

Department of Legislative Services
Maryland General Assembly
2006 Session

FISCAL AND POLICY NOTE

House Bill 829 (Delegates Bates and Miller)
Environmental Matters

Maryland Agricultural Land Preservation Foundation - Use of Land for Existing Easements

This bill makes various changes regarding the number and use of lots released free of easement restrictions to a landowner who originally sold an easement to the Maryland Agricultural Land Preservation Foundation (MALPF).

Fiscal Summary

State Effect: Potential significant increase in special fund revenues from reimbursements by landowners due to any increase in lots released under MALPF. The bill could jeopardize future federal funding for MALPF and, if applied retroactively, could result in the need for MALPF to reimburse the federal government or local governments for their contributions with respect to specified easement purchases.

Local Effect: The bill would likely result in an increase in workload for local governments related to processing additional lot release requests. According to MALPF, if applied retroactively, the bill could also result in the reimbursement of local funds used for the purchase of certain easements.

Small Business Effect: Meaningful.

Analysis

Bill Summary: The bill increases the maximum number of lots, from three to six, that may be released free of easement restrictions for the landowner who originally sold an easement to MALPF. The bill repeals existing density requirements and provides that the

lots shall be subdivided by one lot per 50 acres, not to exceed six subdivided lots. Such lots shall be unrestricted. The location of the lots to be subdivided shall be subject to the approval of the local agricultural advisory board or MALPF. A landowner must relinquish a right reserved under an easement agreement for the lots of an owner or owner's child.

Current Law/Background: 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 for MALPF includes \$84.6 million in special and federal funds.

When MALPF purchases an easement on a property, the appraisal takes into account the value of the number of residential dwelling rights that are extinguished. Thus, the public investment in a property (the offer amount and ultimately the acquisition cost) embodies the extinguishment of the residential dwelling rights that could be developed for the commercial market. The retained rights to an owner's and child's lots are not taken into account by the appraisal because these are rights that are very narrowly defined – such lots are for the exclusive use of the eligible party and cannot be developed and sold on the open market; thus, they have no value for the appraisal of the property.

These rights were intended to encourage the continuation of the family farming operation and the transfer of the property from parents to children. In 2003, on the recommendation of the MALPF Task Force, the density and number of owner's and child's lots was amended to allow less density and fewer total lots (1 lot for the first full 20 acres, and 1 lot each for the next full 50 acres, up to a total of 3 lots for 120-acre or greater property; down from 1 lot per 20 acres or any part thereof up to a total of 10 lots). In return, to give grantors more flexibility, a landowner has the option at the time of easement application (or under the district agreement) to choose one unrestricted lot for the first full 20 acres that can be commercially developed. If the grantor does not develop the lot, the ability to develop it carries forward to future owners of the property; owner and child lots are extinguished when the property is transferred or sold by the original grantor. The unrestricted lot's commercial value is taken into account in the appraisal and, thus, in the offer amount and ultimately the acquisition cost of the easement.

State Fiscal Effect: According to MALPF, the bill's changes are anticipated to result in a significant increase in the removal of acreage from easement restrictions and residential development on preserved farms and farmland. Under current law, the landowner must pay the State for any acre or portion released at the price per acre the State paid the owner for the easement. Accordingly, special fund revenues from reimbursements to MALPF would increase under the bill. A reliable estimate of the increase in reimbursements cannot be made at this time.

However, the following example, developed by MALPF, shows the bill's potential impact on a micro-level. A landowner from Carroll County could sell an easement on a 200-acre farm zoned agricultural to MALPF at \$8,000 per acre, opting for the owner/child lot option (so the value of the potential lot development is not accounted for in the appraisal process). Upon settlement, the landowner and his/her children could take out four unrestricted one-acre lots, reimburse MALPF \$32,000, and sell those unrestricted lots on the open market for approximately \$200,000 each. The grantor's family has now been paid \$1.6 million not to develop the farm but has developed four commercial lots for a net profit of \$800,000 less the \$32,000 payback to the State. The net profit gained by the grantor's family is \$768,000.

The statewide fiscal impact cannot easily be calculated, but the scenario described above suggests that this bill could have a significant impact on MALPF. For example, MALPF advises that, if this bill were interpreted to apply retroactively, an estimated 1,000 existing easements could be given the right to develop unrestricted lots. If 50% of these easements develop two unrestricted lots each with a commercial market value of \$100,000, the gross commercial value of such development would be \$100 million, with a \$2 million payback to the State (assuming an average payback of \$2,000 per acre for existing easements).

MALPF advises that, if additional development is allowed on properties for which federal or local funding was used for the easement purchase, MALPF would likely have to repay those entities the amount of funding contributed to the transaction. In addition, it could jeopardize future federal funding for MALPF. Any reimbursements to the federal government or local governments would not result in an overall increase in MALPF expenditures; it would merely reduce the amount of funds that would be available for easement purchases.

Small Business Effect: Most farms are small businesses. To the extent the bill results in additional lot releases, additional funds (from reimbursements to MALPF) could be available for the purchase of easements. In addition, certain farm owners could benefit significantly from the bill's changes, as described above, as would any small businesses involved with the additional development that could occur as a result of the bill.

Additional development on a farm, however, has the potential to negatively affect the farming operation.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Agriculture (Maryland Agricultural Land Preservation Foundation), Department of Legislative Services

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