

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
Third Reader - Revised

House Bill 155

(Chair, Environment and Transportation Committee)(By
Request - Departmental - Agriculture)

Environment and Transportation

Education, Health, and Environmental Affairs

Maryland Agricultural Land Preservation Foundation - Easement Termination

This departmental bill modifies and clarifies the process that governs the consideration and disposition of any requests for review of specified agricultural preservation easements (those approved for purchase by the Board of Public Works (BPW) on or before September 30, 2004) for possible termination, after 25 years from the date of purchase of the easement. The bill establishes a sequential process of review, and approval or denial, by first the governing body of the applicable county, then the Maryland Agricultural Land Preservation Foundation (MALPF) board of trustees members at large, and finally the Secretary of Agriculture and the State Treasurer.

Fiscal Summary

State Effect: Special fund expenditures decrease each year beginning in FY 2018 to the extent requests for review of an easement for possible termination are submitted to MALPF. Special fund expenditures decrease by at least \$1,400 for each request submitted and by \$13,400 if a county denies a request. A minimal number of requests are expected (one or two per year). Revenues are not directly affected.

Local Effect: The bill is not expected to materially affect local government finances.

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

Analysis

Bill Summary:

New, Sequential Review Process

Under the bill, easements eligible for review for termination (those approved by BPW on or before September 30, 2004) may be terminated only under extraordinary circumstances and in the manner specified. If a landowner, after 25 years from the date of purchase of an easement, requests that MALPF review an easement for termination, MALPF must first request that the county governing body of the county containing the land under easement review the easement for termination. Subject to other applicable requirements, an easement may only be terminated if the county governing body (1) conducts a public hearing on the termination request after adequate public notice and (2) after the public hearing, approves the termination request.

The decision of the county governing body must be in writing and may be based on specified factors (the county agricultural preservation advisory board's recommendation, local comprehensive planning and zoning, local priorities to preserve agricultural land, local patterns of development, and any other land use matters). If the county governing body denies the request, the termination review process ends and MALPF is not required to continue to consider the request.

If the county governing body approves the request, the MALPF board of trustees members at large must determine whether it is feasible to farm the land under easement in a profitable manner. The board of trustees members at large must presume that it is feasible to farm the land in a profitable manner and the landowner has the burden to rebut the presumption. The determination of the board of trustees members at large must be in writing and may be based on specified factors, including expert opinion, the effect of any adjacent nonagricultural development, the existence of markets for any agricultural products that can be produced on the land, and the profitability of nearby farms. The bill eliminates a requirement that MALPF conduct a public hearing within the county containing the land but preserves a requirement that MALPF, before deciding on a request, provide a landowner with the opportunity for a hearing.

If the board of trustees members at large deny the request for termination because they determine that it is feasible to farm the land in a profitable manner, the termination review process ends (with the exception of a landowner's right of appeal to the circuit court of the applicable county under existing law) and MALPF is not required to continue to consider the request.

If the board of trustees members at large approve a request for termination, the easement is terminated only if both the Secretary of Agriculture and the State Treasurer approve the request for termination. The Secretary and the State Treasurer's designee serving on the board of trustees may approve or deny the request for termination.

Approval of Fair Market Value of the Land

In the case of an approved request for termination, the bill makes the Department of General Services' (DGS) determination of the fair market value of the land subject to BPW approval.

Electing to Repurchase

In the case of an approved request for termination, the landowner has 30 days after being notified by MALPF of the approved fair market value in which to *elect to repurchase* the easement for the fair market value as determined by DGS. This requirement to elect to repurchase within 30 days is in addition to the existing 180-day time period following notification from MALPF (of the approved fair market value) within which the landowner must repurchase the easement by paying MALPF the difference between the approved fair market value and the agricultural value of the land. As is the case with a denial of a request for termination and a failure to repurchase an easement within 180 days, a failure to elect to repurchase an easement within 30 days results in the landowner being prohibited from again requesting termination of the easement until five years after the last request.

Current Law: An easement whose purchase is approved by BPW on or after October 1, 2004, must be held by MALPF in perpetuity. Statute states that it is the intent of the General Assembly that any easement whose purchase was approved by BPW on or before September 30, 2004, be held by MALPF for as long as profitable farming is feasible on the land under easement. Yet for those easements approved on or before September 30, 2004, with the exception of an easement purchased using an installment purchase agreement, any time after 25 years from the date of purchase of an easement the landowner may request that the easement be reviewed for possible termination.

Upon a request for review of an easement for termination, an inquiry must be conducted by MALPF to determine the feasibility of profitable farming on the land. The inquiry must include on-site inspection of the land and a public hearing within the county containing the land after adequate public notice. The inquiry must be concluded and a decision reached by MALPF within 180 days after the request for termination unless a separate hearing is requested by the landowner (MALPF is required to provide a landowner with the opportunity for a hearing before deciding on a request). The landowner may appeal any MALPF denial directly to the circuit court of the county where the land is located.

An easement may be terminated only with the approval of the governing body of the county containing the land. The decision of the county governing body must be made after the public hearing conducted by MALPF within the county. The county governing body must notify MALPF of its decision within 90 days after the public hearing.

Upon the affirmative vote of a majority of the MALPF members at large, and upon the approval of the Secretary and the State Treasurer, the request for termination is approved and the landowner is notified. Two fair market value appraisals of the land are ordered by DGS at the direction of MALPF and at the expense of the landowner. DGS reviews the two appraisals, determines the fair market value of the land, and issues a written statement to MALPF as to the approved fair market value. MALPF then issues a notification to the landowner of the approved fair market value, and the landowner has up to 180 days following the notification to repurchase the easement by paying MALPF the difference between the approved fair market value and the agricultural value of the land.

Background: MDA indicates that the bill's primary purpose is to lessen unnecessary administrative work and costs for MALPF associated with an easement termination request by making the review of an easement termination request, by the applicable county and by MALPF, sequential rather than concurrent. A sequential review process avoids the administrative work and costs for MALPF to determine the feasibility of profitable farming on the land if a county denies a request, rather than MALPF bearing the administrative burden and costs regardless, even if the request is subsequently denied by the county.

State Expenditures: Special fund (Maryland Agricultural Land Preservation Fund) expenditures decrease each year beginning in fiscal 2018 to the extent requests for review of an easement for possible termination are submitted to MALPF. MALPF costs associated with determining the feasibility of profitable farming are estimated to be \$12,000 per request, and costs associated with holding a public hearing are estimated to be \$1,400 per hearing. Because MALPF is no longer required to hold a public hearing in the applicable county (instead, the county governing body holds the public hearing), special fund expenditures decrease by at least \$1,400 for every request submitted and by a total of \$13,400 for those that are denied by the applicable county. The number of easement termination requests is expected to be relatively minimal (one or two per year).

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Maryland Department of Agriculture; Board of Public Works; Department of General Services; Judiciary (Administrative Office of the Courts); Baltimore City; Caroline, Montgomery, and Prince George's counties; Department of Legislative Services

Fiscal Note History: First Reader - February 6, 2017
mm/lgc Third Reader - March 21, 2017
Revised - Amendment(s) - March 21, 2017

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ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Maryland Agricultural Land Preservation Foundation- Easement Termination

BILL NUMBER: HB 155

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PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

 x WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

 WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES