

Department of Legislative Services
Maryland General Assembly
2008 Session

FISCAL AND POLICY NOTE

Senate Bill 133

(Senator Edwards)

Education, Health, and Environmental Affairs

Environmental Matters

**Maryland Agricultural Land Preservation Foundation - Allegany County and
Garrett County - Coal Rights**

This bill modifies the applicability of regulations and procedures adopted by the Maryland Agricultural Land Preservation Foundation for the establishment and monitoring of agricultural districts and easements. Specifically, MALPF may not require, in Allegany or Garrett counties, a coal rights owner or lessee to subordinate its interest to MALPF's interest if MALPF determines that the exercise of those rights will not interfere with an agricultural operation conducted on the land. A reporting requirement is established.

Fiscal Summary

State Effect: Although the bill could result in a marginal increase in workload for MALPF, the bill is not anticipated to have a significant impact on State operations or finances.

Local Effect: The bill would not directly affect Allegany or Garrett counties' finances. MALPF advises, however, that the bill would likely make the counties better able to market their land preservation programs.

Small Business Effect: Potential meaningful impact on coal rights owners/lessees and farmers in Allegany and Garrett counties.

Analysis

Current Law: Regulations and criteria developed by MALPF relating to land which may be included in an agricultural district or subject to an easement must (1) require land

to meet productivity, acreage, and locational criteria determined by MALPF to be necessary for the continuation of farming; (2) as long as all other criteria are met, qualify land that is at least 50 acres in size for inclusion in an agricultural district or easement; (3) attempt to preserve the minimum number of acres in a given district that may reasonably be expected to promote the continued availability of agricultural suppliers and markets for agricultural goods; (4) authorize land within the boundaries of a 10-year water and sewer service district to be included in an agricultural district or easement only if that land is outstanding in productivity and is of significant use; and (5) authorize land to be included in an agricultural district or easement only if the county regulations governing the land permit specified activities.

Regulations and procedures adopted by MALPF for the establishment and monitoring of agricultural districts and easements may not require, in Garrett or Allegany counties, a natural gas rights owner or lessee to subordinate its interest to MALPF's interest if MALPF determines that exercise of the natural gas rights will not interfere with an agricultural operation conducted on land in the agricultural district or land subject to an easement.

Background: MALPF was created by the Maryland General Assembly in 1977 to preserve productive agricultural land and woodland. Agricultural preservation districts are formed when qualifying landowners sign voluntary agreements to keep their land in agricultural or woodland use for a specified number of years. Through June 30, 2007, landowners who agreed to place their farms within an agricultural preservation district were eligible to sell a development rights easement on that property to MALPF. Pursuant to Chapter 650 of 2007, as of July 1, 2007, districts are no longer a requirement for the easement application process. MALPF advises that Garrett County still requires districts at the county level and is using the State program to create them through June 30, 2008, when MALPF, pursuant to current law, will be prohibited from accepting district petitions. Allegany County does not require districts at the county level.

Subject to some limitations, once an easement has been sold, the property is protected from further development. As of January 1, 2008, MALPF had protected approximately 265,691 acres through the purchase of easements on 1,933 farms.

According to the *2002 Census of Agriculture*, there are 278 farms in Allegany County and 634 farms in Garrett County. With respect to Allegany County, MALPF advises that one easement was purchased in fiscal 2007 (at an acquisition cost of \$2,321 per acre) and that it currently has five easement applications for fiscal 2008. With respect to Garrett County, MALPF reports that, in fiscal 2007, four easements were purchased, with the average acquisition costs totaling \$5,500 per acre.

MALPF reports that the need for the MALPF board to approve the purchase of an easement without subordinated gas rights only occurs about once every two years.

Small Business Effect: To the extent any coal rights owners or lessees in Allegany or Garrett counties are small businesses, the bill could have a meaningful impact on them by allowing them to continue mining on land that becomes part of an agricultural district or easement under MALPF under certain conditions. However, MALPF reports that it is unlikely that the MALPF board of trustees would approve purchasing an easement on a property where active surface coal mining is taking place or is likely to take place without subordination. In any event, under the bill, certain farms that otherwise would not be able to sell their easements could qualify to do so. According to MALPF, given that these farms may be able to do this without the subordination of third-party interests in the coal rights on the property, they would risk losing their investment in the farming operation should the owner of those coal rights choose to exercise them. In some cases, surface mining on farmland could result in a decrease in farm productivity.

According to MALPF, some examples of situations in which the board of trustees may be willing to purchase an easement without subordination of coal rights include:

- A situation in which the owner of mineral rights on a property cannot be determined and no ownership succession can be identified. Because the chain of title is broken and the current ownership cannot be determined, the risk to the State from nonsubordination is very small.
- A situation in which the landowner of a property on which subordination of coal rights cannot be obtained is able to provide adequate and convincing evidence from an independent geologist that no coal resources exist on the property or that the coal on the property could only be mined by subsurface methods (and the owner or lessee of the rights has no right to construct a tunnel entrance on the property), and no surface mining would take place. If the board of trustees calculates the risk to be minimal or nonexistent, it may be willing to settle on such a property.

On the other hand, MALPF indicates that the board of trustees would likely be unwilling to purchase an easement in cases where surface mining of coal is a possibility because it would diminish the State's investment in the property. Two examples include:

- A situation where the ownership of coal rights can be identified but the owner is unwilling to subordinate and the possibility of surface mining exists.

- A situation in which the ownership of coal rights cannot be identified, but the possibility of coal extraction is sufficiently attractive to invite those willing to pay the costs necessary to seek to claim coal rights through legal channels.

Additional Information

Prior Introductions: Similar legislation was introduced as SB 273/HB 319 of 2007. SB 273 passed the Senate. Both bills received an unfavorable report by the House Environmental Matters Committee.

Cross File: HB 274 (Allegany County Delegation and Garrett County Delegation) – Environmental Matters.

Information Source(s): Maryland Department of Agriculture (Maryland Agricultural Land Preservation Foundation), Allegany County, Garrett County, U.S. Department of Agriculture (National Agricultural Statistics Service), Department of Legislative Services

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