

HOUSE BILL 974

M4

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By: **Delegates Stocksdale, Bartlett, Bates, Beitzel, Elliott, George, Jennings, Krebs, Kullen, McKee, Shewell, Sossi, and Wood**

Introduced and read first time: February 9, 2007

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Agricultural Land Preservation – Easements – Future Dwelling House**

3 FOR the purpose of authorizing a landowner of a certain property, on which there is
4 no existing dwelling house, to reserve the right to construct a future dwelling
5 house under certain circumstances; requiring the Maryland Agricultural Land
6 Preservation Foundation and local governing body to provide certain written
7 notice before a certain date; prohibiting the Foundation from restricting the
8 landowner's right to build a future dwelling house under certain circumstances;
9 authorizing the landowner to build a future dwelling house on certain land at
10 any time, but requiring the landowner to obtain written approval from the
11 Foundation before constructing the dwelling house; requiring the location of the
12 future dwelling house to meet certain conditions; requiring a landowner to
13 forfeit the right to reserve certain acreage for a future dwelling house under
14 certain circumstances; prohibiting the subdivision of certain acreage from the
15 agricultural land preservation easement under certain circumstances; and
16 generally relating to agricultural land preservation.

17 BY repealing and reenacting, with amendments,
18 Article – Agriculture
19 Section 2–513(b)
20 Annotated Code of Maryland
21 (1999 Replacement Volume and 2006 Supplement)

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 **Article – Agriculture**

2 2–513.

3 (b) (1) A landowner whose land is subject to an easement may not use the
4 land for any commercial, industrial, or residential purpose except:

5 (i) As determined by the Foundation, for farm and forest
6 related uses and home occupations; or

7 (ii) As otherwise provided under this section.

8 (2) Except as provided in paragraphs (3) and (6) of this subsection, on
9 written application, the Foundation shall release free of easement restrictions only for
10 the landowner who originally sold an easement, 1 acre or less for the purpose of
11 constructing a dwelling house for the use only of that landowner or child of the
12 landowner, up to a maximum of three lots, subject to the following conditions:

13 (i) The number of lots allowed to be released under this section,
14 except as provided in paragraph (6) of this subsection, may not exceed:

15 1. 1 lot if the size of the easement property is 20 acres or
16 more but fewer than 70 acres;

17 2. 2 lots if the size of the easement property is 70 acres
18 or more but fewer than 120 acres; or

19 3. 3 lots if the size of the easement property is 120 acres
20 or more.

21 (ii) The resulting density on the property may not exceed the
22 density allowed under zoning of the property before the Foundation purchased the
23 easement.

24 (iii) The landowner shall pay the State for any acre or portion
25 released at the price per acre that the State paid the owner for the easement.

26 (iv) Before any conveyance or release, the landowner and the
27 child, if there is a conveyance to a child, shall agree not to subdivide further for
28 residential purposes any acreage allowed to be released. The agreement shall be
29 recorded among the land records where the land is located and shall bind all future
30 owners.

1 (v) After certifying that the landowner or child of the landowner
2 has met the conditions provided in subparagraphs (i) through (iv) of this paragraph,
3 the Foundation shall issue a preliminary release which shall:

4 1. Become final when the Foundation receives and
5 certifies a nontransferable building permit in the name of the landowner or child of
6 the landowner for construction of a dwelling house; or

7 2. Become void upon the death of the person for whose
8 benefit the release was intended if the Foundation has not yet received a building
9 permit as provided in this subparagraph.

10 (vi) Any release or preliminary release issued under this
11 paragraph shall include:

12 1. A statement of the conditions under which it was
13 issued, a certification by the Foundation that all necessary conditions for release or
14 preliminary release have been met, and copies of any pertinent documents; and

15 2. A statement that the owner's or child's lot may not be
16 transferred for 5 years from the date of the final release, except on:

17 A. Approval by the Foundation; or

18 B. Notwithstanding any conditions on transfers imposed
19 under item 1 of this subparagraph, a lender providing notice to the Foundation of a
20 transfer pursuant to a bona fide foreclosure of a mortgage or deed of trust or to a deed
21 in lieu of foreclosure.

22 (vii) Any release, preliminary release, building permit, or other
23 document issued or submitted in accordance with this paragraph shall be recorded
24 among the land records where the land is located and shall bind all future owners.

25 (viii) The Foundation may not restrict the ability of a landowner
26 who originally sold an easement to acquire a release under this paragraph beyond the
27 requirements provided in this section.

28 (3) A landowner may reserve the right to exclude 1 unrestricted lot
29 from an easement in lieu of all owner's and children's lots to which the landowner
30 would otherwise be entitled under paragraph (2) of this subsection, subject to the
31 following conditions:

1 (i) The resulting density on the property shall be less than the
2 density allowed under zoning of the property before the Foundation purchased the
3 easement;

4 (ii) An unrestricted lot may be subdivided by the landowner
5 from the easement and sold to anyone to construct one residential dwelling;

6 (iii) The size of an unrestricted lot shall be 1 acre or less, except
7 as provided in paragraph (6) of this subsection;

8 (iv) The landowner shall agree not to subdivide further for
9 residential purposes any acreage allowed to be released, and the agreement shall be
10 recorded among the land records where the land is located and shall bind all future
11 owners;

12 (v) The right to the lot is taken into consideration in the
13 appraisal of fair market value and determination of easement value;

14 (vi) The lot can be subdivided at any time and the location of the
15 lot to be subdivided is subject to the approval of the local agricultural advisory board
16 and the Foundation; and

17 (vii) If the property is transferred before the right to exclude the
18 lot has been exercised, the right may be transferred with the property.

19 (4) (i) Subject to the approval of the Foundation, a landowner may
20 construct housing for tenants fully engaged in operation of the farm.

21 (ii) Construction may not exceed 1 tenant house per 100 acres,
22 unless the Foundation grants an exception based on a showing of compelling need.

23 (iii) The land on which a tenant house is constructed may not be
24 subdivided or conveyed to any person. In addition, the tenant house may not be
25 conveyed separately from the original parcel.

26 (iv) The Foundation shall adopt regulations for the size and
27 location of tenant houses.

28 (5) Except as provided in paragraph (6) of this subsection, on request
29 to the Foundation, an owner may exclude from the easement restrictions 1 acre per
30 each single dwelling, which existed at the time of the sale of the easement, as an
31 owner's, children's, or unrestricted lot to which the owner is entitled under paragraph
32 (2) of this subsection, by a land survey and recordation provided at the expense of the

1 owner. However, before any exclusion is granted, an owner shall agree with the
2 Foundation not to subdivide further for residential purposes any acreage allowed to be
3 released. This agreement shall be recorded among the land records where the land is
4 located and shall bind all future owners.

5 (6) (i) The restrictions of paragraphs (2) and (5) of this subsection
6 concerning maximum lot sizes are altered so that the maximum lot size is 2 acres if:

7 1. Regulations adopted by the Department of the
8 Environment require a minimum lot size for a dwelling house of not less than 2 acres
9 in areas where there is less than 4 feet of unsaturated and unconsolidated soil
10 material below the bottom of an on-site sewage disposal system or in areas located
11 within 2,500 feet of the normal water level of an existing or proposed water supply
12 reservoir; or

13 2. Regulations adopted by the jurisdiction in which the
14 land is situated require that a lot for a dwelling house be larger than 1 acre.

15 (ii) For exclusions provided under paragraph (5) of this
16 subsection, the landowner shall pay the State for any acre or portion released in excess
17 of the 1 acre per single dwelling that existed at the time of easement.

18 (7) The Foundation may approve a landowner's request to relocate the
19 site of an existing dwelling to another location on a farm subject to an easement or
20 district agreement, provided:

21 (i) The new location does not interfere with any agricultural
22 use; and

23 (ii) Subject to the Foundation's approval, the landowner agrees
24 either to demolish the existing dwelling at the current location or permanently convert
25 the existing dwelling at the current location to a use that is nonresidential and
26 integral to the farm operation.

27 (8) The restrictions of paragraphs (2) and (5) of this subsection
28 concerning maximum lot sizes may be waived by the Foundation so that the maximum
29 lot size is 2 acres if:

30 (i) The Foundation receives a recommendation to allow a
31 maximum lot size of more than 1 acre from the county Agricultural Preservation
32 Advisory Board and the planning and zoning authority of the jurisdiction where the
33 land is situated; and

1 (ii) The Foundation makes a determination that a lot size
2 greater than 1 acre will not interfere significantly with the agricultural use of the land
3 under easement.

4 **(9) (I) 1. SUBJECT TO SUBPARAGRAPH (V) OF THIS**
5 **PARAGRAPH, A LANDOWNER OF A PROPERTY ON WHICH THERE IS NO EXISTING**
6 **DWELLING HOUSE MAY, AT THE TIME THE EASEMENT IS SOLD, RESERVE THE**
7 **RIGHT TO CONSTRUCT A FUTURE DWELLING HOUSE.**

8 **2. THE FOUNDATION AND LOCAL GOVERNING BODY**
9 **SHALL PROVIDE WRITTEN NOTICE OF A LANDOWNER'S RIGHT TO CONSTRUCT A**
10 **FUTURE DWELLING HOUSE, AS ESTABLISHED UNDER THIS PARAGRAPH, BEFORE**
11 **THE SALE OF THE EASEMENT IS COMPLETED.**

12 **(II) A LANDOWNER THAT CHOOSES TO RESERVE THE RIGHT**
13 **TO USE 1 ACRE FOR A FUTURE DWELLING HOUSE UNDER SUBPARAGRAPH (I) OF**
14 **THIS PARAGRAPH IS NOT REQUIRED TO CHOOSE THE LOCATION FOR THE**
15 **DWELLING HOUSE OR HAVE A SURVEY OF THE 1 ACRE CONDUCTED BEFORE THE**
16 **EASEMENT SALE IS COMPLETED.**

17 **(III) IF A LANDOWNER OF A PROPERTY THAT IS SUBJECT TO**
18 **AN AGRICULTURAL LAND PRESERVATION EASEMENT RESERVES THE RIGHT TO**
19 **CONSTRUCT A FUTURE DWELLING HOUSE UNDER SUBPARAGRAPH (I) OF THIS**
20 **PARAGRAPH, THE FOUNDATION MAY NOT RESTRICT THE LANDOWNER'S RIGHT**
21 **TO A FUTURE DWELLING HOUSE ON THE PROPERTY IF:**

22 **1. THE EASEMENT SALE APPLICATION WAS**
23 **APPROVED BY THE FOUNDATION AND THE LOCAL GOVERNING BODY WITH THE 1**
24 **ACRE SUBTRACTED FOR A FUTURE DWELLING HOUSE;**

25 **2. THE ENTIRE CONTIGUOUS ACREAGE MINUS THE 1**
26 **ACRE WAS INCLUDED IN THE DETERMINATION OF THE VALUE OF THE**
27 **EASEMENT OF THE PROPERTY; AND**

28 **3. THE ENTIRE CONTIGUOUS ACREAGE OF THE**
29 **EASEMENT, INCLUDING THE 1 ACRE FOR A FUTURE DWELLING HOUSE, IS**
30 **SUBJECT TO THE EASEMENT RESTRICTIONS UNDER THIS SECTION.**

31 **(IV) 1. A LANDOWNER THAT RESERVES THE 1 ACRE FOR**
32 **A FUTURE DWELLING IN ACCORDANCE WITH THIS PARAGRAPH MAY CHOOSE TO**

1 BUILD A DWELLING AT ANY TIME IN THE FUTURE, BUT SHALL OBTAIN WRITTEN
2 APPROVAL FOR THE LOCATION FROM THE FOUNDATION AND THE LOCAL
3 GOVERNING BODY BEFORE THE DWELLING HOUSE IS CONSTRUCTED.

4 2. A LOCATION FOR A FUTURE DWELLING HOUSE ON
5 THE 1 ACRE SELECTED SHALL BE IN A LOCATION THAT LEAST AFFECTS THE
6 INTEGRITY OF THE AGRICULTURAL PRESERVATION EASEMENT.

7 (V) IF A LANDOWNER OF A PROPERTY THAT DOES NOT HAVE
8 AN EXISTING DWELLING HOUSE DOES NOT CHOOSE TO RESERVE THE 1 ACRE AT
9 THE TIME THE EASEMENT IS SOLD, THE LANDOWNER SHALL FORFEIT THE
10 RIGHT TO CONSTRUCT A DWELLING ON THAT PROPERTY.

11 (VI) IF A LANDOWNER BUILDS A DWELLING HOUSE ON AN
12 EASEMENT UNDER THE RIGHT GRANTED BY THIS PARAGRAPH, THE 1 ACRE WITH
13 THE DWELLING HOUSE MAY NOT BE SUBDIVIDED FROM THE EASEMENT IF THE
14 LANDOWNER SELLS THE PROPERTY AFTER THE DWELLING HOUSE IS
15 CONSTRUCTED.

16 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
17 October 1, 2007.