

HOUSE BILL 939

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By: **Prince George's County Delegation and Montgomery County Delegation**
Introduced and read first time: February 6, 2008
Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland–National Capital Park and Planning Commission – Prince**
3 **George's County Agricultural Preservation Easement Program**

4 **PG/MC 116–08**

5 FOR the purpose of establishing the Prince George's County Agricultural Preservation
6 Easement Program; providing for the purposes of the Program; requiring the
7 Prince George's County Planning Board to administer the Program in
8 consultation with the Prince George's County Soil Conservation District;
9 authorizing the County Council of Prince George's County to enact certain
10 ordinances relating to agricultural preservation and to delegate certain
11 authority of the Planning Board relating to the Program to the Soil
12 Conservation District; requiring the Board to adopt certain regulations;
13 establishing the Prince George's County Agricultural Preservation Easement
14 Fund; requiring the Planning Board to administer the Fund; requiring the
15 Board to deposit certain funds into the Fund for certain purposes; requiring the
16 Fund to be used for certain purposes; requiring the Planning Board to solicit
17 and consider the recommendations of the Soil Conservation District when
18 making certain decisions; authorizing the Planning Board to purchase certain
19 easements on certain land that is outside the Maryland–Washington
20 Metropolitan District but is within the Maryland–Washington Regional District
21 in Prince George's County; authorizing the Planning Board to expend certain
22 current funds for certain purposes; requiring a certain property owner to convey
23 a certain easement to the Planning Board at a certain time and recording a
24 certain easement in the land records; providing that certain provisions of law do
25 not apply to a certain subtitle; authorizing the Prince George's County Council,
26 sitting as the district council to enact ordinances that create a certain program
27 for the purchase of certain development rights; defining certain terms; and
28 generally relating to the Prince George's County Agricultural Preservation
29 Easement Program in the Maryland–National Capital Park and Planning
30 Commission.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 BY adding to
2 Article 28 – Maryland–National Capital Park and Planning Commission
3 Section 5–501 through 5–507 to be under the new subtitle “Subtitle 5. Prince
4 George’s County Agricultural Preservation Easement Program”
5 Annotated Code of Maryland
6 (2003 Replacement Volume and 2007 Supplement)

7 BY repealing and reenacting, with amendments,
8 Article 28 – Maryland–National Capital Park and Planning Commission
9 Section 8–101
10 Annotated Code of Maryland
11 (2003 Replacement Volume and 2007 Supplement)

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

14 **Article 28 – Maryland–National Capital Park and Planning Commission**

15 **SUBTITLE 5. PRINCE GEORGE’S COUNTY AGRICULTURAL PRESERVATION**
16 **EASEMENT PROGRAM.**

17 **5–501.**

18 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
19 INDICATED.

20 (B) “AGRICULTURAL PROPERTY” MEANS A PROPERTY THAT IS USED
21 FOR:

22 (1) AGRICULTURE, VITICULTURE, AQUACULTURE,
23 SILVICULTURE, HORTICULTURE, OR LIVESTOCK AND EQUINE ACTIVITIES;

24 (2) TEMPORARY OR SEASONAL OUTDOOR ACTIVITIES THAT DO
25 NOT PERMANENTLY ALTER THE PROPERTY’S PHYSICAL APPEARANCE AND THAT
26 DO NOT DIMINISH THE PROPERTY’S RURAL CHARACTER; AND

27 (3) ACTIVITIES THAT ARE INTRINSICALLY RELATED TO THE
28 ONGOING AGRICULTURAL ENTERPRISE ON THE PROPERTY.

29 (C) “BOARD” MEANS THE PRINCE GEORGE’S COUNTY PLANNING
30 BOARD OF THE COMMISSION.

31 (D) “FUND” MEANS THE PRINCE GEORGE’S COUNTY AGRICULTURAL
32 PRESERVATION EASEMENT FUND.

1 **(E) “PRESERVATION” MEANS THE LIMITATION OF THE USE OF**
2 **AGRICULTURAL PROPERTY TO THOSE USES CONSISTENT WITH, AND NOT**
3 **ADVERSELY AFFECTING:**

4 **(1) THE AGRICULTURAL CHARACTER OF THE PROPERTY;**

5 **(2) THE SCENIC VALUES ENJOYED BY THE GENERAL PUBLIC; OR**

6 **(3) THE GOVERNMENTAL PRESERVATION POLICIES FURTHERED**
7 **BY THE EASEMENT ACQUISITION.**

8 **(F) “PROGRAM” MEANS THE PRINCE GEORGE’S COUNTY**
9 **AGRICULTURAL PRESERVATION EASEMENT PROGRAM.**

10 **5-502.**

11 **THIS SUBTITLE APPLIES ONLY IN PRINCE GEORGE’S COUNTY.**

12 **5-503.**

13 **(A) THERE IS A PRINCE GEORGE’S COUNTY AGRICULTURAL**
14 **PRESERVATION EASEMENT PROGRAM.**

15 **(B) THE PURPOSE OF THE PROGRAM IS TO:**

16 **(1) IMPLEMENT THE POLICIES OF THE PRINCE GEORGE’S**
17 **COUNTY GENERAL PLAN AND THE GREEN INFRASTRUCTURE PLAN TO**
18 **PRESERVE, PROTECT, AND ENHANCE AGRICULTURAL PROPERTIES,**
19 **PARTICULARLY THOSE AGRICULTURAL PROPERTIES IN THE RURAL TIER;**

20 **(2) PRESERVE ECOLOGICALLY FRAGILE AND AESTHETICALLY**
21 **VALUABLE ENVIRONMENTS OF THE COUNTY, INCLUDING STREAMS, STREAM**
22 **VALLEYS, FLOODPLAINS, WETLANDS, GROUNDWATER, STEEP SLOPES,**
23 **WOODLANDS, HABITATS, SCENIC VISTAS, AND SCENIC CORRIDORS;**

24 **(3) RETAIN AGRICULTURAL LAND AND AUGMENT OTHER LOCAL**
25 **AND STATE PROGRAMS CERTIFIED IN ACCORDANCE WITH THE CODE OF**
26 **MARYLAND REGULATIONS FOR THE PRESERVATION OF AGRICULTURAL LAND;**

27 **(4) RECOGNIZE THE PUBLIC VALUE IN PROTECTING**
28 **AGRICULTURE AND AGRICULTURAL VIEWSHEDS, VISTAS, AND RURAL CULTURE**
29 **AND CHARACTER AS WELL AS LONGSTANDING AGRICULTURAL ENTERPRISES;**

1 (5) **LIMIT NONAGRICULTURAL USES;**

2 (6) **CONSERVE AND PROTECT BIODIVERSITY AND WILDLIFE AND**
3 **AQUATIC HABITATS;**

4 (7) **PROMOTE INTEREST IN AND THE STUDY OF AGRICULTURE**
5 **AND AGRICULTURAL PRESERVATION; AND**

6 (8) **PROMOTE TOURISM THROUGH THE PRESERVATION OF**
7 **SCENIC RESOURCES.**

8 **5-504.**

9 (A) **SUBJECT TO SUBSECTION (B) OF THIS SECTION, THE BOARD SHALL**
10 **ADMINISTER THE PROGRAM IN CONSULTATION WITH THE PRINCE GEORGE'S**
11 **COUNTY SOIL CONSERVATION DISTRICT.**

12 (B) (1) **THE PRINCE GEORGE'S COUNTY COUNCIL MAY ENACT**
13 **ORDINANCES TO PROVIDE FOR:**

14 (I) **AGRICULTURAL PRESERVATION, OUTREACH, AND**
15 **MARKETING;**

16 (II) **MAINTENANCE OF ACTIVITIES ON AGRICULTURAL**
17 **PROPERTIES OF THE COMMISSION; AND**

18 (III) **THE PRESERVATION OF THE AGRICULTURAL INDUSTRY.**

19 (2) **THE PRINCE GEORGE'S COUNTY COUNCIL, IN**
20 **CONSULTATION WITH THE BOARD, MAY ENACT AN ORDINANCE THAT**
21 **DELEGATES SOME OR ALL OF THE POWERS AND DUTIES OF THE BOARD**
22 **RELATING TO THE PROGRAM TO THE PRINCE GEORGE'S COUNTY SOIL**
23 **CONSERVATION DISTRICT.**

24 (3) **AN ORDINANCE ENACTED UNDER PARAGRAPH (1) OF THIS**
25 **SUBSECTION MAY NOT BE INCONSISTENT WITH THE PROVISIONS OF THIS**
26 **ARTICLE.**

27 **5-505.**

28 **SUBJECT TO THE APPROVAL OF THE PRINCE GEORGE'S COUNTY**
29 **COUNCIL, AND IN CONSULTATION WITH THE PRINCE GEORGE'S COUNTY SOIL**
30 **CONSERVATION DISTRICT, THE BOARD SHALL ADOPT REGULATIONS TO CARRY**
31 **OUT THE PROVISIONS OF THIS SUBTITLE.**

1 **5-506.**

2 (A) THERE IS A PRINCE GEORGE'S COUNTY AGRICULTURAL
3 PRESERVATION EASEMENT FUND.

4 (B) THE BOARD SHALL ADMINISTER THE FUND.

5 (C) THE BOARD SHALL DEPOSIT IN THE FUND THOSE FUNDS
6 AUTHORIZED IN ACCORDANCE WITH § 2-118 OF THIS ARTICLE TO PRESERVE,
7 PROTECT, AND ENHANCE AGRICULTURAL PROPERTIES AND TO IMPLEMENT THE
8 PROGRAM'S PURPOSES AS SET FORTH IN THIS SUBTITLE.

9 (D) (1) THE FUND SHALL BE USED TO PURCHASE EASEMENTS TO
10 IMPLEMENT THE PURPOSES OF THE PROGRAM.

11 (2) IN DECIDING WHICH EASEMENTS TO PURCHASE, THE BOARD
12 SHALL SOLICIT AND CONSIDER THE RECOMMENDATIONS OF THE PRINCE
13 GEORGE'S COUNTY SOIL CONSERVATION DISTRICT.

14 (E) (1) IN ACCORDANCE WITH THIS SUBTITLE, THE BOARD MAY
15 PURCHASE EASEMENTS ON AGRICULTURAL LAND THAT IS OUTSIDE THE
16 METROPOLITAN DISTRICT IN PRINCE GEORGE'S COUNTY, BUT THAT IS WITHIN
17 THE MARYLAND-WASHINGTON REGIONAL DISTRICT IN PRINCE GEORGE'S
18 COUNTY.

19 (2) TO FURTHER THE PURPOSES OF THE PROGRAM, THE BOARD
20 MAY EXPEND ANY CURRENT FUNDS WHICH, UNDER THE PROVISIONS OF THIS
21 ARTICLE, ARE AUTHORIZED TO BE USED FOR THE PURCHASE OF EASEMENTS IN
22 PRINCE GEORGE'S COUNTY WITHIN THE METROPOLITAN DISTRICT.

23 (F) WHEN AN AGRICULTURAL PRESERVATION EASEMENT IS
24 PURCHASED IN ACCORDANCE WITH THIS SUBTITLE, THE PROPERTY OWNER
25 SHALL CONVEY A PERPETUAL PRESERVATION EASEMENT TO THE BOARD AT
26 THE TIME OF SETTLEMENT, WHICH SHALL BE RECORDED IN THE LAND
27 RECORDS FOR PRINCE GEORGE'S COUNTY.

28 **5-507.**

29 TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE DOES NOT
30 APPLY TO THE PROVISIONS OF THIS SUBTITLE.

31 **8-101.**

1 (a) The County Councils of Montgomery County and Prince George's County
2 are each individually designated, for the purposes of this article, as the district council
3 for that portion of the regional district lying within each county, respectively. Sitting
4 together, they are jointly designated, for the special purposes delineated in this article,
5 as the bi-county district council for the entire Maryland–Washington Regional
6 District. The adoption of an ordinance or resolution by the bi-county district council
7 shall be accomplished only by the affirmative votes of a majority of the total
8 membership of each district council.

9 (b) (1) In this subsection, the term “zoning classification of agricultural
10 open space” means a zoning classification in which uses are limited to those
11 permissible in the agricultural open space portion of an agricultural preservation
12 development under § 27–445.01 of the Prince George's County Code (1991 Edition, as
13 amended).

14 (2) Except as otherwise provided in §§ 8–126 and 8–127 of this
15 subtitle, each district council, respectively, in accordance with the conditions and
16 procedures specified in this article, may by ordinance adopt and amend the text of the
17 zoning ordinance and may by resolution or ordinance adopt and amend the map or
18 maps accompanying the zoning ordinance text to regulate, in the portion of the
19 regional district lying within its county, (i) the location, height, bulk, and size of
20 buildings, other structures, and units therein, building lines, minimum frontages,
21 depths and areas of lots, and percentages of lots which may be occupied; (ii) the size of
22 lots, yards, courts, and other open spaces; (iii) the erection of temporary stands and
23 structures; (iv) the density and distribution of population; (v) the location and uses of
24 buildings and structures and units therein for trade, industry, residence, recreation,
25 agriculture, public activities, and other purposes; and (vi) the uses of land, including
26 surface, subsurface, and air rights therein, for building, trade, industry, residence,
27 recreation, agriculture, forestry, or other purposes.

28 (3) (I) The powers granted by this subsection include the power to
29 establish a program for the transfer of development rights.

30 (II) **THE COUNTY COUNCIL FOR PRINCE GEORGE'S**
31 **COUNTY, SITTING AS A DISTRICT COUNCIL, MAY, BY ORDINANCE, CREATE A**
32 **PROGRAM FOR THE PURCHASE OF DEVELOPMENT RIGHTS UNDER TITLE 5,**
33 **SUBTITLE 5 OF THIS ARTICLE.**

34 (4) No regulation may prohibit the use of any land by the owner of
35 such land or the holder of any easement or right therein or the owner's or holder's
36 tenant for farming, other agricultural uses exclusively, or within Prince George's
37 County, for the purposes of storing natural or artificial gas at a level below 500 feet
38 from the surface of the earth.

39 (5) The County Council for Montgomery County, sitting as a district
40 council, may not receive an application for a zoning map amendment upon the same
41 land which has been the subject of a previous zoning application for map amendment

1 filed after June 1, 1965, for the same zoning classification upon which there was a
2 decision on the merits unless 36 months have expired since the filing of the application
3 for the previous zoning map amendment upon which there was a decision on the
4 merits. Further, an application for a zoning map amendment filed with the County
5 Council for Montgomery County, sitting as a district council, shall set forth the names
6 of all persons having a substantial interest in the subject property of the application,
7 such substantial interest to include all those persons with a share in such property
8 amounting to five percent or more whether held in an individual or corporate capacity
9 of the full cash value of such property exclusive of all mortgages, deeds of trust, liens
10 and encumbrances. It shall also set forth the names of all contract purchasers and all
11 those persons holding a mortgage, a deed of trust, or an option to purchase the
12 property. However, the foregoing time limitation and name requirement do not apply
13 to applications filed by the district council or by the Commission.

14 (c) In order to protect the historical, archeological, architectural or cultural
15 heritage of areas in Montgomery and Prince George's Counties comprising the regional
16 district and to preserve and enhance the quality of life in the community, in addition
17 to any power or authority of the district councils to regulate by ordinance, planning,
18 zoning or subdivision, each district council may provide by ordinance regulations for
19 the protection, preservation and enhancement of sites, structures with their
20 appurtenances and environmental settings, or districts of historical, archeological,
21 architectural or cultural value designated on the adopted and approved general plan.
22 The enactment and application of these regulations shall be reasonable and
23 appropriate to the purpose of this section and are limited to the protection,
24 preservation and enhancement of the exterior of the sites, structures or districts, and,
25 if such action constitutes a taking of private property, provision shall be made for just
26 compensation.

27 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 October 1, 2008.