

COUNTY COUNCIL OF PRINCE GEORGE'S COUNTY, MARYLAND
2010 Legislative Session

Bill No. CB-86-2010

Chapter No. _____

Proposed and Presented by Council Member Dean

Introduced by _____

Co-Sponsors _____

Date of Introduction _____

BILL

1 AN ACT concerning

2 Agricultural Industry

3 For the purpose of amending and adding to the Right to Farm provision and generally regarding
4 agriculture.

5 BY repealing and reenacting with amendments:

6 SUBTITLE 30. AGRICULTURE.

7 Sections 30-101, 30-102, and 30-103,

8 The Prince George's County Code

9 (2007 Edition, 2009 Supplement).

10 BY adding:

11 SUBTITLE 30. AGRICULTURE.

12 Sections 30-104, 30-105, 30-106, and 30-107,

13 The Prince George's County Code

14 (2007 Edition, 2009 Supplement).

15 BY renumbering:

16 SUBTITLE 30. AGRICULTURE.

17 Sections 30-104, 30-105, 30-106, and 30-107,

18 respectively to be Sections 30-201, 30-202, 30-203

19 and 30-204 respectively,

20 The Prince George's County Code

21 (2007 Edition, 2009 Supplement).

1 SECTION 1. BE IT ENACTED by the County Council of Prince George's County,
 2 Maryland, that Sections 30-101, 30-102, and 30-103 of the Prince George's County Code be and
 3 the same are hereby repealed and reenacted with the following amendments:

4 **SUBTITLE 30. AGRICULTURE.**

5 **DIVISION 1. RIGHT TO FARM.**

6 **Sec. 30-101. Purpose.**

7 It is the declared policy of the Prince George's County Government to promote, preserve,
 8 protect, enhance and encourage [the agricultural industry within the County.] agricultural and
 9 forestry operations and the development and improvement of its agricultural land for the
 10 production of food and other agricultural products. The encroachment of nonagricultural land
 11 uses into rural areas may interfere with efficient agricultural and forestry production by
 12 [encouraging litigation against farmers. Protection must be provided to farms, so that they may
 13 continue established operations despite adjacent nonagricultural neighbors] becoming the subject
 14 of nuisance complaints and lawsuits due to lack of information about such operations.

15 Therefore it is in the public interest to promote a clearer understanding between agricultural and
 16 forestry operations and non-agricultural neighbors concerning the normal inconveniences of
 17 agricultural and forestry operations that follow generally accepted agricultural practices and do
 18 not endanger public health or safety. Protection [must] will be provided to [farms] agricultural
 19 and forestry operations, so that they may [continue established operations] operate and be
 20 successful on agricultural land, despite adjacent non-agricultural neighbors.

21 **Sec. 30-102. Definitions.**

22 [(a) Terms used in this Subtitle are defined as follows:

23 (1) **Agricultural Operation:** The commercial production of food or other
 24 agricultural products, including any structure, vehicle or other farm machinery, condition, or
 25 activity associated therewith. Types of agricultural operations include the following:

- 26 (A) Cultivation of land;
- 27 (B) Raising or production of poultry;
- 28 (C) Production of eggs;
- 29 (D) Production of milk (dairy);
- 30 (E) Production of fruits, vegetables, or other horticultural or floricultural crops;
- 31 (F) Raising or production of livestock;

1 (G) Pasturage; and

2 (H) Apiaries.]

3 (a) Terms used in this Subtitle are defined as follows:

4 (1) Agricultural Land: shall mean all real property within the boundaries of Prince
 5 George’s County that is lying in an open space or residential open space zone; carried on the tax
 6 rolls of the Maryland State Department of Assessments and Taxation as agricultural; or all other
 7 land that is currently used for agricultural operations and has been used, or is under preparation
 8 for use as an agricultural operation continuously for at least one (1) year.

9 (2) Agricultural Operation: shall mean and include, but is not limited to, all matters
 10 set forth in the definition of “agricultural operation” in the Annotated Code of Maryland, Courts
 11 and Judicial Proceedings Article 5-403(a), as may be amended from time to time; and the
 12 production of all matters encompassed within the definition of “farm product” in the Annotated
 13 Code of Maryland, Agriculture Article 10-601(c), as may be amended from time to time.

14 Agricultural Operation shall also mean and include cultivation and tillage of the soil,
 15 dairying, spreading of manure, lime, fertilizer and the like, composting, spraying, producing,
 16 irrigating, protecting from frost, cultivating, rowing, harvesting and processing of any
 17 agricultural crops or commodities, including viticulture, horticulture, timber or apiculture, raising
 18 fish or poultry and other fowl, production of eggs, production of milk and dairy products, equine
 19 activities, production of livestock, pasturage, fur bearing animals, production of bees and their
 20 products, production of fruit, vegetables and other horticultural crops, production of wine,
 21 production of aquatic plants, aquaculture, production of timber, production of wool and fleece,
 22 and any commercial agricultural practices or procedure performed as incident to or in
 23 conjunction with such operations, including on farm processing and preparation for market,
 24 delivery to storage or to market or to carriers for transportation to market, equine activities,
 25 usage of land in furtherance of educational and social goals (including but not limited to 4-H
 26 clubs and Future Farmers of America), agri-tourism, alternative agricultural enterprises, and the
 27 like occurring at any time.

28 (3) Forestry Operation: includes, but is not limited to, the cultivation and production
 29 of all matters, products, and the like, derived from the practice of forestry, as encompassed in the
 30 definition of “forestry” as set forth in the Annotated Code of Maryland, Business Occupations
 31 and Professions Article, Section 7-101(c), as amended from time to time.

1 (4) Generally Accepted Agricultural Land Management Practices: shall mean those
 2 methods used in connection with agricultural operations, which do not violate applicable
 3 federal, State or local laws or public health, safety and welfare and which are generally accepted
 4 practices in the agricultural industry. Generally accepted agricultural management practices
 5 include practices that are recognized as generally accepted management practices and those
 6 methods that are authorized by various governmental agencies, bureaus, and departments, such
 7 as the University of Maryland Extension Service Prince George's County, the Prince George's
 8 County Soil Conservation District, and the like. If no generally accepted agricultural
 9 management practice exists or there is no method authorized by those agencies mentioned herein
 10 which governs a practice, the practice is presumed to be a generally accepted agricultural
 11 management practice.

12 **[Sec. 30-103. Agricultural operations defense in private nuisance actions.**

13 (a) If it is alleged in a private action for legal or equitable relief that an agricultural
 14 operation, or a change in an agricultural operation, has interfered, is interfering, or will interfere
 15 with the use or enjoyment of private property, because such operation constitutes a public or
 16 private nuisance, then the person charged in such action shall not be liable if:

17 (1) The agricultural operation, or change in operation, has been, is, or will be
 18 conducted in accordance with generally accepted agricultural practices, and such agricultural
 19 operation conforms to any applicable federal, state, or County regulations; and

20 (2) The agricultural operation began prior to the use of the property by the person
 21 alleged to have suffered injury as a result of the agricultural operation or change in method of
 22 operation.

23 (b) The defense stated in Subsection (a) of this Section does not apply to agricultural
 24 operations which are conducted in a negligent or willfully injurious manner.]

25 **Sec. 30-103. Limitation of Actions**

26 (a) A private action may not be sustained with respect to an agricultural or forestry
 27 operation conducted on agricultural land on the grounds that the agricultural or forestry operation
 28 interferes or has interfered with the use or enjoyment of property, whether public or private, if:

29 (1) The agricultural or forestry operation, including any change in the operation, has
 30 been under way for a period of one year or more and if the operation or the change did not
 31 constitute a nuisance from the date the operation or change in the operation began; and

1 (2) The agricultural or forestry operation is conducted substantially in accordance
 2 with generally accepted agricultural or forestry practices.

3 (b) Notwithstanding any provision of this section, no action alleging that an
 4 agricultural or forestry operation has interfered with the reasonable use or enjoyment of real
 5 property or personal well-being shall be maintained if the plaintiff has not sought arbitration
 6 through Agricultural Reconciliation Committee, as defined in Sec. 30-104 herein.

7 SECTION 2. BE IT ENACTED by the County Council of Prince George's County,
 8 Maryland, that Sections 30-104, 30-105, 30-106 and 30-107 of the Prince George's County Code
 9 be and the same are hereby added:

10 **SUBTITLE 30. AGRICULTURE.**

11 **DIVISION 1. RIGHT TO FARM.**

12 **Sec. 30-104. Establishment of Agricultural Reconciliation Committee membership;**

13 (a) There is hereby established the Prince George's County Agricultural
 14 Reconciliation Committee, which shall arbitrate and mediate disputes involving agricultural
 15 operations conducted on agricultural lands and issue opinions concerning whether or not such
 16 agricultural operations are conducted in a manner consistent with generally accepted agricultural
 17 practices.

18 (b) Composition:

19 (1) The Agricultural Reconciliation Committee shall be composed of five persons
 20 appointed by the Prince George's County Executive and confirmed by the County Council. The
 21 Committee shall be composed of:

22 (A) Two members from the agricultural community, one must be an active
 23 voting member of the Prince George's County Farm Bureau;

24 (B) One member from the forestry community;

25 (C) One member from a real estate interest; and

26 (D) One other member from the community not actively engaged in agriculture.

27 (2) The County Executive and the County Council shall provide staff to the
 28 Agricultural Reconciliation Committee. In any dispute, if requested by the Committee, or if in
 29 their own opinions their participation is helpful, the Prince George's County Farm Bureau, the
 30 University of Maryland Extension, and the Prince George's Soil Conservation District and other
 31 similar entities may present facts and educational information to the Committee and make

1 recommendations. The Committee shall consider their recommendations.

2 (c) The Committee members shall serve four-year terms; however, the initial
3 appointments shall be staggered.

4 (d) The Committee shall meet at least one time per year. Members shall serve as
5 volunteers with no monetary compensation.

6 (e) Three members shall constitute a quorum. The Agricultural Reconciliation
7 Committee shall be subject to the Open Meetings Act and its members shall be subject to the
8 Prince George's County Ethics Ordinance, each as amended from time to time.

9 **Sec. 30-105. Resolution of disputes and procedure for complaints: investigation and**
10 **declaration.**

11 (a) Nuisances, which affect the public.

12 (1) Complaints. A person may complain to the Director, Department of
13 Environmental Resources or the Director's designee to declare that a nuisance exists, which
14 affects the public.

15 (2) Investigations. The Director, Department of Environmental Resources or the
16 Director's designee may investigate any complaint of nuisance received against an agricultural
17 operation. When a previous complaint involving the same condition resulted in a determination
18 by the Director that a nuisance condition did not exist, the Director may investigate the
19 complaint, but the Director may also determine not to investigate such complaint.

20 (3) Declaration of nuisance. If the Director, Department of Environmental Resources
21 or the Director's designee determines that a nuisance exists, the Director may declare the
22 existence of a nuisance. In determining whether a nuisance condition exists in connection with
23 an agricultural operation, the Director shall apply the criteria provided in this Section. Further,
24 the Director may consider the professional opinion of the University of Maryland Extension
25 Prince George's County, or other qualified expert in the relevant field in determining whether the
26 agricultural operation being investigated is conducted in accordance with accepted agricultural
27 practices.

28 (b) Resolution of disputes regarding agricultural operations.

29 (1) Should any controversy arise regarding an interference with the use or
30 enjoyment of property from agricultural operations conducted on agricultural land, the parties to
31 that controversy shall submit the controversy to the Agricultural Reconciliation Committee.

1 (2) Any such controversy may be submitted in writing to the Agricultural
 2 Reconciliation Committee within thirty (30) days of the alleged adverse impacts.

3 (3) The Agricultural Reconciliation Committee will conduct its proceedings in an
 4 informal manner and the strict rules of evidence shall not apply. The Committee has the power
 5 but is not required hereunder to hold hearings, to compel testimony under oath and to compel the
 6 production of documents. In each case, the Agricultural Reconciliation Committee shall issue
 7 orders settling or otherwise resolving controversy arising out of agricultural operations, including
 8 but not limited to the invasion of property and personal rights by agricultural operations
 9 conducted on agricultural land.

10 (4) Orders of the Agricultural Reconciliation Committee shall be binding on the
 11 parties as a matter of law, but their enforcement shall be suspended by operation of law if,
 12 within 30 days of the date of the Committee's judgment, a party appeals such order to the Circuit
 13 Court for Prince George's County.

14 **Sec. 30-106. Right to farm notice and real estate transfer disclosure.**

15 (a) Upon any transfer of real property by any means, the transferor shall provide the
 16 purchaser or lessee a statement specifically advising the purchaser or lessee of the existence of
 17 this law which shall be in substantially the following wording:

18 Prince George's County allows agricultural and forestry operations, as defined in the Prince
 19 George's County Code, within the county. You may be subject to inconvenience or
 20 discomforts arising from such operations, including but not limited to noise, odors, fumes, dust,
 21 flies, the operation of machinery of any kind during any twenty-four-hour period (including
 22 aircraft), vibration, the storage and disposal of manure, and the application by spraying or
 23 otherwise of chemical fertilizers, soil amendments, and pesticides. Prince George's County has
 24 determined that inconveniences or discomforts associated with such agricultural and forestry
 25 operations shall not be considered to be an interference with reasonable use and enjoyment of
 26 land if such operations are conducted in accordance with generally accepted agricultural or
 27 forestry management practices. Prince George's County has established an Agricultural
 28 Reconciliation Committee to assist in the resolution of disputes which might arise between
 29 persons in this County regarding whether agricultural or forestry operations conducted on
 30 agricultural lands are causing an interference with the reasonable use and enjoyment of and or
 31 personal well-being and whether those operations are being conducted in accordance with

1 generally accepted agricultural or forestry practices.

2 (b) In addition, because of the County's desire to maintain a good-neighbor policy and the
 3 County's desire to provide this information to county real property owners, the Prince George's
 4 County Council shall provide information, within the Legislative section of the Prince George's
 5 County official website, which shall be in substantially the following wording:

6 Prince George's County recognizes and supports the right to farm or practice forestry on
 7 agricultural lands in a manner consistent with generally accepted agricultural or forestry
 8 management practices. Residents of property on or near agricultural land should be prepared to
 9 accept the inconveniences or discomforts associated with agricultural or forestry operations,
 10 including but not limited to noise, odors, flies, fumes, dust, the operation of machinery of any
 11 kind during any twenty-four-hour period (including aircraft), vibration, the storage and disposal
 12 of manure, and the application by spraying or otherwise of chemical fertilizers, soil amendments,
 13 herbicides and pesticides. Prince George's County has determined that inconveniences or
 14 discomforts associated with such agricultural and forestry operations shall not be considered to
 15 be an interference with reasonable use and enjoyment of land, if such operations are conducted in
 16 accordance with generally accepted agricultural or forestry practices. Prince George's County
 17 has established an Agricultural Reconciliation Committee to assist in the resolution of disputes
 18 which might arise between persons in this County regarding whether agricultural or forestry
 19 operations conducted on agricultural lands are causing an interference with the reasonable use
 20 and enjoyment of and or personal well-being and whether those operations are being conducted
 21 in accordance with generally accepted agricultural or forestry practices.

22 **Sec. 30-107. Existing liabilities and statutory construction.**

23 (a) Except to the extent specifically provided herein, this law shall not discharge,
 24 impair or release any contract, obligation, duty, liability or penalty whatever existing on the date
 25 of its enactment.

26 (b) This law is not intended to and shall not be construed as in any way modifying or
 27 abridging local, state, or federal laws, including but not limited to laws relating to health, safety,
 28 trespass onto agricultural property, zoning and licensing requirements.

29 SECTION 3. BE IT ENACTED by the County Council of Prince George's County,
 30 Maryland, that Sections 30-104, 30-105, 30-106 and 30-107 of the Prince George's County Code
 31 be and the same are hereby renumbered respectively to be Sections 30-201, 30-202, 30-203, and

1 30-204 respectively:

2 **SUBTITLE 30. AGRICULTURE.**

3 **DIVISION 2. AGRICULTURAL LAND PRESERVATION.**

4 **[Sec. 30-104.] Sec. 30-201. Agricultural Preservation Districts and Protection of Normal**
 5 **Agricultural Activities.**

6 (a) In accord with Agricultural Article Sections 2-501 through 2-515 of the Annotated
 7 Code of Maryland, Agricultural Preservation Districts may be established in Prince George's
 8 County. In order to protect normal agricultural activities, the following provisions shall apply to
 9 all such districts within Prince George's County:

10 (1) Agricultural activities are permitted, consistent with provisions of the County
 11 Zoning Ordinance;

12 (2) The operation of machinery used in farm production or the primary processing of
 13 agricultural products is permitted at any reasonable time;

14 (3) Agricultural activities carried on in accordance with good husbandry practices,
 15 which do not cause bodily injury or directly endanger human health, are preferred activities,
 16 notwithstanding the incidental production of noise, odor, or dust;

17 (4) The sale of farm products produced on the farm where the sales are made is
 18 permitted, consistent with the provisions of the County Zoning Ordinance;

19 (5) All land within an Agricultural Preservation District shall be eligible for property
 20 tax incentives as may be enacted by the County Council from time to time.

21 **[Sec. 30-105.] Sec. 30-202. Official Maps.**

22 Official maps of Agricultural Preservation Districts and easements purchased by the
 23 Maryland Agricultural Land Preservation Foundation shall be maintained by the Maryland-
 24 National Capital Park and Planning Commission at the County Administration Building, Upper
 25 Marlboro, Maryland, and shall be revised from time to time to reflect the establishment,
 26 alteration, and abolition of Agricultural Preservation District boundaries. The official maps shall
 27 be made current as of June 30 of each year and shall be prepared on a reproducible base at the
 28 same scale as the Department of Assessment and Taxation tax maps or at a more readable, but
 29 uniform, scale if available and regularly maintained by the agency.

30 **[Sec. 30-106.] Sec. 30-203. Establishment of Districts.**

31 (a) In accord with the Agriculture Article, Sections 2-501 through 2-515, and with

1 Maryland Regulations 15.17.01, Agricultural Preservation District establishment shall be
2 accomplished by this ordinance, only upon formal notification to the Prince George's County
3 Council by the Maryland Agricultural Land Preservation Foundation. Such notification shall
4 include a copy of the Agricultural Preservation District Agreement signed by all parties and as
5 recorded among the land records of Prince George's County.

6 (b) All such District Agreements together with property descriptions shall be maintained in
7 an official file and be available from the Clerk of the Council, County Administration Building,
8 Upper Marlboro, Maryland, 20772. Duplicate information, as necessary to respond to inquiries
9 related to established Agricultural Preservation Districts and easements which have been
10 purchased, shall be maintained by the Planning Department of the Maryland-National Capital
11 Park and Planning Commission.

12 **[Sec. 30-107.] Sec. 30-204. Agricultural Preservation Advisory Board; composition; terms;**
13 **officers.**

14 (a) The County Executive shall appoint an Agricultural Preservation Advisory Board in
15 accordance with the provisions of the Agricultural Article, Title 2, Subtitle 5, Annotated Code of
16 Maryland.

17 (b) There shall be five members, at least three of whom shall be owner-operators of
18 commercial farms who earn fifty percent (50%) or more of their income from farming. The term
19 of office for each member shall be five years. No member shall serve more than two consecutive
20 full terms. Appointments to fill a vacancy shall be for the remainder of the unexpired term. The
21 terms of the initial appointments shall be staggered with one member appointed to a three-year
22 term, two members appointed to four-year terms, and two members appointed to five-year terms.

23 (c) The Board members shall elect annually from their own membership a chairman and
24 such other officers as it deems necessary.

25 (d) The duties of the Board shall be as provided in State law.

26 SECTION 4. BE IT FURTHER ENACTED that this Act shall take effect on forty-five (45)
27 calendar days after it becomes law.

Adopted this ____ day of _____, 2010.

COUNTY COUNCIL OF PRINCE
GEORGE'S COUNTY, MARYLAND

BY: _____
Thomas E. Dernoga
Chair

ATTEST:

Redis C. Floyd
Clerk of the Council

APPROVED:

DATE: _____

BY: _____
Jack B. Johnson
County Executive