

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE

Senate Bill 291 (Senator Edwards)
Education, Health, and Environmental Affairs

**Maryland Agricultural Land Preservation Foundation - Easement Properties -
Natural Gas Drilling**

This bill authorizes drilling for natural gas on land subject to an agricultural land preservation easement.

Fiscal Summary

State Effect: The bill's requirements can be handled with existing budgeted resources. However, the bill may significantly reduce the agricultural value of easements in Garrett County and impact the Maryland Agricultural Land Preservation Foundation's (MALPF) federal funding.

Local Effect: Potential increase in gas production tax revenue in Garrett County, to the extent drilling occurs on MALPF easement land.

Small Business Effect: Potential meaningful.

Analysis

Current Law: The following uses are permitted on MALPF easement properties:

- any farm use;
- the operation of any machinery used in farm production or primary processing of agricultural products; and

- all normal agricultural operations performed with good husbandry practices that do not cause bodily injury or directly endanger human health, including but not limited to, sale of farm products produced on the farm where such sales are made.

MALPF easement properties may not be used for commercial, industrial, or residential purposes unless MALPF determines the purposes are compatible with agriculture and forestry. Commercial agricultural uses MALPF allows include the growing of field crops, vegetables, and fruit; dairy and livestock operations, including chickens; and managing land for forest resources.

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: Over the past two years, energy companies have shown considerable interest in locating natural gas from a geologic formation known as the Marcellus Shale, which spans Garrett and Allegany counties in Maryland. The Marcellus Shale was not targeted for gas exploration in the past due to high anticipated drilling costs. However, new cost-effective drilling techniques are currently being used in the Marcellus in Pennsylvania (and to a lesser extent in West Virginia) and are anticipated in New York and Maryland. Energy companies have begun to contact Garrett County land and mineral rights owners about leasing lands for drilling.

MALPF, which was established in 1977 and is part of the Maryland Department of Agriculture, purchases agricultural preservation easements that forever restrict development on prime farmland and woodland. In addition to funding from the State transfer tax, MALPF also receives funding from the agricultural land transfer tax, local matching funds, and the Federal Farmland Protection Program. As of January 2009, MALPF had cumulatively purchased or had a pending contract to purchase permanent conservation easements on 2,005 farms covering 274,950 acres.

MALPF has 44 easements in Garrett County, the only county affected by the bill due to its location and the current status of drilling technology. These easements vary in their status relative to leasing for natural gas exploration and commercial exploitation. Some of these easements are not located in areas deep enough to retain adequate natural gas for commercial exploitation. Others were acquired with subordinated mineral rights because ownership of the mineral rights was identifiable. Some MALPF easements in the county were acquired without subordinated mineral rights, though the mineral rights ownership was identifiable. In these cases, MALPF either determined that existing natural gas wells

had minimal impact or the landowners assumed responsibility for any damage due to exercising nonsubordinated mineral rights. Lastly, MALPF acquired some easements in the county without subordinated mineral rights because the ownership could not be identified. Until ownership is determined, drilling cannot occur on these properties. If one of these landowners ultimately secures mineral rights, the need for MALPF permission to drill would depend on the terms of the property's easement.

State Fiscal Effect: While the bill does not have a direct effect on State operations or finances, it may significantly reduce the agricultural value of MALPF easements. To date the State has invested \$6.5 million to preserve 5,600 acres of prime agricultural land in Garrett County. Given the current per acre acquisition value of easement property in Garrett County (\$4,305 per acre in fiscal 2007 and 2008), the bill could affect up to \$24.1 million of the public's investment in agricultural preservation. However, the likely impact would be much less as not all easement land is suitable for drilling and lower-impact horizontal drilling would most likely be the means of extraction.

The federal government prohibits commercial uses such as natural gas drilling on federally funded agricultural easements. If natural gas drilling is authorized, MALPF may lose future federal funding; be required to reimburse federal funds already granted; and be required to forfeit federally funded easements on which drilling occurs. In Garrett County there is only one federally funded easement. The easement is 102 acres and the property's mineral rights were subordinated.

Local Fiscal Effect: Garrett County imposes a gas distribution and production tax on all natural gas production in the county. To the extent the bill leads to drilling on easement lands, county tax revenues increase.

Small Business Effect: To the extent small businesses in Garrett County have MALPF easement land and own or lease natural gas rights on that land, the bill has a meaningful impact by allowing natural gas drilling. The benefits will depend on how much natural gas is extracted and the rate at which it is sold.

MALPF advises that, in some cases, mining on farmland could result in a decrease in farm productivity that could render affected land unfeasible for agricultural use. Because the effects of mining on the long-term productivity of farmland are still uncertain, an estimate of economic impact to farmers cannot be made at this time.

Additional Information

Prior Introductions: None.

Cross File: HB 333 (Delegate Beitzel) - Environmental Matters.

Information Source(s): Department of Natural Resources (Maryland Geological Survey), Maryland Department of Agriculture, Department of Legislative Services

Fiscal Note History: First Reader - February 10, 2009
ncs/ljm

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