

Department of Legislative Services  
Maryland General Assembly  
2014 Session

FISCAL AND POLICY NOTE  
Revised

House Bill 861 (Delegate Fraser-Hidalgo, *et al.*)  
Environmental Matters and Economic Matters Education, Health, and Environmental Affairs

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**Agriculture - Easements - Renewable Energy Generation Facilities**

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This bill authorizes the Maryland Agricultural Land Preservation Foundation (MALPF) to approve the use of land subject to an agricultural easement for the generation of electricity by a facility using an “authorized renewable energy source” under specified conditions and subject to specified requirements. The bill prohibits such approval after a specified date.

The bill requires MALPF to adopt implementing regulations and to report to specified legislative committees by a specified date on the implementation of the bill. The bill further requires a facility owner to remit a specified annual payment to the Maryland Agricultural Land Preservation Fund and to remove a facility under specified circumstances. The bill also authorizes MALPF to charge specified costs associated with the implementation of the bill.

The bill takes effect July 1, 2014, and applies to any easement acquired by MALPF before, on, or after the bill’s effective date.

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**Fiscal Summary**

**State Effect:** Special fund revenues increase as a result of the bill’s cost recovery and payment provisions. MALPF can implement the bill with existing staff.

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

**Small Business Effect:** Potential meaningful.

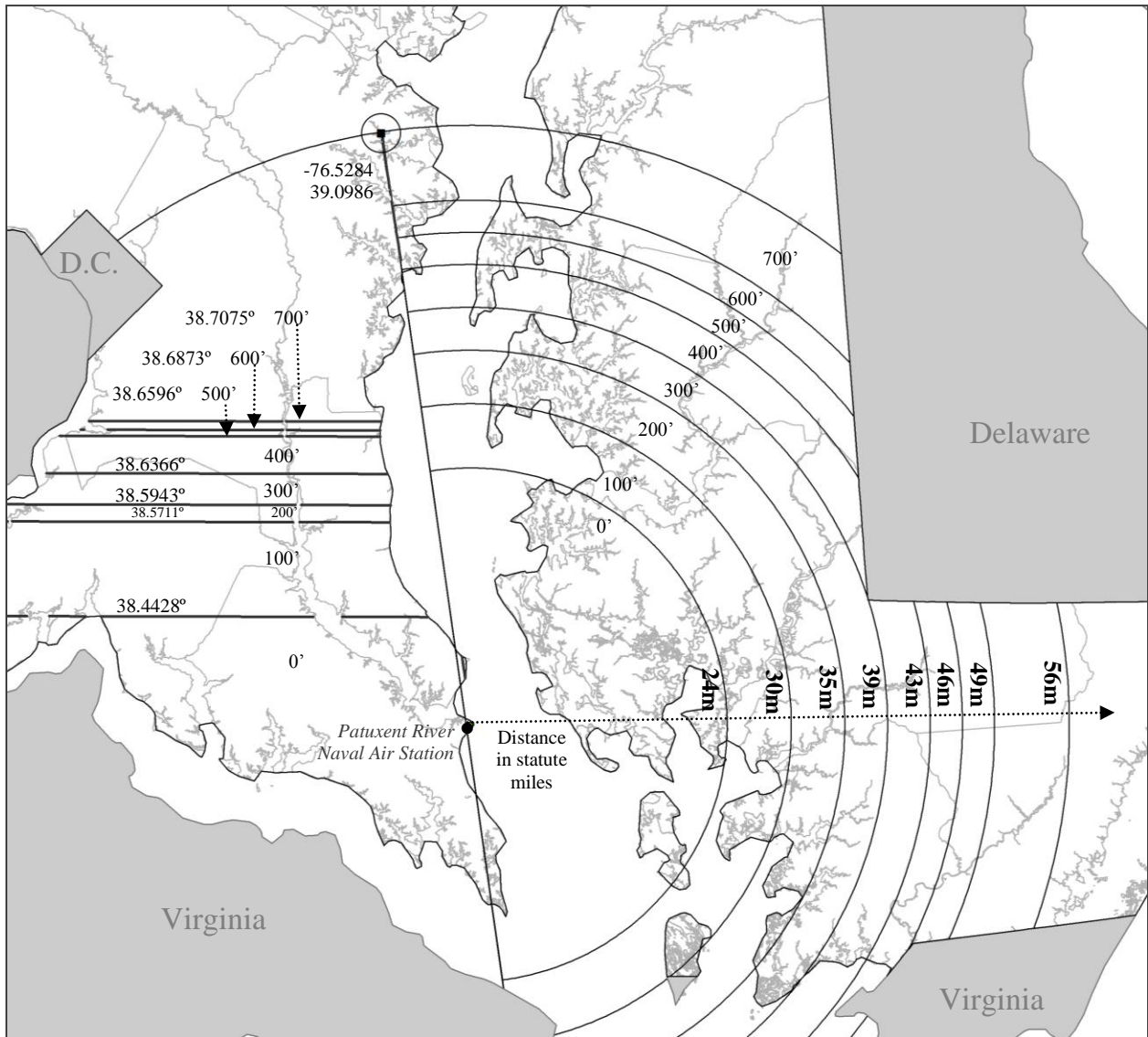
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## Analysis

**Bill Summary:** A landowner whose agricultural easement is approved for purchase by the Board of Public Works after June 30, 2014, is authorized to request MALPF approval, with a favorable recommendation of the local agricultural advisory board and if not prohibited by federal, State, and local laws and regulations, to use land subject to an easement for the generation of electricity by a facility using an “authorized renewable energy source” if:

- the facility occupies no more than 5% or five acres, whichever is less, of the land subject to the easement, including permanent roads or structures that are necessary for access for operation and maintenance purposes and not including any temporary impacts necessary for construction of the facility;
- MALPF determines that the use does not interfere significantly with the agricultural use of the land subject to the easement and does not interfere with State, local, or federal restrictions placed on funds used by MALPF to purchase the easement; and
- for generation of electricity from wind, the generating station’s wind turbines are not located in an area where wind turbines could create Doppler radar interference for missions at the Patuxent River Naval Air Station and do not exceed a specified maximum height depending on the turbines’ proximity to the Patuxent Naval Air Station, as shown in **Exhibit 1**.

**Exhibit 1**  
**Geographic Range**  
**Authorized Wind Turbine Height by Distance from Reference Point**



Source: Department of Legislative Services

MALPF may, upon written request of a landowner and other specified conditions, amend an existing easement to authorize the land subject to the easement for that same purpose under those same conditions.

An “authorized renewable energy source” is solar, wind, and anaerobic digestion of poultry litter or livestock manure if placed on fallow land.

MALPF must adopt implementing regulations and may charge reasonable costs to cover any expenses related to MALPF’s responsibility to amend an easement and to monitor the enforcement and compliance of the easement.

A facility owner who uses land subject to an easement for the generation of electricity in accordance with the bill, on operation of the facility, must remit an annual payment of 5% of any lease payment paid to the landowner to the Maryland Agricultural Land Preservation Fund. In addition, a lease executed by a facility owner and a landowner must include provisions to require a facility owner to remove the facility if it is no longer intended to be used to generate electricity.

MALPF is prohibited from approving the use of land subject to an easement for the generation of electricity in accordance with the bill after June 30, 2019; however, if approved by MALPF prior to July 1, 2019, such land may still be used for the approved purpose.

By December 1, 2018, MALPF must report to specified legislative committees on the implementation of the bill.

Finally, the bill states the intent of the General Assembly that if land subject to an easement is used for the generation of electricity in accordance with the bill, that the majority of raw materials used as an authorized renewable energy source originate from the farm subject to the easement.

**Current Law:**

*Agricultural Easement Land Uses*

The following uses are permitted on MALPF easement properties:

- any farm use;
- the operation of any machinery used in farm production or primary processing of agricultural products; and
- all normal agricultural operations performed with good husbandry practices that do not cause bodily injury or directly endanger human health, including but not limited to, sale of farm products produced on the farm where such sales are made.

MALPF easement properties may not be used for commercial, industrial, or residential purposes unless MALPF determines the purposes are farm and forest-related uses and home occupations. Commercial agricultural uses MALPF allows include the growing of field crops, vegetables, and fruit; dairy and livestock operations, including chickens; and managing land for forest resources.

### *Maryland's Renewable Energy Portfolio Standard*

Maryland's Renewable Energy Portfolio Standard requires that renewable sources generate specified percentages of Maryland's electricity supply each year, increasing to 20%, including 2% from solar power and an amount set by the Public Service Commission (PSC), not to exceed 2.5%, derived from offshore wind energy, by 2022. A "Tier 1 renewable source" includes solar energy; wind; qualifying biomass; methane from anaerobic decomposition of organic materials in a landfill or wastewater treatment plant; geothermal, including energy generated through geothermal exchange from or thermal energy avoided by, groundwater or a shallow ground source; ocean, including energy from waves, tides, currents, and thermal differences; a fuel cell that produces electricity from a Tier 1 renewable source; a small hydroelectric plant of less than 30 megawatts; poultry litter-to-energy; waste-to-energy; refuse-derived fuel; and thermal energy from a thermal biomass system.

### *Net Energy Metering*

Net metering is an electricity policy for consumers who own (generally small) renewable energy facilities. In Maryland, net energy metering is the measurement of the difference between the electricity that is supplied by an electric company and the electricity that is generated by an eligible customer-generator and fed back to the electric grid over the eligible customer-generator's billing period. An "eligible customer-generator" is a customer that owns and operates, leases and operates, or contracts with a third party that owns and operates a biomass, micro combined heat and power, solar, fuel cell, wind, or closed conduit hydro electric generating facility that is located on the customer's premises or contiguous property; interconnected and operated in parallel with an electric company's transmission and distribution facilities; and is intended primarily to offset all or part of the customer's own electricity requirements. The generating capacity of an eligible customer-generator for net metering may not exceed two megawatts.

**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 the end of fiscal 2013, MALPF had cumulatively purchased 2,102 farms covering 285,902 acres.

The federal government prohibits commercial solar and wind energy generation on federally funded agricultural easements. However, noncommercial wind and solar energy production does occur on easement properties. While MALPF does not have an official policy concerning on-site alternative energy uses, the MALPF board has approved on-farm solar use for up to 120% of the landowner's annual usage and landowner compensation for any energy generated above their farm usage, up to 120%.

### *Patuxent River Naval Air Station*

The Patuxent River Naval Air Station was commissioned in 1943 to consolidate air testing facilities. One of the station's primary functions is air and ground test and evaluation. The station has a large air test range, and is equipped to determine the radar signatures of aircraft so that potential weaknesses and vulnerabilities can be mitigated before an aircraft is deployed in combat.

The Navy has expressed concerns relating to large wind turbines' potential to interfere with the station's radar systems. Navy officials have actively sought engagement in the siting and planning process of wind farm projects in southern Maryland and the Eastern Shore for this reason. In order to alleviate the Navy's concern with wind farm projects, Chapters 643 and 644 of 2012 directed PSC to adopt regulations, in coordination with the Navy, regarding wind energy generating stations within a certain distance of the Patuxent River Naval Air Station. As of March 19, 2014, PSC staff has developed *draft* regulations for further consideration, but final regulations have not yet been promulgated.

**State Revenues:** Special fund revenues to the Maryland Agricultural Land Preservation Fund increase as a result of the bill's requirement that a facility owner who uses land subject to an easement for the generation of electricity in accordance with the bill, on operation of the facility, remit an annual payment of 5% of any lease payment paid to the landowner. The extent of any such increase depends on the number of facilities using an authorized renewable energy source that are placed on land subject to MALPF easements, which cannot be reliably estimated at this time.

Special fund revenues to the Maryland Agricultural Land Preservation Fund may also increase minimally to the extent MALPF uses the bill's authority to charge reasonable costs to cover any expenses related to its responsibilities to amend easements and to monitor and enforce easements.

**Small Business Effect:** To the extent small businesses have MALPF easement land and develop renewable energy generation projects on that land, the bill has a meaningful impact. The benefits depend on how much power is generated and the extent to which

that generation reduces their electricity costs or results in payments for net excess generation. However, the bill's changes may reduce the agricultural value of an affected property, as less land may be available for agricultural purposes.

**Additional Comments:** As shown in Exhibit 1, the area referenced by the bill is a 56-mile radius measured from the Patuxent River Naval Air Station (38.29667N, 76.37668W). The Department of Legislative Services notes that this is a land area of approximately 3,875 square miles (39.7% of the total State land area of approximately 9,750 square miles). It covers the entirety of the southern Maryland counties, most of the counties east of the Chesapeake Bay, and most of Prince George's and Anne Arundel counties. On the eastern side of the Chesapeake Bay, turbines of any height are prohibited within 24 miles of the Patuxent River Naval Air Station, with increased heights authorized as the distance increases. For most of the defined area on the western side of the Chesapeake Bay, maximum authorized turbine heights are determined by latitude. Turbines of any height are prohibited below 38.4428N.

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### **Additional Information**

**Prior Introductions:** SB 796 of 2013, a similar bill, received a hearing in the Senate Education, Health, and Environmental Affairs Committee, but no further action was taken. Its cross file, HB 1091, received a hearing in the House Environmental Matters Committee and was referred to interim study.

**Cross File:** SB 259 (Senator Middleton) - Education, Health, and Environmental Affairs and Finance.

**Information Source(s):** Maryland Department of Agriculture; State Department of Assessments and Taxation; Public Service Commission; Charles, Montgomery, and Prince George's counties; Department of Legislative Services

**Fiscal Note History:** First Reader - February 11, 2014  
mm/lgc Revised - House Third Reader - March 24, 2014  
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