

HOUSE BILL 209

M4

11r0025

By: **Chair, Environmental Matters Committee (By Request – Departmental – Agriculture)**

Introduced and read first time: January 28, 2011

Assigned to: Environmental Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 8, 2011

Returned to second reading: March 10, 2011

House action: Adopted with floor amendments

Read second time: March 10, 2011

CHAPTER _____

1 AN ACT concerning

2 **Maryland Agricultural Land Preservation Foundation Easements –**
3 **Allowable Residential Development**

4 FOR the purpose of authorizing the purchase of agricultural land preservation
5 easements if the land meets certain requirements and is subject to certain
6 regulations governing the use of the land; clarifying that certain provisions of
7 this Act do not exempt a landowner from complying with certain local laws or
8 certain State or local restrictions or requirements; prohibiting land subject to
9 agricultural easement from being used for certain purposes; allowing a
10 landowner to reserve up to a certain number of certain sized lots to construct
11 single family residential dwellings, subject to certain conditions; requiring the
12 Maryland Agricultural Land Preservation Foundation to review applications to
13 build on reserved lots and to make certain determinations regarding the
14 applications; requiring a landowner to pay the State for land released from
15 preservation at a certain price; requiring a certain release to be recorded among
16 the land records where the land is located; providing for the required content of
17 a certain release; authorizing a landowner to waive the reservation of lot rights;
18 requiring a certain waiver of rights to be considered in determining the value of
19 an easement; providing for the process by which a landowner may apply to
20 release land from easement restrictions for certain purposes; providing for
21 certain exemptions to the size limitations of a lot released from easement;

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 authorizing a landowner to construct housing for tenants on easement land
 2 under certain conditions; establishing limitations on the construction of housing
 3 for tenants on easement land; authorizing a landowner to convert an existing
 4 dwelling into tenant housing subject to certain conditions; granting the
 5 Foundation authority to approve a landowner request to relocate an existing
 6 dwelling to another location on easement land, subject to certain conditions;
 7 granting the Foundation authority to enter into corrective easements for certain
 8 purposes; providing for the execution of corrective easements; clarifying that a
 9 corrective easement approved by the Foundation is not subject to certain
 10 requirements; providing that the purchase of an easement does not grant
 11 certain rights to the public; requiring the Foundation to adopt certain
 12 regulations; clarifying that certain provisions of law apply to easements
 13 approved for purchase before a certain date; clarifying that certain provisions of
 14 this Act ~~applies~~ apply to easements approved for purchase on or after a certain
 15 date; and generally relating to agricultural land preservation easements
 16 approved for purchase ~~on or after a certain date.~~

17 BY adding to
 18 Article – Agriculture
 19 Section 2–513.2
 20 Annotated Code of Maryland
 21 (2007 Replacement Volume and 2010 Supplement)

22 BY renumbering
 23 Article – Agriculture
 24 Section 2–513(b) and (c), respectively
 25 to be Section 2–513(c) and (d), respectively
 26 Annotated Code of Maryland
 27 (2007 Replacement Volume and 2010 Supplement)

28 BY adding to
 29 Article – Agriculture
 30 Section 2–513(a) and 2–513.2
 31 Annotated Code of Maryland
 32 (2007 Replacement Volume and 2010 Supplement)

33 BY repealing and reenacting, with amendments,
 34 Article – Agriculture
 35 Section 2–513(a)
 36 Annotated Code of Maryland
 37 (2007 Replacement Volume and 2010 Supplement)

38 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 39 MARYLAND, That Section(s) 2–513(b) and (c), respectively, of Article – Agriculture of
 40 the Annotated Code of Maryland be renumbered to be Section(s) 2–513(c) and (d),
 41 respectively.

1 SECTION ~~4~~ 2. AND BE IT FURTHER ENACTED ~~BY THE GENERAL~~
 2 ~~ASSEMBLY OF MARYLAND~~, That the Laws of Maryland read as follows:

3 Article – Agriculture

4 2-513.

5 (A) THIS SECTION APPLIES TO AN EASEMENT THE PURCHASE OF WHICH
 6 IS APPROVED BY THE BOARD OF PUBLIC WORKS BEFORE JULY 1, 2012.

7 [(a)](B) Agricultural land preservation easements may be purchased under
 8 this subtitle for any land in agricultural use which meets the minimum criteria
 9 established under § 2-509 of this subtitle if the easement and county regulations
 10 governing the use of the land include the following provisions:

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

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

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

18 2-513.2.

19 (A) ~~(1) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THIS~~
 20 ~~THIS SECTION ONLY APPLIES TO AN EASEMENT WHOSE THE PURCHASE OF~~
 21 ~~WHICH IS APPROVED BY THE BOARD OF PUBLIC WORKS ON OR AFTER JULY 1,~~
 22 ~~2012.~~

23 (2) THIS SECTION DOES NOT EXEMPT A LANDOWNER FROM
 24 COMPLYING WITH:

25 (I) A LOCAL LAW, ORDINANCE, RESOLUTION, OR
 26 REGULATION APPLICABLE TO TENANT HOUSING;

27 (II) A STATE OR LOCAL LOT SIZE RESTRICTION APPLICABLE
 28 TO THE INSTALLATION OR REPLACEMENT OF AN ON-SITE SEWAGE DISPOSAL
 29 SYSTEM; OR

30 (III) A STATE OR LOCAL LAND CLASSIFICATION
 31 REQUIREMENT OR RESTRICTION APPLICABLE TO THE CHESAPEAKE BAY
 32 CRITICAL AREA OR ATLANTIC COASTAL BAYS CRITICAL AREA.

1 **(B) AGRICULTURAL LAND PRESERVATION EASEMENTS MAY BE**
2 **PURCHASED UNDER THIS SUBTITLE FOR ANY LAND IN AGRICULTURAL USE THAT**
3 **MEETS THE MINIMUM CRITERIA ESTABLISHED UNDER § 2-509 OF THIS**
4 **SUBTITLE IF THE EASEMENT AND COUNTY REGULATIONS GOVERNING THE USE**
5 **OF THE LAND INCLUDE THE FOLLOWING PROVISIONS:**

6 **(1) ANY FARM USE OF LAND IS ALLOWED;**

7 **(2) OPERATION AT ANY TIME OF ANY MACHINERY USED IN FARM**
8 **PRODUCTION OR THE PRIMARY PROCESSING OF AGRICULTURAL PRODUCTS IS**
9 **PERMITTED; AND**

10 **(3) ALL NORMAL AGRICULTURAL OPERATIONS PERFORMED IN**
11 **ACCORDANCE WITH GOOD HUSBANDRY PRACTICES THAT DO NOT CAUSE BODILY**
12 **INJURY OR DIRECTLY ENDANGER HUMAN HEALTH ARE ALLOWED INCLUDING**
13 **THE SALE OF FARM PRODUCTS PRODUCED ON THE FARM WHERE THE SALES**
14 **ARE MADE.**

15 **(C) (1) LAND THAT IS SUBJECT TO AN AGRICULTURAL LAND**
16 **PRESERVATION EASEMENT MAY NOT BE USED FOR ANY COMMERCIAL,**
17 **INDUSTRIAL, OR RESIDENTIAL PURPOSE EXCEPT:**

18 **(I) AS DETERMINED BY THE FOUNDATION, FOR FARM AND**
19 **FOREST RELATED USES AND HOME OCCUPATIONS; OR**

20 **(II) AS OTHERWISE PROVIDED UNDER THIS SECTION.**

21 **(2) ONLY A LANDOWNER WHO SELLS AN EASEMENT TO THE**
22 **FOUNDATION MAY RESERVE AT THE TIME OF THE SALE THE RIGHT TO REQUEST**
23 **THE FOUNDATION TO RELEASE LOTS OF 1 ACRE OR LESS FOR THE PURPOSE OF**
24 **CONSTRUCTING ONE SINGLE-FAMILY RESIDENTIAL DWELLING HOUSE PER LOT,**
25 **UP TO A MAXIMUM OF THREE LOTS, WHICH RESERVED RIGHT SHALL RUN WITH**
26 **THE LAND UNTIL EXERCISED BY THE LANDOWNER OR BY A FUTURE**
27 **LANDOWNER, SUBJECT TO THE FOLLOWING CONDITIONS:**

28 **(I) THE NUMBER OF LOTS THAT A LANDOWNER MAY**
29 **RESERVE UNDER THIS SECTION MAY NOT EXCEED:**

30 **1. ONE LOT IF THE SIZE OF THE LAND TO BE PLACED**
31 **UNDER EASEMENT IS AT LEAST 50 ACRES BUT FEWER THAN 150 ACRES;**

32 **2. TWO LOTS IF THE SIZE OF THE LAND TO BE**
33 **PLACED UNDER EASEMENT IS AT LEAST 150 ACRES BUT FEWER THAN 250**
34 **ACRES; OR**

1 **3. THREE LOTS IF THE SIZE OF THE LAND TO BE**
2 **PLACED UNDER EASEMENT IS AT LEAST 250 ACRES;**

3 **(II) THE RESULTING DENSITY ON THE LAND MAY NOT**
4 **EXCEED THE DENSITY ALLOWED UNDER ZONING OF THE LAND BEFORE THE**
5 **FOUNDATION PURCHASED THE EASEMENT; AND**

6 **(III) THE RESERVATION OF RIGHT TO ANY LOT IS TAKEN**
7 **INTO CONSIDERATION IN THE APPRAISAL OF FAIR MARKET VALUE AND**
8 **DETERMINATION OF EASEMENT VALUE.**

9 **(3) THE FOUNDATION SHALL:**

10 **(I) REVIEW THE WRITTEN APPLICATION OF A LANDOWNER**
11 **TO EXERCISE THE RIGHT TO ANY RESERVED LOT;**

12 **(II) MAKE A DETERMINATION THAT:**

13 **1. THERE ARE NO EXISTING VIOLATIONS OF THE**
14 **EASEMENT OF WHICH THE FOUNDATION HAS KNOWLEDGE AND REQUIRES TO BE**
15 **CORRECTED PRIOR TO THE RELEASE OF THE LOT;**

16 **2. THE LOCATION, SIZE, AND CONFIGURATION OF**
17 **THE LOT WILL MINIMIZE INTERFERENCE WITH THE AGRICULTURAL OPERATION;**
18 **AND**

19 **3. THE LOCATION, SIZE, AND CONFIGURATION OF**
20 **THE LOT HAVE BEEN APPROVED BY THE LOCAL AGRICULTURAL ADVISORY**
21 **BOARD; AND**

22 **(III) REQUIRE THE LANDOWNER TO PAY THE STATE FOR THE**
23 **ACREAGE TO BE RELEASED FROM THE EASEMENT RESTRICTIONS AT THE PRICE**
24 **PER ACRE THAT THE STATE PAID THE GRANTOR FOR THE EASEMENT.**

25 **(4) (I) AFTER CERTIFYING THAT THE LANDOWNER HAS MET**
26 **THE CONDITIONS PROVIDED IN PARAGRAPHS (2) AND (3) OF THIS SUBSECTION,**
27 **THE FOUNDATION SHALL ISSUE A RELEASE THAT SHALL BE RECORDED AMONG**
28 **THE LAND RECORDS WHERE THE LAND IS LOCATED AND SHALL BIND ALL**
29 **FUTURE OWNERS OF THE RELEASED LOT.**

30 **(II) THE RELEASE SHALL INCLUDE A SIGNED**
31 **ACKNOWLEDGMENT BY THE LANDOWNER THAT:**

32 **1. THE RELEASED LOT MAY NOT BE FURTHER**
33 **SUBDIVIDED FOR ANY PURPOSE;**

1 **2. ADJACENT FARMLAND THAT IS SUBJECT TO AN**
2 **AGRICULTURAL LAND PRESERVATION EASEMENT MAY BE USED FOR ANY**
3 **AGRICULTURAL PURPOSE AND MAY INTERFERE WITH THE USE AND ENJOYMENT**
4 **OF THE RELEASED LOT THROUGH NOISE, ODOR, VIBRATION, FUMES, DUST,**
5 **GLARE, OR OTHER INTERFERENCE;**

6 **3. THERE IS NO RECOURSE AGAINST THE EFFECTS**
7 **OF ANY NORMAL AGRICULTURAL OPERATION PERFORMED IN ACCORDANCE**
8 **WITH GOOD HUSBANDRY PRACTICES; AND**

9 **4. THE SIGNED ACKNOWLEDGMENT IS BINDING ON**
10 **THE SUCCESSORS, PERSONAL REPRESENTATIVES, OR ASSIGNS OF THE**
11 **LANDOWNER.**

12 **(5) (I) A LANDOWNER MAY VOLUNTARILY WAIVE THE**
13 **RESERVATION OF LOT RIGHTS AT THE TIME OF APPLICATION.**

14 **(II) ANY WAIVER SHALL BE TAKEN INTO CONSIDERATION IN**
15 **THE APPRAISAL OF FAIR MARKET VALUE AND DETERMINATION OF EASEMENT**
16 **VALUE AND SHALL BE SPECIFICALLY SET FORTH IN THE DEED OF EASEMENT**
17 **EXECUTED BY THE LANDOWNER.**

18 **(6) (I) EXCEPT AS PROVIDED IN PARAGRAPH (7) OF THIS**
19 **SUBSECTION, A LANDOWNER MAY MAKE APPLICATION TO RELEASE FROM THE**
20 **EASEMENT RESTRICTIONS 1 ACRE OR LESS PER EACH SINGLE DWELLING THAT**
21 **EXISTED AT THE TIME OF THE SALE OF THE EASEMENT, SUBJECT TO ALL OF THE**
22 **CONDITIONS SET FORTH IN PARAGRAPHS (2), (3), AND (4) OF THIS SUBSECTION,**
23 **WITH THE EXCEPTION OF LOCATION.**

24 **(II) TO EXERCISE THIS OPTION, THE LANDOWNER MUST USE**
25 **AN UNEXERCISED LOT THAT WAS RESERVED AT THE TIME OF THE APPLICATION.**

26 **(7) THE MAXIMUM SIZE OF A LOT RELEASED FROM EASEMENT**
27 **RESTRICTIONS MAY EXCEED 1 ACRE IF:**

28 **(I) REGULATIONS ADOPTED BY THE DEPARTMENT OF THE**
29 **ENVIRONMENT IN AREAS WHERE THERE IS LESS THAN 4 FEET OF UNSATURATED**
30 **AND UNCONSOLIDATED SOIL MATERIAL BELOW THE BOTTOM OF AN ON-SITE**
31 **SEWAGE DISPOSAL SYSTEM OR IN AREAS LOCATED WITHIN 2,500 FEET OF THE**
32 **NORMAL WATER LEVEL OF AN EXISTING OR PROPOSED WATER SUPPLY**
33 **RESERVOIR REQUIRE A LOT TO BE IN EXCESS OF 1 ACRE;**

34 **(II) REGULATIONS ADOPTED BY THE JURISDICTION IN**
35 **WHICH THE LAND IS SITUATED REQUIRE THAT A LOT FOR A DWELLING HOUSE**

1 BE LARGER THAN 1 ACRE, BUT IN THAT EVENT THE LOT MAY NOT BE IN EXCESS
2 OF 2 ACRES; OR

3 (III) THE FOUNDATION:

4 1. RECEIVES A RECOMMENDATION TO ALLOW A
5 MAXIMUM LOT SIZE OF MORE THAN 1 ACRE FROM THE COUNTY AGRICULTURAL
6 ADVISORY BOARD AND THE PLANNING AND ZONING AUTHORITY OF THE
7 JURISDICTION WHERE THE LAND IS SITUATED; AND

8 2. MAKES A DETERMINATION THAT A LOT SIZE
9 GREATER THAN 1 ACRE WILL NOT SIGNIFICANTLY INTERFERE WITH THE
10 AGRICULTURAL USE OF THE LAND UNDER EASEMENT.

11 (D) (1) SUBJECT TO THE APPROVAL OF THE FOUNDATION, AND
12 BASED ON A SHOWING OF A CURRENT COMPELLING NEED, A LANDOWNER MAY
13 CONSTRUCT HOUSING FOR TENANTS FULLY ENGAGED IN OPERATION OF THE
14 FARM, SUBJECT TO THE FOLLOWING CONDITIONS:

15 (I) CONSTRUCTION MAY NOT EXCEED ONE TENANT HOUSE
16 PER 100 ACRES, UNLESS THE FOUNDATION GRANTS AN EXCEPTION BASED ON A
17 SHOWING OF EXTRAORDINARY COMPELLING NEED;

18 (II) THE LAND ON WHICH A TENANT HOUSE IS
19 CONSTRUCTED MAY NOT BE SUBDIVIDED OR CONVEYED TO ANY PERSON; AND

20 (III) THE TENANT HOUSE MAY NOT BE CONVEYED
21 SEPARATELY FROM THE ORIGINAL PARCEL.

22 (2) THE FOUNDATION SHALL ADOPT REGULATIONS TO:

23 (I) ESTABLISH CRITERIA FOR A LANDOWNER TO SHOW THE
24 BASIS OF A CURRENT COMPELLING NEED TO CONSTRUCT A TENANT HOUSE; AND

25 (II) ESTABLISH THE SIZE AND LOCATION OF TENANT
26 HOUSES.

27 (3) (I) AFTER OBTAINING APPROVAL FOR THE CONSTRUCTION
28 OF A TENANT HOUSE UNDER PARAGRAPH (1) OF THIS SUBSECTION, A
29 LANDOWNER MAY, INSTEAD OF CONSTRUCTING A NEW TENANT HOUSE,
30 CONVERT AN EXISTING DWELLING HOUSE INTO A TENANT HOUSE AND
31 CONSTRUCT ONE REPLACEMENT DWELLING HOUSE RESTRICTED TO THE
32 LANDOWNER'S OWN USE, SUBJECT TO THE CONDITIONS PROVIDED UNDER
33 SUBPARAGRAPH (II) OF THIS PARAGRAPH.

1 (II) 1. BEFORE A REPLACEMENT DWELLING HOUSE MAY
2 BE CONSTRUCTED UNDER THIS PARAGRAPH, THE LANDOWNER SHALL:

3 A. OBTAIN THE FOUNDATION’S APPROVAL; AND

4 B. EXECUTE AN AGREEMENT WITH THE
5 FOUNDATION TO PROHIBIT THE REPLACEMENT DWELLING HOUSE FROM BEING
6 SEPARATELY CONVEYED FROM THE ORIGINAL PARCEL, WHICH AGREEMENT
7 SHALL BE RECORDED AMONG THE LAND RECORDS IN THE COUNTY WHERE THE
8 LAND IS LOCATED AND SHALL BIND FUTURE OWNERS.

9 2. THE SIZE AND LOCATION OF A REPLACEMENT
10 DWELLING HOUSE CONSTRUCTED IN ACCORDANCE WITH THIS PARAGRAPH
11 SHALL BE SUBJECT TO THE FOUNDATION’S APPROVAL.

12 3. A REPLACEMENT DWELLING HOUSE
13 CONSTRUCTED IN ACCORDANCE WITH THIS PARAGRAPH SHALL BE TREATED AS
14 A RELOCATED EXISTING DWELLING HOUSE AS DESCRIBED IN SUBSECTION (E)
15 OF THIS SECTION, BUT IS EXEMPT FROM THE REQUIREMENTS UNDER
16 SUBSECTION ~~(E)(1)~~ (E)(2) OF THIS SECTION.

17 (III) THE FOUNDATION SHALL ADOPT REGULATIONS TO
18 ESTABLISH THE SIZE AND LOCATION OF REPLACEMENT DWELLING HOUSES.

19 (E) THE FOUNDATION MAY APPROVE A LANDOWNER’S REQUEST TO
20 RELOCATE THE SITE OF AN EXISTING DWELLING TO ANOTHER LOCATION ON A
21 FARM SUBJECT TO AN EASEMENT ~~OR DISTRICT AGREEMENT~~, PROVIDED:

22 (1) THE NEW LOCATION DOES NOT INTERFERE WITH ANY
23 AGRICULTURAL USE; AND

24 (2) SUBJECT TO THE FOUNDATION’S APPROVAL, THE
25 LANDOWNER AGREES EITHER TO DEMOLISH THE EXISTING DWELLING AT THE
26 CURRENT LOCATION OR PERMANENTLY CONVERT THE EXISTING DWELLING AT
27 THE CURRENT LOCATION TO A USE THAT IS NONRESIDENTIAL AND INTEGRAL TO
28 THE FARM OPERATION.

29 (F) (1) THE FOUNDATION MAY ENTER INTO CORRECTIVE EASEMENTS
30 WITH LANDOWNERS IN ORDER TO:

31 (I) ADJUST BOUNDARY LINES;

32 (II) RESOLVE EASEMENT VIOLATIONS; OR

1 (III) ACCOMMODATE A PLAN THAT THE FOUNDATION HAS
2 DETERMINED WILL BENEFIT THE AGRICULTURAL OPERATIONS.

3 (2) CORRECTIVE EASEMENTS UNDER THIS SUBSECTION MAY BE
4 ACCOMPLISHED BY THE EXCHANGE AND RELEASE OF FARMLAND SUBJECT TO
5 EASEMENT RESTRICTIONS WITH OTHER FARMLAND THAT MEETS THE
6 REQUIREMENTS OF THIS SUBTITLE.

7 (3) CORRECTIVE EASEMENTS APPROVED BY THE FOUNDATION
8 ARE NOT SUBJECT TO THE REQUIREMENTS OF §§ 4-416 AND 10-305 OF THE
9 STATE FINANCE AND PROCUREMENT ARTICLE.

10 (4) THE FOUNDATION SHALL ADOPT REGULATIONS TO CARRY
11 OUT THIS SUBSECTION.

12 (G) PURCHASE OF AN EASEMENT BY THE FOUNDATION DOES NOT
13 GRANT THE PUBLIC ANY RIGHT OF ACCESS OR RIGHT OF USE OF THE SUBJECT
14 PROPERTY.

15 SECTION ~~2~~ 3. AND BE IT FURTHER ENACTED, That this Act shall take
16 effect October 1, 2011.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.