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By: **Delegates Smigiel, Rosenberg, and Sossi**  
Introduced and read first time: February 10, 2006  
Assigned to: Environmental Matters

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A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Agricultural Land Preservation Foundation and Rural Legacy**  
3 **Program - Bonus Density - Prohibition**

4 FOR the purpose of prohibiting the Maryland Agricultural Land Preservation  
5 Foundation from purchasing easements in certain zoning districts; prohibiting  
6 certain funds under the Rural Legacy Program from being used to purchase  
7 easements or acquire property in certain zoning districts; prohibiting counties  
8 from using certain funds for the purchase of easements in certain zoning  
9 districts; defining certain terms; and generally relating to bonus density and the  
10 Maryland Agricultural Land Preservation Foundation and Rural Legacy  
11 Program.

12 BY repealing and reenacting, with amendments,  
13 Article - Agriculture  
14 Section 2-508 and 2-508.1  
15 Annotated Code of Maryland  
16 (1999 Replacement Volume and 2005 Supplement)

17 BY repealing and reenacting, with amendments,  
18 Article - Natural Resources  
19 Section 5-9A-05  
20 Annotated Code of Maryland  
21 (2005 Replacement Volume and 2005 Supplement)

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

24 **Article - Agriculture**

25 2-508.

26 (a) (1) For purposes of this subtitle, the following words have the meanings  
27 indicated.

1 (2) "Total amount to be allotted" means the amount, as certified by the  
2 Comptroller, which remains in the Maryland Agricultural Land Preservation Fund at  
3 the beginning of the fiscal year after payment of all expenses of the Foundation and  
4 the board of trustees during the previous fiscal year as specified in § 2-505(c)(1) and  
5 (2) of this subtitle, and after subtraction of funds committed for payment as  
6 consideration for easements purchased during previous fiscal years, and after  
7 subtraction of any money remaining in the Fund as a result of a transfer of local  
8 Program Open Space funds made pursuant to § 5-903 of the Natural Resources  
9 Article.

10 (3) "General purchases of easements" means purchases of agricultural  
11 land preservation easements under this subtitle in which the governing body of the  
12 county in which the land is located is not required to make a contribution to the  
13 Maryland Agricultural Land Preservation Fund.

14 (4) "Matching purchases of easements" means purchases of agricultural  
15 land preservation easements under this subtitle in which the governing body of the  
16 county in which the land is located is required to make a contribution to the Maryland  
17 Agricultural Land Preservation Fund of an amount equal to at least 40 percent of the  
18 value of the easement for each such purchase.

19 (5) "Allotted purchases" means general or matching purchases made  
20 pursuant to offers to buy tendered by the Foundation on or before January 31 of any  
21 fiscal year.

22 (6) "County" means any county containing productive agricultural land  
23 which is being actively farmed and which meets the criteria for land for which  
24 easements may be purchased.

25 (7) "Eligible county" means a county as defined in paragraph (6) of this  
26 subsection which has secured approval from the Foundation for a local agricultural  
27 land preservation program.

28 (8) "BONUS DENSITY" MEANS THE PRACTICE OF ALLOWING, AFTER THE  
29 PURCHASE OF AN EASEMENT ON A PROPERTY, MORE SUBDIVISIONS ON AN  
30 ADJACENT PROPERTY THAN WOULD OTHERWISE BE ALLOWED UNDER THE ZONING  
31 ORDINANCE FOR THE ADJACENT PROPERTY.

32 (b) Beginning with fiscal year 1979, and in each fiscal year thereafter, the  
33 Foundation shall determine the maximum amount which may be expended for  
34 allotted purchases of easements on land located within each county. The maximum  
35 amount which may be expended for allotted purchases of easements in any county in  
36 any fiscal year shall be:

37 (1) An amount, to be used for general allotted purchases, equal to one  
38 twenty-third of one half of the total amount to be allotted; and

39 (2) An amount, to be used for matching allotted purchases, which shall  
40 be computed for each eligible county by dividing one half of the total amount to be  
41 allotted equally among those counties having an approved program. The maximum

1 amount available from the Foundation for the Foundation's share in matching  
2 allotted purchases may not exceed \$1 million in any county in any fiscal year.

3 (c) If the Foundation receives acceptances of offers to buy in insufficient  
4 numbers to expend the total amount to be allotted for allotted purchases, the  
5 Foundation, to the extent feasible, shall tender additional offers to buy in sufficient  
6 numbers to expend the total amount to be allotted. Any such additional offers to buy  
7 shall be tendered:

8 (1) To landowners who have applied to sell easements on land which was  
9 otherwise acceptable, but who had not received an offer to buy solely because of  
10 limitations on the amount of money to be spent for allotted purchases;

11 (2) To applicants on a statewide basis as provided by the priority ranking  
12 system established under § 2-510(e) of this subtitle; and

13 (3) Only after the expiration of the period allowed for acceptance of offers  
14 to buy under allotted general and matching purchases.

15 (D) THE FOUNDATION MAY NOT PURCHASE AN EASEMENT IN A ZONING  
16 DISTRICT IN WHICH THE COUNTY GRANTS BONUS DENSITY.

17 2-508.1.

18 (a) If a county is certified by the Department of Planning under § 5-408 of the  
19 State Finance and Procurement Article as having established an effective county  
20 agricultural land preservation program, and if there are moneys remaining in the  
21 Maryland Agricultural Land Preservation Fund at the end of the fiscal year, the  
22 county may apply to the Foundation for an amount equal to the difference between:

23 (1) The aggregate amount allotted on behalf of the county under general  
24 allotted purchases of easements as provided in § 2-508(b) of this subtitle for the fiscal  
25 year in which easement purchases are made; and

26 (2) The amount committed by the Foundation on behalf of the county  
27 under general allotted purchases of easements as provided in § 2-508(b) of this  
28 subtitle for the fiscal year in which easement purchases are made.

29 (b) The distribution under this section shall be made within 60 days of the end  
30 of each fiscal year.

31 (c) If the moneys remaining in the Maryland Agricultural Land Preservation  
32 Fund at the end of the fiscal year are insufficient to distribute the total amount  
33 applied for under subsection (a) of this section, the maximum amount that may be  
34 distributed to any certified county is:

35 (1) The total sum available divided by the number of counties applying  
36 for additional funds under this section; less

1 (2) The amount committed by the Foundation on behalf of the county  
2 under general allotted purchases of easements as provided in § 2-508(b) of this  
3 subtitle for the fiscal year in which easement purchases are made.

4 (d) (1) A county may use the additional funds distributed under this section  
5 only for an approved agricultural land preservation program for the purposes stated  
6 under § 2-512 of this subtitle, including use for bond annuity funds, collateralizing  
7 loans, or matching funds.

8 (2) A COUNTY MAY NOT USE THE ADDITIONAL FUNDS DISTRIBUTED  
9 UNDER THIS SECTION FOR THE PURCHASE OF AN EASEMENT IN A ZONING DISTRICT  
10 IN WHICH THE COUNTY GRANTS BONUS DENSITY.

11 **Article - Natural Resources**

12 5-9A-05.

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

17 (b) (1) The application shall describe the proposed Rural Legacy Area,  
18 include a Rural Legacy Area Plan, identify existing protected lands, state the  
19 anticipated level of initial landowner participation in the Program and the amount of  
20 the grant requested, and comply with the criteria set forth below.

21 (2) To qualify for additional funds appropriated above the level  
22 appropriated in fiscal year 2000 as provided for in § 12-1007(d) of the Public Safety  
23 Article, an application shall include a certification that the local jurisdiction has not  
24 adopted any local amendments to the Maryland Building Rehabilitation Code.

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

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

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

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

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

- 1                   (2)     The degree of threat to the resources and character of the area  
2 proposed for preservation, as reflected by patterns and trends of development and  
3 landscape modifications in and surrounding the proposed Rural Legacy Area;
- 4                   (3)     The significance and extent of the cultural resources proposed for  
5 protection through fee simple purchases, including the importance of historic sites  
6 and significant archaeological areas;
- 7                   (4)     The economic value of the resource-based industries or services  
8 proposed for protection through land conservation, such as agriculture, forestry,  
9 recreation, and tourism;
- 10                  (5)     The overall quality and completeness of the Rural Legacy Plan,  
11 including:
- 12                   (i)     The degree to which existing planning, zoning, and growth  
13 management policies contribute to land conservation and the protection of cultural  
14 resources;
- 15                   (ii)    The degree to which the proposed plan is consistent with the  
16 applicable local comprehensive plan, including protection of sensitive areas and  
17 mineral resources;
- 18                   (iii)   How well existing or new conservation programs are  
19 coordinated with the proposed acquisition plan;
- 20                   (iv)    How well the plan will maximize acquisition of real property  
21 interests in contiguous blocks of land within the Rural Legacy Area while providing  
22 for protection of isolated acquisitions important to the plan;
- 23                   (v)     Provisions for protection of resources, such as voluntarily  
24 granted or purchased easements, fee estate purchases, or gifts of lands;
- 25                   (vi)    How the sponsor plans to manage, prioritize, and sequence  
26 easement and land acquisitions;
- 27                   (vii)   Methodology for prioritizing and valuing or appraising  
28 easements;
- 29                   (viii)   Proposed titleholders for easement or fee estate acquisitions;  
30 and
- 31                   (ix)    The quality of the proposed stewardship program for holding  
32 and monitoring of easement restrictions in perpetuity;
- 33                  (6)     The strength and quality of partnerships created for land  
34 conservation among federal, State, and local governments and land trusts for  
35 implementing the plan, including:
- 36                   (i)     Financial support;

- 1 (ii) Dedication of staff and resources; and
- 2 (iii) Commitment to and development of local land conservation  
3 policies, such as changes in zoning and use of transferable development rights;
- 4 (7) The extent to which federal or other grant programs will serve as a  
5 funding match; and
- 6 (8) A sponsor's ability to carry out the proposed Rural Legacy Plan and  
7 the goals and objectives of the Program.
- 8 (d) The Board:
- 9 (1) Shall review applications and may request additional information  
10 from a sponsor;
- 11 (2) Shall submit applications to appropriate State agencies and to the  
12 advisory committee established by this subtitle and consider any recommendations  
13 made regarding the applications; and
- 14 (3) May negotiate the terms of an application and proposed Rural Legacy  
15 Area and plan with a sponsor.
- 16 (e) (1) A sponsor shall assure adequate public participation in the  
17 development of an application and provide the Board with a summary of that  
18 participation.
- 19 (2) (i) If an application proposes a Rural Legacy Area be located  
20 within 1 mile of the boundary of a municipal corporation, the municipal corporation  
21 shall have 45 days to review and comment on the application before the application is  
22 submitted to the Board.
- 23 (ii) The sponsor shall submit to the Board with the completed  
24 application a summary of the comments from the municipal corporation.
- 25 (f) (1) A land trust shall consult with a local government prior to filing an  
26 application.
- 27 (2) The Board may not approve or amend an application without local  
28 government approval.
- 29 (g) The right of public access may not be required under a conservation  
30 easement.
- 31 (h) A land trust may not hold exclusive title to real property interests acquired  
32 under this subtitle.
- 33 (i) An easement acquired under this subtitle is perpetual and may not be  
34 extinguished or released.

1 (j) (1) With the approval of a landowner, funds under this Program may be  
2 used to purchase a development right as part of an easement or fee estate acquisition.  
3 A development right shall be held by the titleholder and the Board and may be sold  
4 only within the same jurisdiction pursuant to local law.

5 (2) In a county with a locally adopted transferable development rights  
6 program and with the approval of the county, funds under this Program may be used  
7 to purchase transferable development rights in the county in accordance with the  
8 locally adopted transferable development rights program.

9 (3) The right to resell the development right shall be stated in the  
10 instrument of purchase.

11 (4) The Rural Legacy Board shall maintain records concerning:

12 (i) Real property from which transferable development rights are  
13 purchased; and

14 (ii) Real property to which rights are resold and transferred.

15 (5) The county shall provide to the Board information relating to the  
16 records required in paragraph (4) of this subsection.

17 (6) Transferable development rights may be resold only to owners or  
18 option purchasers of real property located in priority funding areas, including  
19 municipalities, within the county in which the rights were purchased.

20 (7) (i) The proceeds associated with the resale of transferable  
21 development rights shall be distributed only as described in this paragraph.

22 (ii) Fifty percent of the proceeds shall be used by the local  
23 government in which the development using transferable development rights is  
24 located to fund capital projects in the county or municipal corporation which is  
25 receiving transferable development rights. Funds shall be distributed to the  
26 municipal corporation if the receiving area is within the corporate limits of a  
27 municipal corporation.

28 (iii) Fifty percent of the proceeds shall be returned to the Rural  
29 Legacy Program for use in the county in which the proceeds were generated.

30 (iv) Proceeds may not be used for operating expenses.

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

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

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

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

7 (o) In its determination under subsection (c) of this section, the Rural Legacy  
8 Board may not make its determination solely on the basis of whether a county has  
9 adopted a transferable development rights program authorizing Rural Legacy Board  
10 purchases and sales of transferable development rights.

11 (P) (1) IN THIS SUBSECTION, "BONUS DENSITY" MEANS THE PRACTICE OF  
12 ALLOWING, AFTER THE PURCHASE OF AN EASEMENT ON A PROPERTY, MORE  
13 SUBDIVISIONS ON AN ADJACENT PROPERTY THAN WOULD OTHERWISE BE ALLOWED  
14 UNDER THE ZONING ORDINANCE FOR THE ADJACENT PROPERTY.

15 (2) FUNDS MAY NOT BE USED FOR THE PURCHASE OF AN EASEMENT OR  
16 THE ACQUISITION OF PROPERTY IN A ZONING DISTRICT IN WHICH THE COUNTY  
17 GRANTS BONUS DENSITY.

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
19 October 1, 2006.