

CHAPTER 157
FORMERLY
SENATE BILL NO. 117

AN ACT TO FACILITATE THE ACQUISITION AND PRESERVATION OF AGRICULTURAL LANDS BY YOUNG FARMERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 9, Title 3 of the Delaware Code by providing a new Subchapter VI to read as follows:

“Subchapter VI. Farmland Purchase and Preservation Loan Program

§942. Purpose, policy and intent.

In furtherance of the declared policy of the State to conserve, protect and encourage use and improvement of agricultural lands and to encourage, promote and protect farming as a valued occupation it is important to provide a means of facilitating the acquisition of farmland by young farmers, while furthering the goal of permanently protecting the farmland which is acquired through the placement of permanent Preservation easements on the acquired farmland property. To accomplish this objective it is desirable to establish a farmland purchase and preservation loan program in accordance with the provisions of this subchapter.

§943. Loan Program.

There is hereby established a farmland purchase and preservation loan program to be administered by the Foundation.

§944. Loan Program Eligibility.

(a) In order to receive loan monies from the Foundation for the purchase and preservation of farmlands the following eligibility criteria shall apply:

1. The loan recipient shall be at least 18 years of age and no older than 40 years of age at the time a loan application is submitted to the Foundation.

2. The loan recipient at the time of loan application shall have at least three (3) years of farming or agriculturally related activity experience.

3. The loan recipient at the time of loan application shall have a net worth of no more than \$300,000.

4. The loan recipient shall be required to take title to the farmland in an individual name.

5. The farmland subject to purchase shall contain at least fifteen (15) tillable acres.

6. The loan recipient prior to the receipt of loan monies shall not own or have an ownership interest in more than twice the tillable acres of farmland than the amount of tillable acres subject to purchases with loan monies.

7. The farmland shall be located in the State of Delaware.

8. Loan applicants shall be residents of the State of Delaware.

9. The farmland subject to purchase may be comprised of a combination of tillable acres, forestlands or wetlands; provided however, that the farmland property is zoned for agricultural usage.

10. The farmlands being purchased shall not be subject to an existing Preservation easement, conservation easement or similar limitation which restricts residential or commercial development.

11. Loan applicants shall contractually commit that they will be actively engaged in agricultural usage of the purchased farmland during the term of the Foundation loan.

(b) The Foundation shall be entitled to adopt a loan application form requesting information from the loan applicant which includes, but is not limited to, information regarding loan eligibility.

§945. Loan Requirements and Approval.

(a) The following requirements and conditions shall apply to loans provided by the Foundation:

(1) The maximum total amount of loans provided to an individual recipient shall not exceed \$500,000.

- (2) The maximum loan amount for any loan shall not exceed seventy percent (70%) of the appraised Preservation easement value of the farmland property which is being purchased and subject to perpetual Preservation easement.
- (3) A condition of the loan is that the eligible farmland being acquired is to be subjected at closing to a permanent Preservation easement in the form determined by the Foundation, such easement to have priority status and not be subject to subordination.
- (4) The loans provided by the Foundation shall be secured by Notes and Mortgages which allow for the following conditions:
 - a. Notes and Mortgages will be subordinated to other loans provided for the purchase, in whole or in part, of the eligible farmlands; provided however, that the perpetual Preservation easement placed on the eligible farmland property at the time of settlement shall not be subordinated.
 - b. The Notes and Mortgages shall bear no interest and the payback may be structured for final payback within thirty (30) years, with initial payments to begin after the primary commercial or other financing for the purchase of the farmland property is satisfied or released.
 - c. The Notes and Mortgages shall contain a requirement for payment in full of the balance of the loan upon the sale or transfer of the secured farmland property; provided however, the Foundation shall have the discretion to allow for assumption of the loan by the transferee under such terms and conditions deemed advisable, provided the transferee satisfies the loan eligibility requirements set forth in Section 945(a) above.

(5) Loans shall be limited to the purchase of farmland and farmland improvements only. Portions of the property subject to purchase which are used or proposed for use for residential purposes shall not be eligible for loans, provided further nonetheless, that those lands used or intended for use for residential purposes shall be subject to the limitations set forth in Section 904(a)(4) a. and b. of this Chapter.

(b) The approval of loans by the Foundation under this subchapter is purely a discretionary function and the Foundation shall be under no obligation to provide a loan to any applicant.

§946. Preservation Easements.

- (a) The Preservation easements provided as a condition for receiving a loan under this subchapter shall include, but not be limited to, the following conditions:
 - (1) The Preservation easement binds and runs with the farmland in perpetuity, and is not subject to the termination provisions of Section 917 of this Chapter.
 - (2) No residential use is allowed on the farmland subject to the Preservation easement.
 - (3) The farming and related uses as specified under Section 909(a)(5)a. through h. inclusive of this Chapter shall be allowed.
 - (4) Except as expressly provided otherwise, the farmland subject to a Preservation easement under this subchapter shall have the same benefits, controls and restrictions as those Preservation easements otherwise acquired pursuant to the provisions of this Chapter, and provided further the Foundation shall be entitled to take enforcement action as provided in Section 920 of this Chapter.
- (b) The Preservation easements acquired under this subchapter shall not be affected by the payment status of the loan.

§947. Preservation Loan Fund.

There is hereby established a preservation loan fund to be maintained, operated, supervised and administered by the Foundation, and used for making loan payments and related transaction costs and expenses for the loans provided under this subchapter. Monies for the preservation loan fund may be derived from specific appropriations provided by the General Assembly, federal grants, county and municipal grants and private funding. The fund shall be operated as a revolving fund, with monies paid to the Foundation as repayment of loans or condemnation related compensation deposited in the fund and used to make additional loans.

§948. Administration.

(a) In carrying out the responsibilities of administering the loan program the Foundation shall be entitled to:

- (1) Adopt an application and other forms for processing applications and closing loan transactions.
- (2) Establish a prequalification system for potential loan applicants.
- (3) Establish schedules and timelines for processing applications and making loan decisions.
- (4) Require the submission by applicants of a farm plan which includes a loan repayment plan.
- (5) Provide assurances to commercial or other lenders regarding willingness to subordinate Foundation loans to commercial or other loans needed to acquire farmland.
- (6) Structure and restructure the payment provisions of loans, provided however, that payments due the Foundation under any loan shall not be forgiven in whole or in part.
- (7) Have appraisals performed under an appraisal methodology approved by the Foundation to determine the fair market value and Preservation easement value of loan eligible farmland property.
- (8) Develop selection criteria for approving loans involving competing applicants, with emphasis on selecting on a priority basis the loan applicant or applicants who request a loan with the lowest percentage value of the appraised Preservation easement value of the eligible farmland.
- (9) subordinate Foundation loans to commercial financing provided to support farming operations conducted on the purchased farmlands.
- (10) Cooperate with commercial lenders and others providing financing for the purchase of eligible farmlands to facilitate the successful completion of purchase transactions.
- (11) Establish a system for annual reporting by loan recipients to assure that the loan recipients are actively engaged in agricultural usage of the acquired farmlands.

(b) The Foundation shall be entitled to advertise and promote the loan program, and create public awareness of the agricultural land preservation, open space and environmental benefits which the program provides.

(c) The Foundation shall be entitled to adopt rules of practice and procedure for administering the loan program.

§949. Secretary's Veto.

With respect to any loan application approved by the Foundation under this subchapter, the Secretary shall be entitled to veto any such approval at the time that the approval is granted. In the event the Secretary fails to exercise the veto power at the meeting at which the approval is granted, the veto power shall be deemed waived.”

Approved July 28, 2011