

FARMLAND TRUST FUND

House Bill 5894 (Substitute H-2)

Sponsor: Rep. Howard Wetters

House Bill 5895 (Substitute H-1)

Sponsor: Rep. Bill Bobier

First Analysis (6-16-98)

Committee: Agriculture

THE APPARENT PROBLEM:

Under statutory provisions formerly contained in Public Act 116 of 1974, which was known as the Farmland and Open Space Preservation Act, a landowner and the state may enter into a contract--known as a "development rights agreement"--that grants a property tax credit to the landowner in return for a promise to keep farmland in agricultural use or as undeveloped open space. (This act was incorporated into the Natural Resources and Environmental Protection Act [NREPA] of 1994, which codified all of the state's natural resources and environmental protection statutes into one comprehensive law.) When land is withdrawn from the program, either prematurely or because the agreement expires, the Department of Treasury calculates and places a lien upon the property to recapture some or all of the tax credits when the property is developed or sold. The repaid money is then used by the state to purchase development rights on other agricultural lands. Recent changes also provided local units of government with the authority to adopt a development rights ordinance governing the purchase of development rights for the purpose of protecting farmland and adjoining land. The development rights ordinance must specify the level of development that would be permitted and the circumstances under which the landowner may repurchase those rights.

The current system for using the lien money for the purchase of farmland development rights is, according to some, less effective than it could be. It has been suggested that changing the way lien money is held and used -- for example, placing the lien money in a fund within the Department of Treasury to allow investment and allowing for some of the money to be used by local units of government to fund their efforts to acquire development rights -- would help to enhance the effectiveness of the program.

THE CONTENT OF THE BILLS:

The bills would amend the Natural Resources and Environmental Protection Act (MCL 324.36111 et al.) to create a "farmland trust fund" and provide for money from the fund to be expended to purchase development rights (agriculture conservation easements or resource conservation easements) from willing landowners. An agriculture conservation easement would be a written conveyance relinquishing the owner's rights to develop the property in perpetuity. The conveyance would have to describe permitted uses and contain a covenant that would run with the land. A resource conservation easement would be a conveyance on the same terms as an agriculture conservation easement but would provide for the preservation of a permanent vegetative cover adjacent to a body of water or watercourse for the purpose of reducing nonpoint source pollution, improving water quality, or enhancing wildlife habitat.

Fund. Under Part 361 of the Natural Resources and Environmental Protection Act (formerly known as the Farmland and Open Space Preservation Act), farmers are able to reduce their property taxes by entering into agreements with the state promising to keep property in agricultural use and not develop it. When land leaves the program, either prematurely or because the agreement has expired, the Department of Treasury places a lien on the property to recapture some or all of the tax credits when the property is developed or sold. If the property is withdrawn from the program prematurely, additional interest is added to the amount of the lien. Money collected through these liens is currently used by the state land use agency to administer the Farmland and Open Space Preservation Act and allow for the purchase of development rights. Beginning July 1, 1999, the bill would require that proceeds collected from lien payments and all unexpended lien proceeds that were being held by the state would be deposited in the Farmland Trust Fund.

The Michigan Farmland Trust Fund would be created within the state treasury. The treasurer would be responsible for directing investment of the fund and would credit interest and earnings from those investments to the fund. The treasurer could also receive money or other assets from any source for deposit in the fund. Money in the fund at the end of the fiscal year would remain in the fund and would not lapse into the general fund.

The accrued interest and earnings of the fund could be expended, upon appropriation, for the following purposes:

- No more than \$600,000 annually for the administrative costs of implementing the bill's provisions for the Department of Natural Resources and the Michigan Farmland Trust Fund Board. However, if the interest and earnings in a fiscal year exceed \$7.5 million, up to 8 percent of the interest and earnings could be expended for administrative costs.
- Of the funds remaining after money is taken out for administrative costs, no less than half would be spent by the director of the DNR for the acquisition of agriculture and resource conservation easements and no more than half would be used to provide grants to local units of government to assist them with the purchase of other agriculture and resource conservation easements.

The department or the board could accept donations of all or a portion of the development rights to one or more parcels of land as part of a transaction for the purchase of development rights.

Grants program for local units. The DNR would be required to establish a program to provide grants to local units of government for the purchase of development rights. A local unit of government that applied for a grant would be required to pay at least 25 percent of the cost of acquiring the development rights. Local units of government that had adopted a development rights ordinance that providing for a program to purchase development rights under the City and Village Zoning Act, the Township Zoning Act, or the County Zoning Act, would be eligible to apply for a grant.

The development rights ordinance adopted by the local unit would have to contain a scoring system for local parcels that were selected and establish the market value of the development rights by subtracting the current fair market value of the property without the

development rights from the current fair market value of the property with all of the development rights.

To apply, a local unit would have to submit an application containing the information required to the DNR on a prescribed form. At a minimum, the application would have to include a list of the parcels proposed for development rights purchase, indicating the size and location of each parcel and the estimated value of the development rights of each parcel. The applications received by the DNR would be forwarded to the Farmland Trust Fund Board on an annual basis.

Farmland Trust Fund Board. The seven-member board would be created within the DNR. The members would include the directors of the DNR and the Department of Agriculture, or their designees, as non-voting members. The remaining five members would be appointed by the governor -- two representing conservation interests, two representing agricultural interests, and one representing the general public. The members would have to be appointed within 60 days after the effective date of the bills' provisions.

Board members would serve four-year terms or until a successor was appointed, whichever was later. The first appointees, however, would serve staggered terms -- with the general public appointee serving one year, one of each of the agricultural and conservation appointees serving two years and the remaining pair of appointees serving three years.

Board members could be removed for incompetence, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office or any other good cause. Vacancies would be filled in the same manner as the original appointment. Board members would serve without compensation; however, they could be reimbursed for actual and necessary expenses.

The first meeting of the board would be called by the director of the DNR, and after that the board would be required to meet at least quarterly (more frequent meetings could occur at the call of the chair or if requested by three or more members). At the first meeting, the board would elect a chairperson and any other officers that the members deemed necessary or appropriate. A majority of the board's members would constitute a quorum, and a majority of the members present and serving would be needed to take any official action. The board's business would have to be conducted at public meetings in compliance with

the Open Meetings Act and any writings prepared, owned, used, in the possession of or retained by the board in the performance of an official function would be subject to the Freedom of Information Act.

The board would be responsible for annually listing, in order of priority, the grant applications it had determined should be approved. The DNR would be required to provide the board with the staff and assistance needed to carry out its responsibilities. The legislature would be required by law to approve the grants that would be funded with money from the trust fund.

Grant review process. When reviewing grant applications for the purchase of *agriculture conservation easements*, the board would have to give consider the following criteria, listed in descending order of importance:

1) The productive capacity suited for the production of feed, food, and fiber of the farmland, including but not limited to, prime or unique farmland or farmland of local importance, as defined by the U.S. Department of Agriculture - Natural Resources Conservation Service.

2) Whether the farmland was:

* Part of a documented, long-range effort or plan for land preservation by the governing body of the local unit of government and would complement that long-range effort or plan.

* Located within an agricultural security area or an area that complements other land protection efforts by creating a block of farmland.

* Adjacent to farmland that is subject to another easement that restricts development on that land in perpetuity.

3) The amount of matching funds from the local unit, private organizations, the owner of the farmland, or other sources in excess of the minimum match amount.

4) Development pressure that would permanently alter the ability for the land to be used for productive agricultural activity.

5) Enrollment in the Farmland or Open Space Preservation Act program.

6) The existence of a conservation plan approved by the soil conservation district.

When considering applications for *resource conservation easements*, the board would have to

consider whether the acquisition would: be consistent with local conservation plans, complement federal and private programs that fund the purchase of development rights for the same or similar purposes, and meet the technical specifications established by the U.S. Department of Agriculture Farm Service Agency.

Upon appropriation, the DNR would distribute the grants to the recipients. Receipt of a grant would be conditioned on the DNR's approval of the easement. When reviewing permitted uses within an agriculture conservation easement the department would have to consider whether the use would adversely affect the productivity of the farmland, materially alter or negatively affect the existing conditions or use of the land, result in a material alteration of an existing structure to a nonagricultural use, and whether the use conformed with all applicable federal, state, and local laws and ordinances.

The DNR would have the authority to promulgate rules to implement the bills' provisions.

Tie bar. House Bill 5895 would not take effect unless House Bill 5894 were also enacted, and House Bill 5894 would not take effect unless House Bills 5895 and House Bills 5620 and 5621 and Senate Bills 902 and 904 (which would provide for a Clean Michigan Initiative bond proposal to be placed on the November 1998 ballot) and House Bill 5719 (to provide for the use of bond fund money for local public recreation projects) were also enacted.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bills would result in increased state administrative costs for the new local grants program to purchase development rights, and would also affect how state revenues are expended by diverting revenue for the purchase of development rights from the current program under the DNR to the new local grants program. (6-15-98)

ARGUMENTS:

For:

Agriculture contributes over \$37 billion to Michigan's economy every year, making it the second largest

industry in the state. The state has some 46,500 farms that produce more than 100 different crops, second only to California for diversity of crops grown. However, in spite of the valuable contributions of agriculture, Michigan has allowed its available farmland to be eaten away by urban and suburban sprawl as residential developments are built on once productive farmland to provide houses for those people moving from cities and suburbs to rural areas. According to a recent study by the Michigan Society of Planning Officials, the state lost about 10 acres of farmland every hour from 1982 through 1992 -- some 854,000 acres of farmland in all. During the same time period, the state's overall population grew by only 33,000 people, but many rural areas had significant increases in population.

The programs created by House Bills 5894 and 5895 would help protect farmland from development while allowing the landowners to continue to own and work the property. By allowing for the purchase of development rights, the bills create a voluntary, financially competitive alternative to development. The purchase of development rights (PDR) program in the bills provides a more immediate and substantial payoff for farmers, which can be used to reduce debt, expand or modernize equipment, or invest. The program also provides for a longer term and greater degree of protection against development than the current tax credit program. In addition, the reduction in the market value of the property caused by the sale of development rights may also help to reduce property taxes and make it less costly to transfer the farm to others who wish to use the property for agricultural purposes -- e.g. the children of the farm owner.

Further, the purchase of development rights has advantages over purchasing the land outright because it allows the land to retain its current use as farmland while restricting the current and future rights for development to those allowed in the purchase agreement. It is beneficial both for the purchaser, who effectively prevents future development of the land that would be inconsistent with the agreement, and for the land owner who continues to be allowed to use the property for farming and is paid for agreeing to continue to refrain from exercising rights that he or she was not using.

The bills also offers financial assistance to local units of governments to help them to protect valuable farmland and buffer zones. The changes made in 1996 allowed local units to engage in purchasing development rights but failed to offer any financial assistance. By setting up a grant program and allowing for up to fifty percent of the fund's income to be spent assisting local units to purchase development rights,

the bills will help to significantly increase the investment of local units in development rights and thereby help to expand the number of acres of farmland that will be protected from being developed. This also gives communities the opportunity to support and protect the farms in their area.

Against:

The bills do nothing to correct one of the more serious flaws in the recent changes made to Part 361 of NREPA, the changes that disallow the use of the money from the lien fund to purchase development rights for open space, rather than just farm land. The tax credits that are granted to farmers under these provisions are paid from the general fund and should be used for a broader purpose that protecting and subsidizing agri-businesses.

Preservation of the state's unique and beautiful natural areas is an extremely important concern. The same current practices of poor land-use planning and urban sprawl are also threatening one of the state's greatest assets -- its natural areas. If the bills are successful in taking farmland off the market for developers, this will only serve to increase the pressure on the state's natural areas. Although efforts to stop the development of farmland are not without merit, failure to protect the state's natural beauty will likely harm another important state industry -- tourism.

Response:

The bills would allow for purchasing development rights of "resource conservation" areas, whose purpose would be to preserve a permanent vegetative cover adjacent to a body of water in order to reduce pollution, improve water quality, and enhance wildlife habitat.

Against:

The bill offers a more complicated solution than is necessary. Michigan already has a Natural Resources Trust Fund, which is financed by oil and gas revenues from state-owned land and is used to purchase additional state land for public access. Simply placing the lien fund money into this fund and allowing for the fund to be used, in addition to its current uses, to purchase development rights both for farmland and for open land might be an easier solution. Or, rather than continuing to attempt to keep farmland and open space

"off the market", another solution might be to increase efforts to encourage the use or re-use of already developed areas and help to revitalize urban centers. Another possible solution would be to help keep farm property taxes lower by providing for use value assessments, where farmland is assessed based on its agricultural use instead of its potential for development. Michigan is apparently one of the few states that does not provide for this type of assessment of farm property. Currently, property taxes put a particular financial strain on farmers where urban sprawl is already encroaching because the farm's property taxes rise under the current assessment system as the nearby farms become residential developments.

The Michigan Farm Bureau supports the bills. (6-12-98)

Against:

Several financial issues are raised by the bills. For example, the percentage of the price required of local units (25 percent) is probably too high for a large number of the smaller local units and will, in all likelihood, limit the program to wealthier local units. This is particularly likely to be true as the price that developers are willing to pay increases. In addition, since it is probable that fewer and fewer farmers will take advantage of the current tax credit (provided that they would be barred from doing so after having sold an easement under the bills), the fund will decrease and be less and less effective as time goes by. Without another source of money the fund will effectively swallow itself. While the provisions for donations may help but if the fund is to be successful in the long run, more funding is needed. One strong possibility for a source might be the Clean Michigan Initiative.

Even if the funds are found, since removal of property from the development market by the sale of development rights will increase the value of the remaining property, the price of development rights will increase over time and the farmers that hold out will be able to get a higher price than those who sign on early in the program.

POSITIONS:

The Department of Agriculture supports the bills. (6-12-98)

The Michigan Environmental Council supports the bills. (6-12-98)

The Michigan Townships Association has not taken a formal position due to concerns about the current language of the bills. (6-12-98)

Analyst: W. Flory

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.