

SENATE BILL 362

M4

9lr1975

By: **Senator Haines**

Introduced and read first time: January 30, 2009

Assigned to: Education, Health, and Environmental Affairs

A BILL ENTITLED

1 AN ACT concerning

2 **Agricultural Land Preservation Easements – Residential Uses**

3 FOR the purpose of authorizing a landowner whose land is subject to an agricultural
4 land preservation easement, subject to the approval of the Maryland
5 Agricultural Land Preservation Foundation, to convert the landowner's existing
6 dwelling house into a tenant house and to build a dwelling house for the
7 landowner's use; providing that such a dwelling house is subject to certain
8 restrictions; and generally relating to use of land under an agricultural land
9 preservation easement for residential purposes.

10 BY repealing and reenacting, with amendments,
11 Article – Agriculture
12 Section 2–513
13 Annotated Code of Maryland
14 (2007 Replacement Volume and 2008 Supplement)

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

17 **Article – Agriculture**

18 2–513.

19 (a) Agricultural land preservation easements may be purchased under this
20 subtitle for any land in agricultural use which meets the minimum criteria established
21 under § 2–509 of this subtitle if the easement and county regulations governing the
22 use of the land include the following provisions:

23 (1) Any farm use of land is permitted.

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2) Operation at any time of any machinery used in farm production or
2 the primary processing of agricultural products is permitted.

3 (3) All normal agricultural operations performed in accordance with
4 good husbandry practices which do not cause bodily injury or directly endanger human
5 health are permitted including, but not limited to, sale of farm products produced on
6 the farm where such sales are made.

7 (b) (1) A landowner whose land is subject to an easement may not use the
8 land for any commercial, industrial, or residential purpose except:

9 (i) As determined by the Foundation, for farm and forest
10 related uses and home occupations; or

11 (ii) As otherwise provided under this section.

12 (2) Except as provided in paragraphs (3) and [(6)] (7) of this
13 subsection, on written application, the Foundation shall release free of easement
14 restrictions only for the landowner who originally sold an easement, 1 acre or less for
15 the purpose of constructing a dwelling house for the use only of that landowner or
16 child of the landowner, up to a maximum of three lots, subject to the following
17 conditions:

18 (i) The number of lots allowed to be released under this section,
19 except as provided in paragraph [(6)] (7) of this subsection, may not exceed:

20 1. 1 lot if the size of the easement property is 20 acres or
21 more but fewer than 70 acres;

22 2. 2 lots if the size of the easement property is 70 acres
23 or more but fewer than 120 acres; or

24 3. 3 lots if the size of the easement property is 120 acres
25 or more.

26 (ii) The resulting density on the property may not exceed the
27 density allowed under zoning of the property before the Foundation purchased the
28 easement.

29 (iii) The landowner shall pay the State for any acre or portion
30 released at the price per acre that the State paid the owner for the easement.

31 (iv) Before any conveyance or release, the landowner and the
32 child, if there is a conveyance to a child, shall agree not to subdivide further for
33 residential purposes any acreage allowed to be released. The agreement shall be
34 recorded among the land records where the land is located and shall bind all future
35 owners.

1 (v) After certifying that the landowner or child of the landowner
2 has met the conditions provided in subparagraphs (i) through (iv) of this paragraph,
3 the Foundation shall issue a preliminary release which shall:

4 1. Become final when the Foundation receives and
5 certifies a nontransferable building permit in the name of the landowner or child of
6 the landowner for construction of a dwelling house; or

7 2. Become void upon the death of the person for whose
8 benefit the release was intended if the Foundation has not yet received a building
9 permit as provided in this subparagraph.

10 (vi) Any release or preliminary release issued under this
11 paragraph shall include:

12 1. A statement of the conditions under which it was
13 issued, a certification by the Foundation that all necessary conditions for release or
14 preliminary release have been met, and copies of any pertinent documents;

15 2. A statement by the landowner or child of the
16 landowner that acknowledges that:

17 A. Adjacent farmland that is subject to an agricultural
18 land preservation easement may be used for any agricultural purpose and may
19 interfere with the use and enjoyment of the property through noise, odor, vibration,
20 fumes, dust, glare, or other interference;

21 B. There is no recourse against the effects of any normal
22 agricultural operation performed in accordance with good husbandry practices; and

23 C. Acknowledgments made under items A and B of this
24 item are binding to any successor or assign of the landowner or child; and

25 3. A statement that the owner's or child's lot may not be
26 transferred for 5 years from the date of the final release, except on:

27 A. Approval by the Foundation; or

28 B. Notwithstanding any conditions on transfers imposed
29 under item 1 of this subparagraph, a lender providing notice to the Foundation of a
30 transfer pursuant to a bona fide foreclosure of a mortgage or deed of trust or to a deed
31 in lieu of foreclosure.

32 (vii) Any release, preliminary release, building permit, or other
33 document issued or submitted in accordance with this paragraph shall be recorded
34 among the land records where the land is located and shall bind all future owners.

1 (viii) The Foundation may not restrict the ability of a landowner
2 who originally sold an easement to acquire a release under this paragraph beyond the
3 requirements provided in this section.

4 (3) A landowner may reserve the right to exclude 1 unrestricted lot
5 from an easement in lieu of all owner's and children's lots to which the landowner
6 would otherwise be entitled under paragraph (2) of this subsection, subject to the
7 following conditions:

8 (i) The resulting density on the property shall be less than the
9 density allowed under zoning of the property before the Foundation purchased the
10 easement;

11 (ii) An unrestricted lot may be subdivided by the landowner
12 from the easement and sold to anyone to construct one residential dwelling;

13 (iii) The size of an unrestricted lot shall be 1 acre or less, except
14 as provided in paragraph [(6)] (7) of this subsection;

15 (iv) The landowner shall agree not to subdivide further for
16 residential purposes any acreage allowed to be released, and the agreement shall be
17 recorded among the land records where the land is located and shall bind all future
18 owners;

19 (v) The right to the lot is taken into consideration in the
20 appraisal of fair market value and determination of easement value;

21 (vi) The lot can be subdivided at any time and the location of the
22 lot to be subdivided is subject to the approval of the local agricultural advisory board
23 and the Foundation; and

24 (vii) If the property is transferred before the right to exclude the
25 lot has been exercised, the right may be transferred with the property.

26 (4) (i) Subject to the approval of the Foundation, a landowner may
27 construct housing for tenants fully engaged in operation of the farm.

28 (ii) Construction may not exceed 1 tenant house per 100 acres,
29 unless the Foundation grants an exception based on a showing of compelling need.

30 (iii) The land on which a tenant house is constructed may not be
31 subdivided or conveyed to any person. In addition, the tenant house may not be
32 conveyed separately from the original parcel.

33 (iv) The Foundation shall adopt regulations for the size and
34 location of tenant houses.

1 (5) (I) **SUBJECT TO THE APPROVAL OF THE FOUNDATION, A**
2 **LANDOWNER MAY, INSTEAD OF CONSTRUCTING A TENANT HOUSE UNDER**
3 **PARAGRAPH (4) OF THIS SUBSECTION, CONVERT THE LANDOWNER’S EXISTING**
4 **DWELLING HOUSE INTO A TENANT HOUSE AND CONSTRUCT ONE DWELLING**
5 **HOUSE FOR THE LANDOWNER’S OWN USE.**

6 (II) **A DWELLING HOUSE FOR THE LANDOWNER’S USE**
7 **CONSTRUCTED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH IS SUBJECT TO**
8 **THE SAME RESTRICTIONS THAT WOULD HAVE APPLIED TO A TENANT HOUSE**
9 **UNDER PARAGRAPH (4) OF THIS SUBSECTION.**

10 (6) Except as provided in paragraph [(6)] (7) of this subsection, on
11 request to the Foundation, an owner may exclude from the easement restrictions 1
12 acre per each single dwelling, which existed at the time of the sale of the easement, as
13 an owner’s, children’s, or unrestricted lot to which the owner is entitled under
14 paragraph (2) of this subsection, by a land survey and recordation provided at the
15 expense of the owner. However, before any exclusion is granted, an owner shall agree
16 with the Foundation not to subdivide further for residential purposes any acreage
17 allowed to be released. This agreement shall be recorded among the land records
18 where the land is located and shall bind all future owners.

19 [(6)] (7) (i) The restrictions of paragraphs (2) and [(5)] (6) of this
20 subsection concerning maximum lot sizes are altered so that the maximum lot size is:

21 1. As determined by the Department of the Environment
22 in accordance with regulations adopted by the Department of the Environment in
23 areas where there is less than 4 feet of unsaturated and unconsolidated soil material
24 below the bottom of an on-site sewage disposal system or in areas located within 2,500
25 feet of the normal water level of an existing or proposed water supply reservoir; or

26 2. Up to a maximum of 2 acres when regulations
27 adopted by the jurisdiction in which the land is situated require that a lot for a
28 dwelling house be larger than 1 acre.

29 (ii) For exclusions provided under paragraph [(5)] (6) of this
30 subsection, the landowner shall pay the State for any acre or portion released in excess
31 of the 1 acre per single dwelling that existed at the time of easement.

32 [(7)] (8) The Foundation may approve a landowner’s request to
33 relocate the site of an existing dwelling to another location on a farm subject to an
34 easement or district agreement, provided:

35 (i) The new location does not interfere with any agricultural
36 use; and

1 (ii) Subject to the Foundation's approval, the landowner agrees
2 either to demolish the existing dwelling at the current location or permanently convert
3 the existing dwelling at the current location to a use that is nonresidential and
4 integral to the farm operation.

5 [(8)] **(9)** The restrictions of paragraphs (2) and [(5)] **(6)** of this
6 subsection concerning maximum lot sizes may be waived by the Foundation so that
7 the maximum lot size is 2 acres if:

8 (i) The Foundation receives a recommendation to allow a
9 maximum lot size of more than 1 acre from the county agricultural preservation
10 advisory board and the planning and zoning authority of the jurisdiction where the
11 land is situated; and

12 (ii) The Foundation makes a determination that a lot size
13 greater than 1 acre will not interfere significantly with the agricultural use of the land
14 under easement.

15 (c) Purchase of an easement by the Foundation does not grant the public any
16 right of access or right of use of the subject property.

17 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
18 October 1, 2009.