

HOUSE BILL 861

M4, C5

(4lr2406)

ENROLLED BILL

— *Environmental Matters and Economic Matters/ Education, Health, and
Environmental Affairs* —

Introduced by **Delegates Fraser-Hidalgo, Arora, Barkley, Hixson, Kramer,
Luedtke, McIntosh, Mizeur, and Waldstreicher**

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this
_____ day of _____ at _____ o'clock, _____ M.

Speaker.

CHAPTER _____

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 *approved for a certain purchase after a*
5 *certain date* to authorize the landowner *to request approval* to use the land
6 subject to the easement for renewable energy generation under certain
7 circumstances; ~~requiring, on written request of a landowner,~~ authorizing a
8 written request of a landowner to be approved by the Maryland Agricultural
9 Land Preservation Foundation to amend an easement to authorize the
10 landowner to use the land subject to the easement for renewable energy
11 generation under certain circumstances; altering the composition of the
12 Maryland Agricultural Land Preservation Fund; prohibiting the Foundation
13 from approving the use of land subject to an easement for renewable energy

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.

Italics indicate opposite chamber/conference committee amendments.



1 generation after a certain date; prohibiting the installation of certain wind
 2 turbines exceeding certain heights in certain areas of the State; requiring a
 3 facility owner to remit a certain percentage of a certain lease payment to the
 4 Maryland Agricultural Land Preservation Fund; requiring a certain lease
 5 executed by a landowner and a certain facility owner to include provisions
 6 related to the removal of a certain facility under certain circumstances;
 7 authorizing the Foundation to charge certain costs to cover certain expenses;
 8 requiring the Foundation to adopt certain regulations; providing for the
 9 application of this Act; declaring the intent of the General Assembly; requiring
 10 the Foundation to make a certain report to certain committees of the General
 11 Assembly by a certain date; defining a certain term certain terms; and generally
 12 relating to use of land under an easement held by the Maryland Agricultural
 13 Land Preservation Foundation.

14 BY repealing and reenacting, with amendments,
 15 Article – Agriculture
 16 Section 2–505(b) and 2–513(c)
 17 Annotated Code of Maryland
 18 (2007 Replacement Volume and 2013 Supplement)

19 BY repealing and reenacting, without amendments,
 20 Article – Agriculture
 21 Section 2–509
 22 Annotated Code of Maryland
 23 (2007 Replacement Volume and 2013 Supplement)

24 BY adding to
 25 Article – Agriculture
 26 Section 2–513(c)
 27 Annotated Code of Maryland
 28 (2007 Replacement Volume and 2013 Supplement)

29 ~~BY repealing and reenacting, with amendments,~~
 30 ~~Article – Agriculture~~
 31 ~~Section 2–513(e)~~
 32 ~~Annotated Code of Maryland~~
 33 ~~(2007 Replacement Volume and 2013 Supplement)~~

34 ~~BY repealing and reenacting, without amendments,~~
 35 ~~Article – Public Utilities~~
 36 ~~Section 7–701(e)~~
 37 ~~Annotated Code of Maryland~~
 38 ~~(2010 Replacement Volume and 2013 Supplement)~~

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

Article – Agriculture

2 2-505.

3 (b) The Maryland Agricultural Land Preservation Fund shall comprise:

4 (1) Any money made available to the Fund by general or special fund
5 appropriations; [and]

6 (2) Any money made available to the Fund by grants or transfers from
7 governmental or private sources; AND

8 (3) ANY MONEY RECEIVED UNDER § 2-513(C) OF THIS SUBTITLE.

9 2-509.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 2. A ranking of all applications based on:

35 A. The county governing body's locally established
36 priorities as approved by the Foundation, which for purposes of enhancing competitive

1 bidding may include a system that ranks properties in ascending order with respect to
2 the proportion obtained by dividing the asking price by the value of the easement; and

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

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

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

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

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

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

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

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

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

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

32 (6) Land be evaluated for:

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

1 (ii) Soil and other land characteristics associated with
2 agricultural and silvicultural productivity;

3 (iii) Agricultural and silvicultural production and contribution to
4 the agricultural and silvicultural economy; and

5 (iv) Any other unique county considerations that support the
6 goals of the program.

7 2-513.

8 (C) (1) (I) ~~IN THIS SUBSECTION, "TIER 1 RENEWABLE SOURCE" IS~~
9 ~~A SOURCE STATED IN § 7-701(R)(1), (2), (4), OR (9) OF THE PUBLIC UTILITIES~~
10 ~~ARTICLE. IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE MEANINGS~~
11 INDICATED.

12 (II) "AUTHORIZED RENEWABLE ENERGY SOURCE" MEANS
13 THE FOLLOWING ENERGY SOURCES:

14 1. SOLAR;

15 2. WIND; AND

16 3. ANAEROBIC DIGESTION OF POULTRY LITTER IF
17 PLACED ON FALLOW LAND; AND

18 4. ANAEROBIC DIGESTION OF LIVESTOCK MANURE IF
19 PLACED ON FALLOW LAND.

20 (III) "REFERENCE POINT" MEANS A POINT ON THE
21 PATUXENT NAVAL AIR STATION CENTERED AT 38.29667N AND 76.37668W.

22 (2) ~~ANY SUBJECT TO PARAGRAPH (4) OF THIS SUBSECTION, ANY~~
23 ~~EASEMENT ACQUIRED BY THE FOUNDATION AFTER SEPTEMBER 30, 2014,~~
24 ~~SHALL AUTHORIZE THE LANDOWNER TO USE THE LAND SUBJECT TO THE~~
25 ~~EASEMENT FOR THE GENERATION OF ELECTRICITY BY A FACILITY UTILIZING A~~
26 ~~TIER 1 RENEWABLE APPROVED FOR PURCHASE BY THE BOARD OF PUBLIC~~
27 ~~WORKS AFTER JUNE 30, 2014, SHALL AUTHORIZE THE LANDOWNER TO~~
28 ~~REQUEST APPROVAL, WITH A FAVORABLE RECOMMENDATION OF THE LOCAL~~
29 ~~AGRICULTURAL ADVISORY BOARD AND IF NOT PROHIBITED BY FEDERAL,~~
30 ~~STATE, AND LOCAL LAWS AND REGULATIONS, TO USE THE LAND SUBJECT TO~~
31 ~~THE EASEMENT FOR THE GENERATION OF ELECTRICITY BY A FACILITY~~
32 ~~UTILIZING AN AUTHORIZED RENEWABLE ENERGY SOURCE PROVIDED THAT:~~

1 (I) THE FACILITY OCCUPIES NO MORE THAN 5% OR 5
 2 ACRES, WHICHEVER IS LESS ~~AND NOT INCLUDING ANY TEMPORARY IMPACTS~~
 3 ~~NECESSARY FOR CONSTRUCTION OF THE FACILITY, OF EACH PARCEL~~ THE LAND
 4 SUBJECT TO THE EASEMENT;

5 1. INCLUDING PERMANENT ROADS OR STRUCTURES
 6 THAT ARE NECESSARY FOR ACCESS FOR OPERATION AND MAINTENANCE
 7 PURPOSES; AND

8 2. NOT INCLUDING ANY TEMPORARY IMPACTS
 9 NECESSARY FOR CONSTRUCTION OF THE FACILITY;

10 (II) THE FOUNDATION DETERMINES THAT AUTHORIZING
 11 THE LANDOWNER TO USE THE LAND SUBJECT TO THE EASEMENT FOR THE
 12 GENERATION OF ELECTRICITY BY A FACILITY UTILIZING ~~A TIER 1 RENEWABLE~~
 13 AN AUTHORIZED RENEWABLE ENERGY SOURCE WILL NOT:

14 1. INTERFERE SIGNIFICANTLY WITH THE
 15 AGRICULTURAL USE OF THE LAND SUBJECT TO THE EASEMENT; AND

16 2. INTERFERE WITH STATE, LOCAL, OR FEDERAL
 17 RESTRICTIONS PLACED ON FUNDS USED BY THE FOUNDATION TO PURCHASE
 18 THE EASEMENT; AND

19 (III) FOR GENERATION OF ELECTRICITY FROM WIND, THE
 20 GENERATING STATION'S WIND TURBINES ~~ARE NOT LOCATED:~~

21 1. ~~IN ARE NOT LOCATED IN~~ AN AREA WHERE THE
 22 WIND TURBINES COULD CREATE DOPPLER RADAR INTERFERENCE FOR
 23 MISSIONS AT THE PATUXENT RIVER NAVAL AIR STATION; AND

24 2. ~~WITHIN A 46 MILE RADIUS MEASURED FROM~~
 25 ~~LOCATION 38.29667N, 76.37668W~~ DO NOT EXCEED THE MAXIMUM HEIGHT
 26 ABOVE GROUND LEVEL WITHIN THE AREA SPECIFIED IN PARAGRAPH (5) OF
 27 THIS SUBSECTION.

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

32 (3) SUBJECT TO PARAGRAPH (4) OF THIS SUBSECTION, A
 33 WRITTEN REQUEST OF A LANDOWNER, WITH A FAVORABLE RECOMMENDATION
 34 OF THE LOCAL AGRICULTURAL ADVISORY BOARD AND IF NOT PROHIBITED BY

1 FEDERAL, STATE, AND LOCAL LAWS, MAY BE APPROVED BY THE FOUNDATION
 2 TO AMEND AN EXISTING EASEMENT TO AUTHORIZE THE LANDOWNER TO USE
 3 THE LAND SUBJECT TO THE EASEMENT FOR THE GENERATION OF ELECTRICITY
 4 BY A FACILITY UTILIZING AN AUTHORIZED RENEWABLE ENERGY SOURCE
 5 PROVIDED THAT:

6 (I) THE FACILITY OCCUPIES NO MORE THAN 5% OR 5
 7 ACRES, WHICHEVER IS LESS ~~AND NOT INCLUDING ANY TEMPORARY IMPACTS~~
 8 ~~NECESSARY FOR CONSTRUCTION OF THE FACILITY, OF EACH PARCEL~~ THE LAND
 9 SUBJECT TO THE EASEMENT;

10 1. INCLUDING PERMANENT ROADS OR STRUCTURES
 11 THAT ARE NECESSARY FOR ACCESS FOR OPERATION AND MAINTENANCE
 12 PURPOSES; AND

13 2. NOT INCLUDING ANY TEMPORARY IMPACTS
 14 NECESSARY FOR CONSTRUCTION OF THE FACILITY;

15 (II) THE FOUNDATION DETERMINES THAT AUTHORIZING
 16 THE LANDOWNER TO USE THE LAND SUBJECT TO THE EASEMENT FOR THE
 17 GENERATION OF ELECTRICITY BY A FACILITY UTILIZING ~~A TIER 1 RENEWABLE~~
 18 AN AUTHORIZED RENEWABLE ENERGY SOURCE WILL NOT:

19 1. INTERFERE SIGNIFICANTLY WITH THE
 20 AGRICULTURAL USE OF THE LAND SUBJECT TO THE EASEMENT; AND

21 2. INTERFERE WITH STATE, LOCAL, OR FEDERAL
 22 RESTRICTIONS PLACED ON FUNDS USED BY THE FOUNDATION TO PURCHASE
 23 THE EASEMENT; AND

24 (III) FOR GENERATION OF ELECTRICITY FROM WIND, THE
 25 GENERATING STATION'S WIND TURBINES ~~ARE NOT LOCATED:~~

26 1. ~~IN~~ ARE NOT LOCATED IN AN AREA WHERE THE
 27 WIND TURBINES COULD CREATE DOPPLER RADAR INTERFERENCE FOR
 28 MISSIONS AT THE PATUXENT RIVER NAVAL AIR STATION; AND

29 2. ~~WITHIN A 46 MILE RADIUS MEASURED FROM~~
 30 ~~LOCATION 38.29667N, 76.37668W~~ DO NOT EXCEED THE MAXIMUM HEIGHT
 31 ABOVE GROUND LEVEL WITHIN THE AREA SPECIFIED IN PARAGRAPH (5) OF
 32 THIS SUBSECTION.

33 (4) (I) THE FOUNDATION MAY NOT APPROVE THE USE OF
 34 LAND SUBJECT TO AN EASEMENT FOR THE GENERATION OF ELECTRICITY BY A

1 FACILITY UTILIZING AN AUTHORIZED RENEWABLE ENERGY SOURCE AFTER
2 JUNE 30, 2019.

3 (II) THIS PARAGRAPH MAY NOT BE CONSTRUED TO
4 PROHIBIT THE USE OF LAND SUBJECT TO AN EASEMENT FOR THE GENERATION
5 OF ELECTRICITY IN ACCORDANCE WITH THIS SUBSECTION THAT WAS APPROVED
6 BY THE FOUNDATION BEFORE JULY 1, 2019.

7 (5) A WIND TURBINE LOCATED ON LAND SUBJECT TO AN
8 EASEMENT MAY NOT EXCEED THE SPECIFIED HEIGHT ABOVE GROUND LEVEL IN
9 THE AREA DESCRIBED AS FOLLOWS:

10 (I) EAST OF A LINE PASSING THROUGH THE REFERENCE
11 POINT AND 39.0986N AND 76.5284W AND:

12 1. NOT MORE THAN 24 MILES FROM THE
13 REFERENCE POINT, 0 FEET;

14 2. MORE THAN 24 MILES AND NOT MORE THAN 30
15 MILES FROM THE REFERENCE POINT, 100 FEET;

16 3. MORE THAN 30 MILES AND NOT MORE THAN 35
17 MILES FROM THE REFERENCE POINT, 200 FEET;

18 4. MORE THAN 35 MILES AND NOT MORE THAN 39
19 MILES FROM THE REFERENCE POINT, 300 FEET;

20 5. MORE THAN 39 MILES AND NOT MORE THAN 43
21 MILES FROM THE REFERENCE POINT, 400 FEET;

22 6. MORE THAN 43 MILES AND NOT MORE THAN 46
23 MILES FROM THE REFERENCE POINT, 500 FEET;

24 7. MORE THAN 46 MILES AND NOT MORE THAN 49
25 MILES FROM THE REFERENCE POINT, 600 FEET; AND

26 8. MORE THAN 49 MILES AND NOT MORE THAN 56
27 MILES FROM THE REFERENCE POINT, 700 FEET; AND

28 (II) WEST OF A LINE PASSING THROUGH THE REFERENCE
29 POINT AND 39.0986N AND 76.5284W AND:

30 1. SOUTH OF 38.4428N, 0 FEET;

1 **2. NORTH OF 38.4428N AND NO FARTHER NORTH**
2 **THAN 38.5711N, 100 FEET;**

3 **3. NORTH OF 38.5711N AND NO FARTHER NORTH**
4 **THAN 38.5943N, 200 FEET;**

5 **4. NORTH OF 38.5943N AND NO FARTHER NORTH**
6 **THAN 38.6366N, 300 FEET;**

7 **5. NORTH OF 38.6366N AND NO FARTHER NORTH**
8 **THAN 38.6596N, 400 FEET;**

9 **6. NORTH OF 38.6596N AND NO FARTHER NORTH**
10 **THAN 38.6873N, 500 FEET;**

11 **7. NORTH OF 38.6873N AND NO FARTHER NORTH**
12 **THAN 38.7075N, 600 FEET; AND**

13 **8. NORTH OF 38.7075N AND NOT MORE THAN 56**
14 **MILES FROM THE REFERENCE POINT, 700 FEET.**

15 **(6) A FACILITY OWNER WHO USES LAND SUBJECT TO AN**
16 **EASEMENT FOR THE GENERATION OF ELECTRICITY IN ACCORDANCE WITH THIS**
17 **SUBSECTION SHALL, ON OPERATION OF THE FACILITY, REMIT AN ANNUAL**
18 **PAYMENT OF 5% OF ANY LEASE PAYMENT PAID TO THE LANDOWNER TO THE**
19 **MARYLAND AGRICULTURAL LAND PRESERVATION FUND UNDER § 2-505 OF**
20 **THIS ARTICLE.**

21 **(7) A LEASE EXECUTED BY A FACILITY OWNER AND A LANDOWNER**
22 **FOR THE GENERATION OF ELECTRICITY IN ACCORDANCE WITH THIS**
23 **SUBSECTION SHALL INCLUDE PROVISIONS TO REQUIRE A FACILITY OWNER TO**
24 **REMOVE THE FACILITY IF THE FACILITY IS NO LONGER INTENDED TO BE USED**
25 **TO GENERATE ELECTRICITY.**

26 **(7) (8) A LANDOWNER WHO IS IN VIOLATION OF FEDERAL,**
27 **STATE, OR LOCAL LAWS REGARDING THE OPERATION OF THE FACILITY IS IN**
28 **VIOLATION OF THE EASEMENT AND IS SUBJECT TO A CIVIL PENALTY UNDER §**
29 **2-519 OF THIS SUBTITLE.**

30 **(4) (8) (9) THE FOUNDATION MAY CHARGE REASONABLE COSTS**
31 **TO COVER ANY EXPENSES RELATING TO THE FOUNDATION'S RESPONSIBILITY**
32 **TO AMEND ANY EASEMENT, AS REQUIRED UNDER THIS SUBSECTION, AND TO**
33 **MONITOR THE ENFORCEMENT AND COMPLIANCE OF THE EASEMENT.**

1 acquired by the Maryland Agricultural Land Preservation Foundation before, on, or
2 after the effective date of this Act.

3 SECTION 3. AND BE IT FURTHER ENACTED, That it is the intent of the
4 General Assembly that if land subject to an easement is used for the generation of
5 electricity in accordance with this Act, that the majority of raw materials used as ~~Tier~~
6 ~~1 renewable sources~~ an authorized renewable energy source under § 7-701(r)(4) and
7 ~~(9) of the Public Utilities § 2-513(c)(1)(ii) of the Agriculture Article~~ originate from the
8 farm subject to the easement.

9 SECTION 4. AND BE IT FURTHER ENACTED, That, on or before December 1,
10 2018, the Maryland Agricultural Land Preservation Foundation shall report to the
11 Senate Education, Health, and Environmental Affairs Committee, the Senate Finance
12 Committee, the House Economic Matters Committee, and the House Environmental
13 Matters Committee, in accordance with § 2-1246 of the State Government Article, on
14 the implementation of this Act.

15 SECTION ~~4~~ 5. AND BE IT FURTHER ENACTED, That this Act shall take
16 effect July 1, 2014.

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.