

# 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

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Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 19, 2008

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## CHAPTER \_\_\_\_\_

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~~ Soil Conservation District to administer  
8 the Program ~~in consultation with the Prince George's County Soil Conservation~~  
9 ~~District~~ subject to certain regulations; authorizing the County Council of Prince  
10 George's County to enact certain ordinances relating to agricultural  
11 preservation ~~and to delegate certain authority of the Planning Board relating to~~  
12 ~~the Program to the Soil Conservation District~~; requiring the Board and the Soil  
13 Conservation District to adopt certain regulations; establishing the Prince  
14 George's County Agricultural Preservation Easement Fund; requiring the  
15 Planning Board to administer the Fund; requiring the Board to deposit certain  
16 ~~funds~~ revenues into the Fund for certain purposes; requiring the Fund to be  
17 used for certain purposes; requiring the Planning Board to ~~solely~~ exercise  
18 prudence and due diligence and consider the recommendations of the Soil  
19 Conservation District when making certain decisions; authorizing the Planning  
20 Board to purchase certain easements on certain land that is outside the  
21 Maryland-Washington Metropolitan District but is within the  
22 Maryland-Washington Regional District in Prince George's County; authorizing  
23 the Planning Board to expend certain current funds for certain purposes;  
24 requiring a certain property owner to convey a certain easement to the Planning  
25 Board at a certain time and recording a certain easement in the land records;

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 providing that certain provisions of law do not apply to a certain subtitle;  
 2 authorizing the Prince George's County Council, sitting as the district council to  
 3 enact ordinances that create a certain program for the purchase of certain  
 4 development rights; defining certain terms; and generally relating to the Prince  
 5 George's County Agricultural Preservation Easement Program in the  
 6 Maryland–National Capital Park and Planning Commission.

7 BY adding to

8 Article 28 – Maryland–National Capital Park and Planning Commission  
 9 Section 5–501 through 5–507 to be under the new subtitle “Subtitle 5. Prince  
 10 George's County Agricultural Preservation Easement Program”  
 11 Annotated Code of Maryland  
 12 (2003 Replacement Volume and 2007 Supplement)

13 BY repealing and reenacting, with amendments,

14 Article 28 – Maryland–National Capital Park and Planning Commission  
 15 Section 8–101  
 16 Annotated Code of Maryland  
 17 (2003 Replacement Volume and 2007 Supplement)

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

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

21 **SUBTITLE 5. PRINCE GEORGE'S COUNTY AGRICULTURAL PRESERVATION**  
 22 **EASEMENT PROGRAM.**

23 **5–501.**

24 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS  
 25 INDICATED.

26 (B) “AGRICULTURAL PROPERTY” MEANS A PROPERTY THAT IS USED  
 27 FOR:

28 (1) AGRICULTURE, VITICULTURE, AQUACULTURE,  
 29 SILVICULTURE, HORTICULTURE, OR LIVESTOCK AND EQUINE ACTIVITIES;

30 (2) TEMPORARY OR SEASONAL OUTDOOR ACTIVITIES THAT DO  
 31 NOT PERMANENTLY ALTER THE PROPERTY'S PHYSICAL APPEARANCE AND THAT  
 32 DO NOT DIMINISH THE PROPERTY'S RURAL CHARACTER; AND

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

1 (C) "BOARD" MEANS THE PRINCE GEORGE'S COUNTY PLANNING  
2 BOARD OF THE COMMISSION.

3 (D) "FUND" MEANS THE PRINCE GEORGE'S COUNTY AGRICULTURAL  
4 PRESERVATION EASEMENT FUND.

5 (E) "PRESERVATION" MEANS THE LIMITATION OF THE USE OF  
6 AGRICULTURAL PROPERTY TO THOSE USES CONSISTENT WITH, AND NOT  
7 ADVERSELY AFFECTING:

8 (1) THE AGRICULTURAL CHARACTER OF THE PROPERTY;

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

10 (3) THE GOVERNMENTAL PRESERVATION POLICIES FURTHERED  
11 BY THE EASEMENT ACQUISITION.

12 (F) "PROGRAM" MEANS THE PRINCE GEORGE'S COUNTY  
13 AGRICULTURAL PRESERVATION EASEMENT PROGRAM.

14 **5-502.**

15 THIS SUBTITLE APPLIES ONLY IN PRINCE GEORGE'S COUNTY.

16 **5-503.**

17 (A) THERE IS A PRINCE GEORGE'S COUNTY AGRICULTURAL  
18 PRESERVATION EASEMENT PROGRAM.

19 (B) THE PURPOSE OF THE PROGRAM IS TO:

20 (1) IMPLEMENT THE POLICIES OF THE PRINCE GEORGE'S  
21 COUNTY GENERAL PLAN AND THE GREEN INFRASTRUCTURE PLAN TO  
22 PRESERVE, PROTECT, AND ENHANCE AGRICULTURAL PROPERTIES,  
23 PARTICULARLY THOSE AGRICULTURAL PROPERTIES IN THE RURAL TIER;

24 (2) PRESERVE ECOLOGICALLY FRAGILE AND AESTHETICALLY  
25 VALUABLE ENVIRONMENTS OF THE COUNTY, INCLUDING STREAMS, STREAM  
26 VALLEYS, FLOODPLAINS, WETLANDS, GROUNDWATER, STEEP SLOPES,  
27 WOODLANDS, HABITATS, SCENIC VISTAS, AND SCENIC CORRIDORS;

28 (3) RETAIN AGRICULTURAL LAND AND AUGMENT OTHER LOCAL  
29 AND STATE PROGRAMS CERTIFIED IN ACCORDANCE WITH THE CODE OF  
30 MARYLAND REGULATIONS FOR THE PRESERVATION OF AGRICULTURAL LAND;

1           (4) RECOGNIZE THE PUBLIC VALUE IN PROTECTING  
2 AGRICULTURE AND AGRICULTURAL VIEWSHEDS, VISTAS, AND RURAL CULTURE  
3 AND CHARACTER AS WELL AS LONGSTANDING AGRICULTURAL ENTERPRISES;

4           (5) LIMIT NONAGRICULTURAL USES;

5           (6) CONSERVE AND PROTECT BIODIVERSITY AND WILDLIFE AND  
6 AQUATIC HABITATS;

7           (7) PROMOTE INTEREST IN AND THE STUDY OF AGRICULTURE  
8 AND AGRICULTURAL PRESERVATION; AND

9           (8) PROMOTE TOURISM THROUGH THE PRESERVATION OF  
10 SCENIC RESOURCES.

11 **5-504.**

12           (A) ~~SUBJECT TO SUBSECTION (B) OF THIS SECTION, THE BOARD~~  
13 ~~REGULATIONS ADOPTED BY THE BOARD AND THE PRINCE GEORGE'S COUNTY~~  
14 ~~SOIL CONSERVATION DISTRICT UNDER THIS SUBTITLE, THE PRINCE GEORGE'S~~  
15 ~~COUNTY SOIL CONSERVATION DISTRICT SHALL ADMINISTER THE PROGRAM IN~~  
16 ~~CONSULTATION WITH THE PRINCE GEORGE'S COUNTY SOIL CONSERVATION~~  
17 ~~DISTRICT.~~

18           (B) (1) THE PRINCE GEORGE'S COUNTY COUNCIL MAY ENACT  
19 ORDINANCES TO PROVIDE FOR:

20                   (I) AGRICULTURAL PRESERVATION, OUTREACH, AND  
21 MARKETING;

22                   (II) MAINTENANCE OF ACTIVITIES ON AGRICULTURAL  
23 PROPERTIES OF THE COMMISSION; AND

24                   (III) THE PRESERVATION OF THE AGRICULTURAL INDUSTRY.

25           ~~(2) THE PRINCE GEORGE'S COUNTY COUNCIL, IN~~  
26 ~~CONSULTATION WITH THE BOARD, MAY ENACT AN ORDINANCE THAT~~  
27 ~~DELEGATES SOME OR ALL OF THE POWERS AND DUTIES OF THE BOARD~~  
28 ~~RELATING TO THE PROGRAM TO THE PRINCE GEORGE'S COUNTY SOIL~~  
29 ~~CONSERVATION DISTRICT.~~

30           ~~(3)~~ (2) AN ORDINANCE ENACTED UNDER PARAGRAPH (1) OF  
31 THIS SUBSECTION MAY NOT BE INCONSISTENT WITH THE PROVISIONS OF THIS  
32 ARTICLE.

1 **5-505.**

2 ~~**SUBJECT TO THE APPROVAL OF THE PRINCE GEORGE'S COUNTY**~~  
3 ~~**COUNCIL, AND IN CONSULTATION WITH THE PRINCE GEORGE'S COUNTY SOIL**~~  
4 ~~**CONSERVATION DISTRICT, THE BOARD**~~

5 **(A) THE BOARD AND THE PRINCE GEORGE'S COUNTY SOIL**  
6 **CONSERVATION DISTRICT SHALL ADOPT REGULATIONS TO CARRY OUT THE**  
7 **PROVISIONS OF THIS SUBTITLE.**

8 **(B) THE REGULATIONS ADOPTED UNDER THIS SUBTITLE SHALL:**

9 **(1) PROVIDE FOR A PROGRAM APPLICATION PROCESS;**

10 **(2) ESTABLISH CRITERIA FOR PRIORITIZING APPLICATIONS FOR**  
11 **EASEMENTS TO PURCHASE;**

12 **(3) PROVIDE FOR THE PROCESS FOR NEGOTIATING THE**  
13 **PURCHASE OF EASEMENTS;**

14 **(4) ALLOW THE PRINCE GEORGE'S COUNTY SOIL**  
15 **CONSERVATION DISTRICT TO PROCURE ANY APPRAISALS NECESSARY FOR**  
16 **VALUATION OF EACH EASEMENT; AND**

17 **(5) SPECIFY A METHOD FOR APPRAISING AND VALUING**  
18 **EASEMENTS TO ENCOURAGE LANDOWNERS TO PARTICIPATE IN THE PROGRAM**  
19 **AND MAXIMIZE THE ACREAGE FOR EASEMENTS TO BE PURCHASED.**

20 **(C) THE REGULATIONS MAY PROVIDE FOR THE ADJUDICATION AND**  
21 **APPEAL OF ANY DISPUTED EASEMENT VALUATION BY THE PRINCE GEORGE'S**  
22 **COUNTY PROPERTY TAX ASSESSMENT APPEAL BOARD ACCORDING TO THE**  
23 **PROCEDURES PRESCRIBED UNDER § 2-511 OF THE AGRICULTURE ARTICLE.**

24 **5-506.**

25 **(A) THERE IS A PRINCE GEORGE'S COUNTY AGRICULTURAL**  
26 **PRESERVATION EASEMENT FUND.**

27 **(B) THE BOARD SHALL ADMINISTER THE FUND.**

28 **(C) THE BOARD SHALL DEPOSIT IN THE FUND ~~THOSE FUNDS~~ REVENUES**  
29 **FROM PRINCE GEORGE'S COUNTY METROPOLITAN DISTRICT TAXES OR**  
30 **PRINCE GEORGE'S COUNTY REGIONAL DISTRICT TAXES** AUTHORIZED IN  
31 ACCORDANCE WITH § 2-118 OF THIS ARTICLE TO PRESERVE, PROTECT, AND

1 ENHANCE AGRICULTURAL PROPERTIES AND TO IMPLEMENT THE PROGRAM'S  
2 PURPOSES AS SET FORTH IN THIS SUBTITLE.

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

5 (2) IN DECIDING WHICH EASEMENTS TO PURCHASE USING THE  
6 FUND, THE BOARD SHALL SOLICIT EXERCISE PRUDENCE AND DUE DILIGENCE  
7 AND CONSIDER THE RECOMMENDATIONS OF THE PRINCE GEORGE'S COUNTY  
8 SOIL CONSERVATION DISTRICT.

9 (E) (1) IN ACCORDANCE WITH THIS SUBTITLE, THE BOARD MAY  
10 PURCHASE EASEMENTS ON AGRICULTURAL LAND THAT IS OUTSIDE THE  
11 METROPOLITAN DISTRICT IN PRINCE GEORGE'S COUNTY, BUT THAT IS WITHIN  
12 THE MARYLAND-WASHINGTON REGIONAL DISTRICT IN PRINCE GEORGE'S  
13 COUNTY.

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

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

23 5-507.

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

26 8-101.

27 (a) The County Councils of Montgomery County and Prince George's County  
28 are each individually designated, for the purposes of this article, as the district council  
29 for that portion of the regional district lying within each county, respectively. Sitting  
30 together, they are jointly designated, for the special purposes delineated in this article,  
31 as the bi-county district council for the entire Maryland-Washington Regional  
32 District. The adoption of an ordinance or resolution by the bi-county district council  
33 shall be accomplished only by the affirmative votes of a majority of the total  
34 membership of each district council.

1 (b) (1) In this subsection, the term “zoning classification of agricultural  
2 open space” means a zoning classification in which uses are limited to those  
3 permissible in the agricultural open space portion of an agricultural preservation  
4 development under § 27-445.01 of the Prince George’s County Code (1991 Edition, as  
5 amended).

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

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

22 (II) **THE COUNTY COUNCIL FOR PRINCE GEORGE’S**  
23 **COUNTY, SITTING AS A DISTRICT COUNCIL, MAY, BY ORDINANCE, CREATE A**  
24 **PROGRAM FOR THE PURCHASE OF DEVELOPMENT RIGHTS UNDER TITLE 5,**  
25 **SUBTITLE 5 OF THIS ARTICLE.**

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

31 (5) The County Council for Montgomery County, sitting as a district  
32 council, may not receive an application for a zoning map amendment upon the same  
33 land which has been the subject of a previous zoning application for map amendment  
34 filed after June 1, 1965, for the same zoning classification upon which there was a  
35 decision on the merits unless 36 months have expired since the filing of the application  
36 for the previous zoning map amendment upon which there was a decision on the  
37 merits. Further, an application for a zoning map amendment filed with the County  
38 Council for Montgomery County, sitting as a district council, shall set forth the names  
39 of all persons having a substantial interest in the subject property of the application,  
40 such substantial interest to include all those persons with a share in such property  
41 amounting to five percent or more whether held in an individual or corporate capacity  
42 of the full cash value of such property exclusive of all mortgages, deeds of trust, liens

1 and encumbrances. It shall also set forth the names of all contract purchasers and all  
2 those persons holding a mortgage, a deed of trust, or an option to purchase the  
3 property. However, the foregoing time limitation and name requirement do not apply  
4 to applications filed by the district council or by the Commission.

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

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

Approved:

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Governor.

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Speaker of the House of Delegates.

\_\_\_\_\_  
President of the Senate.