

Department of Legislative Services  
Maryland General Assembly  
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 970 (Senator Haines)  
Education, Health, and Environmental Affairs

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Agricultural Land Preservation Easements - Construction of Houses

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This bill relates to the construction of houses on land subject to an agricultural land preservation easement held by the Maryland Agricultural Land Preservation Foundation. First, the bill repeals provisions allowing for the construction of *tenant* houses and replaces it with provisions allowing for the construction of houses for the *landowner's use*. Second, the bill increases the density of allowable houses (from one tenant house per 100 acres to one house per 70 acres). Finally, the bill repeals the authority of MALPF to adopt regulations relating to the size of such houses.

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Fiscal Summary

**State Effect:** The bill could result in an increase in workload for MALPF to process additional requests for dwellings and to respond to related questions; any such increase cannot be reliably estimated at this time. Potential increase in special fund expenditures for MALPF to repay federal funds under certain conditions.

**Local Effect:** The bill could result in an increase in workload for local agricultural land preservation staff to process additional requests for dwellings and to respond to related questions.

**Small Business Effect:** Meaningful impact on MALPF participants.

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Analysis

**Current Law:** Subject to MALPF approval, a landowner may construct housing for tenants fully engaged in the operation of the farm. Construction may not exceed one

tenant house per 100 acres, unless MALPF grants an exception based on a showing of compelling need. The land on which a tenant house is constructed may not be subdivided or conveyed to any person. In addition, the tenant house may not be conveyed separately from the original parcel. MALPF is required under current law to adopt regulations for the size and location of tenant houses. Current regulations establish the criteria and eligibility for the approval of a tenant house on a farm subject to an easement held by MALPF.

Current policy generally limits the size of tenant houses to 2,000 square feet, and MALPF advises that whether or not that size limitation applies in a specific case, the tenant house is considered an accessory structure (smaller than the main farmhouse) and its use is highly restricted. For example, the tenant house cannot be occupied by the landowner and cannot be used as a rental unit.

**Background:** MALPF was established by the General Assembly in 1977 and is part of the Maryland Department of Agriculture. MALPF purchases agricultural preservation easements that forever restrict development on prime farmland and woodland. MALPF settled on its first purchased easement in October 1980. Through fiscal 2007, MALPF had cumulatively purchased or had a pending contract to purchase permanent conservation easements on 1,933 farms covering 265,691 acres.

Chapter 374 of 2004 modified provisions relating to tenant houses based on the recommendations of the Task Force to Study the Maryland Agricultural Land Preservation Foundation.

**State Fiscal Effect:** The bill could result in an increase in workload for MALPF staff to process requests for the construction of additional dwelling houses on farms subject to MALPF easements and to respond to related inquiries. The extent of any workload increase cannot be reliably estimated at this time, as it depends largely on whether or not the bill would apply to properties already under easement. If the bill were applied prospectively to easements purchased after the effective date of the bill, MALPF could probably handle any increase in workload with existing staff. If, however, the bill were applied retroactively to easements already purchased, MALPF would likely require additional staff, at least for a few years. Any increase in administrative costs would simply reduce the amount of special funds available for easement purchases.

MALPF advises that if the bill were applied retroactively, it would create a windfall for current program participants at the public's expense. Specifically, MALPF advises that the bill would diminish the State's investment in affected properties by creating additional development rights. The establishment of the original offer value of the easement was based on a certain configuration of what rights would remain on the

property. This bill would allow for additional dwellings at higher density with virtually no limits on their use; the only restriction would be that the land on which a house is built could not be subdivided from the farm property or conveyed to any person. Further, any additional acreage developed as a result of the bill would be taken out of active agricultural use.

MALPF also advises that the bill's changes with respect to any easements that were originally purchased with federal funds could lead to those properties being declared noncompliant with the federal program. If this were to occur, MALPF would be required to repay the federal government its share of the easement funds. In addition, MALPF reports that the federal government would take over the ownership of any affected easements.

**Small Business Effect:** Affected landowners could benefit significantly from the ability to construct additional houses for nonfarm purposes (for example, rental housing). However, the bill's changes could reduce the agricultural value of an affected property, unless any affected dwellings are occupied by tenants engaged in the farming operation.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Maryland Department of Agriculture, Anne Arundel County, Garrett County, Montgomery County, Department of Legislative Services

**Fiscal Note History:** First Reader - March 20, 2008  
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