

Chapter 180

(Senate Bill 129)

AN ACT concerning

Maryland Agricultural Land Preservation Foundation – Easements

FOR the purpose of repealing certain obsolete language relating to agricultural districts and agricultural land preservation easements; requiring certain applicants to include certain information in certain applications; altering certain notice requirements; clarifying the process and requirements for the application, approval, and acquisition of agricultural preservation easements; repealing certain deadlines; authorizing the Maryland Agricultural Land Preservation Foundation to assign certain district agreements to the governing body of a county under certain circumstances; *providing for the effective date of this Act*; making stylistic changes; and generally relating to agricultural land preservation easements purchased by the Maryland Agricultural Land Preservation Foundation.

BY repealing and reenacting, with amendments,
 Article – Agriculture
 Section 2–509, 2–510, 2–513(b)(8), and 2–513.1(a)
 Annotated Code of Maryland
 (2007 Replacement Volume and 2011 Supplement)

BY repealing and reenacting, without amendments,
 Chapter 650 of the Acts of the General Assembly of 2007
 Section 2 and 3

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

Article – Agriculture

2–509.

(a) (1) The Foundation shall follow the provisions under this section for the easement application process [for:

- (i) Properties without established districts; and
- (ii) Properties entering into a district].

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

(i) [Establishment and monitoring of agricultural districts and easements;]

[(ii)] Evaluation of land [to be included within agricultural districts or land to be subject to] **FOR WHICH APPLICATION IS MADE TO SELL** an easement; and

[(iii)] **(II)** Purchase of easements, including the purchase of easements under an installment purchase agreement.

(b) Regulations and procedures adopted by the Foundation for the [establishment and monitoring of agricultural districts and for the] purchase of easements shall provide that:

(1) One or more owners of land actively devoted to agricultural use may file [a petition] **AN APPLICATION** with the county governing body requesting [the establishment of an agricultural district or an application for] the purchase of an easement by the Foundation on the land owned by the [petitioners] **APPLICANTS**. The [petition] **APPLICATION** shall include maps and descriptions of the current use of land [in the proposed district or] for the proposed easement, **AND ANY OTHER INFORMATION REQUIRED BY THE FOUNDATION TO EVALUATE THE LAND FOR PURCHASE OF AN EASEMENT**.

(2) Upon receipt of [a petition to establish an agricultural district or] **AN** application to purchase an easement the local governing body shall refer the [petition or] application and accompanying materials both to the agricultural preservation advisory board and to the county planning and zoning body.

(i) [Within 60 days of] **AFTER** the referral of [a petition or] **AN** application, the agricultural preservation advisory board shall advise the county governing body as to whether or not the land [in] **FOR** the [proposed district or] proposed easement meets the qualifications established by the Foundation under subsection (d) of this section, and whether or not the advisory board recommends [establishment of the district or] the purchase of the easement.

(II) IN MAKING ITS RECOMMENDATION, THE COUNTY AGRICULTURAL PRESERVATION ADVISORY BOARD SHALL:

1. TAKE INTO CONSIDERATION CRITERIA AND STANDARDS ESTABLISHED BY THE FOUNDATION UNDER THIS SUBTITLE, CURRENT LOCAL REGULATIONS, LOCAL PATTERNS OF LAND DEVELOPMENT, THE KINDS OF DEVELOPMENT PRESSURES CURRENTLY EXISTING ON THE LAND FOR THE PROPOSED EASEMENT, STATE SMART GROWTH GOALS, AND ANY

LOCALLY ESTABLISHED PRIORITIES FOR THE PRESERVATION OF AGRICULTURAL LAND; AND

2. RECOMMEND FOR RANKING ANY APPLICATION THAT QUALIFIES AND MEETS THE PRIORITIES ESTABLISHED BY THE COUNTY GOVERNING BODY FOR THE PRESERVATION OF AGRICULTURAL LAND.

[(ii) (III)] [Within 60 days of] **AFTER** the referral of [a petition or] **AN** application, the county planning and zoning body shall advise the local governing body as to whether or not [establishment of the district or] the purchase of the easement is compatible with existing and approved county plans and overall county policy, and whether or not the planning and zoning body recommends [establishment of the district or] the purchase of the easement.

(3) If either the agricultural preservation advisory board or the planning and zoning body recommends approval, the county governing body shall hold a public hearing on the [petition or] **APPLICATION** for the proposed easement. Adequate notice of the hearing shall be given to all [landowners in the proposed district or] **OWNERS WHOSE LAND WOULD BE ENCUMBERED BY** the proposed easement[, and to the Foundation] **AND ALL OWNERS WHOSE LAND IS CONTIGUOUS TO THE LAND FOR THE PROPOSED EASEMENT.**

(4) IN DECIDING WHETHER TO APPROVE THE APPLICATION, THE COUNTY GOVERNING BODY SHALL RECEIVE THE RECOMMENDATION OF THE COUNTY AGRICULTURAL PRESERVATION ADVISORY BOARD ESTABLISHED UNDER § 2-504.1 OF THIS SUBTITLE.

[(4) (5)] (i) [Within 120 days after] **AFTER** the receipt of the [petition or] application[,] **AND THE RECOMMENDATIONS OF THE AGRICULTURAL PRESERVATION ADVISORY BOARD AND THE COUNTY PLANNING AND ZONING BODY,** the county governing body shall render a decision as to whether or not the [petition or] application shall be recommended to the Foundation for approval.

(ii) If the county governing body decides to recommend approval of the [petition or] application, it shall [so] notify the Foundation and forward to the Foundation:

1. [the petition or] **THE** application and all accompanying materials, including the recommendations of the advisory board and county planning and zoning body;

2. **A RANKING OF ALL APPLICATIONS BASED ON:**

A. THE COUNTY GOVERNING BODY'S LOCALLY ESTABLISHED PRIORITIES AS APPROVED BY THE FOUNDATION, WHICH FOR PURPOSES OF ENHANCING COMPETITIVE BIDDING MAY INCLUDE A SYSTEM THAT RANKS PROPERTIES IN ASCENDING ORDER WITH RESPECT TO THE PROPORTION OBTAINED BY DIVIDING THE ASKING PRICE BY THE VALUE OF THE EASEMENT; AND

B. GUIDELINES ADOPTED BY THE FOUNDATION UNDER SUBSECTION (D) OF THIS SECTION; AND

3. A STATEMENT OF THE TOTAL CURRENT DEVELOPMENT RIGHTS ON THE LAND FOR THE PROPOSED EASEMENT, WHICH SHALL INCLUDE THE TOTAL NUMBER OF DEVELOPMENT RIGHTS THAT HAVE BEEN SUBDIVIDED OR TRANSFERRED.

(iii) If the county governing body recommends denial of the [petition] APPLICATION, it shall [so] inform the Foundation and the [petitioners] APPLICANTS.

[(5) The Foundation may approve a petition for the establishment of an agricultural district only if:

(i) The land within the proposed district meets the qualifications established under subsection (d) of this section;

(ii) The petition has been approved by the county governing body; and

(iii) The establishment of the district or the purchase of the easement is approved by a majority of the Foundation board of trustees at-large, by the Secretary, and by the State Treasurer.

(6) The Foundation shall render its decision on a petition to establish an agricultural district within 60 days of the receipt of the petition, and shall inform the county governing body and the petitioners of its decision.

(7) (i) If the Foundation approves the petition, the agricultural district shall be established by an ordinance of the county governing body.

(ii) The establishment of the district shall not take effect until all landowners in the proposed district have executed and recorded among the land records an agreement with the Foundation stipulating that for a specified period of time from the establishment of the agricultural district, the landowner agrees to keep his land in agricultural use and has the right to offer to sell an easement for development rights on his land to the Foundation under the provisions of this subtitle.

(iii) In the ordinance that establishes an agricultural district:

1. The county governing body shall establish the length of time required for a district agreement under subparagraph (ii) of this paragraph; and

2. The time period of the district agreement shall be from 3 to 10 years, both inclusive.

(iv) In the event of severe economic hardship the Foundation, with the concurrence of the county governing body, may release the landowner's property from the agricultural district. Any person aggrieved by a decision of the Foundation regarding a determination of severe economic hardship is entitled to judicial review.

(v) Nothing in this section shall preclude the landowner from selling his property.

(8) At any time after the period of time stipulated in the district agreement, a landowner may terminate his property as an agricultural district by notifying the Foundation one year in advance of his intention to do so.

(9) After the establishment of an agricultural district the county governing body or the Foundation may review the use of land within the district.

(10) The Foundation may approve alteration or abolition of a district only if:

(i) The use of land within the district has so changed as to cause land within the district to fail to meet the qualifications established under subsection (d) of this section;

(ii) The alteration or abolition of the district has been recommended by the county governing body; and

(iii) The alteration or abolition is approved by a majority of the Foundation board of trustees at-large, by the Secretary, and by the State Treasurer.]

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

(d) Regulations and criteria developed by the Foundation relating to land which may be [included in an agricultural district or subject to] **CONSIDERED FOR PURCHASE OF** an easement shall provide that:

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

(2) As long as all other criteria are met, land that is at least 50 acres in size **OR IS CONTIGUOUS TO OTHER PERMANENTLY PRESERVED LAND** shall qualify for [inclusion in an agricultural district or] **PURCHASE OF AN** easement;

(3) The Foundation shall attempt to preserve the minimum number of acres [in a given district] which may reasonably be expected to promote the continued availability of agricultural suppliers and markets for agricultural goods;

(4) Land within the boundaries of a 10-year water and sewer service district may be [included in an agricultural district or] **CONSIDERED FOR PURCHASE OF AN** easement only if that land is outstanding in productivity and is of significant size; [and]

(5) Land may be [included in an agricultural district or] **CONSIDERED FOR PURCHASE OF AN** easement only if the county regulations governing the land permit the activities listed under § 2-513(a) of this subtitle; **AND**

(6) LAND BE EVALUATED FOR:

(I) LOCATION IN A PRIORITY PRESERVATION AREA OF THE COUNTY;

(II) SOIL AND OTHER LAND CHARACTERISTICS ASSOCIATED WITH AGRICULTURAL AND SILVICULTURAL PRODUCTIVITY;

(III) AGRICULTURAL AND SILVICULTURAL PRODUCTION AND CONTRIBUTION TO THE AGRICULTURAL AND SILVICULTURAL ECONOMY; AND

(IV) ANY OTHER UNIQUE COUNTY CONSIDERATIONS THAT SUPPORT THE GOALS OF THE PROGRAM.

2-510.

(a) An owner of agricultural land [that has an] **WHOSE APPLICATION TO SELL AN** easement **HAS BEEN** approved by the county under this subtitle may sell an

easement to the Foundation on the contiguous acreage of [such] **THE** agricultural land, **SUBJECT TO THE REQUIREMENTS OF THIS SUBTITLE AND REGULATIONS OF THE FOUNDATION.**

(b) In order to be considered by the Foundation, an application to sell shall:

(1) Be received by the board at a time the board determines for the fiscal year in which the application is to be considered;

(2) Include an asking price at which the owner is willing to sell an easement; and

(3) Include a complete description of the [subject] land **FOR THE PROPOSED EASEMENT.**

(c) **[(1)]** The board shall determine the maximum number of applications **THAT IT WILL ACCEPT FROM EACH COUNTY** in each offer cycle.

[(2)] Applications received after the maximum number has been reached may be considered in the next available cycle.]

(d) Within 30 days after the receipt of an application **FROM THE COUNTY GOVERNING BODY**, the Foundation shall notify the landowner **AND THE COUNTY GOVERNING BODY** of the receipt and sufficiency of the application. If the original application is insufficient, the Foundation shall specify the reason for insufficiency, and the Foundation shall grant an additional 30 days for the landowner to remedy the insufficiency. If the application is made sufficient within 30 days of the notification by the Foundation, the application shall be considered as if it had originally been submitted in a timely and sufficient manner.

(e) **[(1) (i)]** Within 30 days after the receipt of an application to sell, the Foundation shall notify the governing body of the county containing the subject land, that an application to sell has been received.

(ii) 1. Within] IF THE APPLICATION IS SUBMITTED TO THE FOUNDATION PRIOR TO COUNTY APPROVAL, THEN WITHIN 60 days of the notification OF SUFFICIENCY OF THE APPLICATION, the county governing body shall advise the Foundation as to [local] **THE COUNTY'S** approval or disapproval of the application. The Foundation shall grant a 30-day extension of this [response] **APPROVAL** period if the county governing body applies to the Foundation for an extension and states its reasons for seeking an extension.

[2.] Upon local approval of the application, the county governing body shall submit a statement of the total current development rights on the subject land to the Maryland Agricultural Land Preservation Foundation, along

with the application approval notification. The statement shall include the total number of development rights that have been subdivided or transferred.

(2) In deciding whether to approve the application, the county governing body shall:

(i) Receive the recommendation of the county agricultural preservation advisory board established under § 2-504.1 of this subtitle; and

(ii) Rank all applications based on:

1. Its locally established priorities as approved by the Foundation, which, for purposes of enhancing competitive bidding, may include a system that ranks properties in ascending order with respect to the proportion obtained by dividing the asking price by the value of the easement; and

2. Guidelines adopted by the Foundation under paragraph (3) of this subsection.

(3) (i) In consultation with county governing bodies, the Foundation shall adopt guidelines to identify easements for purchase that further the goals of the Maryland Agricultural Land Preservation Program.

(ii) Guidelines adopted under subparagraph (i) of this paragraph shall include consideration of:

1. Location in a priority preservation area of the county;

2. Soil and other land characteristics associated with agricultural productivity;

3. Agricultural production and contribution to the agricultural economy; and

4. Any other unique county considerations that support the goals of the program.

(4) In making its recommendation, the county agricultural preservation advisory board shall:

(i) Take into consideration criteria and standards established by the Foundation under this subtitle, current local regulations, local patterns of land development, the kinds of pressures to develop the subject land, State smart growth goals, and any locally established priorities for the preservation of agricultural land; and

(ii) Recommend for ranking any application that qualifies and meets the priorities established by the county governing body for the preservation of agricultural land.

(5) The county agricultural preservation advisory board shall provide a public hearing concerning any application to sell if such a hearing is requested by a majority of the county agricultural preservation advisory board, or by a majority of the county governing body, or by the applicant.

(6) The board of trustees of the Foundation shall not approve any application to sell which has not been approved by the governing body of the county containing the subject land.]

(f) (1) In determining which applications it shall approve for the purchase of the easements offered for sale in each fiscal year under this section, the Foundation:

(i) May approve only those applications in which the subject land meets the criteria and standards established under §§ 2–509 and 2–513 of this subtitle;

(ii) Except as provided in subparagraph (iii) of this paragraph, [rank] REVIEW the applications and submit offers to buy at the beginning of each offer cycle based on the approved priorities established by each eligible county for the preservation of agricultural land; and

(iii) For applications competing on a statewide basis following the initial round of offers, shall rank the applications and submit offers to buy in order of priority, as provided in paragraph (2) of this subsection.

(2) The Foundation shall adopt by regulation a standard priority ranking system for additional offers to buy by which it shall rank each application. The system shall be based on the following criteria as to the easements offered in any one county:

(i) The applications shall be assigned a rank in ascending order with respect to the proportion obtained by dividing the asking price by the State easement value. The resulting rank shall be the sole criterion for establishing the priority for discounted applications that include proportions of 1.0 or lower.

(ii) All additional applications which include proportions greater than 1.0 shall be assigned a numerical value that, in regard to the land for which the easement is offered, reflects:

1. The relative productive capacity of the land;

2. The extent to which the easement acquisition will contribute to the continued availability of agricultural suppliers and markets for agricultural goods; and

3. The priority recommendations of the local governing bodies.

(g) The Foundation may approve general allotted purchases of easements in a county not to exceed in aggregate value the amount allotted for that county under § 2–508(b) of this subtitle for the fiscal year in which such purchases are made, plus any amount of transferred local open space funds designated by the local governing body for general purchases.

(h) The Foundation may approve matching allotted purchases of easements in an eligible county such that the Foundation’s share will not exceed in aggregate value the amount allotted for that county under § 2–508(b) of this subtitle for that fiscal year.

(i) Upon approval of a majority of the board members at–large, and upon the recommendation of the State Treasurer and the Secretary, an application to sell shall be approved, and an offer to buy containing the specific terms of the purchase shall be tendered to the landowner. An offer to buy may specify terms, contingencies, and conditions not contained in the original application.

(j) [(1) With respect to allotted purchases, the Foundation shall tender any offer to buy containing the specific terms of the purchase on or before January 31 of the fiscal year in which the purchase is to be made.]

[2] (1) With respect to additional offers to buy tendered under § 2–508(c) of this subtitle, the Foundation may not tender such offers earlier than 30 days after the completion of allotted [purchases] **OFFERS TO BUY** in each offer cycle.

[3] (2) A landowner has 30 days from the date of any offer to buy in which to accept or reject the offer.

(k) (1) At the time of settlement of the purchase of an easement, the landowner and the Foundation may agree upon and establish a schedule of payment such that the landowner may receive consideration for the easement in a lump sum, in installments over a period of up to 10 years from the date of settlement, or as provided in an installment purchase agreement under paragraph (3) of this subsection. At the time of settlement, the Foundation shall notify in writing each landowner who sells an agricultural easement to the Foundation of the schedule of anticipated ranges of interest rates to be paid on any unpaid balance after the date of settlement.

(2) (i) If a schedule of installments is agreed upon, the Comptroller shall retain in the Maryland Agricultural Land Preservation Fund an amount of money sufficient to pay the landowner according to the schedule.

(ii) The landowner shall receive interest on any unpaid balance remaining after the date of settlement. The State Treasurer shall invest the unpaid balance remaining after the date of settlement in a certificate or certificates of deposit at the maximum interest rate offered by a bank servicing the State or at such other institutions which pay the maximum interest rates payable on time and savings deposits at federally insured commercial banks selected by the Treasurer, to mature in accordance with an agreed upon schedule of installments as provided in this section. Any interest earned on the invested unpaid balance shall be paid with the installment when due, less 1/4 of 1 percent.

(3) (i) The Foundation may pay the landowner according to a schedule, up to a maximum term of 15 years, established in an installment purchase agreement.

(ii) The installment purchase agreement shall:

1. Require that the Foundation make annual equal payments to the landowner of interest on the outstanding balance of the purchase price;

2. Require that the Foundation pay the landowner the remainder of the purchase price at the end of the term;

3. State the total amount of money the Foundation will pay the landowner, the interest rate, and the terms of the agreement; and

4. Require that the easement be recorded within 30 days of settlement.

(l) (1) **[On or before June 30] AFTER THE FOUNDATION HAS EXPENDED ALLOTTED FUNDS FOR A FISCAL YEAR IN OFFERS TO PURCHASE**, the Foundation shall notify all landowners whose applications had been rejected during that fiscal year. The Foundation shall specify the reasons for that rejection.

(2) A landowner who rejects an offer from the Foundation to purchase an easement on the same land during two consecutive years, for a reason other than insufficient Foundation funds, may not reapply to sell an easement on the same land for the following two consecutive years.

(m) Notwithstanding any other provision of law, for each offer cycle as provided in this section, records relating to a landowner's ranking, asking price, or

Foundation offer shall be confidential and not subject to public inspection until after the end of the cycle, as determined by the Foundation.

2-513.

(b) (8) The Foundation may approve a landowner's request to relocate the site of an existing dwelling to another location on a farm subject to an easement [or district agreement], provided:

(i) The new location does not interfere with any agricultural use; and

(ii) Subject to the Foundation's approval, the landowner agrees either to demolish the existing dwelling at the current location or permanently convert the existing dwelling at the current location to a use that is nonresidential and integral to the farm operation.

2-513.1.

(a) This section applies only to applications affecting land encumbered by a [district agreement or] deed of easement created under this subtitle.

Chapter 650 of the Acts of 2007

SECTION 2. AND BE IT FURTHER ENACTED, That:

(a) Effective July 1, 2007, districts may not be a requirement for the easement application process to the Maryland Agricultural Land Preservation Foundation; and

(b) Except as provided in Section 3 of this Act, as of June 30, 2012, all districts in the Maryland Agricultural Land Preservation Foundation shall be terminated and a landowner may not be bound to the terms of any Foundation district agreement.

SECTION 3. AND BE IT FURTHER ENACTED, That the following agricultural land preservation districts established under § 2-509 of the Agriculture Article or by a county shall remain in force and may not be terminated:

(a) Any district in which an easement has been transferred to the Foundation; and

(b) Any district established by a county and a landowner for the purpose of providing a property tax credit to the landowner.

SECTION 2. AND BE IT FURTHER ENACTED, That for all district agreements encumbering land on which the Foundation has not purchased an easement as of June 30, 2012, and which otherwise have not terminated as of June 30, 2012, the Foundation may assign those district agreements to the county governing body for the county in which the land is located by an assignment instrument to be recorded in the land records of that county, if the county governing body is willing to accept an assignment. From the date of the recording of the assignment instrument, a county governing body shall be entitled to enforce the terms of the district agreements it has been assigned, and shall determine whether or not a district agreement may be modified or terminated.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect June 30, 2012.

Approved by the Governor, May 2, 2012.