

Department of Legislative Services
Maryland General Assembly
2009 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 358

(Senator Middleton, *et al.*)

Education, Health, and Environmental Affairs

Economic Matters and Environmental
Matters

Calvert County, Charles County, and St. Mary's County - Agricultural
Preservation Easements - Renewable Energy Generation

This emergency bill authorizes solar energy generation in Calvert, Charles, and St. Mary's counties on Maryland Agricultural Land Preservation Foundation (MALPF) easement land so long as landowners agree to pay MALPF, over a five-year period, a specified amount and it does not exceed 5% of the land under easement; minimizes the impact to property's agricultural and forestry use; meets all federal, State, and local permitting and zoning requirements; is recommended as consistent with local preservation plans and policies by the local land preservation advisory board within a specified time period; and is approved by MALPF within a specified time period.

The bill terminates September 30, 2012.

Fiscal Summary

State Effect: The bill's requirements can be handled with existing budgeted resources. However the bill may reduce the agricultural value of easements throughout the State and impact MALPF's federal funding. Furthermore, State tax revenues may increase to the extent commercial renewable energy generation occurs and MALPF revenues increase to the extent landowners make payments for the land being used to generate solar energy.

Local Effect: Local government tax revenues in the three affected counties may increase to the extent commercial renewable energy generation occurs.

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.

Background: 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.

Currently noncommercial wind and solar energy production occurs on easement properties for on-farm use. Such facilities may be part of the electrical grid as long as the production balance is net zero. Therefore, landowners may draw from the electrical grid when on-site energy production is insufficient for on-site use and can send energy surpluses to the grid for credit. However, if the energy surplus exceeds use over an annual period, landowners may not be compensated for the surplus.

State Fiscal Effect: The bill may significantly reduce the agricultural value of MALPF easements. To date the State has invested \$556.3 million to preserve 274,950 acres of prime agricultural land in the State. Since energy generation is authorized on only 5% of easement lands and the current acquisition value of easement property in the State is \$6,800 per acre, the bill may affect up to 13,748 acres or \$93.5 million of the public's investment in agricultural preservation. However, the impact is likely to be much less as not all easement land is suitable for solar energy generation.

The federal government prohibits commercial solar energy generation on federally funded agricultural easements. If commercial solar generation 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 commercial solar energy generation occurs.

MALPF revenues increase to the extent landowners make payments for the land being used to generate solar energy.

Commercial energy generation is subject to a variety of State taxes. To the extent commercial renewable energy generation occurs on MALPF easement land, and is subject to these taxes, State tax revenues increase.

Local Fiscal Effect: Commercial energy generation is subject to a variety of local taxes. To the extent commercial renewable energy generation occurs on MALPF easement land, and is subject to these taxes, local tax revenues increase.

Small Business Effect: To the extent small businesses have MALPF easement land and develop solar energy generation projects on that land, the bill has a meaningful impact by allowing these commercial purposes. The benefits depend on how much power is generated and the rate at which it is sold. However, the bill's changes may reduce the agricultural value of an affected property, as less land may be available for agricultural purposes.

Additional Comments: The bill refers to landowners paying MALPF the "value of the percentage of land under easement" as well as the "current market value of the easement." Therefore, it is not clear whether landowner payments should be based on the value of the land or on the value of the easement. Also, landowners are required to make payments over a five-year period, but the bill terminates within a three-year period. Therefore, it is not clear whether landowners would be required to make payments for three or five years.

Additional Information

Prior Introductions: None.

Cross File: HB 290 (Southern Maryland Delegation) - Environmental Matters and Economic Matters.

Information Source(s): Maryland Department of Agriculture, Department of Natural Resources, Maryland Department of Planning, Maryland Energy Administration, Department of Legislative Services

Fiscal Note History: First Reader - February 24, 2009
mlm/ljm Revised - Senate Third Reader - April 10, 2009

Analysis by: Amanda Mock

Direct Inquiries to:
(410) 946-5510
(301) 970-5510