

Chapter 287

(Senate Bill 259)

AN ACT concerning

Agriculture – Easements – Renewable Energy Generation Facilities

FOR the purpose of requiring, ~~on written request of a landowner in an application to purchase an easement,~~ an easement approved for a certain purchase after a certain date to authorize the landowner to request approval to use the land subject to the easement for renewable energy generation under certain circumstances; ~~requiring, on written request of a landowner,~~ authorizing a written request of a landowner to be approved by the Maryland Agricultural Land Preservation Foundation to amend an easement to authorize the landowner to use the land subject to the easement for renewable energy generation under certain circumstances; altering the composition of the Maryland Agricultural Land Preservation Fund; prohibiting the Foundation from approving the use of land subject to an easement for renewable energy generation after a certain date; prohibiting the installation of certain wind turbines exceeding certain heights in certain areas of the State; requiring a facility owner to remit a certain percentage of a certain lease payment to the Maryland Agricultural Land Preservation Fund; requiring a certain lease executed by a landowner and a certain facility owner to include provisions related to the removal of a certain facility under certain circumstances; authorizing the Foundation to charge certain costs to cover certain expenses; requiring the Foundation to adopt certain regulations; providing for the application of this Act; declaring the intent of the General Assembly; requiring the Foundation to make a certain report to certain committees of the General Assembly by a certain date; defining ~~a certain term~~ certain terms; and generally relating to use of land under an easement held by the Maryland Agricultural Land Preservation Foundation.

BY repealing and reenacting, with amendments,

Article – Agriculture

Section 2–505(b) and 2–513(c)

Annotated Code of Maryland

(2007 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, without amendments,

Article – Agriculture

Section 2–509

Annotated Code of Maryland

(2007 Replacement Volume and 2013 Supplement)

BY adding to

Article – Agriculture
 Section 2–513(c)
 Annotated Code of Maryland
 (2007 Replacement Volume and 2013 Supplement)

~~BY repealing and reenacting, with amendments,~~

~~Article – Agriculture
 Section 2–513(e)
 Annotated Code of Maryland
 (2007 Replacement Volume and 2013 Supplement)~~

~~BY repealing and reenacting, without amendments,~~

~~Article – Public Utilities
 Section 7–701(r)
 Annotated Code of Maryland
 (2010 Replacement Volume and 2013 Supplement)~~

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

Article – Agriculture

2–505.

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

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

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

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

2–509.

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

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

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

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

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

(1) One or more owners of land actively devoted to agricultural use may file an application with the county governing body requesting the purchase of an easement by the Foundation on the land owned by the applicants. The application shall include maps and descriptions of the current use of land 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 an application to purchase an easement the local governing body shall refer the application and accompanying materials both to the agricultural preservation advisory board and to the county planning and zoning body.

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

(iii) After the referral of an application, the county planning and zoning body shall advise the local governing body as to whether or not 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 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 application for the proposed easement. Adequate notice of the hearing shall be given to all owners whose land would be encumbered by the proposed

easement 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.

(5) (i) After the receipt of the 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 application shall be recommended to the Foundation for approval.

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

1. 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 application, it shall inform the Foundation and the applicants.

(c) Regulations and procedures adopted by the Foundation for the purchase and monitoring of 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 subject to an easement.

(d) Regulations and criteria developed by the Foundation relating to land which may be 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 purchase of an easement;

(3) The Foundation shall attempt to preserve the minimum number of acres 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 considered for purchase of an easement only if that land is outstanding in productivity and is of significant size;

(5) Land may be 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.

2-513.

~~(C) (1) IN THIS SUBSECTION, "TIER 1 RENEWABLE SOURCE" IS A SOURCE STATED IN § 7-701(R)(1), (2), (4), OR (9) OF THE PUBLIC UTILITIES ARTICLE.~~

(I) IN THIS SUBSECTION THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

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

1. SOLAR;

2. WIND;

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

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

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

(2) ~~ANY SUBJECT TO PARAGRAPH (4) OF THIS SUBSECTION, ANY EASEMENT ACQUIRED BY THE FOUNDATION AFTER SEPTEMBER 30, 2014, SHALL AUTHORIZE THE LANDOWNER TO USE THE LAND SUBJECT TO THE EASEMENT FOR THE GENERATION OF ELECTRICITY BY A FACILITY UTILIZING A TIER 1 RENEWABLE~~ APPROVED FOR PURCHASE BY THE BOARD OF PUBLIC WORKS AFTER JUNE 30, 2014, SHALL AUTHORIZE THE LANDOWNER TO REQUEST 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 THE LAND SUBJECT TO THE EASEMENT FOR THE GENERATION OF ELECTRICITY BY A FACILITY UTILIZING AN AUTHORIZED RENEWABLE ENERGY SOURCE PROVIDED THAT:

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

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

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

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

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

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

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

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

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

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

(3) SUBJECT TO PARAGRAPH (4) OF THIS SUBSECTION, A WRITTEN REQUEST OF A LANDOWNER, WITH A FAVORABLE RECOMMENDATION OF THE LOCAL AGRICULTURAL ADVISORY BOARD AND IF NOT PROHIBITED BY FEDERAL, STATE, AND LOCAL LAWS, MAY BE APPROVED BY THE FOUNDATION TO AMEND AN EXISTING EASEMENT TO AUTHORIZE THE LANDOWNER TO USE THE LAND SUBJECT TO THE EASEMENT FOR THE GENERATION OF ELECTRICITY BY A FACILITY UTILIZING AN AUTHORIZED RENEWABLE ENERGY SOURCE PROVIDED THAT:

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

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

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

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

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

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

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

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

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

(4) (I) THE FOUNDATION MAY NOT APPROVE THE USE OF LAND SUBJECT TO AN EASEMENT FOR THE GENERATION OF ELECTRICITY BY A FACILITY UTILIZING AN AUTHORIZED RENEWABLE ENERGY SOURCE AFTER JUNE 30, 2019.

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

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

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

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

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

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

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

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

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

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

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

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

1. SOUTH OF 38.4428N, 0 FEET;

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

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

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

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

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

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

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

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

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

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

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

(5) (10) THE FOUNDATION SHALL ADOPT REGULATIONS TO CARRY OUT THE PROVISIONS OF THIS SUBSECTION.

[(c)] (D) Purchase of an easement by the Foundation does not grant the public any right of access or right of use of the subject property.

Article — Public Utilities

7-701.

(r) "Tier 1 renewable source" means one or more of the following types of energy sources:

(1) solar energy, including energy from photovoltaic technologies and solar water heating systems;

(2) wind;

- ~~(3) qualifying biomass;~~
- ~~(4) methane from the anaerobic decomposition of organic materials in a landfill or wastewater treatment plant;~~
- ~~(5) geothermal, including energy generated through geothermal exchange from or thermal energy avoided by, groundwater or a shallow ground source;~~
- ~~(6) ocean, including energy from waves, tides, currents, and thermal differences;~~
- ~~(7) a fuel cell that produces electricity from a Tier 1 renewable source under item (3) or (4) of this subsection;~~
- ~~(8) a small hydroelectric power plant of less than 30 megawatts in capacity that is licensed or exempt from licensing by the Federal Energy Regulatory Commission;~~
- ~~(9) poultry litter to energy;~~
- ~~(10) waste to energy;~~
- ~~(11) refuse derived fuel; and~~
- ~~(12) thermal energy from a thermal biomass system.~~

SECTION 2. AND BE IT FURTHER ENACTED, That § 2-513(c) of the Agriculture Article as enacted by Section 1 of this Act applies to any easement acquired by the Maryland Agricultural Land Preservation Foundation before, on, or after the effective date of this Act.

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

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

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

Approved by the Governor, May 5, 2014.