

# HOUSE BILL 1091

M4, C5

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CF SB 796

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By: **Delegate Jameson**

Introduced and read first time: February 8, 2013

Assigned to: Environmental Matters

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## A BILL ENTITLED

1 AN ACT concerning

2 **Agriculture – Easements – Renewable Energy Generation Facilities**

3 FOR the purpose of requiring, on written request of a landowner in an application to  
4 purchase an easement, an easement to authorize the landowner to use the land  
5 subject to the easement for renewable energy generation under certain  
6 circumstances; requiring, on written request of a landowner, the Maryland  
7 Agricultural Land Preservation Foundation to amend an easement to authorize  
8 the landowner to use the land subject to the easement for renewable energy  
9 generation under certain circumstances; requiring the Foundation to adopt  
10 certain regulations; defining certain terms; and generally relating to use of land  
11 under an easement held by the Foundation.

12 BY repealing and reenacting, without amendments,  
13 Article – Agriculture  
14 Section 2–509  
15 Annotated Code of Maryland  
16 (2007 Replacement Volume and 2012 Supplement)

17 BY adding to  
18 Article – Agriculture  
19 Section 2–513(c)  
20 Annotated Code of Maryland  
21 (2007 Replacement Volume and 2012 Supplement)

22 BY repealing and reenacting, with amendments,  
23 Article – Agriculture  
24 Section 2–513(c)  
25 Annotated Code of Maryland  
26 (2007 Replacement Volume and 2012 Supplement)

27 BY repealing and reenacting, without amendments,

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Public Utilities  
2 Section 7–701(l) and (m)  
3 Annotated Code of Maryland  
4 (2010 Replacement Volume and 2012 Supplement)

5 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
6 MARYLAND, That the Laws of Maryland read as follows:

7 **Article – Agriculture**

8 2–509.

9 (a) (1) The Foundation shall follow the provisions under this section for  
10 the easement application process.

11 (2) The Foundation shall adopt regulations and procedures for:

12 (i) Evaluation of land for which application is made to sell an  
13 easement; and

14 (ii) Purchase of easements, including the purchase of easements  
15 under an installment purchase agreement.

16 (b) Regulations and procedures adopted by the Foundation for the purchase  
17 of easements shall provide that:

18 (1) One or more owners of land actively devoted to agricultural use  
19 may file an application with the county governing body requesting the purchase of an  
20 easement by the Foundation on the land owned by the applicants. The application  
21 shall include maps and descriptions of the current use of land for the proposed  
22 easement, and any other information required by the Foundation to evaluate the land  
23 for purchase of an easement.

24 (2) Upon receipt of an application to purchase an easement the local  
25 governing body shall refer the application and accompanying materials both to the  
26 agricultural preservation advisory board and to the county planning and zoning body.

27 (i) After the referral of an application, the agricultural  
28 preservation advisory board shall advise the county governing body as to whether or  
29 not the land for the proposed easement meets the qualifications established by the  
30 Foundation under subsection (d) of this section, and whether or not the advisory board  
31 recommends the purchase of the easement.

32 (ii) In making its recommendation, the county agricultural  
33 preservation advisory board shall:

1                   1.     Take into consideration criteria and standards  
2 established by the Foundation under this subtitle, current local regulations, local  
3 patterns of land development, the kinds of development pressures currently existing  
4 on the land for the proposed easement, State smart growth goals, and any locally  
5 established priorities for the preservation of agricultural land; and

6                   2.     Recommend for ranking any application that qualifies  
7 and meets the priorities established by the county governing body for the preservation  
8 of agricultural land.

9                   (iii)   After the referral of an application, the county planning and  
10 zoning body shall advise the local governing body as to whether or not the purchase of  
11 the easement is compatible with existing and approved county plans and overall  
12 county policy, and whether or not the planning and zoning body recommends the  
13 purchase of the easement.

14                  (3)     If either the agricultural preservation advisory board or the  
15 planning and zoning body recommends approval, the county governing body shall hold  
16 a public hearing on the application for the proposed easement. Adequate notice of the  
17 hearing shall be given to all owners whose land would be encumbered by the proposed  
18 easement and all owners whose land is contiguous to the land for the proposed  
19 easement.

20                  (4)     In deciding whether to approve the application, the county  
21 governing body shall receive the recommendation of the county agricultural  
22 preservation advisory board established under § 2-504.1 of this subtitle.

23                  (5)     (i)     After the receipt of the application and the recommendations  
24 of the agricultural preservation advisory board and the county planning and zoning  
25 body, the county governing body shall render a decision as to whether or not the  
26 application shall be recommended to the Foundation for approval.

27                  (ii)    If the county governing body decides to recommend approval  
28 of the application, it shall notify the Foundation and forward to the Foundation:

29                   1.     The application and all accompanying materials,  
30 including the recommendations of the advisory board and county planning and zoning  
31 body;

32                   2.     A ranking of all applications based on:

33                   A.     The county governing body's locally established  
34 priorities as approved by the Foundation, which for purposes of enhancing competitive  
35 bidding may include a system that ranks properties in ascending order with respect to  
36 the proportion obtained by dividing the asking price by the value of the easement; and

1 B. Guidelines adopted by the Foundation under  
2 subsection (d) of this section; and

3 3. A statement of the total current development rights  
4 on the land for the proposed easement, which shall include the total number of  
5 development rights that have been subdivided or transferred.

6 (iii) If the county governing body recommends denial of the  
7 application, it shall inform the Foundation and the applicants.

8 (c) Regulations and procedures adopted by the Foundation for the purchase  
9 and monitoring of easements may not require, in Garrett County or Allegany County,  
10 a natural gas rights owner or lessee to subordinate its interest to the Foundation's  
11 interest if the Foundation determines that exercise of the natural gas rights will not  
12 interfere with an agricultural operation conducted on land subject to an easement.

13 (d) Regulations and criteria developed by the Foundation relating to land  
14 which may be considered for purchase of an easement shall provide that:

15 (1) Subject to item (2) of this subsection, land shall meet productivity,  
16 acreage, and locational criteria determined by the Foundation to be necessary for the  
17 continuation of farming;

18 (2) As long as all other criteria are met, land that is at least 50 acres  
19 in size or is contiguous to other permanently preserved land shall qualify for purchase  
20 of an easement;

21 (3) The Foundation shall attempt to preserve the minimum number of  
22 acres which may reasonably be expected to promote the continued availability of  
23 agricultural suppliers and markets for agricultural goods;

24 (4) Land within the boundaries of a 10-year water and sewer service  
25 district may be considered for purchase of an easement only if that land is outstanding  
26 in productivity and is of significant size;

27 (5) Land may be considered for purchase of an easement only if the  
28 county regulations governing the land permit the activities listed under § 2-513(a) of  
29 this subtitle; and

30 (6) Land be evaluated for:

31 (i) Location in a priority preservation area of the county;

32 (ii) Soil and other land characteristics associated with  
33 agricultural and silvicultural productivity;

1 (iii) Agricultural and silvicultural production and contribution to  
2 the agricultural and silvicultural economy; and

3 (iv) Any other unique county considerations that support the  
4 goals of the program.

5 2-513.

6 (c) (1) (i) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE  
7 THE MEANINGS INDICATED.

8 (ii) "TIER 1 RENEWABLE SOURCE" HAS THE MEANING  
9 STATED IN § 7-701 OF THE PUBLIC UTILITIES ARTICLE.

10 (iii) "TIER 2 RENEWABLE SOURCE" HAS THE MEANING  
11 STATED IN § 7-701 OF THE PUBLIC UTILITIES ARTICLE.

12 (2) ON THE WRITTEN REQUEST OF A LANDOWNER IN AN  
13 APPLICATION TO PURCHASE AN EASEMENT UNDER § 2-509 OF THIS SUBTITLE,  
14 THE EASEMENT SHALL AUTHORIZE THE LANDOWNER TO USE THE LAND  
15 SUBJECT TO THE EASEMENT FOR THE GENERATION OF ELECTRICITY BY A  
16 FACILITY UTILIZING A TIER 1 RENEWABLE SOURCE OR A TIER 2 RENEWABLE  
17 SOURCE PROVIDED THAT:

18 (i) THE FACILITY OCCUPIES NO MORE THAN 5% OF THE  
19 TOTAL SURFACE AREA OF THE LAND SUBJECT TO THE EASEMENT; AND

20 (ii) THE FOUNDATION DETERMINES THAT AUTHORIZING  
21 THE LANDOWNER TO USE THE LAND SUBJECT TO THE EASEMENT FOR THE  
22 GENERATION OF ELECTRICITY BY A FACILITY UTILIZING A TIER 1 RENEWABLE  
23 SOURCE OR A TIER 2 RENEWABLE SOURCE WILL NOT:

24 1. INTERFERE SIGNIFICANTLY WITH THE  
25 AGRICULTURAL USE OF THE LAND SUBJECT TO THE EASEMENT; AND

26 2. INTERFERE WITH STATE OR FEDERAL  
27 RESTRICTIONS PLACED ON FUNDS USED BY THE FOUNDATION TO PURCHASE  
28 THE EASEMENT.

29 (3) ON THE WRITTEN REQUEST OF A LANDOWNER, THE  
30 FOUNDATION SHALL AMEND AN EASEMENT TO AUTHORIZE THE LANDOWNER TO  
31 USE THE LAND SUBJECT TO THE EASEMENT FOR GENERATION OF ELECTRICITY  
32 BY A FACILITY UTILIZING A TIER 1 RENEWABLE SOURCE OR A TIER 2  
33 RENEWABLE SOURCE PROVIDED THAT:

1                   **(I) THE FACILITY OCCUPIES NO MORE THAN 5% OF THE**  
2 **TOTAL SURFACE AREA OF THE LAND SUBJECT TO THE EASEMENT; AND**

3                   **(II) THE FOUNDATION DETERMINES THAT AUTHORIZING**  
4 **THE LANDOWNER TO USE THE LAND SUBJECT TO THE EASEMENT FOR**  
5 **GENERATION OF ELECTRICITY BY A FACILITY UTILIZING A TIER 1 RENEWABLE**  
6 **SOURCE OR A TIER 2 RENEWABLE SOURCE WILL NOT:**

7                               **1. INTERFERE SIGNIFICANTLY WITH THE**  
8 **AGRICULTURAL USE OF THE LAND SUBJECT TO THE EASEMENT; AND**

9                               **2. INTERFERE WITH STATE OR FEDERAL**  
10 **RESTRICTIONS PLACED ON FUNDS USED BY THE FOUNDATION TO PURCHASE**  
11 **THE EASEMENT.**

12                   **(4) THE FOUNDATION SHALL ADOPT REGULATIONS TO CARRY**  
13 **OUT THE PROVISIONS OF THIS SUBSECTION.**

14           **[(c)](D)** Purchase of an easement by the Foundation does not grant the  
15 public any right of access or right of use of the subject property.

#### 16   **Article – Public Utilities**

17   7–701.

18           (1) “Tier 1 renewable source” means one or more of the following types of  
19 energy sources:

20                   (1) solar energy, including energy from photovoltaic technologies and  
21 solar water heating systems;

22                   (2) wind;

23                   (3) qualifying biomass;

24                   (4) methane from the anaerobic decomposition of organic materials in  
25 a landfill or wastewater treatment plant;

26                   (5) geothermal, including energy generated through geothermal  
27 exchange from or thermal energy avoided by, groundwater or a shallow ground source;

28                   (6) ocean, including energy from waves, tides, currents, and thermal  
29 differences;

1           (7) a fuel cell that produces electricity from a Tier 1 renewable source  
2 under item (3) or (4) of this subsection;

3           (8) a small hydroelectric power plant of less than 30 megawatts in  
4 capacity that is licensed or exempt from licensing by the Federal Energy Regulatory  
5 Commission;

6           (9) poultry litter-to-energy;

7           (10) waste-to-energy;

8           (11) refuse-derived fuel; and

9           (12) thermal energy from a thermal biomass system.

10           (m) "Tier 2 renewable source" means hydroelectric power other than pump  
11 storage generation.

12           SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
13 October 1, 2013.