

SENATE BILL 434

M4, Q3, Q7

8lr0700

By: **Senator Dyson (Chair, Task Force on Incentives for Agriculture)**

Introduced and read first time: January 31, 2008

Assigned to: Budget and Taxation and Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Incentives for Agriculture Act of 2008**

3 FOR the purpose of requiring the Governor to include in the annual budget bill for
4 certain fiscal years a certain appropriation to the Maryland Agricultural
5 Resource-Based Industry Development Corporation for the Next Generation
6 Farmland Program; altering the determination of the Maryland estate tax
7 under certain circumstances to exclude from the gross estate the value of
8 certain agricultural property; altering a certain income tax credit for certain
9 donations of certain interests in land for certain purposes to the Maryland
10 Agricultural Land Preservation Foundation or the Maryland Environmental
11 Trust; providing for applications to the Department of Agriculture for approval
12 of the credit and certification by the Department to taxpayers of approved credit
13 amounts; limiting the total amount of credits the Department may approve in a
14 calendar year to a certain amount; requiring the Department to approve a
15 prorated credit for each applicant if the total amount applied for exceeds the
16 maximum that may be approved; providing that a certain income tax credit for
17 agricultural land preservation or conservation is refundable; requiring the
18 submission of a certain report by the Department by a certain date; altering
19 certain production credits for certain ethanol and biodiesel products; altering
20 certain limits on the number of gallons of ethanol and biodiesel products that
21 may qualify for a production credit in a calendar year; requiring a claim for a
22 production credit to include certain information; requiring the Department of
23 Budget and Management, in consultation with the Department of Agriculture
24 and the Department of Natural Resources, to examine the feasibility of
25 establishing a certain forest health contingency fund; defining certain terms;
26 and generally relating to incentives for agriculture in the State.

27 BY repealing and reenacting, with amendments,
28 Article 41 – Governor – Executive and Administrative Departments
29 Section 13–513(c)
30 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2003 Replacement Volume and 2007 Supplement)

2 BY repealing and reenacting, with amendments,
3 Article – Tax – General
4 Section 7–309(b) and 10–723
5 Annotated Code of Maryland
6 (2004 Replacement Volume and 2007 Supplement)

7 BY adding to
8 Article – Tax – General
9 Section 7–309(c)
10 Annotated Code of Maryland
11 (2004 Replacement Volume and 2007 Supplement)

12 BY repealing and reenacting, with amendments,
13 Article – Agriculture
14 Section 10–1501, 10–1504(d), 10–1505, and 10–1506(b) and (c)
15 Annotated Code of Maryland
16 (2007 Replacement Volume)

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

19 **Article 41 – Governor – Executive and Administrative Departments**

20 13–513.

21 (c) (1) The Corporation may receive annual funding through an
22 appropriation in the State budget.

23 (2) The Corporation may also receive funds for projects included in the
24 budgets of State units.

25 (3) All unexpended and unencumbered funds appropriated to the
26 Corporation shall remain with the Corporation for future uses.

27 (4) The Corporation shall conduct its financial affairs in such a
28 manner that, by the year 2020, it shall be self-sufficient and in no further need of
29 general operating support by the State.

30 (5) (i) In order to assist the Corporation in meeting the
31 requirement specified in paragraph (4) of this subsection, the Governor shall include
32 each year in the budget bill an appropriation to the Corporation for rural business
33 development and assistance as follows:

34 1. For fiscal year 2008, \$3,000,000;

35 2. For fiscal year 2009, \$3,500,000; and

1 3. For each of fiscal years 2010 through 2020,
2 \$4,000,000.

3 (ii) In addition to any funds provided under
4 subparagraph (i) of this paragraph, **FOR FISCAL YEARS 2010 THROUGH 2013**, the
5 Governor [may] **SHALL** include each year in the budget bill an appropriation to the
6 Corporation in an amount [up] **EQUAL** to [\$5,000,000] **\$1,250,000** for [rural land
7 acquisition and easement programs, including programs to assist young and beginning
8 farmers] **THE NEXT GENERATION FARMLAND PROGRAM**.

9 **Article - Tax - General**

10 7-309.

11 (b) (1) Except as provided in paragraphs (2) through (7) of this subsection
12 **AND SUBSECTION (C) OF THIS SECTION**, after the effective date of an Act of
13 Congress described in subsection (a) of this section, the Maryland estate tax shall be
14 determined using:

15 (i) the federal credit allowable by § 2011 of the Internal
16 Revenue Code as in effect before the reduction or repeal of the federal credit pursuant
17 to the Act of Congress; and

18 (ii) other provisions of federal estate tax law as in effect on the
19 date of the decedent's death.

20 (2) Except as provided in paragraphs (3) through (7) of this subsection
21 **AND SUBSECTION (C) OF THIS SECTION**, if the federal estate tax is not in effect on
22 the date of the decedent's death, the Maryland estate tax shall be determined using:

23 (i) the federal credit allowable by § 2011 of the Internal
24 Revenue Code as in effect before the reduction or repeal of the federal credit pursuant
25 to the Act of Congress; and

26 (ii) other provisions of federal estate tax law as in effect on the
27 date immediately preceding the effective date of the repeal of the federal estate tax.

28 (c) (1) (I) **IN THIS SUBSECTION THE FOLLOWING WORDS HAVE**
29 **THE MEANINGS INDICATED.**

30 (II) **“CHILD” AND “PARENT” HAVE THE MEANINGS STATED**
31 **IN § 7-203(B) OF THIS TITLE.**

1 (III) 1. **“FARMING PURPOSE” MEANS CULTIVATING THE**
2 **SOIL OR RAISING, BREEDING, OR HARVESTING ANY AGRICULTURAL,**
3 **SILVICULTURAL, VITICULTURAL, OR HORTICULTURAL COMMODITY.**

4 2. **“FARMING PURPOSE” INCLUDES ANY**
5 **AGRICULTURAL, SILVICULTURAL, VITICULTURAL, OR HORTICULTURAL**
6 **ACTIVITY CONDUCTED ON A FARM, VINEYARD, WINERY, OR ORCHARD FOR THE**
7 **PURPOSE OF ENTERTAINMENT OR EDUCATION.**

8 (IV) **“QUALIFIED AGRICULTURAL PROPERTY” MEANS REAL**
9 **OR PERSONAL PROPERTY THAT IS USED PRIMARILY FOR A FARMING PURPOSE.**

10 (2) **SUBJECT TO PARAGRAPH (3) OF THIS SUBSECTION, THE**
11 **MARYLAND ESTATE TAX SHALL BE DETERMINED BY EXCLUDING FROM THE**
12 **GROSS ESTATE THE VALUE OF QUALIFIED AGRICULTURAL PROPERTY THAT**
13 **PASSES FROM THE DECEDENT TO OR FOR THE USE OF A QUALIFIED RECIPIENT.**

14 (3) **THE MARYLAND ESTATE TAX SHALL BE RECAPTURED IF,**
15 **WITHIN 10 YEARS AFTER THE DECEDENT’S DEATH AND BEFORE THE DEATH OF A**
16 **QUALIFIED RECIPIENT:**

17 (I) **THE QUALIFIED RECIPIENT DISPOSES OF ANY INTEREST**
18 **IN QUALIFIED AGRICULTURAL PROPERTY, OTHER THAN BY A DISPOSITION TO:**

19 1. **A SPOUSE, PARENT, OR GUARDIAN OF THE**
20 **QUALIFIED RECIPIENT;**

21 2. **A CHILD OF THE DECEDENT OR A LINEAL**
22 **DESCENDANT OF A CHILD OF THE QUALIFIED RECIPIENT;**

23 3. **A SPOUSE OF A CHILD OF THE QUALIFIED**
24 **RECIPIENT OR A SPOUSE OF A LINEAL DECEDENT OF A CHILD OF THE**
25 **QUALIFIED RECIPIENT; OR**

26 4. **A BROTHER OR SISTER OF THE QUALIFIED**
27 **RECIPIENT; OR**

28 (II) **THE QUALIFIED RECIPIENT CEASES TO USE THE**
29 **QUALIFIED AGRICULTURAL PROPERTY FOR A FARMING PURPOSE.**

30 (4) **SUBJECT TO PARAGRAPH (5) OF THIS SUBSECTION, THE**
31 **AMOUNT OF THE ESTATE TAX RECAPTURED UNDER PARAGRAPH (3) OF THIS**
32 **SUBSECTION SHALL BE THE AMOUNT OF THE ESTATE TAX THAT WOULD HAVE**

1 **BEEN PAYABLE AT THE TIME OF THE DECEDENT'S DEATH BUT FOR PARAGRAPH**
2 **(2) OF THIS SUBSECTION.**

3 **(5) THE COMPTROLLER SHALL ADOPT REGULATIONS TO**
4 **PROVIDE FOR THE RECAPTURE OF THE ESTATE TAX UNDER PARAGRAPHS (3)**
5 **AND (4) OF THIS SUBSECTION.**

6 **(V) "QUALIFIED RECIPIENT" INCLUDES:**

7 **1. A SPOUSE, PARENT, OR GUARDIAN OF THE**
8 **DECEDENT;**

9 **2. A CHILD OF THE DECEDENT OR A LINEAL**
10 **DESCENDANT OF A CHILD OF THE DECEDENT;**

11 **3. A SPOUSE OF A CHILD OF THE DECEDENT OR A**
12 **SPOUSE OF A LINEAL DECEDENT OF A CHILD OF THE DECEDENT; OR**

13 **4. A BROTHER OR SISTER OF THE DECEDENT.**

14 10-723.

15 (a) (1) An individual may claim a credit against the State income tax as
16 provided in this section for an easement conveyed to the Maryland Environmental
17 Trust or the Maryland Agricultural Land Preservation Foundation for the purpose of
18 preserving open space, natural resources, agriculture, forest land, watersheds,
19 significant ecosystems, viewsheds, or historic properties, if:

20 (i) the easement is perpetual; and

21 (ii) the easement is accepted and approved by the Board of
22 Public Works.

23 (2) [Subject to subsection (c)(2) of this section, the] **THE** credit under
24 this section shall be allowed for the taxable year in which the donation is approved by
25 the Board of Public Works.

26 (b) (1) Except as otherwise provided in this section, the amount of the
27 credit allowed under this section is the amount by which the fair market value of the
28 property before the conveyance of the easement exceeds the fair market value of the
29 property after the conveyance of the easement.

30 (2) The fair market value of the property before and after the
31 conveyance of the easement shall be substantiated by an appraisal prepared by a
32 certified real estate appraiser, as defined under § 16-101 of the Business Occupations
33 and Professions Article.

1 (3) The amount of the credit shall be reduced by the amount of any
2 payment received for the easement.

3 [(c) (1) For any taxable year, the credit allowed under this section may not
4 exceed the lesser of:

5 (i) the State income tax for that taxable year; or

6 (ii) \$5,000.

7 (2) If the credit otherwise allowable under subsection (b) of this
8 section exceeds the limit under paragraph (1) of this subsection, an individual may
9 apply the excess as a credit against the State income tax for succeeding taxable years
10 until the earlier of:

11 (i) the full amount of the excess is used; or

12 (ii) the expiration of the 15th taxable year after the taxable year
13 in which the donation was approved by the Board of Public Works.

14 (3) For each taxable year, the amount carried forward to the taxable
15 year under paragraph (2) of this subsection may not exceed the limit under paragraph
16 (1) of this subsection.]

17 **(C) (1) BY SEPTEMBER 15 OF THE CALENDAR YEAR FOLLOWING THE**
18 **END OF THE TAXABLE YEAR IN WHICH AN EASEMENT WAS CONVEYED TO THE**
19 **MARYLAND ENVIRONMENTAL TRUST OR THE MARYLAND AGRICULTURAL**
20 **LAND PRESERVATION FOUNDATION, AN INDIVIDUAL SHALL SUBMIT AN**
21 **APPLICATION TO THE DEPARTMENT OF AGRICULTURE FOR THE CREDITS**
22 **ALLOWED UNDER SUBSECTION (A) OF THIS SECTION.**

23 **(2) (I) THE TOTAL AMOUNT OF CREDITS APPROVED BY THE**
24 **DEPARTMENT OF AGRICULTURE UNDER SUBSECTION (A) OF THIS SECTION MAY**
25 **NOT EXCEED \$10,000,000 FOR ANY CALENDAR YEAR.**

26 **(II) IF THE TOTAL AMOUNT OF CREDITS APPLIED FOR BY**
27 **ALL INDIVIDUALS EXCEEDS THE MAXIMUM SPECIFIED UNDER SUBPARAGRAPH**
28 **(I) OF THIS PARAGRAPH, THE DEPARTMENT OF AGRICULTURE SHALL APPROVE**
29 **A CREDIT UNDER SUBSECTION (A) OF THIS SECTION FOR EACH APPLICANT IN AN**
30 **AMOUNT EQUAL TO THE PRODUCT OF MULTIPLYING THE CREDIT APPLIED FOR**
31 **BY THE APPLICANT TIMES A FRACTION:**

32 **1. THE NUMERATOR OF WHICH IS THE MAXIMUM**
33 **SPECIFIED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH; AND**

1 **2. THE DENOMINATOR OF WHICH IS THE TOTAL OF**
2 **ALL CREDITS APPLIED FOR BY ALL APPLICANTS IN THE CALENDAR YEAR.**

3 **(3) BY DECEMBER 15 OF THE CALENDAR YEAR FOLLOWING THE**
4 **END OF THE TAXABLE YEAR IN WHICH AN EASEMENT WAS CONVEYED TO THE**
5 **MARYLAND ENVIRONMENTAL TRUST OR THE MARYLAND AGRICULTURAL**
6 **LAND PRESERVATION FOUNDATION, THE DEPARTMENT OF AGRICULTURE**
7 **SHALL CERTIFY TO THE INDIVIDUAL THE AMOUNT OF THE TAX CREDIT**
8 **APPROVED BY THE DEPARTMENT OF AGRICULTURE FOR THE INDIVIDUAL**
9 **UNDER THIS SECTION.**

10 **(4) THE AMOUNT OF THE CREDIT ALLOWED FOR AN INDIVIDUAL**
11 **UNDER THIS SECTION MAY NOT EXCEED THE AMOUNT APPROVED FOR THAT**
12 **INDIVIDUAL UNDER THIS SUBSECTION.**

13 **(5) TO CLAIM THE APPROVED CREDIT ALLOWED UNDER THIS**
14 **SECTION, AN INDIVIDUAL SHALL:**

15 **(I) FILE AN AMENDED INCOME TAX RETURN FOR THE**
16 **TAXABLE YEAR IN WHICH AN EASEMENT WAS CONVEYED TO THE MARYLAND**
17 **ENVIRONMENTAL TRUST OR THE MARYLAND AGRICULTURAL LAND**
18 **PRESERVATION FOUNDATION; AND**

19 **(II) ATTACH A COPY OF THE DEPARTMENT OF**
20 **AGRICULTURE CERTIFICATION OF THE APPROVED CREDIT AMOUNT TO THE**
21 **AMENDED INCOME TAX RETURN.**

22 **(D) AN INDIVIDUAL MAY CLAIM A REFUND IN THE AMOUNT, IF ANY, BY**
23 **WHICH THE CREDIT ALLOWED UNDER THIS SECTION IN ANY TAXABLE YEAR**
24 **EXCEEDS THE STATE INCOME TAX FOR THE TAXABLE YEAR.**

25 **(E) (1) ON OR BEFORE JANUARY 10 OF EACH YEAR, THE**
26 **DEPARTMENT OF AGRICULTURE SHALL REPORT TO THE GOVERNOR AND,**
27 **SUBJECT TO § 2-1246 OF THE STATE GOVERNMENT ARTICLE, THE GENERAL**
28 **ASSEMBLY, ON THE CREDITS APPROVED UNDER THIS SECTION.**

29 **(2) THE REPORT REQUIRED UNDER PARAGRAPH (1) OF THIS**
30 **SUBSECTION SHALL INCLUDE FOR EACH INDIVIDUAL APPROVED TO RECEIVE A**
31 **CREDIT UNDER THIS SECTION IN THE PRIOR CALENDAR YEAR:**

32 **(I) THE INDIVIDUAL'S NAME AND ADDRESS; AND**

33 **(II) THE AMOUNT OF THE CREDIT APPROVED.**

1 (d) (1) The Board may not certify ethanol production credits for more than
2 a total of [15,000,000] **30,000,000** gallons per calendar year, of which at least
3 [10,000,000] **25,000,000** gallons shall be produced from small grains **OR BIOMASS**.

4 (2) The Board may not certify biodiesel production credits for more
5 than a total of [5,000,000] **20,000,000** gallons per calendar year, of which at least
6 [2,000,000] **8,000,000** gallons shall be from soybean oil produced:

7 (i) In a facility that began operating after December 31, 2004;
8 or

9 (ii) Under the expanded capacity of a facility, the expansion of
10 which occurred after December 31, 2004.

11 10–1505.

12 (a) (1) The Board may pay credits as calculated under this section to
13 certified producers of ethanol or biodiesel in the State for ethanol or biodiesel produced
14 on or after December 31, 2007.

15 (2) (i) For the purposes of this subtitle, a person that holds a
16 controlling interest in more than one ethanol production facility is considered to be a
17 single ethanol producer.

18 (ii) For the purposes of this subtitle, a person that holds a
19 controlling interest in more than one biodiesel production facility is considered to be a
20 single biodiesel producer.

21 (b) (1) For an ethanol producer, a credit may not exceed the maximum
22 amount certified by the Board and shall be:

23 (i) **50 CENTS PER GALLON OF ETHANOL PRODUCED FROM**
24 **BIOMASS;**

25 (ii) [20] **40** cents per gallon of ethanol produced from small
26 grains; and

27 [(ii)] (iii) 5 cents per gallon of ethanol produced from other
28 agricultural products.

29 (2) For a biodiesel producer, a credit may not exceed the maximum
30 amount certified by the Board and shall be:

31 (i) [20] **40** cents per gallon of biodiesel produced from soybean
32 oil produced:

1 (4) (i) For an ethanol producer, the number of bushels of
 2 Maryland-grown small grains and other agricultural commodities used by the
 3 producer in the previous quarter; or

4 (ii) For a biodiesel producer[,]:

5 1. [the] **THE** number of gallons of Maryland-produced
 6 soybean oil and other bio-based oils used by the producer in the previous quarter; and

7 2. **THE NUMBER OF GALLONS OF SOYBEAN OIL AND**
 8 **OTHER BIO-BASED OILS PRODUCED IN OTHER STATES USED BY THE PRODUCER**
 9 **IN THE PREVIOUS QUARTER; AND**

10 (5) Any other information that the Board requires.

11 (c) A claim filed under this section shall be reviewed by an independent
 12 certified public accountant with respect to, as appropriate:

13 (1) The total ethanol production;

14 (2) The breakdown between ethanol produced from small grains,
 15 **BIOMASS**, and [ethanol produced from] other agricultural products;

16 (3) The total biodiesel production; and

17 (4) The breakdown between biodiesel produced from:

18 (i) Soybean oil produced in a facility that began operating after
 19 December 31, 2004, or under the expanded capacity of a facility, the expansion of
 20 which occurred after December 31, 2004; [and]

21 (ii) Other feedstock **ORIGINATING IN THIS STATE**, including
 22 soybean oil produced in a facility that began operating on or before December 31, 2004;
 23 **AND**

24 **(III) OTHER FEEDSTOCK ORIGINATING IN OTHER STATES.**

25 SECTION 2. AND BE IT FURTHER ENACTED, That the Department of
 26 Budget and Management, in consultation with the Department of Agriculture and the
 27 Department of Natural Resources, shall examine the feasibility of establishing a
 28 dedicated source of funding for a forest health contingency fund to allow for swift and
 29 efficient response to forest health needs. The Department of Budget and Management
 30 shall report any findings to the House Appropriations Committee, the House Ways
 31 and Means Committee, and the Senate Budget and Taxation Committee, in
 32 accordance with § 2-1246 of the State Government Article, by December 1, 2008.

1 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 July 1, 2008.