIQUES  
17 SUCH AS TRANSFERABLE DEVELOPMENT RIGHTS AND THE PURCHASE OF  
18 DEVELOPMENT RIGHTS, and promotes a greater level of natural and environmental  
19 resources protection than is provided by existing efforts, will establish a rural legacy  
20 for future generations.

21 (b) (1) A Rural Legacy Program is established to enhance natural resource,  
22 agricultural, forestry, and environmental protection as provided in subsection (a) of  
23 this section while maintaining the viability of resource-based land usage and proper  
24 management of tillable and wooded areas through accepted agricultural and  
25 silvicultural practices for farm production and timber harvests.

26 (2) The Program provides funds to the local governments and land trusts  
27 to purchase interests in real property from willing sellers, including easements,  
28 TRANSFERABLE DEVELOPMENT RIGHTS, and fee estates, focused in designated Rural  
29 Legacy Areas.

30 (3) The Program shall encourage partnerships among the federal, State,  
31 and local governments, and nonprofit land trust organizations and encourage local  
32 land conservation initiatives.

33 (4) The Program is administered by a Rural Legacy Board in the  
34 Department of Natural Resources, an advisory committee, and existing State staff.

35 (c) The Program is funded:

36 (1) Pursuant to § 13-209 of the Tax - Property Article and §  
37 5-903(a)(2)(iii) of this article; and

1 (2) By the proceeds from the sale of general obligation bonds as provided  
2 in § 5-9A-09 of this subtitle.

3 (d) When negotiating and awarding grants, the Board shall encourage  
4 sponsors to utilize zero coupon bonds in the implementation of the Rural Legacy Plan  
5 in order to reduce the utilization of general obligation bonds in funding the grants.

6 5-9A-02.

7 (a) In this subtitle the following words have the meanings indicated.

8 (b) "Application" means an application to the Rural Legacy Board to designate  
9 a Rural Legacy Area.

10 (c) "Board" means the Rural Legacy Board.

11 (d) "BPW" means the Maryland State Board of Public Works.

12 (E) "DEVELOPMENT RIGHT" MEANS A RIGHT TO CREATE A RESIDENTIAL  
13 BUILDING LOT OR CONSTRUCT A DWELLING UNIT IN ACCORDANCE WITH A LOCAL  
14 ZONING ORDINANCE OR OTHER IMPLEMENTING LAND-USE ORDINANCE.

15 [(e)] (F) "Grant agreement" means an agreement between the Board and a  
16 sponsor to implement a Rural Legacy Plan in a designated Rural Legacy Area.

17 [(f)] (G) "Land trust" means a qualified conservation organization that:

18 (1) Is a qualified organization under § 170(h)(3) of the Internal Revenue  
19 Code and regulations adopted under § 170(h)(3); and

20 (2) Has executed a cooperative agreement with the Maryland  
21 Environmental Trust.

22 (H) "PRIORITY FUNDING AREA" MEANS AN AREA DESIGNATED AS A PRIORITY  
23 FUNDING AREA UNDER § 5-7B-02 OF THE STATE FINANCE AND PROCUREMENT  
24 ARTICLE.

25 [(g)] (I) "Program" means the Rural Legacy Program established by this  
26 subtitle.

27 [(h)] (J) "Rural Legacy Area" means a region within or outside a metropolitan  
28 area designated by the Board as rich in a multiple of agricultural, forestry, natural,  
29 and cultural resources.

30 [(i)] (K) "Rural Legacy Plan" means a plan accepted by the Board for  
31 acquisition of easements and fee interests in Rural Legacy Areas.

32 [(j)] (L) "Sponsor" means a local government, group of local governments, or a  
33 land trust.

1 (M) "TRANSFER OF DEVELOPMENT RIGHTS PROGRAM" MEANS A PROGRAM  
2 ESTABLISHED TO RELOCATE DEVELOPMENT FROM NONPRIORITY FUNDING AREAS  
3 TO A PRIORITY FUNDING AREA THROUGH THE USE OF BONUS DENSITY AND OTHER  
4 PROVISIONS THAT WOULD ALLOW DEVELOPMENT IN THE PRIORITY FUNDING AREA  
5 AT A HIGHER DENSITY THAN USUALLY PERMITTED IN THE AREA.

6 5-9A-03.

7 (a) There is a Rural Legacy Board established in the Department of Natural  
8 Resources to administer the Rural Legacy Program.

9 (b) The Board consists of the following members:

10 (1) The Secretary of Agriculture;

11 (2) The Secretary of Natural Resources; and

12 (3) The Director of the Office of Planning.

13 (c) The Secretary of Natural Resources shall serve as Chairman of the Board.

14 (d) (1) The Department of Natural Resources shall provide staff to the  
15 Board.

16 (2) The Department of Agriculture and the Office of Planning may  
17 provide additional staff.

18 5-9A-04.

19 (a) The Board has and may exercise all powers necessary to carry out the  
20 purposes of this subtitle, INCLUDING THE AUTHORITY TO PURCHASE, HOLD, AND  
21 SELL TRANSFERABLE DEVELOPMENT RIGHTS AND TO USE THE PROCEEDS FROM  
22 THE SALE OF TRANSFERABLE DEVELOPMENT RIGHTS CONSISTENT WITH THIS  
23 SUBTITLE.

24 (b) (1) The Board may adopt regulations to implement the purposes of this  
25 subtitle, including procedures for expediting acquisitions AND PURCHASING AND  
26 SELLING TRANSFERABLE DEVELOPMENT RIGHTS AND USING THE PROCEEDS  
27 RELATED TO PURCHASING AND SELLING TRANSFERABLE DEVELOPMENT RIGHTS.

28 (2) The authority granted under this subsection may not be construed to  
29 permit adoption of a regulation applicable to land that is not subject to an easement  
30 under this subtitle.

31 (c) (1) The Board shall establish a method for appraisal of real property  
32 interests acquired under this subtitle.

33 (2) Any method for appraisal established by the Board may not include a  
34 value for any resource used or reserved by the owner for private economic benefit.

1 (d) The Board and sponsors may enter into agreements with other  
2 governmental agencies, including the Maryland Agricultural Land Preservation  
3 Foundation and the Maryland Environmental Trust, for the purpose of establishing  
4 partnerships to carry out this Program.

5 5-9A-05.

6 (a) A sponsor may file an application to designate a Rural Legacy Area in  
7 accordance with a schedule established by the Board. A local government may not  
8 apply for or approve an application for a Rural Legacy Area designation inside  
9 another jurisdiction's boundaries without that jurisdiction's approval.

10 (b) The application shall describe the proposed Rural Legacy Area, include a  
11 Rural Legacy Area Plan, identify existing protected lands, state the anticipated level  
12 of initial landowner participation in the Program and the amount of the grant  
13 requested, and comply with the criteria set forth below.

14 (c) The Board shall evaluate and compare applications in accordance with the  
15 following criteria in order to select those that best carry forward the goals and  
16 objectives of the Program set forth in § 5-9A-01 of this subtitle:

17 (1) The significance of the agricultural, forestry, and natural resources  
18 proposed for protection, including:

19 (i) The degree to which proposed fee or easement purchases will  
20 protect the location, proximity, and size of contiguous blocks of lands, green belts or  
21 greenways, or agricultural, forestry, or natural resource corridors;

22 (ii) The nature, size, and importance of the land area to be  
23 protected, such as farmland, forests, wetlands, wildlife habitat and plant species,  
24 vegetative buffers, or bay or waterfront access; and

25 (iii) The quality and public or economic value of the land;

26 (2) The degree of threat to the resources and character of the area  
27 proposed for preservation, as reflected by patterns and trends of development and  
28 landscape modifications in and surrounding the proposed Rural Legacy Area;

29 (3) The significance and extent of the cultural resources proposed for  
30 protection through fee simple purchases, including the importance of historic sites  
31 and significant archaeological areas;

32 (4) The economic value of the resource-based industries or services  
33 proposed for protection through land conservation, such as agriculture, forestry,  
34 recreation, and tourism;

35 (5) The overall quality and completeness of the Rural Legacy Plan,  
36 including:

- 1 (i) The degree to which existing planning, zoning, and growth  
2 management policies contribute to land conservation and the protection of cultural  
3 resources;
- 4 (ii) The degree to which the proposed plan is consistent with the  
5 applicable local comprehensive plan, including protection of sensitive areas and  
6 mineral resources;
- 7 (iii) How well existing or new conservation programs are  
8 coordinated with the proposed acquisition plan;
- 9 (iv) How well the plan will maximize acquisition of real property  
10 interests in contiguous blocks of land within the Rural Legacy Area while providing  
11 for protection of isolated acquisitions important to the plan;
- 12 (v) Provisions for protection of resources, such as voluntarily  
13 granted or purchased easements, EFFECTIVE MARKETING OF LOCAL GOVERNMENT  
14 TRANSFERABLE DEVELOPMENT RIGHTS PROGRAMS, fee estate purchases, or gifts of  
15 lands;
- 16 (vi) How the sponsor plans to manage, prioritize, and sequence  
17 easement and land acquisitions;
- 18 (vii) Methodology for prioritizing and valuing or appraising  
19 easements;
- 20 (viii) Proposed titleholders for easement or fee estate acquisitions;  
21 and
- 22 (ix) The quality of the proposed stewardship program for holding  
23 and monitoring of easement restrictions in perpetuity;
- 24 (6) The strength and quality of partnerships created for land  
25 conservation among federal, State, and local governments and land trusts for  
26 implementing the plan, including:
- 27 (i) Financial support;
- 28 (ii) Dedication of staff and resources; and
- 29 (iii) Commitment to and development of local land conservation  
30 policies, such as changes in zoning and use of transferable development rights;
- 31 (7) The extent to which federal or other grant programs will serve as a  
32 funding match; and
- 33 (8) A sponsor's ability to carry out the proposed Rural Legacy Plan and  
34 the goals and objectives of the Program.
- 35 (d) The Board:

1           (1)     Shall review applications and may request additional information  
2 from a sponsor;

3           (2)     Shall submit applications to appropriate State agencies and to the  
4 advisory committee established by this subtitle and consider any recommendations  
5 made regarding the applications; and

6           (3)     May negotiate the terms of an application and proposed Rural Legacy  
7 Area and plan with a sponsor.

8       (e)     (1)     A sponsor shall assure adequate public participation in the  
9 development of an application and provide the Board with a summary of that  
10 participation.

11           (2)     (i)     If an application proposes a Rural Legacy Area be located  
12 within 1 mile of the boundary of a municipal corporation, the municipal corporation  
13 shall have 45 days to review and comment on the application before the application is  
14 submitted to the Board.

15                   (ii)     The sponsor shall submit to the Board with the completed  
16 application a summary of the comments from the municipal corporation.

17       (f)     (1)     A land trust shall consult with a local government prior to filing an  
18 application.

19           (2)     The Board may not approve or amend an application without local  
20 government approval.

21       (g)     The right of public access may not be required under a conservation  
22 easement.

23       (h)     A land trust may not hold exclusive title to real property interests acquired  
24 under this subtitle.

25       (i)     An easement acquired under this subtitle is perpetual and may not be  
26 extinguished or released.

27       (j)     [With the approval of a landowner, funds under this Program may be used  
28 to purchase a development right as part of an easement or fee estate acquisition. A  
29 development right shall be held by the titleholder and the Board and may be sold only  
30 within the same jurisdiction pursuant to local law.]

31           (1)     FUNDS UNDER THE PROGRAM MAY BE USED TO PURCHASE A  
32 DEVELOPMENT RIGHT AS PART OF AN EASEMENT OR FEE ESTATE ACQUISITION.

33           (2)     A DEVELOPMENT RIGHT MAY BE SEVERED FROM A PROPERTY AND  
34 TRANSFERRED FROM ONE AREA TO PROPERTY IN A RECEIVING AREA IN  
35 ACCORDANCE WITH LOCAL LAW.

1           (3)    (I)    A DEVELOPMENT RIGHT THAT IS PURCHASED UNDER THE  
2 PROGRAM SHALL BE HELD BY THE TITLEHOLDER AND THE BOARD WITH THE OPTION  
3 FOR RESALE UNDER A TRANSFER OF DEVELOPMENT RIGHTS PROGRAM.

4                   (II)   THE RIGHT TO RESELL THE DEVELOPMENT RIGHT SHALL BE  
5 STATED IN THE INSTRUMENT OF PURCHASE.

6           (4)    THE RURAL LEGACY BOARD SHALL MAINTAIN RECORDS  
7 CONCERNING:

8                   (I)    REAL PROPERTY FROM WHICH TRANSFERABLE DEVELOPMENT  
9 RIGHTS ARE PURCHASED; AND

10                   (II)   REAL PROPERTY TO WHICH RIGHTS ARE RESOLD AND  
11 TRANSFERRED.

12           (5)    TRANSFERABLE DEVELOPMENT RIGHTS MAY BE RESOLD ONLY TO  
13 OWNERS OR OPTION PURCHASERS OF REAL PROPERTY LOCATED IN PRIORITY  
14 FUNDING AREAS, INCLUDING MUNICIPALITIES, WITHIN THE COUNTY IN WHICH THE  
15 RIGHTS WERE PURCHASED.

16           (6)    (I)    THE BOARD SHALL DISTRIBUTE THE PROCEEDS ASSOCIATED  
17 WITH THE RESALE OF TRANSFERABLE DEVELOPMENT RIGHTS ONLY AS DESCRIBED  
18 IN THIS PARAGRAPH.

19                   (II)   FIFTY PERCENT OF THE PROCEEDS SHALL BE USED BY THE  
20 PRINCIPAL LOCAL GOVERNMENT IN WHICH THE PRIORITY FUNDING AREA USING  
21 TRANSFERABLE DEVELOPMENT RIGHTS IS LOCATED TO FUND LOCAL CAPITAL  
22 PROJECTS IN THE IMMEDIATE NEIGHBORHOOD WHICH IS RECEIVING  
23 TRANSFERABLE DEVELOPMENT RIGHTS.

24                   (III)   FIFTY PERCENT OF THE PROCEEDS SHALL BE RETURNED TO  
25 THE RURAL LEGACY PROGRAM FOR USE IN THE COUNTY IN WHICH THE PROCEEDS  
26 WERE GENERATED.

27                   (IV)   PROCEEDS MAY NOT BE USED FOR OPERATING EXPENSES.

28   (k)    All easement acquisitions must be recorded among the land records where  
29 the real property is located.

30   (l)    State or local condemnation authority may not be used to acquire real  
31 property interests under this Program.

32   (m)    Funds may be used for the protection of historic sites or significant  
33 archeological areas that otherwise meet the goals of this Program only if the sponsor  
34 is acquiring real property interests through a fee simple purchase.

35   (n)    A land or mineral owner who participates in this Program may reserve  
36 mineral rights for extraction in accordance with applicable law and the terms of the  
37 easement or fee acquisition.



1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
2 October 1, 2000.