

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

House Bill 1418

(Chair, Environmental Matters Committee)(By Request -
Departmental - Agriculture)

Environmental Matters

Education, Health, and Environmental Affairs

Agricultural Land Preservation - Condemnation of Land Under Easement

This departmental bill makes condemnation of land under a Maryland Agricultural Land Preservation Foundation (MALPF) easement, for economic development, residential development, or parkland purposes, subject to approval by MALPF and the Board of Public Works (BPW). Condemnation of easement land for roads, water lines or pipelines, sewer lines or pipelines, power transmission lines or natural gas pipelines, and storm water or drainage facilities is not subject to MALPF and BPW approval. The condemning authority, which is expanded to include any governmental authority, must demonstrate that a greater public purpose exists than that served by the MALPF easement and there is no reasonable alternative site.

Fiscal Summary

State Effect: The bill does not directly affect State finances; however, it may help preserve the value of the State's investment in agricultural land preservation easements.

Local Effect: The bill does not directly affect local finances; however, it may make it more difficult to condemn properties and help preserve the value of a local jurisdiction's investment in agricultural land preservation easements.

Small Business Effect: The Maryland Department of Agriculture (MDA) has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Current Law: The State and local jurisdictions are not prohibited from condemning land which is under an agricultural preservation easement held by MALPF or a county land preservation program if such acquisition is for a public purpose.

When land under a MALPF easement is condemned, the State or local jurisdiction condemning the property must pay, (1) to the landowner, the full amount to which the landowner would be entitled if the land was not under easement, less any amount paid to the landowner by MALPF or a local jurisdiction for the easement; and (2) to MALPF or a local jurisdiction, an amount equal to any amount paid by MALPF or the local jurisdiction for the easement.

MALPF and Board of Public Works approval is not currently required prior to condemning MALPF easement land.

Background: MALPF, which was established in 1977 and is part of MDA, purchases agricultural preservation easements that restrict development on prime farmland and woodland in perpetuity. 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.

To date, no MALPF-preserved farms have been condemned and acquired fee simple. However, MALPF advises easement properties are being increasingly threatened by the exercise of eminent domain. Landowners with MALPF easements have a substantial incentive to encourage governments to purchase easement land for public purposes, since landowners are reimbursed for the full current appraised fair market value. Since repayment for condemnation of agricultural easement land is not returned to MALPF, condemnation may result in a decrease in the value of the State's investment in agricultural land preservation.

MALPF advises the bill allows the evaluation of potentially competing public purposes to be done explicitly and puts the burden on the condemning authority to demonstrate the superiority of the public purposes it is pursuing and its inability to find an alternative to meet those public purposes. The bill targets public purposes for which relatively quick acquisition is not an important element of consideration, that are likely to result in the acquisition of the entire preserved property, that directly compete with farmland preservation goals, and that are not site specific.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Anne Arundel, Charles, Frederick, Montgomery, and Somerset counties; City of Bowie; Maryland Department of Agriculture; Board of Public Works; Department of Legislative Services

Fiscal Note History: First Reader - March 17, 2009
ncs/ljm Revised - House Third Reader - April 3, 2009

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Agricultural Land Preservation – Condemnation of Land Under Easement

BILL NUMBER: HB 1418

PREPARED BY: Maryland Department of Agriculture

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESS

OR

WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND
SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.