

**SUBSTITUTE FOR
HOUSE BILL NO. 5780**

[A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 36101, 36111 and 36111b (MCL 324.36101,
324.36111, and 324.36111b) section 36101 as amended and section
36111b as added by 1996 PA 233 and section 36111 as amended by
1996 PA 567, and by adding part 362.]

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 36101. As used in this part:

2 (a) "Agricultural use" means substantially undeveloped land
3 devoted to the production of plants and animals useful to humans,
4 including forages and sod crops; grains, feed crops, and field
5 crops; dairy and dairy products; poultry and poultry products;
6 livestock, including breeding and grazing of cattle, swine, cap-
7 tive cervidae, and similar animals; berries; herbs; flowers;
8 seeds; grasses; nursery stock; fruits; vegetables; Christmas

1 trees; and other similar uses and activities. The management and
2 harvesting of a woodlot is not an agricultural use.

3 (B) "CONSERVATION DISTRICT" MEANS A CONSERVATION DISTRICT
4 ESTABLISHED UNDER PART 93.

5 (C) ~~-(b)-~~ "Development" means an activity that materially
6 alters or affects the existing conditions or use of any land.

7 (D) ~~-(c)-~~ "Development rights" means the right to construct
8 a building or structure, to improve land, or the extraction of
9 minerals incidental to a permitted use or as is set forth in an
10 instrument recorded under this part.

11 (E) ~~-(d)-~~ "Development rights agreement" means a restrictive
12 covenant, evidenced by an instrument in which the owner and the
13 state, for a term of years, agree to jointly hold the right to
14 develop the land as may be expressly reserved in the instrument,
15 and that contains a covenant running with the land, for a term of
16 years, not to develop, except as this right is expressly reserved
17 in the instrument.

18 (F) ~~-(e)-~~ "Development rights easement" means a grant, by an
19 instrument, in which the owner relinquishes to the public in per-
20 petuity or for a term of years the right to develop the land as
21 may be expressly reserved in the instrument, and that contains a
22 covenant running with the land, not to develop, except as this
23 right is expressly reserved in the instrument.

24 (G) ~~-(f)-~~ "Farmland" means 1 or more of the following:

25 (i) A farm of 40 or more acres in 1 ownership, with 51% or
26 more of the land area devoted to an agricultural use.

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1 (ii) A farm of 5 acres or more in 1 ownership, but less than
2 40 acres, with 51% or more of the land area devoted to an
3 agricultural use, that has produced a gross annual income from
4 agriculture of \$200.00 per year or more per acre of cleared and
5 tillable land. A farm described in this subparagraph enrolled in
6 a federal acreage set aside program or a federal conservation
7 reserve program is considered to have produced a gross annual
8 income from agriculture of \$200.00 per year or more per acre of
9 cleared and tillable land.

10 (iii) A farm designated by the department of agriculture as
11 a specialty farm in 1 ownership that has produced a gross annual
12 income from an agricultural use of \$2,000.00 or more. Specialty
13 farms include, but are not limited to, greenhouses; equine breed-
14 ing and grazing; the breeding and grazing of cervidae, pheasants,
15 and other game animals; bees and bee products; mushrooms; aqua-
16 culture; and other similar uses and activities.

17 (iv) Parcels of land in 1 ownership that are not contiguous
18 but which constitute an integral part of a farming operation
19 being conducted on land otherwise qualifying as farmland may be
20 included in an application under this part.

21 (H) ~~-(g)-~~ "Local governing body" means 1 of the following:

22 (i) The legislative body of a city or village.

23 (ii) The township board of a township having a zoning ordi-
24 nance in effect as provided by law.

25 (iii) The county board of commissioners in all other areas.

26 (I) ~~-(h)-~~ "Open space land" means 1 of the following:

1 (i) Lands defined as 1 or more of the following:

2 (A) Any undeveloped site included in a national registry of
3 historic places or designated as a historic site pursuant to
4 state or federal law.

5 (B) Riverfront ownership subject to designation under part
6 305, to the extent that full legal descriptions may be declared
7 open space under the meaning of this part, if the undeveloped
8 parcel or government lot parcel or portions of the undeveloped
9 parcel or government lot parcel as assessed and owned is affected
10 by that part and lies within 1/4 mile of the river.

11 (C) Undeveloped lands designated as environmental areas
12 under part 323, including unregulated portions of those lands.

13 (ii) Any other area approved by the local governing body,
14 the preservation of which area in its present condition would
15 conserve natural or scenic resources, including the promotion of
16 the conservation of soils, wetlands, and beaches; the enhancement
17 of recreation opportunities; the preservation of historic sites;
18 and idle potential farmland of not less than 40 acres that is
19 substantially undeveloped and because of its soil, terrain, and
20 location is capable of being devoted to agricultural uses as
21 identified by the department of agriculture.

22 (J) ~~-(i)-~~ "Owner" means a person having a freehold estate in
23 land coupled with possession and enjoyment. If land is subject
24 to a land contract, owner means the vendee in agreement with the
25 vendor.

26 (K) ~~-(j)-~~ "Permitted use" means any use contained within a
27 development rights agreement or a development rights easement

1 consistent with the farming operation or that does not alter the
2 open space character of the land. Storage, retail or wholesale
3 marketing, or processing of agricultural products is a permitted
4 use in a farming operation if more than 50% of the stored, pro-
5 cessed, or merchandised products are produced by the farm opera-
6 tor for at least 3 of the immediately preceding 5 years. The
7 state land use agency shall determine whether a use is a permit-
8 ted use pursuant to section 36104a.

9 (I) ~~(k)~~ "Person" includes an individual, corporation,
10 limited liability company, business trust, estate, trust, part-
11 nership, or association, or 2 or more persons having a joint or
12 common interest in the land.

13 (M) ~~(l)~~ "Prohibited use" means a use that is not consis-
14 tent with an agricultural use for farmland subject to a develop-
15 ment rights agreement or is not consistent with the open space
16 character of the land for lands subject to a development rights
17 easement.

18 (N) ~~(m)~~ "Property taxes" means general ad valorem taxes
19 levied after January 1, 1974, on lands and structures in this
20 state, including collection fees, but not including special
21 assessments, penalties, or interest.

22 (O) ~~(n)~~ "Regional planning commission" means a regional
23 planning commission created pursuant to ~~Act No. 281 of the~~
24 ~~Public Acts of 1945, being sections 125.11 to 125.25 of the~~
25 ~~Michigan Compiled Laws 1945 PA 281, MCL 125.11 TO 125.25.~~

26 (P) ~~(o)~~ "Regional planning district" means the planning
27 and development regions as established by executive directive

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1 1968-1, as amended, whose organizational structure is approved by
2 the regional council.

3 ~~(p) "Soil conservation district" means a district created~~
4 ~~pursuant to part 93.~~

5 (q) "State income tax act" means the income tax act of 1967,
6 ~~Act No. 281 of the Public Acts of 1967, being sections 206.1 to~~
7 ~~206.532 of the Michigan Compiled Laws~~ 1967 PA 281, MCL 206.1 TO
8 206.532, and in effect during the particular year of the refer-
9 ence to the act.

10 (r) "State land use agency" means the ~~land use agency~~
11 ~~within the~~ department of ~~natural resources~~ AGRICULTURE.

12 (s) "Substantially undeveloped" means any parcel or area of
13 land essentially unimproved except for a dwelling, building,
14 structure, road, or other improvement that is incidental to agri-
15 cultural and open space uses.

16 (t) "Unique or critical land area" means agricultural or
17 open space lands identified by the STATE land use agency as an
18 area that should be preserved.

19 Sec. 36111. (1) A development rights agreement shall be
20 relinquished by the state at the expiration of the term of the
21 agreement unless renewed with the consent of the owner of the
22 land. If the owner of the land has complied with the require-
23 ments of this part regarding development rights agreements, the
24 owner is entitled to automatic renewal of the farmland covered by
25 the agreement upon written request of the owner. A development
26 rights agreement may be renewed for a term of not less than 7
27 years. If a development rights agreement is renewed, the state

1 land use agency shall send a copy of the renewal contract to the
2 local governing body of the local unit of government in which the
3 farmland is located.

4 (2) A development rights agreement or a portion of the farm-
5 land covered by a development rights agreement may be relin-
6 quished as provided in this section and section 36111a. Farmland
7 may be relinquished by this state before a termination date con-
8 tained in the instrument under either of the following
9 circumstances:

10 (a) If approved by the local governing body and the state
11 land use agency, land containing structures that were present
12 before the recording of the development rights agreement may be
13 relinquished from the agreement. Not more than 2 acres may be
14 relinquished under this subdivision unless additional land area
15 is needed to encompass all of the buildings located on the
16 parcel, in which case not more than 5 acres may be relinquished.
17 If the parcel proposed to be relinquished is less in area than
18 the minimum parcel size required by local zoning, the parcel may
19 not be relinquished unless a variance is obtained from the local
20 zoning board of appeals to allow for the smaller parcel size.

21 (b) If approved by the local governing body and the state
22 land use agency, land may be relinquished from the agreement for
23 the construction of a residence by an individual essential to the
24 operation of the farm as defined in section 36110(5). Not more
25 than 2 acres may be relinquished under this subdivision. If the
26 parcel proposed to be relinquished is less in area than the
27 minimum parcel size required by local zoning, the parcel may not

1 be relinquished unless a variance is obtained from the local
2 zoning board of appeals to allow for the smaller parcel size.

3 (3) Until April 1, 1997, if an owner who entered into or
4 renewed a development rights agreement before April 15, 1994
5 makes a request, in writing, to the state land use agency, to
6 terminate that development rights agreement with respect to all
7 or a portion of the farmland covered by the agreement, the state
8 land use agency shall approve the request and relinquish that
9 farmland from the development rights agreement. If farmland is
10 relinquished under this subsection, the state land use agency
11 shall notify the local governing body of the local unit of gov-
12 ernment in which the land is located of the relinquishment.

13 (4) If the request for relinquishment of the development
14 rights agreement is approved, the state land use agency shall
15 prepare an instrument, subject to subsections (5), (6), (7), and
16 (8), and record it with the register of deeds of the county in
17 which the land is situated.

18 (5) If a development rights agreement or a portion of a
19 development rights agreement is to be relinquished pursuant to
20 subsection (2) or section 36111a, the state land use agency shall
21 record a lien against the property formerly subject to the devel-
22 opment rights agreement for the total amount of the allocated tax
23 credit of the last 7 years, including the year of termination,
24 received by an owner for that property under the agreement under
25 section 36109, attributable to the property formerly subject to
26 the development rights agreement, plus interest at the rate of 6%

1 per annum simple interest from the time the credit was received
2 until the lien is placed on the property.

3 (6) If the property being relinquished from the development
4 rights agreement is less than all of the property subject to that
5 development rights agreement, the allocated tax credit for the
6 development rights agreement shall be multiplied by the
7 property's share of the taxable value of the agreement. As used
8 in this subsection:

9 (a) "The allocated tax credit" means the amount obtained by
10 multiplying the owner's total farmland preservation credit
11 claimed in that year on all agreements by the quotient of the ad
12 valorem property tax levied in that year on property subject to
13 the development rights agreement that included the property being
14 relinquished from the agreement divided by the total property
15 taxes levied on property subject to any development rights agree-
16 ment and used in determining the farmland preservation credit in
17 that year.

18 (b) "The property's share of the taxable value of the
19 agreement" means the quotient of the taxable value of the prop-
20 erty being relinquished from the agreement divided by the total
21 taxable value of property subject to the development rights
22 agreement that included the property being relinquished from the
23 agreement. For years before 1995, taxable value means assessed
24 value.

25 (7) Thirty days before the recording of a lien under this
26 section, the state land use agency shall notify the owner of the
27 farmland subject to the development rights agreement of the

1 amount of the lien, including interest, if any. If the lien
2 amount is paid before 30 days after the owner is notified, the
3 lien shall not be recorded. The lien may be paid and discharged
4 at any time and is payable to the state by the owner of record at
5 the time the land or any portion of it is sold by the owner of
6 record, or if the land is converted to a use prohibited by the
7 former development rights agreement. The lien shall be dis-
8 charged upon renewal or reentry in a development rights agree-
9 ment, except that a subsequent lien shall not be less than the
10 lien discharged.

11 (8) Upon the natural termination of the development rights
12 agreement under subsections (1) or (13), or the termination of
13 all or a portion of the development rights agreement under sub-
14 section (3), the state land use agency shall prepare and record a
15 lien, if any, against the property formerly subject to the devel-
16 opment rights agreement for the total amount of the allocated tax
17 credit of the last 7 years, including the year of natural termi-
18 nation, received by the owner under section 36109, attributable
19 to the property formerly subject to the development rights
20 agreement. The lien shall be without interest or penalty and is
21 payable subject to subsection (7).

22 (9) Upon termination, the state land use agency shall notify
23 the department of treasury for their records.

24 (10) ~~The~~ UNTIL OCTOBER 1, 2000, THE proceeds from lien
25 payments made under this part shall be used by the state land use
26 agency to administer this part ~~for fiscal years 1991-92 and~~
27 ~~through 1999-2000, to purchase development rights of unique or~~

1 ~~critical land area that does not necessitate direct purchase of~~
2 ~~the fee interest in the land for which money was appropriated~~
3 ~~under Act No. 128 of the Public Acts of 1995,~~ and, pursuant to
4 section 36111b, to purchase development rights on farmland that
5 does not necessitate direct purchase of the fee interest in the
6 land. It is the intent of the legislature that if the accumu-
7 lated proceeds from lien payments received under this part fall
8 below \$2,000,000.00, then the funds used to administer this part
9 shall be appropriated from the general fund until the proceeds
10 from the lien payments received under this part exceed
11 \$2,000,000.00. However, the amount of lien payments used to
12 administer this part shall not exceed \$600,000.00 in any fiscal
13 year. BEGINNING ON OCTOBER 1, 2000, THE PROCEEDS FROM LIEN PAY-
14 MENTS MADE UNDER THIS PART SHALL BE FORWARDED TO THE STATE TREA-
15 SURER FOR DEPOSIT IN THE AGRICULTURAL PRESERVATION FUND CREATED
16 IN SECTION 36202. ON OCTOBER 1, 2000, ALL UNEXPENDED PROCEEDS
17 FROM LIEN PAYMENTS MADE UNDER THIS PART THAT ARE HELD BY THE
18 STATE SHALL BE TRANSFERRED TO THE AGRICULTURAL PRESERVATION FUND
19 CREATED IN SECTION 36202.

20 (11) Upon the relinquishment of all of the farmland under
21 section 36110(2) or a portion of the farmland under
22 section 36110(3), the state land use agency shall prepare and
23 record a lien against the property formerly subject to a develop-
24 ment rights agreement in an amount calculated as follows:

25 (a) Establishing a term of years by multiplying 7 by a frac-
26 tion, the numerator of which is the number of years the farmland
27 was under the development rights agreement, including any

1 extensions, and the denominator of which is the number
2 representing the term of years of that agreement, including any
3 extensions.

4 (b) The lien amount equals the total amount of the allocated
5 tax credit claimed attributable to that development rights agree-
6 ment in the immediately preceding term of years as determined in
7 subdivision (a).

8 (12) When a lien is paid under this section, the state land
9 use agency shall prepare and record a discharge of lien with the
10 register of deeds in the county in which the land is located.
11 The discharge of lien shall specifically state that the lien has
12 been paid in full, that the lien is discharged, that the develop-
13 ment rights agreement and accompanying contract are terminated,
14 and that the state has no further interest in the land under that
15 agreement.

16 (13) An owner of farmland, upon written request to the state
17 land use agency on or before April 1, 1997, may elect to have the
18 remaining term of the development rights agreement reduced to 7
19 years if the farmland has been subject to that development rights
20 agreement for 10 or more years. If the farmland has not been
21 subject to a development rights agreement for 10 or more years,
22 an owner of farmland may, upon written request to the state land
23 use agency on or before April 1, 1997, elect to have the term of
24 the development rights agreement reduced to 17 years from the
25 initial year of enrollment.

26 ~~-(14) Within 60 days of June 5, 1996, the state land use~~
27 ~~agency shall notify, by first-class mail, all owners of farmland~~

1 ~~that have a development rights agreement in effect as determined~~
2 ~~by the state land use agency on June 5, 1996 about all of the~~
3 ~~following:~~

4 ~~(a) The ability to terminate an agreement under subsection~~
5 ~~(3).~~

6 ~~(b) The ability to reduce the termination agreement under~~
7 ~~subsection (13).~~

8 ~~(c) All other significant changes in law contained in the~~
9 ~~amendatory act that added this subsection.~~

[Sec. 36111b. (1) An application submitted under section 36111(10) for development rights acquisition shall be evaluated and ranked according to selection criteria and a scoring system approved ~~jointly by the commission of natural resources and the~~ commission of agriculture. In developing a point system for selecting the parcels for purchase of development rights, the state land use agency ~~and department of agriculture~~ shall seek the assistance of Michigan state university, the United States department of agriculture-natural resources conservation service, and other appropriate professional and industry organizations. The selection criteria shall give consideration to the quality and physical characteristics of the parcel as well as surrounding land uses and threat of development.

(2) The state land use agency shall prepare a notification to those individuals whose farmland development rights agreements are expiring in the year of application or expiring 1 year after the year of application. The notice shall be completed not less than 90 days before an application deadline set by the state land use agency and shall include written information and details regarding the program. Applications for development rights acquisition shall be submitted to the state land use agency by the owner of that land and must include written support by the local governing body.

(3) In developing a scoring system, points shall be given to farmland that meets 1 or more of the following criteria, with subdivision (a) given priority over subdivisions (b) to (e):

(a) Productive capacity of farmland suited for the production of feed, food, and fiber, including, but not limited to, prime or unique farmland or farmland of local importance, as defined by the United States department of agriculture-natural resources conservation service.

(b) Lands that are enrolled under this act.

(c) Prime agricultural lands that are faced with development pressure that will permanently alter the ability for that land to be used for productive agricultural activity.

(d) Parcels that would complement and are part of a documented, long-range effort or plan for land preservation by the local governing body.

(e) Parcels with available matching funds from the local governing body, private organizations, or other sources.

(4) For purposes of this section, development rights value shall be determined 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 development rights.

(5) ~~The director of the department of natural resources in consultation with the~~ director of the department of agriculture shall approve individual parcels for the purchase of development rights based upon the adopted selection criteria and scoring process. ~~The commission of natural resources and the~~ commission of agriculture shall approve a method to establish the price to be paid for development rights, such as via appraisal or bidding process and shall establish the maximum price to be paid on a per purchase basis from the lien fund. The director of the department of ~~natural resources~~ AGRICULTURE, after negotiations with the landowner, shall approve the price to be paid for purchase of

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development rights. Proper releases from mortgage holders and lienholders must be obtained and executed to ensure that all development rights are purchased free and clear of all encumbrances.

(6) All development rights easements shall include appropriate provisions for the protection of the farmland and other unique and critical benefits. Development rights easements created under this section may be terminated if the land, as determined by the ~~natural resources~~ commission OF AGRICULTURE, meets 1 or more of the criteria described in section 36111a(1)(a)(i) through (iv). An easement or portion of an easement shall not be terminated unless approved by the local governing body and the ~~commission of natural resources~~ and the commission of agriculture. If an easement is terminated, the current fair market value of the development rights, at the time of termination, shall be paid to the state land use agency. Any payment received by the state land use agency under this part shall be used to purchase development rights on additional farmland in accordance with the provisions of section 36111(10).

(7) Whenever a public entity, authority, or political subdivision exercises the power of eminent domain and condemns land enrolled under this act, the value of the land shall include the value of development rights covered by development rights agreements. If the development rights have been purchased under section 36111(10), the value of the development rights at the time of condemnation shall be paid to the state land use agency and any payment received by the state land use agency shall be used to purchase development rights on additional land under section 36111(10).]

10 PART 362 AGRICULTURAL PRESERVATION FUND

11 SEC. 36201. AS USED IN THIS PART:

12 (A) "AGRICULTURAL CONSERVATION EASEMENT" MEANS A CONVEYANCE,
13 BY A WRITTEN INSTRUMENT, IN WHICH, SUBJECT TO PERMITTED USES, THE
14 OWNER RELINQUISHES TO THE PUBLIC IN PERPETUITY HIS OR HER DEVEL-
15 OPMENT RIGHTS AND MAKES A COVENANT RUNNING WITH THE LAND NOT TO
16 UNDERTAKE DEVELOPMENT.

17 (B) "AGRICULTURAL USE" MEANS SUBSTANTIALLY UNDEVELOPED LAND
18 DEVOTED TO THE PRODUCTION OF PLANTS AND ANIMALS USEFUL TO HUMANS,
19 INCLUDING FORAGES AND SOD CROPS; GRAINS, FEED CROPS, AND FIELD
20 CROPS; DAIRY AND DAIRY PRODUCTS; POULTRY AND POULTRY PRODUCTS;
21 LIVESTOCK, INCLUDING BREEDING AND GRAZING OF CATTLE, SWINE, CAP-
22 TIVE CERVIDAE, AND SIMILAR ANIMALS; BERRIES; HERBS; FLOWERS;
23 SEEDS; GRASSES; NURSERY STOCK; FRUITS; VEGETABLES; CHRISTMAS
24 TREES; AND OTHER SIMILAR USES AND ACTIVITIES. AGRICULTURAL USE
25 INCLUDES USE IN A FEDERAL ACREAGE SET-ASIDE PROGRAM OR A FEDERAL
26 CONSERVATION RESERVE PROGRAM. AGRICULTURAL USE DOES NOT INCLUDE
27 THE MANAGEMENT AND HARVESTING OF A WOODLOT.

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1 (C) "BOARD" MEANS THE AGRICULTURAL PRESERVATION FUND BOARD
2 CREATED IN SECTION 36204.

3 (D) "COMMISSION" MEANS THE COMMISSION OF AGRICULTURE.

4 (E) "DEPARTMENT" MEANS THE DEPARTMENT OF AGRICULTURE.

5 (F) "DEVELOPMENT" MEANS AN ACTIVITY THAT MATERIALLY ALTERS
6 OR AFFECTS THE EXISTING CONDITIONS OR USE OF ANY LAND IN A MANNER
7 THAT IS INCONSISTENT WITH AN AGRICULTURAL USE.

8 (G) "DEVELOPMENT RIGHTS" MEANS AN INTEREST IN LAND THAT
9 INCLUDES THE RIGHT TO CONSTRUCT A BUILDING OR STRUCTURE, TO
10 IMPROVE LAND FOR DEVELOPMENT, OR TO DIVIDE A PARCEL FOR DEVELOP-
11 MENT PURPOSES.

12 (H) "FARMLAND" MEANS 1 OR MORE OF THE FOLLOWING:

13 (i) A FARM OF 40 OR MORE ACRES IN 1 OWNERSHIP, WITH 51% OR
14 MORE OF THE LAND AREA DEVOTED TO AN AGRICULTURAL USE.

15 (ii) A FARM OF 5 ACRES OR MORE IN 1 OWNERSHIP, BUT LESS THAN
16 40 ACRES, WITH 51% OR MORE OF THE LAND AREA DEVOTED TO AN AGRI-
17 CULTURAL USE, THAT HAS PRODUCED A GROSS ANNUAL INCOME FROM AGRI-
18 CULTURE OF \$200.00 PER YEAR OR MORE PER ACRE OF CLEARED AND TIL-
19 LABLE LAND. A FARM DESCRIBED IN THIS SUBPARAGRAPH ENROLLED IN A
20 FEDERAL ACREAGE SET ASIDE PROGRAM OR A FEDERAL CONSERVATION
21 RESERVE PROGRAM IS CONSIDERED TO HAVE PRODUCED A GROSS ANNUAL
22 INCOME FROM AGRICULTURE OF \$200.00 PER YEAR OR MORE PER ACRE OF
23 CLEARED AND TILLABLE LAND.

24 (iii) A FARM DESIGNATED BY THE DEPARTMENT OF AGRICULTURE AS
25 A SPECIALTY FARM IN 1 OWNERSHIP THAT HAS PRODUCED A GROSS ANNUAL
26 INCOME OF \$2,000.00 OR MORE FROM AN AGRICULTURAL USE. SPECIALTY
27 FARMS INCLUDE, BUT ARE NOT LIMITED TO, GREENHOUSES; EQUINE

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1 BREEDING AND GRAZING; THE BREEDING AND GRAZING OF CERVIDAE,
2 PHEASANTS, AND OTHER GAME ANIMALS; BEES AND BEE PRODUCTS; MUSH-
3 ROOMS; AQUACULTURE; AND OTHER SIMILAR USES AND ACTIVITIES.

4 (iv) PARCELS OF LAND IN 1 OWNERSHIP THAT ARE NOT CONTIGUOUS
5 BUT WHICH CONSTITUTE AN INTEGRAL PART OF A FARMING OPERATION
6 BEING CONDUCTED ON LAND OTHERWISE QUALIFYING AS FARMLAND MAY BE
7 INCLUDED IN AN APPLICATION UNDER THIS PART.

8 (I) "FUND" MEANS THE AGRICULTURAL PRESERVATION FUND CREATED
9 IN SECTION 36202.

10 (J) "GRANT" MEANS A GRANT FOR THE PURCHASE OF AN AGRICULTURE
11 CONSERVATION EASEMENT UNDER THIS PART.

12 (K) "OWNER" MEANS A PERSON HAVING A FREEHOLD ESTATE IN LAND
13 COUPLED WITH POSSESSION AND ENJOYMENT. IF LAND IS SUBJECT TO A
14 LAND CONTRACT, OWNER MEANS THE VENDEE IN AGREEMENT WITH THE
15 VENDOR.

16 (l) "PERMITTED USE" MEANS ANY USE EXPRESSLY AUTHORIZED
17 WITHIN AN AGRICULTURE CONSERVATION EASEMENT CONSISTENT WITH THE
18 FARMING OPERATION OR THAT DOES NOT ADVERSELY AFFECT THE PRODUC-
19 TIVITY OF THE FARMLAND. STORAGE, RETAIL OR WHOLESALE MARKETING,
20 OR PROCESSING OF AGRICULTURAL PRODUCTS IS A PERMITTED USE IN A
21 FARMING OPERATION IF MORE THAN 50% OF THE STORED, PROCESSED, OR
22 MERCHANDISED PRODUCTS ARE PRODUCED BY THE FARM OPERATOR FOR AT
23 LEAST 3 OF THE IMMEDIATELY PRECEDING 5 YEARS. PERMITTED USE
24 INCLUDES OIL AND GAS EXPLORATION AND EXTRACTION, BUT DOES NOT
25 INCLUDE OTHER MINERAL DEVELOPMENT THAT IS INCONSISTENT WITH AN
26 AGRICULTURAL USE.

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1 SEC. 36202. (1) THE AGRICULTURAL PRESERVATION FUND IS
2 CREATED WITHIN THE STATE TREASURY.

3 (2) THE STATE TREASURER MAY RECEIVE MONEY OR OTHER ASSETS
4 FROM ANY SOURCE FOR DEPOSIT INTO THE FUND, INCLUDING GIFTS,
5 BEQUESTS, AND OTHER DONATIONS. THE STATE TREASURER SHALL DIRECT
6 THE INVESTMENT OF THE FUND AND SHALL CREDIT TO THE FUND INTEREST
7 AND EARNINGS FROM FUND INVESTMENTS.

8 (3) MONEY IN THE FUND AT THE CLOSE OF THE FISCAL YEAR SHALL
9 REMAIN IN THE FUND AND SHALL NOT LAPSE TO THE GENERAL FUND.

10 (4) MONEY IN THE FUND MAY BE EXPENDED, UPON APPROPRIATION,
11 FOLLOWING APPROVAL OF THE BOARD AND THE COMMISSION, AS FOLLOWS:

12 (A) NOT MORE THAN \$700,000.00 ANNUALLY FOR THE ADMINISTRA-
13 TIVE COSTS OF THE DEPARTMENT AND THE BOARD IN IMPLEMENTING THIS
14 PART AND PART 361. HOWEVER, IF DEPOSITS INTO THE FUND DURING ANY
15 GIVEN FISCAL YEAR EXCEED \$8,750,000.00, UP TO 8% OF THE DEPOSITS
16 MAY BE EXPENDED FOR ADMINISTRATIVE COSTS PURSUANT TO THIS
17 SUBDIVISION.

18 (B) AFTER EXPENDITURES FOR THE ADMINISTRATIVE COSTS UNDER
19 SUBDIVISION (A), MONEY IN THE FUND MAY BE USED TO PROVIDE GRANTS
20 TO LOCAL UNITS OF GOVERNMENT PURSUANT TO SECTION 36203.

21 (C) AFTER EXPENDITURES UNDER SUBDIVISIONS (A) AND (B) HAVE
22 BEEN MADE, IF THE AMOUNT OF MONEY REMAINING IN THE FUND EXCEEDS
23 \$10,000,000.00, MONEY IN THE FUND MAY BE USED PURSUANT TO
24 SECTION 36111B FOR THE ACQUISITION OF DEVELOPMENT RIGHTS.

25 (5) EXPENDITURES OF MONEY IN THE FUND AS PROVIDED IN THIS
26 PART ARE CONSISTENT WITH THE STATE'S INTEREST IN PRESERVING
27 FARMLAND AND ARE DECLARED TO BE FOR AN IMPORTANT PUBLIC PURPOSE.

1 SEC. 36203. (1) THE DEPARTMENT SHALL ESTABLISH A GRANT
2 PROGRAM TO PROVIDE GRANTS TO ELIGIBLE LOCAL UNITS OF GOVERNMENT
3 FOR THE PURCHASE OF AGRICULTURAL CONSERVATION EASEMENTS.

4 (2) A GRANT APPLICATION SHALL BE SUBMITTED BY THE LOCAL UNIT
5 OF GOVERNMENT APPLYING FOR THE GRANT. A LOCAL UNIT OF GOVERNMENT
6 IS ELIGIBLE TO SUBMIT A GRANT APPLICATION UNDER THIS SECTION IF
7 BOTH OF THE FOLLOWING REQUIREMENTS HAVE BEEN MET:

8 (A) THE LOCAL UNIT OF GOVERNMENT HAS ADOPTED A DEVELOPMENT
9 RIGHTS ORDINANCE PROVIDING FOR A PURCHASE OF DEVELOPMENT RIGHTS
10 PROGRAM PURSUANT TO THE COUNTY ZONING ACT, 1943 PA 183, MCL
11 125.201 TO 125.240, THE TOWNSHIP ZONING ACT, 1943 PA 184, MCL
12 125.271 TO 125.310, OR THE CITY AND VILLAGE ZONING ACT, 1921 PA
13 207, MCL 125.581 TO 125.600, THAT CONTAINS ALL OF THE FOLLOWING:

14 (i) AN APPLICATION PROCEDURE.

15 (ii) THE CRITERIA FOR A SCORING SYSTEM FOR PARCEL SELECTIONS
16 WITHIN THE LOCAL UNIT OF GOVERNMENT.

17 (iii) A METHOD TO ESTABLISH THE PRICE TO BE PAID FOR DEVEL-
18 OPMENT RIGHTS, WHICH MAY INCLUDE AN APPRAISAL, BIDDING, OR
19 FORMULA-BASED PROCESS.

20 (B) THE LOCAL UNIT OF GOVERNMENT HAS ADOPTED, WITHIN THE
21 LAST 10 YEARS, A COMPREHENSIVE LAND USE PLAN THAT INCLUDES A PLAN
22 FOR AGRICULTURAL PRESERVATION.

23 (3) AN APPLICATION FOR A GRANT SHALL BE SUBMITTED ON A FORM
24 PRESCRIBED BY THE DEPARTMENT. THE GRANT APPLICATION SHALL
25 INCLUDE AT A MINIMUM A LIST OF THE PARCELS PROPOSED FOR ACQUISI-
26 TION OF AGRICULTURAL CONSERVATION EASEMENTS, THE SIZE AND
27 LOCATION OF EACH PARCEL, THE AMOUNT OF LOCAL MATCHING FUNDS, AND

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18

1 THE ESTIMATED ACQUISITION VALUE OF THE AGRICULTURAL CONSERVATION
2 EASEMENTS.

3 (4) UPON RECEIPT OF GRANT APPLICATIONS PURSUANT TO
4 SUBSECTION (3), THE DEPARTMENT SHALL FORWARD THOSE GRANT APPLICA-
5 TIONS TO THE BOARD FOR CONSIDERATION UNDER SECTION 36205.

6 SEC. 36204. (1) THE AGRICULTURAL PRESERVATION FUND BOARD IS
7 CREATED WITHIN THE DEPARTMENT.

8 (2) THE BOARD SHALL CONSIST OF THE FOLLOWING MEMBERS:

9 (A) THE DIRECTOR OF THE DEPARTMENT OR HIS OR HER DESIGNEE.

10 (B) THE DIRECTOR OF THE DEPARTMENT OF NATURAL RESOURCES OR
11 HIS OR HER DESIGNEE.

12 (C) FIVE INDIVIDUALS APPOINTED BY THE GOVERNOR.

13 (D) IN ADDITION TO THE MEMBERS DESCRIBED IN SUBDIVISIONS (A)
14 TO (C), THE DIRECTOR OF THE DEPARTMENT MAY APPOINT 2 INDIVIDUALS
15 WITH KNOWLEDGE AND EXPERTISE IN AGRICULTURE OR LAND USE, OR LOCAL
16 GOVERNMENT, AS NONVOTING MEMBERS.

17 (3) THE MEMBERS FIRST APPOINTED TO THE BOARD SHALL BE
18 APPOINTED WITHIN 60 DAYS AFTER THE EFFECTIVE DATE OF THIS
19 SECTION.

20 (4) MEMBERS OF THE BOARD APPOINTED UNDER SUBSECTION (2)(C)
21 AND (D) SHALL SERVE FOR TERMS OF 4 YEARS OR UNTIL A SUCCESSOR IS
22 APPOINTED, WHICHEVER IS LATER. HOWEVER, OF THE MEMBERS FIRST
23 APPOINTED UNDER SUBSECTION (2)(C), 1 SHALL BE APPOINTED FOR A
24 TERM OF 2 YEARS, 2 SHALL BE APPOINTED FOR TERMS OF 3 YEARS, AND 2
25 SHALL BE APPOINTED FOR TERMS OF 4 YEARS.

26 (5) A MAJORITY OF THE MEMBERS OF THE BOARD CONSTITUTE A
27 QUORUM FOR THE TRANSACTION OF BUSINESS AT A MEETING OF THE

1 BOARD. A MAJORITY OF THE MEMBERS PRESENT AND SERVING ARE
2 REQUIRED FOR OFFICIAL ACTION OF THE BOARD.

3 (6) MEMBERS OF THE BOARD SHALL SERVE WITHOUT COMPENSATION.
4 HOWEVER, MEMBERS OF THE BOARD MAY BE REIMBURSED FOR THEIR ACTUAL
5 AND NECESSARY EXPENSES INCURRED IN THE PERFORMANCE OF THEIR OFFI-
6 CIAL DUTIES AS MEMBERS OF THE BOARD.

7 (7) THE BOARD SHALL ANNUALLY ELECT A CHAIRPERSON AND A
8 VICE-CHAIRPERSON FROM AMONG ITS MEMBERS.

9 (8) THE BOARD MAY REMOVE A MEMBER OF THE BOARD FOR INCOMPE-
10 TENCY, DERELICTION OF DUTY, MALFEASANCE, MISFEASANCE, OR NONFEA-
11 SANCE IN OFFICE, OR ANY OTHER GOOD CAUSE.

12 (9) A VACANCY ON THE BOARD SHALL BE FILLED FOR THE UNEXPIRED
13 TERM IN THE SAME MANNER AS THE ORIGINAL APPOINTMENT.

14 SEC. 36205. (1) AN APPLICATION SUBMITTED TO THE BOARD UNDER
15 SECTION 36203 SHALL BE EVALUATED ACCORDING TO SELECTION CRITERIA
16 ESTABLISHED BY THE BOARD. THE CRITERIA SHALL PLACE A PRIORITY ON
17 THE ACQUISITION OF AGRICULTURAL CONSERVATION EASEMENTS ON FARM-
18 LAND THAT MEETS 1 OR MORE OF THE FOLLOWING:

19 (A) FARMLAND THAT HAS A PRODUCTIVE CAPACITY SUITED FOR THE
20 PRODUCTION OF FEED, FOOD, AND FIBER.

21 (B) FARMLAND THAT WOULD COMPLEMENT AND IS PART OF A DOCU-
22 MENTED, LONG-RANGE EFFORT OR PLAN FOR LAND PRESERVATION BY THE
23 LOCAL UNIT OF GOVERNMENT IN WHICH THE FARMLAND IS LOCATED.

24 (C) FARMLAND THAT IS LOCATED WITHIN AN AREA THAT COMPLEMENTS
25 OTHER LAND PROTECTION EFFORTS BY CREATING A BLOCK OF FARMLAND
26 THAT IS SUBJECT TO AN AGRICULTURAL CONSERVATION EASEMENT UNDER

1 THIS PART, OR A DEVELOPMENT RIGHTS AGREEMENT UNDER PART 361, OR
2 IN WHICH DEVELOPMENT RIGHTS HAVE BEEN ACQUIRED UNDER PART 361.

3 (D) FARMLAND IN WHICH THE APPLICANT OR OTHER PERSON CONTRIB-
4 UTES A PORTION OF THE MONEY FOR OR PROVIDES OTHER CONSIDERATION
5 TOWARD THE COST OF THE AGRICULTURAL CONSERVATION EASEMENT, AND
6 THE AMOUNT OF THAT CONTRIBUTION.

7 (E) OTHER FACTORS CONSIDERED IMPORTANT BY THE BOARD.

8 (2) AFTER REVIEWING GRANT APPLICATIONS FOR THE ACQUISITION
9 OF AGRICULTURAL CONSERVATION EASEMENTS AND EVALUATING THEM
10 ACCORDING TO THE CRITERIA ESTABLISHED IN SUBSECTION (1), THE
11 BOARD SHALL DETERMINE WHICH GRANTS SHOULD BE AWARDED AND THE
12 AMOUNT OF THE GRANTS. UPON MAKING ITS DETERMINATION, THE BOARD
13 SHALL NOTIFY THE DEPARTMENT AND SHALL SUBMIT A REPORT CONTAINING
14 THIS INFORMATION TO THE COMMISSION.

15 (3) THE BOARD MAY ESTABLISH A MAXIMUM AMOUNT PER ACRE THAT
16 MAY BE EXPENDED WITH MONEY FROM THE FUND FOR THE PURCHASE OF
17 AGRICULTURAL CONSERVATION EASEMENTS.

18 SEC. 36206. (1) AFTER THE BOARD DETERMINES WHICH GRANTS
19 SHOULD BE AWARDED, AND THE AMOUNT OF THE GRANTS, THE DEPARTMENT
20 SHALL DISTRIBUTE THE GRANTS TO THE LOCAL UNITS OF GOVERNMENT
21 AWARDED THE GRANTS. THE DEPARTMENT SHALL CONDITION THE RECEIPT
22 OF A GRANT UPON THE DEPARTMENT'S APPROVAL OF THE AGRICULTURAL
23 CONSERVATION EASEMENTS BEING ACQUIRED.

24 (2) IN REVIEWING PERMITTED USES CONTAINED WITHIN AN AGRICUL-
25 TURAL CONSERVATION EASEMENT UNDER SUBSECTION (1), THE DEPARTMENT
26 SHALL CONSIDER ALL OF THE FOLLOWING:

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1 (A) WHETHER THE PERMITTED USES ADVERSELY AFFECT THE
2 PRODUCTIVITY OF FARMLAND.

3 (B) WHETHER THE PERMITTED USES MATERIALLY ALTER OR NEGA-
4 TIVELY AFFECT THE EXISTING CONDITIONS OR USE OF THE LAND.

5 (C) WHETHER THE PERMITTED USES RESULT IN A MATERIAL ALTER-
6 ATION OF AN EXISTING STRUCTURE TO A NONAGRICULTURAL USE.

7 (D) WHETHER THE PERMITTED USES CONFORM WITH ALL APPLICABLE
8 FEDERAL, STATE, AND LOCAL LAWS AND ORDINANCES.

9 (3) THE DEPARTMENT MAY ACCEPT CONTRIBUTIONS OF ALL OR A POR-
10 TION OF THE DEVELOPMENT RIGHTS TO 1 OR MORE PARCELS OF LAND AS
11 PART OF A TRANSACTION FOR THE PURCHASE OF AN AGRICULTURAL CONSER-
12 VATION EASEMENT.

13 (4) A LOCAL UNIT OF GOVERNMENT THAT PURCHASES AN AGRICUL-
14 TURAL CONSERVATION EASEMENT WITH MONEY FROM A GRANT MAY PURCHASE
15 THE AGRICULTURAL CONSERVATION EASEMENT THROUGH AN INSTALLMENT
16 PURCHASE AGREEMENT UNDER TERMS NEGOTIATED BY THE LOCAL UNIT OF
17 GOVERNMENT.

18 (5) AN AGRICULTURAL CONSERVATION EASEMENT ACQUIRED UNDER
19 THIS PART SHALL BE HELD JOINTLY BY THE STATE AND THE LOCAL UNIT
20 OF GOVERNMENT IN WHICH THE LAND SUBJECT TO THE AGRICULTURAL CON-
21 SERVATION EASEMENT IS LOCATED. HOWEVER, THE STATE MAY DELEGATE
22 ENFORCEMENT AUTHORITY OF 1 OR MORE AGRICULTURAL CONSERVATION
23 EASEMENTS TO THE LOCAL UNITS OF GOVERNMENT IN WHICH THE AGRICUL-
24 TURAL CONSERVATION EASEMENTS ARE LOCATED.

25 (6) AN AGRICULTURAL CONSERVATION EASEMENT ACQUIRED UNDER
26 THIS PART MAY BE TRANSFERRED TO THE OWNER OF THE PROPERTY SUBJECT

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1 TO THE AGRICULTURAL CONSERVATION EASEMENT IF BOTH OF THE
2 FOLLOWING CONDITIONS ARE MET:

3 (A) THE STATE AND THE LOCAL UNIT OF GOVERNMENT HOLDING THE
4 AGRICULTURAL CONSERVATION EASEMENT AGREE TO THE TRANSFER AND THE
5 TERMS OF THE TRANSFER.

6 (B) THE PROPERTY OWNER AGREES TO PAY TO THE FUND THE FAIR
7 MARKET VALUE OF THE AGRICULTURAL CONSERVATION EASEMENT AS OF THE
8 DATE OF THE TRANSFER, BUT NOT LESS THAN THE ORIGINAL PURCHASE
9 AMOUNT.

10 SEC. 36208. THE DEPARTMENT MAY PROMULGATE RULES TO IMPL-
11 MENT THIS PART.

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