

**Department of Legislative Services**  
Maryland General Assembly  
2011 Session

**FISCAL AND POLICY NOTE**  
**Revised**

House Bill 209

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

Environmental Matters

Education, Health, and Environmental Affairs

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**Maryland Agricultural Land Preservation Foundation Easements - Allowable  
Residential Development**

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This departmental bill alters residential development rights associated with Maryland Agricultural Land Preservation Foundation (MALPF) preservation easements approved after July 1, 2012. The bill establishes a new residential lot right system that authorizes up to three unrestricted lots, replacing the current system that authorizes either up to three family lots or one unrestricted lot. Generally, the bill retains existing MALPF provisions addressing easement purchase criteria, commercial and industrial uses, tenant housing, replacement dwelling houses, dwelling house relocation, and corrective easements. MALPF must adopt implementing regulations.

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**Fiscal Summary**

**State Effect:** The bill is not expected to impact overall State finances. However, it may result in decreased acquisition costs, due to accounting for the value of unrestricted lots, and reduce MALPF's easement monitoring workload. To the extent acquisition costs decrease, the State may be able to purchase additional easements.

**Local Effect:** The bill does not materially affect local finances.

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

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## Analysis

**Bill Summary:** The bill does not exempt a landowner from complying with (1) a local law, ordinance, resolution, or regulation applicable to tenant housing; (2) a State or local lot size restriction applicable to the installation or replacement of an on-site sewage disposal system; or (3) a State or local land classification requirement or restriction applicable to the Chesapeake Bay Critical Area or Atlantic Coastal Bays Critical Area.

The bill authorizes landowners who sell an easement to MALPF to reserve, at the time of the sale, the right to seek MALPF approval to release lots of one acre or less to construct one single-family residential dwelling house per lot. This authority is limited to up to three lots and it runs with the land until exercised. The number of lots that a landowner may reserve is limited by the size of the land to be placed under easement: (1) one lot for easements between 50 and 149 acres; (2) two lots for easements between 150 and 249 acres; and (3) three lots for easements of least 250 acres. The reservation of right to any lot is taken into consideration in the appraisal of fair market value and determination of easement value.

The bill retains provisions requiring (1) the density of easement land to not exceed the density allowed under zoning at the time the easement was purchased; and (2) landowners to pay the State for acreage to be released from easement restrictions at the price per acre that the State originally paid.

The bill requires MALPF to review landowners' written applications to exercise the right to any reserved lot and to make a determination that (1) there are no existing violations of the easement; and (2) the location, size, and configuration of the lot will minimize interference with the agricultural operation and have been approved by the local agricultural advisory board.

The bill alters a requirement that MALPF issue a preliminary release document after certifying that certain conditions are met but retains MALPF's responsibility for certifying that specified conditions have been met and issuing a release document that binds all future owners of the released lot. The bill retains a requirement that the release include a signed acknowledgement by the landowners containing specified information.

The bill authorizes landowners to voluntarily waive the reservation of lot rights at the time of application and requires such waivers to be taken into consideration when determining specified values and to be included in the deed of easement. A waiver of lot rights must be taken into consideration when completing appraisals of fair market value and determinations of easement value.

The bill retains landowners' general authority to request, at the time of the easement sale, the right to seek MALPF approval to release lots of one acre or less per single dwelling that exist at that time. However, landowners must use an unexercised lot for this purpose.

Generally, the bill retains provisions authorizing the maximum size of a lot released from easement restrictions to exceed one acre if specified conditions are met.

**Current Law:** MALPF is limited to purchasing easements that meet specified criteria and are located in only those counties with land use regulations that (1) allow any farm use of land; (2) permit operation at any time of any machinery used in farm production or the primary processing of agricultural products; and (3) allow all normal agricultural operations performed in accordance with good husbandry practices that do not injure or endanger individuals.

Generally, commercial, industrial, or residential uses are not permitted on MALPF easement land, except for farm and forest-related uses and home occupations.

MALPF is authorized to approve landowners' requests to relocate existing dwellings to another location subject to an easement or district agreement if (1) the new location does not interfere with any agricultural uses; and (2) the existing dwelling is either demolished or permanently converted to a nonresidential use integral to farm operation.

MALPF easements do not grant the public any access or use rights to easement land.

#### *Reservation of Lot Rights*

Currently, the residential development rights landowners may retain after placing a MALPF conservation easement on their land provide for either family lots or an unrestricted lot. Generally, landowners who sell an easement may reserve the right to ask MALPF to release lots of one acre or less for the purpose of constructing a dwelling house for the use only of that landowner or child of the landowner. This right is limited to a maximum of three family lots or one restricted lot and is subject to the following conditions:

- the number of family lots landowners may reserve may not exceed (1) one lot for easements of between 20 and 69 acres; (2) two lots for easements between 70 and 119 acres; and (3) three lots for easements of at least 120 acres;
- the resulting density on the property may not exceed the density allowed prior to the easement;
- landowners must pay the State for any acre or portion released at the price per acre that the State paid the owner for the easement;

- before any conveyance or lot release, specified parties must agree not to subdivide further for residential purposes any land to be released;
- MALPF must issue a preliminary release that includes specified information, including a statement that the lot may not be transferred for five years from the date of the final release, except in specified circumstances;
- specified documents must be recorded among the land records and must bind all future owners; and
- landowners may not be made subject to lot release restrictions beyond those in statute.

Landowners may exclude from easement restrictions one acre per dwelling, which exists at the time of the easement sale, as an owner's, child's, or unrestricted lot. However, prior to granting this exclusion, the landowner must agree not to subdivide the released acreage for residential purposes.

MALPF is authorized to approve a maximum lot size of two acres if specified local authorities approve and MALPF determines it would not interfere with the easement land's agricultural uses. The maximum size of a lot to be released can be adjusted in accordance with specified regulations of the Maryland Department of the Environment and the relevant local jurisdiction.

#### *Construction of Tenant and Replacement Dwelling Housing*

Landowners may construct housing for tenants fully engaged in operation of the farm if MALPF approves, a compelling need exists, and additional conditions are met. If tenant house construction approval is granted, landowners are authorized to convert an existing dwelling house into a tenant house and construct one replacement dwelling for the landowners' own use instead. However, this authority is contingent upon MALPF approval, execution of a specified agreement with MALPF, and adoption of regulations. Generally, such replacement dwellings must be treated as a relocated existing dwelling house.

#### *Corrective Easements*

MALPF is authorized to enter into corrective easements to adjust boundary lines, resolve easement violations, or accommodate a plan that will benefit the agricultural operations. Corrective easements may be accomplished by the exchange and release of farmland subject to easement restrictions with other farmland that meets specified requirements, and they are not subject to specified requirements concerning appraisals and the transfer of State property in the State Finance and Procurement Article.

**Background:** MALPF, which was established by the General Assembly 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 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.

The family lot approach was developed, in part, to encourage the continuation of family farms and facilitate intergenerational transfers by allowing children to live and work on the farm. However, family lots are highly restrictive because (1) they may only be released for the personal use of eligible family members; (2) an eligible person may not have more than one lot, even if multiple farms are preserved; and (3) if the easement property is transferred to another owner, unused family lot rights are extinguished at the time of the transfer. Furthermore, since family lots may not be sold, the fair market appraisal on which an offer is based does not take these lot rights into consideration.

Landowners who choose to preserve one unrestricted lot with their easement property may transfer or sell this lot to anyone after being released from the easement and convey the right with the property until it is exercised. The value of unrestricted lots is taken into account in the fair market appraisal of which the easement offer is based. The unrestricted lot option was instituted to provide more flexibility to landowners entering the program.

MDA advises that the bill would:

- make MALPF more consistent with other land preservation programs;
- simplify the residential lot rights system by making it unnecessary to examine family relationships and corporate structures to determine eligibility;
- lower overall easement costs since appraisals would take into account the value of any retained development rights;
- give landowners more flexibility on the use and disposition of any retained lot rights;
- reduce MALPF monitoring and legal costs associated with monitoring to ensure only authorized individuals occupy dwellings; and
- improve the program's fairness to new participants by basing residential lot rights on easement acreage, as opposed to the number of children or easement properties a landowner may have.

Montgomery County advises that the bill favors counties with large farms, by requiring potential reserved lots to be based on the size of the easement land, and fails to reward counties that have established restrictive agricultural zoning to prevent high-density residential development in agricultural areas.

**Small Business Effect:** While Legislative Services concurs that the overall impact on the farming industry as a whole is minimal, some farms could be positively affected while others could be negatively affected.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** None.

**Information Source(s):** Allegany, Harford, Montgomery, and Talbot counties; Baltimore City; Maryland Department of Agriculture; Board of Public Works; Department of Legislative Services

**Fiscal Note History:** First Reader - February 14, 2011  
ncs/lgc Revised - House Third Reader - March 22, 2011

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Maryland Agricultural Land Preservation Foundation Easements – Allowable Residential Development

BILL NUMBER: HB 209

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.