

Introduced Feb. 4, 2013  
Public Hearing Feb. 19, 2013  
Council Action March 4, 2013  
Executive Action March 5, 2013  
Effective Date May 5, 2013

## County Council Of Howard County, Maryland

2013 Legislative Session

Legislative Day No. 2

Bill No. 10 -2013

Introduced by: The Chairperson at the request of the County Executive

AN ACT amending certain provisions related to nuisance suits against agricultural operations; amending certain definitions; clarifying the types of properties for which certain protection applies; requiring certain mediation; and generally related to nuisance suits against agricultural operations.

Introduced and read first time February 4, 2013. Ordered posted and hearing scheduled.

By order Stephen LeGendre  
Stephen LeGendre, Administrator

Having been posted and notice of time & place of hearing & title of Bill having been published according to Charter, the Bill was read for a second time at a public hearing on February 19, 2013.

By order Stephen LeGendre  
Stephen LeGendre, Administrator

This Bill was read the third time on March 4, 2013 and Passed ☒, Passed with amendments ☐, Failed ☐.

By order Stephen LeGendre  
Stephen LeGendre, Administrator

Sealed with the County Seal and presented to the County Executive for approval this 5<sup>th</sup> day of March, 2013 at 3:00 a.m./p.m.

By order Stephen LeGendre  
Stephen LeGendre, Administrator

Approved/Vetoed by the County Executive March 5, 2013

Ken Ulman  
Ken Ulman, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; Strike-out indicates material deleted by amendment; Underlining indicates material added by amendment.

1 **Section 1. *Be It Enacted by the County Council of Howard County, Maryland, that the Howard***  
2 ***County Code is amended as follows:***

3  
4 *By amending:*

5 *Title 12 – Health and Social Services*

6 *Section 12.111 “Nuisance suits against agricultural operations”*

7  
8 **Title 12. Health and Social Services.**

9 **Subtitle 1. Health Code.**

10  
11 **Section 12.111. Nuisance suits against agricultural operations.**

12 (a) *Short Title.* This section shall be known and may be cited as the Howard County Right-To-  
13 Farm Act, bill No. 22, 1989.

14 (b) *Public Policy.* The practice of agriculture has been a mainstay of the economy of Howard  
15 County since the land was settled. It is a valued and respected way of life, and the preferred land  
16 use in the Rural Conservation (RC) Zoning District, a valued land use in the Rural Residential  
17 (RR) Zoning District and on PROPERTY THAT HAS AN AGRICULTURAL USE ASSESSMENT AS  
18 DETERMINED BY THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION. [[[1) individual  
19 residential properties of 20 acres or more that are subject to perpetual conservation easements; or  
20 (2) two contiguous residential properties where the total contiguous acreage equals 20 acres or  
21 more and which are subject to one or more perpetual conservation easements.]]] The Howard  
22 County Council hereby finds and declares that the practice of farming in Howard County should  
23 be protected and encouraged.

24 (c) *Definitions.* [[[This]]] IN THIS section *agricultural operation* INCLUDES AGRICULTURE,  
25 APIARIES, HORTICULTURE, ORCHARDS, AGRICULTURAL NURSERIES, VITICULTURE, AQUACULTURE,  
26 SILVICULTURE, ANIMAL AND POULTRY HUSBANDRY, AND FARMING AS DEFINED IN THE HOWARD  
27 COUNTY ZONING REGULATIONS. AN AGRICULTURAL OPERATION MAY OCCUR WITHOUT  
28 LIMITATION AS TO HOURS OF OPERATION. THE HARVESTING AND PROCESSING OF AGRICULTURAL  
29 CROPS AND OTHER USES OR STRUCTURES DIRECTLY RELATED TO OR ACCESSORY TO THE PREMISES  
30 FOR FARMING ARE CONSIDERED PART OF AN AGRICULTURAL OPERATION. AGRICULTURAL  
31 PRACTICES INCLUDED AS PART OF AN AGRICULTURAL OPERATION INCLUDE, BUT ARE NOT LIMITED

TO: [[includes any one or a combination of the following activities as well as the necessary accessory uses for packing, processing, treating, storing or marketing the produce; provided however, the operation of any such accessory uses shall be secondary to that of normal agricultural activities:]]

[[ (1) Cultivation of land.

(2) Production of agricultural crops.

(3) Raising of poultry.

(4) Production of eggs.

(5) Production of milk.

(6) Production of fruit or other horticultural crops.

(7) Production of livestock, including pasturage.

(8) Production of bees and their products.

(9) Production of fish.

(10) Production of trees.

(11) The breeding, raising, training and general care of livestock by children and youth enrolled in an organized program such as 4-H for uses other than food, such as sport or show purposes, as pets or for family recreation, shall be considered a normal farming function provided that good agricultural management practices are followed.]]

(1) THE TRANSPORTATION OF AGRICULTURAL PRODUCTS;

(2) THE TRANSPORTATION, STORAGE, HANDLING, AND APPLICATION OF FERTILIZER, SOIL AMENDMENTS, PESTICIDES, AND MANURE; AND

(3) THE OPERATION OF AGRICULTURAL MACHINERY AND EQUIPMENT.

(d) *Protection for Agricultural Operations.* In [[RR]]RC and [[RC]]RR zoning districts, and on PROPERTY THAT HAS AN AGRICULTURAL USE ASSESSMENT AS DETERMINED BY THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION, [[ (1) individual residential properties of 20 acres or more that are subject to perpetual conservation easements; or (2) two contiguous residential properties where the total contiguous acreage equals 20 acres or more and which are subject to one or more perpetual conservation easements,]] an agricultural operation may not LEGALLY BE CONSIDERED [[be or become]] a public or private nuisance; and a private action may not be sustained on the grounds that the agricultural operation interferes or has interfered with the use or enjoyment of other property, whether public or private, if:

1 (1) The agricultural operation existed before a change occurred in the ADJOINING land  
2 use or occupancy of land [[in the locality of the agricultural operation]] and,  
3 before such change in land use or occupancy of land, the agricultural operation  
4 did not constitute a nuisance; or

5 (2) The agricultural operation, including any change in the operation, has been  
6 ongoing for one year or more and the operation or change did not constitute a  
7 nuisance from the date the operation began or the date the change in the operation  
8 began; and

9 (3) The agricultural operation is conducted in accordance with generally accepted  
10 agricultural management practices.

11 (e) *Exceptions.* This section does not apply to:

12 (1) An agricultural operation that does not conform to Federal, State or local health or  
13 zoning requirements;

14 (2) A Federal, State or local agency when enforcing air, water quality, or other  
15 environmental standards under Federal, State or local law; or

16 (3) An agricultural operation that is conducted in a negligent manner.

17 (F) *LIMITATIONS OF ACTIONS.* NOTWITHSTANDING ANY PROVISION OF THIS SECTION, NO ACTION  
18 ALLEGING THAT AN AGRICULTURAL OPERATION CONDUCTED IN ACCORDANCE WITH GENERALLY  
19 ACCEPTED AGRICULTURAL PRACTICES HAS INTERFERED WITH THE REASONABLE USE OR  
20 ENJOYMENT OF REAL PROPERTY OR PERSONAL WELL-BEING SHALL BE MAINTAINED IF THE  
21 PLAINTIFF HAS NOT SOUGHT MEDIATION THROUGH THE MARYLAND AGRICULTURAL CONFLICT  
22 RESOLUTION SERVICE WITHIN THE MARYLAND DEPARTMENT OF AGRICULTURE, AS PROVIDED FOR  
23 IN TITLE 5, SUBTITLE 4 OF THE COURTS AND JUDICIAL PROCEEDINGS ARTICLE OF THE ANNOTATED  
24 CODE OF MARYLAND.

25 [[(f)]](G) *Legal Actions in Bad Faith or without Substantial Justification.* In any civil action, if a  
26 court finds that the conduct of a plaintiff in maintaining a nuisance CASE against the owner of an  
27 agricultural operation was in bad faith or without substantial justification, the court may require  
28 the plaintiff to pay to the owner of the agricultural operation the costs of the proceeding and the  
29 reasonable expenses, including reasonable attorney's fees, incurred by the owner of the  
30 agricultural operation in defending against the legal action.

1  
2 ***Section 2. And Be It Further Enacted*** by the County Council of Howard County, Maryland,  
3 *that this Act shall become effective 61 days after its enactment.*



BY THE COUNCIL

This Bill, having been approved by the Executive and returned to the Council, stands enacted on March 5, 2013.

Stephen M. LeGendre  
Stephen M. LeGendre, Administrator to the County Council

BY THE COUNCIL

This Bill, having been passed by the yeas and nays of two-thirds of the members of the Council notwithstanding the objections of the Executive, stands enacted on \_\_\_\_\_, 2013.

\_\_\_\_\_  
Stephen M. LeGendre, Administrator to the County Council

BY THE COUNCIL

This Bill, having received neither the approval nor the disapproval of the Executive within ten days of its presentation, stands enacted on \_\_\_\_\_, 2013.

\_\_\_\_\_  
Stephen M. LeGendre, Administrator to the County Council

BY THE COUNCIL

This Bill, not having been considered on final reading within the time required by Charter, stands failed for want of consideration on \_\_\_\_\_, 2013.

\_\_\_\_\_  
Stephen M. LeGendre, Administrator to the County Council

BY THE COUNCIL

This Bill, having been disapproved by the Executive and having failed on passage upon consideration by the Council stands failed on \_\_\_\_\_, 2013.

\_\_\_\_\_  
Stephen M. LeGendre, Administrator to the County Council

BY THE COUNCIL

This Bill, the withdrawal of which received a vote of two-thirds (2/3) of the members of the Council, is withdrawn from further consideration on \_\_\_\_\_, 2013.

\_\_\_\_\_  
Stephen M. LeGendre, Administrator to the County Council

