

Department of Legislative Services  
Maryland General Assembly  
2006 Session

FISCAL AND POLICY NOTE

House Bill 1254

(Delegate Smigiel, *et al.*)

Environmental Matters

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

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This bill prohibits the Maryland Agricultural Land Preservation Foundation (MALPF) from purchasing an easement in a zoning district in which the county grants “bonus density.” The bill also prohibits a county from using specified MALPF funds for the purchase of an easement in a zoning district in which the county grants bonus density. Furthermore, the bill prohibits funds under the Rural Legacy Program within the Department of Natural Resources (DNR) from being used for the purchase of an easement or the acquisition of property in a zoning district in which the county grants bonus density.

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Fiscal Summary

**State Effect:** Potential decrease in federal funds and local matching funds for MALPF to the extent that any counties become ineligible to participate in that program. Overall funding for Rural Legacy would not be affected. Any funds that would have been used under MALPF or Rural Legacy in counties that allow bonus density would presumably be redistributed to other counties.

**Local Effect:** Unless affected counties change their zoning ordinances to disallow bonus density, those counties stand to lose a significant amount of funding under MALPF and Rural Legacy and would no longer provide any matching funds related to these programs. Other counties could benefit to the extent they receive additional State funding as a result.

**Small Business Effect:** Potential meaningful.

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## Analysis

**Bill Summary:** “Bonus density” means the practice of allowing, after the purchase of an easement on a property, more subdivisions on an adjacent property than would otherwise be allowed under the zoning ordinance for the adjacent property.

### **Current Law/Background:**

#### *Maryland Agricultural Land Preservation Foundation*

MALPF was created by the Maryland General Assembly in 1977 to preserve productive agricultural land and woodland. Agricultural preservation districts are formed when qualifying landowners sign voluntary agreements to keep their land in agricultural or woodland use for at least five years. Landowners who agree to place their farms within an agricultural preservation district may sell a development rights easement on that property to MALPF. Subject to some limitations, once an easement has been sold, the property is protected from further development. As of June 30, 2005, MALPF had protected approximately 242,822 acres through the purchase of 1,757 easements. The Governor’s proposed fiscal 2007 budget includes \$84.6 million in special and federal funds for MALPF; this includes \$13 million in local matching funds.

The total funds available to MALPF for the purchase of easements are divided equally between general allotted funds and State matching funds. The half devoted to general allotted funds is divided equally among the 23 counties. The half devoted to State matching funds is allocated on the basis of a match of 60¢ of State funds for every 40¢ of county funds committed up to \$1 million in State funds. “Round 1” offers are made based on competition for funds by applications within individual counties. General allotted funds are applied first to make Round 1 offers until depleted, and the matching funds are then applied to make Round 1 offers until either all the funds are depleted or all of the possible offers within a county are made. When Round 1 offers are completed, the remaining easement applications compete statewide in “Round 2” based on unused general allotted and State matching funds.

Under current law, if there is any money remaining at the end of the fiscal year, counties with certified agricultural land preservation programs may apply to MALPF for those funds. A county may use the additional funds only for an approved agricultural land preservation program for specified purposes.

#### *Rural Legacy*

The purpose of the Rural Legacy Program, established in 1997 and administered by DNR, is to supplement State land preservation programs in order to preserve key areas

before escalating land values render protection impossible or before the land is lost to development. The program provides funding to local governments and conservation organizations to purchase property and conservation easements within designated rural legacy areas. According to DNR, the Rural Legacy Board and the Rural Legacy Advisory Committee already take into account the transfer of density when making decisions under the Rural Legacy Program. There are 29 rural legacy areas in 21 counties. As of February 1, 2006, the program had preserved 51,772 acres. The Governor's proposed fiscal 2007 budget includes \$31.05 million in special funds and general obligation bonds for the Rural Legacy Program.

### *Bonus Density*

The Maryland Department of Planning (MDP) advises that the goals of MALPF and Rural Legacy are compromised when development occurs on lands adjacent to those protected by the State under these programs. The intent of the bill is to protect the State's investment by focusing the purchase of easements or property in areas where bonus density is not allowed.

Legislative Services advises, however, that the State agencies contacted with respect to this bill do not agree on the interpretation of the bill's definition of "bonus density". Accordingly, it is difficult to determine which counties could be affected by the bill.

According to MDP, at least eight counties (Cecil, Dorchester, Howard, Kent, Queen Anne's, St. Mary's, Talbot, and Wicomico) allow bonus density; seven of these counties (all except for Dorchester County) have certified agricultural land preservation programs. According to DNR, 11 rural legacy areas in six counties (Calvert, Carroll, Frederick, Harford, Queen Anne's, and Wicomico counties) could be affected. On the other hand, MALPF advises that it is unaware of any county participating in MALPF that would be affected under its interpretation of the bill's definition.

**State Fiscal Effect:** Although it is unclear at this point which counties could be affected, it is assumed that affected counties would attempt to change their zoning ordinances as a result of the bill so as not to lose eligibility for MALPF and Rural Legacy funds. However, to the extent any affected counties do not change their zoning and, therefore, become ineligible for MALPF and Rural Legacy funds, the bill could result in a redistribution of funds from counties that grant bonus density to those that do not. (This assumes that there would be sufficient demand in other counties to offset the decrease in demand created by counties who would no longer be eligible for these funds.) In addition, MALPF advises that federal funds and local matching (special) funds could decrease to the extent any counties become ineligible to participate in that program.

**Small Business Effect:** The bill could have an impact on farmers, other resource-based businesses, and developers. If counties that currently allow bonus density change their zoning ordinances so as not to allow bonus density, farmers and other resource-based businesses in those counties could be positively impacted, while certain developers in those counties could be negatively impacted. If any counties become ineligible for funds, however, farmers and other resource-based businesses in those counties would be unable to participate in the affected programs, while farmers and other resource-based businesses in other counties could benefit.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Maryland Department of Agriculture (Maryland Agricultural Land Preservation Foundation), Department of Natural Resources, Maryland Department of Planning, Charles County, Frederick County, Prince George's County, Somerset County, Department of Legislative Services

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