

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

House Bill 777

(Delegate Cane, *et al.*)

Environmental Matters

Education, Health, and Environmental Affairs

Maryland Agricultural Land Preservation Foundation - Easement Termination

This bill provides that an easement whose purchase by the Maryland Agricultural Land Preservation Foundation (MALPF) is approved by the Board of Public Works on or after October 1, 2004 is perpetual. For easements purchased on or before September 30, 2004, the bill requires MALPF to provide landowners with the opportunity for a hearing prior to making a decision regarding a termination and establishes an appeals process for landowners applying for easement terminations.

Fiscal Summary

State Effect: By repealing the 25-year termination clause for easements purchased on or after October 1, 2004, and by clarifying the termination request process for easements purchased before that date, the bill is expected to reduce the overall administrative burden on MALPF to handle easement termination requests. However, the bill is not expected to significantly affect State finances.

Local Effect: While the bill could reduce the overall administrative burden on local governments, as described above, it is not expected to significantly affect local finances.

Small Business Effect: Minimal.

Analysis

Current Law: MALPF was created in 1977 to, among other things, protect agricultural land in the State. Agricultural preservation districts are formed when qualifying landowners sign voluntary agreements to keep their land in agricultural or woodland use for a minimum of five years. Once land is placed within a district, the owner is eligible to sell a development rights easement on that land to MALPF. At 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. Upon request for a review, MALPF must conduct an inquiry to determine the feasibility of profitable farming on the land. MALPF must conclude the inquiry and reach a decision within 180 days after the request. MALPF must inspect the site and, after adequate public notice, conduct a public hearing within the county containing the land.

An easement may be terminated only with the approval of the governing body of the county containing the land. The county government must receive the recommendation of the county agricultural preservation advisory board. The decision of the county governing body must be made after the public hearing is held. The county governing body must notify MALPF of its decision within 30 days after the public hearing.

Upon the affirmative vote of a majority of MALPF members at-large and approval by the Secretary of Agriculture and the State Treasurer, the request for termination is approved and the landowner notified. If the request is denied or the landowner fails to repurchase the easement within a specified period of time, the landowner may not again request termination of the easement until five years after the last request was made.

Background: Chapter 634 of 2000 created a task force to study MALPF and make recommendations for improvements. In its August 2001 report, the task force recommended, among other things, that its charge be extended to complete the development of legislative proposals; Chapter 473 of 2002 re-established the task force and extended its charge through May 31, 2004. This bill is a direct result of the task force's work.

According to MALPF, the original legislative intent when MALPF was established was that easements would be perpetual. The repurchase option was included to allow the possibility of exceptional circumstances under which profitable farming of any kind is no longer possible on a property and the repurchase of its easement restrictions is consistent with local and State land-use objectives. MALPF advises that most land preservation programs in other states do not have a repurchase option and those that do make it extremely difficult for an easement to be repurchased. In addition, MALPF is the only State easement purchase program that does not have an explicitly perpetual easement. Regarding the establishment of an explicit hearings and appeals process for easements purchased on or before September 30, 2004, MALPF advises that the intent is to clarify the process by which any requests for easement termination will be considered. The first easement was purchased by MALPF in October 1980. Accordingly, the first repurchase request could occur in October 2005.

Additional Information

Prior Introductions: HB 616 of 2001 would have prohibited a landowner from terminating an easement purchased by MALPF after July 1, 2002. The bill was withdrawn.

Cross File: SB 327 (Senators Dyson and Middleton) – Education, Health, and Environmental Affairs.

Information Source(s): Maryland Department of Agriculture (Maryland Agricultural Land Preservation Foundation), Office of Administrative Hearings, Judiciary (Administrative Office of the Courts), Board of Public Works, Department of Legislative Services

Fiscal Note History: First Reader - February 19, 2004
ncs/jr

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