

HOUSE BILL 209

M4

11r0025

By: **Chair, Environmental Matters Committee (By Request – Departmental – Agriculture)**

Introduced and read first time: January 28, 2011

Assigned to: Environmental Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Agricultural Land Preservation Foundation Easements –**
3 **Allowable Residential Development**

4 FOR the purpose of authorizing the purchase of agricultural land preservation
5 easements if the land meets certain requirements and is subject to certain
6 regulations governing the use of the land; prohibiting land subject to
7 agricultural easement from being used for certain purposes; allowing a
8 landowner to reserve up to a certain number of certain sized lots to construct
9 single family residential dwellings, subject to certain conditions; requiring the
10 Maryland Agricultural Land Preservation Foundation to review applications to
11 build on reserved lots and to make certain determinations regarding the
12 applications; requiring a landowner to pay the State for land released from
13 preservation at a certain price; requiring a certain release to be recorded among
14 the land records where the land is located; providing for the required content of
15 a certain release; authorizing a landowner to waive the reservation of lot rights;
16 requiring a certain waiver of rights to be considered in determining the value of
17 an easement; providing for the process by which a landowner may apply to
18 release land from easement restrictions for certain purposes; providing for
19 certain exemptions to the size limitations of a lot released from easement;
20 authorizing a landowner to construct housing for tenants on easement land
21 under certain conditions; establishing limitations on the construction of housing
22 for tenants on easement land; authorizing a landowner to convert an existing
23 dwelling into tenant housing subject to certain conditions; granting the
24 Foundation authority to approve a landowner request to relocate an existing
25 dwelling to another location on easement land, subject to certain conditions;
26 granting the Foundation authority to enter into corrective easements for certain
27 purposes; providing for the execution of corrective easements; clarifying that a
28 corrective easement approved by the Foundation is not subject to certain
29 requirements; providing that the purchase of an easement does not grant
30 certain rights to the public; requiring the Foundation to adopt certain

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 regulations; clarifying that this Act applies to easements approved for purchase
2 after a certain date; and generally relating to agricultural land preservation
3 easements approved for purchase on or after a certain date.

4 BY adding to

5 Article – Agriculture

6 Section 2–513.2

7 Annotated Code of Maryland

8 (2007 Replacement Volume and 2010 Supplement)

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

11 **Article – Agriculture**

12 **2–513.2.**

13 (A) IT IS THE INTENT OF THE GENERAL ASSEMBLY THAT THIS SECTION
14 ONLY APPLIES TO AN EASEMENT WHOSE PURCHASE IS APPROVED BY THE
15 BOARD OF PUBLIC WORKS ON OR AFTER JULY 1, 2012.

16 (B) AGRICULTURAL LAND PRESERVATION EASEMENTS MAY BE
17 PURCHASED UNDER THIS SUBTITLE FOR ANY LAND IN AGRICULTURAL USE THAT
18 MEETS THE MINIMUM CRITERIA ESTABLISHED UNDER § 2–509 OF THIS
19 SUBTITLE IF THE EASEMENT AND COUNTY REGULATIONS GOVERNING THE USE
20 OF THE LAND INCLUDE THE FOLLOWING PROVISIONS:

21 (1) ANY FARM USE OF LAND IS ALLOWED;

22 (2) OPERATION AT ANY TIME OF ANY MACHINERY USED IN FARM
23 PRODUCTION OR THE PRIMARY PROCESSING OF AGRICULTURAL PRODUCTS IS
24 PERMITTED; AND

25 (3) ALL NORMAL AGRICULTURAL OPERATIONS PERFORMED IN
26 ACCORDANCE WITH GOOD HUSBANDRY PRACTICES THAT DO NOT CAUSE BODILY
27 INJURY OR DIRECTLY ENDANGER HUMAN HEALTH ARE ALLOWED INCLUDING
28 THE SALE OF FARM PRODUCTS PRODUCED ON THE FARM WHERE THE SALES
29 ARE MADE.

30 (C) (1) LAND THAT IS SUBJECT TO AN AGRICULTURAL LAND
31 PRESERVATION EASEMENT MAY NOT BE USED FOR ANY COMMERCIAL,
32 INDUSTRIAL, OR RESIDENTIAL PURPOSE EXCEPT:

33 (I) AS DETERMINED BY THE FOUNDATION, FOR FARM AND
34 FOREST RELATED USES AND HOME OCCUPATIONS; OR

1 **(II) AS OTHERWISE PROVIDED UNDER THIS SECTION.**

2 **(2) ONLY A LANDOWNER WHO SELLS AN EASEMENT TO THE**
3 **FOUNDATION MAY RESERVE AT THE TIME OF THE SALE THE RIGHT TO REQUEST**
4 **THE FOUNDATION TO RELEASE LOTS OF 1 ACRE OR LESS FOR THE PURPOSE OF**
5 **CONSTRUCTING ONE SINGLE-FAMILY RESIDENTIAL DWELLING HOUSE PER LOT,**
6 **UP TO A MAXIMUM OF THREE LOTS, WHICH RESERVED RIGHT SHALL RUN WITH**
7 **THE LAND UNTIL EXERCISED, SUBJECT TO THE FOLLOWING CONDITIONS:**

8 **(I) THE NUMBER OF LOTS THAT A LANDOWNER MAY**
9 **RESERVE UNDER THIS SECTION MAY NOT EXCEED:**

10 **1. ONE LOT IF THE SIZE OF THE LAND TO BE PLACED**
11 **UNDER EASEMENT IS AT LEAST 50 ACRES BUT FEWER THAN 150 ACRES;**

12 **2. TWO LOTS IF THE SIZE OF THE LAND TO BE**
13 **PLACED UNDER EASEMENT IS AT LEAST 150 ACRES BUT FEWER THAN 250**
14 **ACRES; OR**

15 **3. THREE LOTS IF THE SIZE OF THE LAND TO BE**
16 **PLACED UNDER EASEMENT IS AT LEAST 250 ACRES;**

17 **(II) THE RESULTING DENSITY ON THE LAND MAY NOT**
18 **EXCEED THE DENSITY ALLOWED UNDER ZONING OF THE LAND BEFORE THE**
19 **FOUNDATION PURCHASED THE EASEMENT; AND**

20 **(III) THE RESERVATION OF RIGHT TO ANY LOT IS TAKEN**
21 **INTO CONSIDERATION IN THE APPRAISAL OF FAIR MARKET VALUE AND**
22 **DETERMINATION OF EASEMENT VALUE.**

23 **(3) THE FOUNDATION SHALL:**

24 **(I) REVIEW THE WRITTEN APPLICATION OF A LANDOWNER**
25 **TO EXERCISE THE RIGHT TO ANY RESERVED LOT;**

26 **(II) MAKE A DETERMINATION THAT:**

27 **1. THERE ARE NO EXISTING VIOLATIONS OF THE**
28 **EASEMENT OF WHICH THE FOUNDATION HAS KNOWLEDGE AND REQUIRES TO BE**
29 **CORRECTED PRIOR TO THE RELEASE OF THE LOT;**

1 **2. THE LOCATION, SIZE, AND CONFIGURATION OF**
2 **THE LOT WILL MINIMIZE INTERFERENCE WITH THE AGRICULTURAL OPERATION;**
3 **AND**

4 **3. THE LOCATION, SIZE, AND CONFIGURATION OF**
5 **THE LOT HAVE BEEN APPROVED BY THE LOCAL AGRICULTURAL ADVISORY**
6 **BOARD; AND**

7 **(III) REQUIRE THE LANDOWNER TO PAY THE STATE FOR THE**
8 **ACREAGE TO BE RELEASED FROM THE EASEMENT RESTRICTIONS AT THE PRICE**
9 **PER ACRE THAT THE STATE PAID THE GRANTOR FOR THE EASEMENT.**

10 **(4) (I) AFTER CERTIFYING THAT THE LANDOWNER HAS MET**
11 **THE CONDITIONS PROVIDED IN PARAGRAPHS (2) AND (3) OF THIS SUBSECTION,**
12 **THE FOUNDATION SHALL ISSUE A RELEASE THAT SHALL BE RECORDED AMONG**
13 **THE LAND RECORDS WHERE THE LAND IS LOCATED AND SHALL BIND ALL**
14 **FUTURE OWNERS OF THE RELEASED LOT.**

15 **(II) THE RELEASE SHALL INCLUDE A SIGNED**
16 **ACKNOWLEDGMENT BY THE LANDOWNER THAT:**

17 **1. THE RELEASED LOT MAY NOT BE FURTHER**
18 **SUBDIVIDED FOR ANY PURPOSE;**

19 **2. ADJACENT FARMLAND THAT IS SUBJECT TO AN**
20 **AGRICULTURAL LAND PRESERVATION EASEMENT MAY BE USED FOR ANY**
21 **AGRICULTURAL PURPOSE AND MAY INTERFERE WITH THE USE AND ENJOYMENT**
22 **OF THE RELEASED LOT THROUGH NOISE, ODOR, VIBRATION, FUMES, DUST,**
23 **GLARE, OR OTHER INTERFERENCE;**

24 **3. THERE IS NO RECOURSE AGAINST THE EFFECTS**
25 **OF ANY NORMAL AGRICULTURAL OPERATION PERFORMED IN ACCORDANCE**
26 **WITH GOOD HUSBANDRY PRACTICES; AND**

27 **4. THE SIGNED ACKNOWLEDGMENT IS BINDING ON**
28 **THE SUCCESSORS, PERSONAL REPRESENTATIVES, OR ASSIGNS OF THE**
29 **LANDOWNER.**

30 **(5) (I) A LANDOWNER MAY VOLUNTARILY WAIVE THE**
31 **RESERVATION OF LOT RIGHTS AT THE TIME OF APPLICATION.**

32 **(II) ANY WAIVER SHALL BE TAKEN INTO CONSIDERATION IN**
33 **THE APPRAISAL OF FAIR MARKET VALUE AND DETERMINATION OF EASEMENT**

1 VALUE AND SHALL BE SPECIFICALLY SET FORTH IN THE DEED OF EASEMENT
2 EXECUTED BY THE LANDOWNER.

3 (6) (I) EXCEPT AS PROVIDED IN PARAGRAPH (7) OF THIS
4 SUBSECTION, A LANDOWNER MAY MAKE APPLICATION TO RELEASE FROM THE
5 EASEMENT RESTRICTIONS 1 ACRE OR LESS PER EACH SINGLE DWELLING THAT
6 EXISTED AT THE TIME OF THE SALE OF THE EASEMENT, SUBJECT TO ALL OF THE
7 CONDITIONS SET FORTH IN PARAGRAPHS (2), (3), AND (4) OF THIS SUBSECTION,
8 WITH THE EXCEPTION OF LOCATION.

9 (II) TO EXERCISE THIS OPTION, THE LANDOWNER MUST USE
10 AN UNEXERCISED LOT THAT WAS RESERVED AT THE TIME OF THE APPLICATION.

11 (7) THE MAXIMUM SIZE OF A LOT RELEASED FROM EASEMENT
12 RESTRICTIONS MAY EXCEED 1 ACRE IF:

13 (I) REGULATIONS ADOPTED BY THE DEPARTMENT OF THE
14 ENVIRONMENT IN AREAS WHERE THERE IS LESS THAN 4 FEET OF UNSATURATED
15 AND UNCONSOLIDATED SOIL MATERIAL BELOW THE BOTTOM OF AN ON-SITE
16 SEWAGE DISPOSAL SYSTEM OR IN AREAS LOCATED WITHIN 2,500 FEET OF THE
17 NORMAL WATER LEVEL OF AN EXISTING OR PROPOSED WATER SUPPLY
18 RESERVOIR REQUIRE A LOT TO BE IN EXCESS OF 1 ACRE;

19 (II) REGULATIONS ADOPTED BY THE JURISDICTION IN
20 WHICH THE LAND IS SITUATED REQUIRE THAT A LOT FOR A DWELLING HOUSE
21 BE LARGER THAN 1 ACRE, BUT IN THAT EVENT THE LOT MAY NOT BE IN EXCESS
22 OF 2 ACRES; OR

23 (III) THE FOUNDATION:

24 1. RECEIVES A RECOMMENDATION TO ALLOW A
25 MAXIMUM LOT SIZE OF MORE THAN 1 ACRE FROM THE COUNTY AGRICULTURAL
26 ADVISORY BOARD AND THE PLANNING AND ZONING AUTHORITY OF THE
27 JURISDICTION WHERE THE LAND IS SITUATED; AND

28 2. MAKES A DETERMINATION THAT A LOT SIZE
29 GREATER THAN 1 ACRE WILL NOT SIGNIFICANTLY INTERFERE WITH THE
30 AGRICULTURAL USE OF THE LAND UNDER EASEMENT.

31 (D) (1) SUBJECT TO THE APPROVAL OF THE FOUNDATION, AND
32 BASED ON A SHOWING OF A CURRENT COMPELLING NEED, A LANDOWNER MAY
33 CONSTRUCT HOUSING FOR TENANTS FULLY ENGAGED IN OPERATION OF THE
34 FARM, SUBJECT TO THE FOLLOWING CONDITIONS:

1 **(I) CONSTRUCTION MAY NOT EXCEED ONE TENANT HOUSE**
2 **PER 100 ACRES, UNLESS THE FOUNDATION GRANTS AN EXCEPTION BASED ON A**
3 **SHOWING OF EXTRAORDINARY COMPELLING NEED;**

4 **(II) THE LAND ON WHICH A TENANT HOUSE IS**
5 **CONSTRUCTED MAY NOT BE SUBDIVIDED OR CONVEYED TO ANY PERSON; AND**

6 **(III) THE TENANT HOUSE MAY NOT BE CONVEYED**
7 **SEPARATELY FROM THE ORIGINAL PARCEL.**

8 **(2) THE FOUNDATION SHALL ADOPT REGULATIONS TO:**

9 **(I) ESTABLISH CRITERIA FOR A LANDOWNER TO SHOW THE**
10 **BASIS OF A CURRENT COMPELLING NEED TO CONSTRUCT A TENANT HOUSE; AND**

11 **(II) ESTABLISH THE SIZE AND LOCATION OF TENANT**
12 **HOUSES.**

13 **(3) (I) AFTER OBTAINING APPROVAL FOR THE CONSTRUCTION**
14 **OF A TENANT HOUSE UNDER PARAGRAPH (1) OF THIS SUBSECTION, A**
15 **LANDOWNER MAY, INSTEAD OF CONSTRUCTING A NEW TENANT HOUSE,**
16 **CONVERT AN EXISTING DWELLING HOUSE INTO A TENANT HOUSE AND**
17 **CONSTRUCT ONE REPLACEMENT DWELLING HOUSE RESTRICTED TO THE**
18 **LANDOWNER'S OWN USE, SUBJECT TO THE CONDITIONS PROVIDED UNDER**
19 **SUBPARAGRAPH (II) OF THIS PARAGRAPH.**

20 **(II) 1. BEFORE A REPLACEMENT DWELLING HOUSE MAY**
21 **BE CONSTRUCTED UNDER THIS PARAGRAPH, THE LANDOWNER SHALL:**

22 **A. OBTAIN THE FOUNDATION'S APPROVAL; AND**

23 **B. EXECUTE AN AGREEMENT WITH THE**
24 **FOUNDATION TO PROHIBIT THE REPLACEMENT DWELLING HOUSE FROM BEING**
25 **SEPARATELY CONVEYED FROM THE ORIGINAL PARCEL, WHICH AGREEMENT**
26 **SHALL BE RECORDED AMONG THE LAND RECORDS IN THE COUNTY WHERE THE**
27 **LAND IS LOCATED AND SHALL BIND FUTURE OWNERS.**

28 **2. THE SIZE AND LOCATION OF A REPLACEMENT**
29 **DWELLING HOUSE CONSTRUCTED IN ACCORDANCE WITH THIS PARAGRAPH**
30 **SHALL BE SUBJECT TO THE FOUNDATION'S APPROVAL.**

31 **3. A REPLACEMENT DWELLING HOUSE**
32 **CONSTRUCTED IN ACCORDANCE WITH THIS PARAGRAPH SHALL BE TREATED AS**
33 **A RELOCATED EXISTING DWELLING HOUSE AS DESCRIBED IN SUBSECTION (E)**

1 OF THIS SECTION, BUT IS EXEMPT FROM THE REQUIREMENTS UNDER
2 SUBSECTION (E)(1) OF THIS SECTION.

3 (III) THE FOUNDATION SHALL ADOPT REGULATIONS TO
4 ESTABLISH THE SIZE AND LOCATION OF REPLACEMENT DWELLING HOUSES.

5 (E) THE FOUNDATION MAY APPROVE A LANDOWNER'S REQUEST TO
6 RELOCATE THE SITE OF AN EXISTING DWELLING TO ANOTHER LOCATION ON A
7 FARM SUBJECT TO AN EASEMENT OR DISTRICT AGREEMENT, PROVIDED:

8 (1) THE NEW LOCATION DOES NOT INTERFERE WITH ANY
9 AGRICULTURAL USE; AND

10 (2) SUBJECT TO THE FOUNDATION'S APPROVAL, THE
11 LANDOWNER AGREES EITHER TO DEMOLISH THE EXISTING DWELLING AT THE
12 CURRENT LOCATION OR PERMANENTLY CONVERT THE EXISTING DWELLING AT
13 THE CURRENT LOCATION TO A USE THAT IS NONRESIDENTIAL AND INTEGRAL TO
14 THE FARM OPERATION.

15 (F) (1) THE FOUNDATION MAY ENTER INTO CORRECTIVE EASEMENTS
16 WITH LANDOWNERS IN ORDER TO:

17 (I) ADJUST BOUNDARY LINES;

18 (II) RESOLVE EASEMENT VIOLATIONS; OR

19 (III) ACCOMMODATE A PLAN THAT THE FOUNDATION HAS
20 DETERMINED WILL BENEFIT THE AGRICULTURAL OPERATIONS.

21 (2) CORRECTIVE EASEMENTS UNDER THIS SUBSECTION MAY BE
22 ACCOMPLISHED BY THE EXCHANGE AND RELEASE OF FARMLAND SUBJECT TO
23 EASEMENT RESTRICTIONS WITH OTHER FARMLAND THAT MEETS THE
24 REQUIREMENTS OF THIS SUBTITLE.

25 (3) CORRECTIVE EASEMENTS APPROVED BY THE FOUNDATION
26 ARE NOT SUBJECT TO THE REQUIREMENTS OF §§ 4-416 AND 10-305 OF THE
27 STATE FINANCE AND PROCUREMENT ARTICLE.

28 (4) THE FOUNDATION SHALL ADOPT REGULATIONS TO CARRY
29 OUT THIS SUBSECTION.

30 (G) PURCHASE OF AN EASEMENT BY THE FOUNDATION DOES NOT
31 GRANT THE PUBLIC ANY RIGHT OF ACCESS OR RIGHT OF USE OF THE SUBJECT
32 PROPERTY.

1 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2011.