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BILL ANALYSIS

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Senate Bill 1247 (as introduced 5-4-00)  
Sponsor: Senator Ken Sikkema  
Committee: Farming, Agribusiness and Food Systems

Date Completed: 5-9-00

## **CONTENT**

**The bill would add Part 362 (Agricultural Preservation Fund) to the Natural Resources and Environmental Protection Act (NREPA) to do the following:**

- **Create the Agricultural Preservation Fund, and require the Department of Agriculture to establish a grant program, to provide grants to counties for the purchase of agricultural conservation easements.**
- **Provide that money in the Fund could be used for administrative costs; grants to counties and credits toward their matching funds for acquiring conservation easements; and local matching funds required for the purchase of farmland development rights.**
- **Prohibit the amount of a grant from exceeding 75% of the purchase price of an agricultural conservation easement.**
- **Establish criteria for the evaluation of county grant applications for the acquisition of agricultural easements.**
- **Create the Agricultural Preservation Fund Board to evaluate grant applications.**
- **Require the Department of Agriculture to distribute grants to counties, and specify that a conservation easement would be held jointly by the State and a county board of commissioners.**
- **Permit the Department to promulgate rules to implement the bill.**

The bill is tie-barred to Senate Bill 1245, which would require that agricultural property assessments be based on agricultural use value, and Senate Bill 1246, which would create the "Agricultural Property Recapture Act" to provide for the levy of a recapture tax on qualified agricultural property that was converted from agricultural property by a change in use, and dedicate the proceeds to the Agricultural Preservation Fund. Also, the bill could not take effect unless Senate Joint Resolution M was approved by a vote of the electors and became a part of the State Constitution. (Senate Joint

Resolution M proposes an amendment to the State Constitution to provide for the assessment of agricultural property based on the lesser of a property's market value or agricultural use value, without regard to that property's highest and best use.)

### Agricultural Preservation Fund

The bill would create the Agricultural Preservation Fund within the State Treasury. The State Treasurer could receive money or other assets from any source for deposit into the Fund. The State Treasurer would have to direct the investment of the Fund and credit to it interest and earnings from Fund investments. Money in the Fund at the close of the fiscal year would have to remain in the Fund and could not lapse to the General Fund.

Money in the Fund could be spent, upon appropriation and after approval of the Agricultural Preservation Fund Board and the Agriculture Commission, as follows: Not more than \$700,000 annually could be spent for the administrative costs of the Department and the Board in implementing the bill and Part 361 (Farmland and Open Space Preservation). If deposits into the Fund during any given fiscal year exceeded \$8.75 million, however, up to 8% of the deposits could be spent for these administrative costs. After expenditures for the administrative costs, money in the Fund could be used to provide grants to counties for the purchase of agricultural conservation easements and for credits toward a local government's match of funds to cover a portion of the cost of acquiring an agricultural conservation easement, as authorized by the Board. ("Agricultural conservation easement" would mean a conveyance, by a written instrument, in which, subject to permitted uses, the owner relinquished to the public in perpetuity his or her development rights and made a covenant running with the land not to undertake development. (A covenant "running with the land" is binding on future owners.) "Development" would mean an activity that materially altered or affected the existing conditions

or use of any land in a manner that was inconsistent with an agricultural use. "Development rights" would mean an interest in land that included the right to construct a building or structure, to improve land for development, or to divide a parcel for development purposes.)

In addition, the Department of Agriculture could use money in the Fund to apply toward the local match required of counties under Part 19 (Natural Resources Trust Fund) for a grant from the Trust Fund to purchase development rights on farmland. The money could be spent under this provision only if the Board approved its use for this purpose at least 120 days before the deadline for submitting a grant application under Part 19. If money were appropriated for this purpose, the amount that a county was eligible to receive could not exceed 5% of the amount of money collected by the county under the proposed Agricultural Property Recapture Act.

After the expenditures described above had been made, if the amount of money remaining in the Fund exceeded \$10 million, it could be used for the acquisition of development rights or agricultural conservation easements, pursuant to the NREPA's provisions on development rights acquisition (MCL 324.36111b).

The bill specifies that expenditures of money in the Fund, as provided in the bill, would be consistent with the State's interest in preserving farmland and would be declared to be for an important public purpose.

("Farmland" would mean one or more of the following:

- A farm of at least 40 acres in one ownership, with at least 51% of the land area devoted to an agricultural use.
- A farm of at least five acres but less than 40 acres in one ownership, with at least 51% of the land area devoted to an agricultural use, that had produced a gross annual income from agriculture of at least \$200 per year per acre of cleared and tillable land. A farm, as described above, that was enrolled in a Federal acreage set aside program or a Federal conservation reserve program would be considered to have produced a gross annual income from agriculture of at least \$200 per acre of cleared and tillable land. If the farm were enrolled in a Federal acreage set aside program or a Federal conservation reserve program it would be considered to meet that income test.
- A farm designated by the Department of Agriculture as a specialty farm in one ownership that had produced a gross annual income of at

least \$2,000 from an agricultural use. Specialty farms would include greenhouses; equine breeding and grazing; the breeding and grazing of cervidae, pheasants, and other game animals; bees and bee products; mushrooms; aquaculture; and other similar uses and activities.

Also, parcels of land in one ownership that were not contiguous but constituted an integral part of a farming operation being conducted on land otherwise qualifying as farmland could be included in an application under the bill.

"Agricultural use" would mean substantially undeveloped land devoted to the production of plants and animals useful to humans, including forages and sod crops; grains, feed crops, and field crops; dairy and dairy products; poultry and poultry products; livestock; berries; herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables; Christmas trees; and other similar uses and activities. "Agricultural use" would include use in a Federal acreage set-aside program or a Federal conservation reserve program. It would not include the management and harvesting of a woodlot.)

#### Grant Application

The county board of commissioners of a county applying for a grant would have to submit a grant application. A county board of commissioners would be eligible to submit a grant application if the county had established a county agricultural preservation board, as provided under the bill; the county had adopted, within the last 10 years, a comprehensive land use plan that included a plan for agricultural preservation; and the county had adopted a development rights ordinance providing for a purchase of development rights program pursuant to the County Zoning Act. The ordinance would have to contain all of the following: an application procedure; the criteria for a scoring system, to be approved by both the county agricultural preservation board and the county board of commissioners, for parcel selections within the county; a method to establish the price to be paid for development rights, which could include an appraisal, bidding, or formula-based process; and, priority consideration for townships, cities, or villages that had provided additional matching funds for the purchase of development rights or had established agricultural districts.

A county could establish a county agricultural preservation board. This board would be required to provide recommendations, in accordance with the county ordinance, to the county board of commissioners on the selection of parcels to be included in the grant application. The county agricultural preservation board could consist of up to seven members. One member would have to

represent development interests, one would have to be a member of a township board from a township within the county, and a majority would have to represent agricultural interests.

A grant application would have to be submitted on a form prescribed by the Department, and would have to include at a minimum a list of the parcels proposed for acquisition of agricultural conservation easements, the size and location of each parcel, the amount of local matching funds, and the estimated acquisition value of the agricultural conservation easements. Upon receiving grant applications, the Department would have to forward them to the Agricultural Preservation Fund Board for consideration, as prescribed under the bill.

#### Grant Approval

An application submitted to the Agricultural Preservation Fund Board would have to be evaluated according to selection criteria established by the Board. The criteria would have to place a priority on the preservation of farmland that met one or more of the following:

- Had a productive capacity suited for the production of feed, food, and fiber.
- Would complement and was part of a documented, long-range effort or plan for land preservation by the county in which the farmland was located consistent with the county's comprehensive land use plan.
- Was located within an agricultural district established under Part 361 or an area that complemented other land protection efforts by creating a block of farmland that was subject to an agricultural conservation easement under the bill or Part 361, or a resource conservation easement under Part 19.
- Was faced with development pressure that would permanently alter the ability for that farmland to be used for productive agricultural activity.
- Was farmland in which a larger amount than the minimum required under the bill of matching funds or a larger percentage of the agricultural easement value was provided by sources other than the Fund.
- Met other factors considered important by the board.

After reviewing grant applications and evaluating them according to these criteria, the Board would have to determine which grants should be approved and the amount of the grants. The Board would have to submit a report containing this information to the Commission.

A grant could not exceed 75% of the purchase price of an agricultural conservation easement. The Board could establish a maximum amount per acre that could be spent with money from the Fund for the purchase of agricultural conservation easements. A grant would have to require that at least 25% of the cost of acquiring an agricultural conservation easement be provided by the county board of commissioners, the governing body of a municipality within the county, the landowner, or another person. At least 120 days before the deadline for submitting grant applications, however, the Board could authorize the use of additional money from the Fund as a credit toward this match. The amount of the credits could not exceed 20% of the revenue collected during the previous fiscal year by the county submitting the grant application under the proposed Agricultural Property Recapture Act. A credit under this provision would have to be applied

to all grant awards made during the award period.

#### Grant Disbursement

Upon approval by the Board, the Department would be required to distribute the grants to the counties awarded the grants. The Department would have to condition the receipt of a grant upon the Department's approval of the agricultural conservation easements being acquired.

In reviewing permitted uses contained within an agricultural conservation easement, the Department would have to consider whether the permitted uses adversely affected the productivity of farmland, materially altered or negatively affected the existing conditions or use of the land, resulted in a material alteration of an existing structure to a nonagricultural use, and conformed with all applicable Federal, State, and local laws and ordinances. ("Permitted use" would mean any use expressly authorized within an agriculture conservation easement consistent with the farming operation or that did not adversely affect the productivity of the farmland. Storage, retail or wholesale marketing, or processing of agricultural products would be a permitted use in a farming operation if more than 50% of the stored, processed, or merchandised products were produced by the farm operator for at least three of the immediately preceding five years. "Permitted use" would include oil and gas exploration and extraction, but would not include other mineral development that was inconsistent with an agricultural use.)

An agricultural conservation easement acquired under the bill would have to be held jointly by the State and the county board of commissioners of the county in which the land subject to the easement was located. The State, however, could delegate enforcement authority of one or more agricultural conservation easements to the county boards of commissioners of the counties in which the easements were located.

The Department could accept contributions 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 an agricultural conservation easement. A county that purchased agricultural conservation easement with money from a grant could purchase the easement through an installment purchase agreement under terms negotiated by the county.

#### Agricultural Preservation Fund Board

The Agricultural Preservation Fund Board would be created within the Department of Agriculture. The Board would have to consist of the Directors of the Departments of Agriculture and Natural Resources or their designees, and five individuals appointed by the

Governor as follows: two individuals representing agricultural interests, two representing conservation interests, and one representing the general public. In addition to these members, the Director of the Department of Agriculture could appoint two individuals with knowledge and expertise in agriculture or land use, or local government, as nonvoting members.

The first members would have to be appointed within 60 days after the bill's effective date. Appointed members would serve four-year terms or until a successor was appointed, whichever was later. Of the members first appointed by the Governor, however, one would have to be appointed for a term of two years, two for terms of three years, and two for terms of four years.

Board members would have to serve without compensation, but could be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as Board members. The Board annually would have to elect a chairperson and a vice-chairperson from among its members. The Board could remove a member for incompetency, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause. A Board vacancy would have to be filled for the unexpired term in the same manner as the original appointment.

Proposed MCL 324.36201-324.36208

Legislative Analyst: L. Arasim

#### FISCAL IMPACT

The fiscal impact of this bill on State and local units of government would be threefold. First, the bill would result in the expenditure of State revenues deposited in the Agricultural Preservation Fund proposed by the bill. The primary source of revenue to the Fund would be the recapture fee established under Senate Bill 1246. At this time, the amount of revenue the Fund would receive is unknown.

Second, the Department of Agriculture would experience increased administrative costs associated with the county grant program established under the bill. In addition, there would be minimal administrative costs associated with the operations of the Agricultural Preservation Fund Board created within the Department. Under the bill, up to \$700,000 annually could be appropriated to the Department of Agriculture from the Agricultural Preservation Fund to cover the administrative costs resulting from the bill and the administrative costs S9900s1247sa

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associated with the "PA 116" purchase of development rights program (PDR). Should deposits to the Fund exceed \$8.75 million in any given fiscal year, up to 8% could be appropriated for administrative costs. Currently, the administrative costs of the PA 116 program are approximately \$600,000. (Note: Under current law the Department of Natural Resources is responsible for administering the PA 116 program. As currently written, it appears that Senate Bill 1247 contemplates the Department of Agriculture administering the program.)

Finally, counties would realize additional revenue resulting from grants received from the Agricultural Preservation Fund for the purchase of agricultural easements. Counties would be eligible to receive a grant for up to 75% of the purchase price of an agricultural conservation easement. Grants would require at least a 25% local match. (Note: The Agricultural Preservation Fund Board could establish the maximum amount per acre for the purchase of agricultural conservation easements.) The local fiscal impact is unknown, but would be contingent upon the number of counties applying for and receiving grants.

Counties also could receive additional revenue from the Agricultural Preservation Fund to apply toward the local match requirement for a grant from the Natural Resources Trust Fund to purchase development rights on farmland. The fiscal impact of this provision is unknown, but would be contingent upon the number of counties receiving grants.

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