

Department of Legislative Services
Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 556

(Senator Getty)

Judicial Proceedings

Rules and Executive Nominations

Real Property - Restrictions on Use of Property - Separate Parcels

This bill prohibits a grant of a specified restriction governing two or more separate parcels of land owned by the same grantor under separate deeds from consolidating the parcels for any other purpose if the parcels are described separately in the deed granting the restriction, unless the deed granting the restriction expressly provides for the consolidation.

Fiscal Summary

State Effect: General fund expenditures increase by \$50,300 in FY 2013 to account for the addition of a paralegal in the Department of General Services (DGS) to assist in the review of land records for any preserved farm that may have sold a portion of the land. Future year estimates reflect annualization and inflation. Special fund expenditures increase to the extent that an increased number of landowners litigate with the Maryland Department of Agriculture (MDA) to determine whether an agreement expressly authorizes the sale of a parcel without MDA's approval. The bill may also impact the value of conservation easements, and MDA may be required to reimburse federal funds already granted.

(in dollars)	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017
FF Revenue	(-)	(-)	(-)	(-)	(-)
GF Expenditure	\$50,300	\$62,000	\$66,000	\$69,100	\$72,300
SF Expenditure	-	-	-	-	-
Net Effect	(\$50,300)	(\$62,000)	(\$66,000)	(\$69,100)	(\$72,300)

Note: (-) = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: Expenditures may increase for local governments that buy conservation easements to the extent that additional personnel are hired to review land records or repay federal funds for easements which no longer meet specified requirements. No impact on revenues.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill also establishes that (1) unless the deed granting the restriction expressly provides otherwise, a parcel of land may be conveyed separately without the approval of the grantee of the restriction but remains subject to the restriction; and (2) a conveyance of a separate parcel under the bill is not a subdivision or off-conveyance. The bill requires the owner of the separate parcel of the land to notify the grantee of the restriction at least 60 days before conveying a parcel.

A parcel of land that is less than 50 acres must be deemed a separate parcel if it adjoins another parcel that is subject to the specified restriction that is at least as stringent as the restriction governing the parcel.

Current Law: Under the Real Property Article, any restriction, such as an easement, covenant, restriction, or condition, prohibiting or limiting the use of water or land areas, for a specified purpose creates an incorporeal property interest (*i.e.*, the right to enforce an agreement) in the water or land area. Any restriction prohibiting or limiting the use of water or land areas also prohibits or limits the use of any improvement or appurtenance to the area.

If the restriction is executed in compliance with the same requirements for the execution of deeds and wills, the property interest is (1) enforceable in both law and equity in the same manner as an easement or servitude with respect to the water or land areas; and (2) extinguishable and releasable, in whole or in part, in the same manner as other easements. If the restriction is not granted for the benefit of any dominant tract of land, it is enforceable with respect to the servient land, in both law and equity, as an easement in gross (*i.e.*, for an individual or legal entity) and is inheritable and assignable.

The restriction described above may be for any of the following purposes:

- construction, placement, preservation, maintenance in a particular condition, alteration, removal, or decoration of buildings, roads, signs, billboards or other advertising, utilities, or other structures on or above the ground;

- dumping or placing of a substance or material as landfill, or dumping or placing of trash, waste or other materials;
- excavation, dredging, or removal of loam, peat, or another material substance in way that alters the topography of the area;
- removal or destruction of trees, shrubs, or other vegetation;
- surface use except for purposes of preserving the water or land areas;
- activities affecting drainage, flood control, water conservation, erosion control, soil conservation, or fish or wildlife habitat preservation;
- preservation of exposure of solar energy devices; or
- other acts or uses having any relation to the preservation of water or land areas.

Background: In *Stitzel v. State, et. al*, 194 Md. App. 443 (2010), the Court of Special Appeals upheld a lower court decision that the sale of a portion of a lot with an agricultural land preservation easement was a subdivision and, thus, required the approval of the Maryland Agricultural Land Preservation Foundation (MALPF).

The requirement that a seller of the portion receive approval of the foundation is found in each easement's District Agreement and Deed of Easement.

Many State and local agencies buy conservation easements. One such program is MALPF, which was established by the General Assembly in 1977 and is part of MDA. It 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 the end of fiscal 2011, MALPF had cumulatively purchased 2,043 farms covering 279,223 acres.

State Fiscal Effect: DGS currently has staff, an assistant Attorney General and a paralegal, devoted to performing research for MALPF. However, DGS advises that the addition of a paralegal is needed to implement the bill. The Department of Legislative Services concurs.

Accordingly, general fund expenditures increase by \$50,314 in fiscal 2013, which accounts for the bill's October 1, 2012 effective date. This estimate reflects the cost of hiring a paralegal to review prior land records to determine if any past easements have been invalidated, any sale of a portion of land disqualifies the land from MALPF minimum size and soils criteria, and any easements have been purchased with federal money that may need to be returned. There are currently over 425 MALPF easements with multiple parcels that may be affected by the bill. It includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

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Salary and Fringe Benefits	\$43,841
Other Operating Expenses	<u>6,473</u>
Total FY 2013 State Expenditures	\$50,314

Future year expenditures reflect a full salary with annual increases and employee turnover as well as annual increases in ongoing operating expenses. As many of the easements are perpetual, the need for the paralegal is ongoing. Special fund expenditures increase to the extent that an increased number of landowners with MALPF easements litigate to determine whether an agreement expressly authorizes the sale of a parcel without MDA's approval. As noted above, there are over 425 easements with affected multiple parcels. The increase in special fund expenditures is not quantifiable as the extent to which the bill will increase litigation is unknown, though MDA advises that the economic benefits of subdividing will incentivize litigation to authorize the action.

Additionally, the federal government may rescind funding if a plot is subdivided in such a way that it fails to meet MALPF standards. In such cases, MALPF may lose future federal funding and be required to reimburse federal funds already granted.

Local Fiscal Effect: Local governments that buy conservation easements may increase to hire additional personnel to review land records. A review of the land records would determine if any past easements have been invalidated, any sale of a portion of land disqualifies the land from minimum size and soils criteria, and any easements have been purchased with federal money that may need to be returned.

Small Business Effect: To the extent small businesses use this authority to subdivide and convey a conservation easement, 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.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): State Department of Assessments and Taxation, Maryland Department of Agriculture, Office of the Attorney General (Consumer Protection Division), Maryland Department of Planning, Maryland Department of the Environment,

Department of General Services, Judiciary (Administrative Office of the Courts),
Department of Legislative Services

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