

SENATE BILL 95

L5

8lr1119

By: **Senators Miller, Britt, Currie, Muse, Peters, Pinsky, ~~and Rosapepe~~
Rosapepe, and Harrington**

Introduced and read first time: January 16, 2008

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 26, 2008

CHAPTER _____

1 AN ACT concerning

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

4 FOR the purpose of establishing the Prince George's County Agricultural Preservation
5 Easement Program; providing for the purposes of the Program; requiring the
6 Prince George's County ~~Planning Board~~ Soil Conservation District to administer
7 the Program ~~in consultation with the Prince George's County Soil Conservation~~
8 ~~District~~ subject to certain regulations; authorizing the County Council of Prince
9 George's County to enact certain ordinances relating to agricultural
10 preservation ~~and to delegate certain authority of the Planning Board relating to~~
11 ~~the Program to the Soil Conservation District~~; requiring the Board and the Soil
12 Conservation District to adopt certain regulations; establishing the Prince
13 George's County Agricultural Preservation Easement Fund; requiring the
14 Planning Board to administer the Fund; requiring the Board to deposit certain
15 ~~funds~~ revenues into the Fund for certain purposes; requiring the Fund to be
16 used for certain purposes; requiring the Planning Board to ~~solicit~~ exercise
17 prudence and due diligence and consider the recommendations of the Soil
18 Conservation District when making certain decisions; authorizing the Planning
19 Board to purchase certain easements on certain land that is outside the
20 Maryland-Washington Metropolitan District but is within the
21 Maryland-Washington Regional District in Prince George's County; authorizing
22 the Planning Board to expend certain current funds for certain purposes;
23 requiring a certain property owner to convey a certain easement to the Planning
24 Board at a certain time and recording a certain easement in the land records;
25 providing that certain provisions of law do not apply to a certain subtitle;

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 authorizing the Prince George's County Council, sitting as the district council to
 2 enact ordinances that create a certain program for the purchase of certain
 3 development rights; defining certain terms; and generally relating to the Prince
 4 George's County Agricultural Preservation Easement Program in the
 5 Maryland–National Capital Park and Planning Commission.

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

12 BY repealing and reenacting, with amendments,
 13 Article 28 – Maryland–National Capital Park and Planning Commission
 14 Section 8–101
 15 Annotated Code of Maryland
 16 (2003 Replacement Volume and 2007 Supplement)

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

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

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

22 **5–501.**

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

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

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

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

32 (3) ACTIVITIES THAT ARE INTRINSICALLY RELATED TO THE
 33 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~~ (A) THE BOARD AND THE PRINCE
5 GEORGE'S COUNTY SOIL CONSERVATION DISTRICT SHALL ADOPT
6 REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS SUBTITLE.

7 (B) THE REGULATIONS ADOPTED UNDER THIS SUBTITLE SHALL:

8 (1) PROVIDE FOR A PROGRAM APPLICATION PROCESS;

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

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

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

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

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

23 **5-506.**

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

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

27 (C) THE BOARD SHALL DEPOSIT IN THE FUND ~~THOSE FUNDS~~ REVENUES
28 FROM PRINCE GEORGE'S COUNTY METROPOLITAN DISTRICT TAXES OR
29 PRINCE GEORGE'S COUNTY REGIONAL DISTRICT TAXES AUTHORIZED IN
30 ACCORDANCE WITH § 2-118 OF THIS ARTICLE TO PRESERVE, PROTECT, AND
31 ENHANCE AGRICULTURAL PROPERTIES AND TO IMPLEMENT THE PROGRAM'S
32 PURPOSES AS SET FORTH IN THIS SUBTITLE.

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

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

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

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

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

21 **5-507.**

22 **TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE DOES NOT**
23 **APPLY TO THE PROVISIONS OF THIS SUBTITLE.**

24 **8-101.**

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

33 (b) (1) In this subsection, the term "zoning classification of agricultural
34 open space" means a zoning classification in which uses are limited to those
35 permissible in the agricultural open space portion of an agricultural preservation
36 development under § 27-445.01 of the Prince George's County Code (1991 Edition, as
37 amended).

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

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

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

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

26 (5) The County Council for Montgomery County, sitting as a district
27 council, may not receive an application for a zoning map amendment upon the same
28 land which has been the subject of a previous zoning application for map amendment
29 filed after June 1, 1965, for the same zoning classification upon which there was a
30 decision on the merits unless 36 months have expired since the filing of the application
31 for the previous zoning map amendment upon which there was a decision on the
32 merits. Further, an application for a zoning map amendment filed with the County
33 Council for Montgomery County, sitting as a district council, shall set forth the names
34 of all persons having a substantial interest in the subject property of the application,
35 such substantial interest to include all those persons with a share in such property
36 amounting to five percent or more whether held in an individual or corporate capacity
37 of the full cash value of such property exclusive of all mortgages, deeds of trust, liens
38 and encumbrances. It shall also set forth the names of all contract purchasers and all
39 those persons holding a mortgage, a deed of trust, or an option to purchase the
40 property. However, the foregoing time limitation and name requirement do not apply
41 to applications filed by the district council or by the Commission.

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

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.