

Department of Legislative Services  
Maryland General Assembly  
2011 Session

FISCAL AND POLICY NOTE

Senate Bill 412 (Senator Getty)  
Education, Health, and Environmental Affairs

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Agriculture - Easements - Separate Parcels

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This bill specifies that, if two adjoining parcels of land are owned by the same person, are recorded in separate deeds, and are described separately in a Maryland Agricultural Land Preservation Foundation (MALPF) deed of easement, then (1) the conveyance of one of the adjoining parcels is not a subdivision for MALPF purposes; and (2) a landowner may convey the parcels separately and to separate owners without MALPF's approval.

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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 MALPF easements throughout the State.

**Local Effect:** None.

**Small Business Effect:** Potential meaningful.

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Analysis

**Current Law:** In accordance with current regulations, "subdivision" is the division of land into two or more parts or parcels. Land subject to a MALPF easement may not be subdivided for any purpose without the written approval of MALPF. This restriction on subdivision of MALPF easements is stated in statute, regulations, and each deed of easement.

**Background:** MALPF, which was established by the General Assembly in 1977 and is part of the Maryland Department of Agriculture, purchases agricultural preservation

easements that restrict development on prime farmland and woodland in perpetuity. In addition to funding from the State transfer tax, MALPF is funded with agricultural land transfer taxes, local matching funds, and the U.S. Department of Agriculture's Federal Farmland Protection Program. MALPF settled on its first purchased easement in October 1980. As of January 2011, MALPF had cumulatively purchased or had a pending contract to purchase conservation easements on 2,080 farms covering 283,523 acres.

Landowners seeking to subdivide land subject to a MALPF easement must come before the board of trustees of MALPF to request a subdivision with a justifiable agricultural purpose. The agricultural subdivision of easement property may be done only with MALPF approval, even if the easement property is composed of more than one parcel originally titled separately. MALPF evaluates whether the product of a subdivision still meets the program's eligibility requirements, can be justified for agricultural purposes, and will result in farming operations that remain economically viable. MALPF requires any parcels resulting from agricultural subdivision to be at least 50 acres in size and continue independently to meet the minimum soils requirements for program participation.

Initial research shows that 422 MALPF easements – approximately 20% of all MALPF easements – are composed of multiple parcels, averaging 2.5 parcels per easement. Thus, if applied retroactively, the bill authorizes these 422 easements to be divided into their approximately 1,055 constituent parts with no consideration being given to their economic viability, agricultural purpose, size, or productivity of the subdivided parcels. It is likely the parcels would not meet MALPF eligibility requirements after being subdivided.

MALPF advises that the right to subdivision is a development right that the State has purchased with each easement, and the bill results in a potentially significant financial benefit for some landowners at the public's expense. MALPF further advises that the bill may create an impairment of contract and may not be able to be applied retroactively to current MALPF easements.

**Small Business Effect:** To the extent small businesses use this authority to subdivide and convey MALPF easement land, they benefit potentially significantly. For example, subdividing a 50-acre farm into two 25-acre "farmettes" prior to selling the farm likely produces a higher overall sales price than selling a 50-acre farm intact.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Maryland Department of Agriculture, Maryland Department of Planning, Department of Legislative Services

**Fiscal Note History:** First Reader - February 17, 2011  
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