

SENATE BILL 362

M4

9lr1975

By: **Senator Haines**

Introduced and read first time: January 30, 2009

Assigned to: Education, Health, and Environmental Affairs

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 18, 2009

CHAPTER _____

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 replacement dwelling house
7 for the landowner's own use under certain circumstances; ~~providing that such a~~
8 ~~dwelling house is subject to certain restrictions~~ requiring the Foundation to
9 adopt certain regulations; and generally relating to use of land under an
10 agricultural land preservation easement for residential purposes.

11 BY repealing and reenacting, with amendments,
12 Article – Agriculture
13 Section 2–513
14 Annotated Code of Maryland
15 (2007 Replacement Volume and 2008 Supplement)

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

18 **Article – Agriculture**

19 2–513.

20 (a) Agricultural land preservation easements may be purchased under this
21 subtitle for any land in agricultural use which meets the minimum criteria established

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 under § 2–509 of this subtitle if the easement and county regulations governing the
2 use of the land include the following provisions:

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

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

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

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

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

14 (ii) As otherwise provided under this section.

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

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

23 1. 1 lot if the size of the easement property is 20 acres or
24 more but fewer than 70 acres;

25 2. 2 lots if the size of the easement property is 70 acres
26 or more but fewer than 120 acres; or

27 3. 3 lots if the size of the easement property is 120 acres
28 or more.

29 (ii) The resulting density on the property may not exceed the
30 density allowed under zoning of the property before the Foundation purchased the
31 easement.

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

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

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

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

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

15 (vi) Any release or preliminary release issued under this
16 paragraph shall include:

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

20 2. A statement by the landowner or child of the
21 landowner that acknowledges that:

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

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

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

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

32 A. Approval by the Foundation; or

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

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

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

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

11 (i) The resulting density on the property shall be less than the
12 density allowed under zoning of the property before the Foundation purchased the
13 easement;

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

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

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

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

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

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

29 (4) (i) Subject to the approval of the Foundation, **AND BASED ON A**
30 **SHOWING OF A CURRENT COMPELLING NEED**, a landowner may construct housing
31 for tenants fully engaged in operation of the farm.

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

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

4 (iv) The Foundation shall adopt regulations ~~for the size and~~
 5 ~~location of tenant houses~~ **TO:**

6 **1. ESTABLISH CRITERIA FOR A LANDOWNER TO**
 7 **SHOW THE BASIS OF A CURRENT COMPELLING NEED TO CONSTRUCT A TENANT**
 8 **HOUSE; AND**

9 **2. ESTABLISH THE SIZE AND LOCATION OF TENANT**
 10 **HOUSES.**

11 (5) (I) ~~SUBJECT TO THE APPROVAL OF THE FOUNDATION, A~~
 12 ~~LANDOWNER MAY, INSTEAD OF CONSTRUCTING A TENANT HOUSE UNDER~~
 13 ~~PARAGRAPH (4) OF THIS SUBSECTION, CONVERT THE LANDOWNER'S EXISTING~~
 14 ~~DWELLING HOUSE INTO A TENANT HOUSE AND CONSTRUCT ONE DWELLING~~
 15 ~~HOUSE FOR THE LANDOWNER'S OWN USE~~ **AFTER OBTAINING APPROVAL FOR**
 16 **THE CONSTRUCTION OF A TENANT HOUSE UNDER PARAGRAPH (4) OF THIS**
 17 **SUBSECTION, A LANDOWNER MAY, INSTEAD OF CONSTRUCTING A NEW TENANT**
 18 **HOUSE, CONVERT AN EXISTING DWELLING HOUSE INTO A TENANT HOUSE AND**
 19 **CONSTRUCT ONE REPLACEMENT DWELLING HOUSE RESTRICTED TO THE**
 20 **LANDOWNER'S OWN USE, SUBJECT TO THE CONDITIONS PROVIDED UNDER**
 21 **SUBPARAGRAPH (II) OF THIS PARAGRAPH.**

22 (II) ~~A DWELLING HOUSE FOR THE LANDOWNER'S USE~~
 23 ~~CONSTRUCTED UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH IS SUBJECT TO~~
 24 ~~THE SAME RESTRICTIONS THAT WOULD HAVE APPLIED TO A TENANT HOUSE~~
 25 ~~UNDER PARAGRAPH (4) OF THIS SUBSECTION~~

26 **1. BEFORE A REPLACEMENT DWELLING HOUSE MAY**
 27 **BE CONSTRUCTED UNDER THIS SUBSECTION, THE LANDOWNER SHALL:**

28 **A. OBTAIN THE FOUNDATION'S APPROVAL; AND**

29 **B. EXECUTE AN AGREEMENT WITH THE**
 30 **FOUNDATION TO PROHIBIT THE REPLACEMENT DWELLING HOUSE FROM BEING**
 31 **SEPARATELY CONVEYED FROM THE ORIGINAL PARCEL.**

32 **2. THE AGREEMENT REQUIRED UNDER**
 33 **SUBSUBPARAGRAPH 1 OF THIS SUBPARAGRAPH SHALL BE RECORDED AMONG**
 34 **THE LAND RECORDS IN THE COUNTY WHERE THE LAND UPON WHICH THE**
 35 **REPLACEMENT DWELLING HOUSE IS TO BE LOCATED AND SHALL BIND FUTURE**
 36 **OWNERS OF THE LAND.**

1 **3. THE SIZE AND LOCATION OF A REPLACEMENT**
2 **DWELLING HOUSE CONSTRUCTED IN ACCORDANCE WITH THIS PARAGRAPH**
3 **SHALL BE SUBJECT TO THE FOUNDATION'S APPROVAL.**

4 **4. A REPLACEMENT DWELLING HOUSE**
5 **CONSTRUCTED IN ACCORDANCE WITH THIS PARAGRAPH SHALL BE TREATED AS**
6 **A RELOCATED EXISTING DWELLING HOUSE AS DESCRIBED IN PARAGRAPH (8) OF**
7 **THIS SUBSECTION, BUT IS EXEMPT FROM THE REQUIREMENTS UNDER**
8 **PARAGRAPH (8)(II) OF THIS SUBSECTION.**

9 **(III) THE FOUNDATION SHALL ADOPT REGULATIONS TO**
10 **ESTABLISH THE SIZE AND LOCATION OF REPLACEMENT DWELLING HOUSES.**

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

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

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

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

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

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

1 (i) The new location does not interfere with any agricultural
2 use; and

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

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

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

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

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

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
20 ~~October~~ July 1, 2009.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.