

**SUBSTITUTE FOR
HOUSE BILL NO. 5808**

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 36101 and 36106 (MCL 324.36101 and
324.36106), section 36101 as amended by 2000 PA 262 and
section 36106 as amended by 2002 PA 75.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 36101. As used in this part:

2 (a) "Agricultural conservation easement" means a conveyance,
3 by a written instrument, in which, subject to permitted uses, the
4 owner relinquishes to the public in perpetuity his or her devel-
5 opment rights and makes a covenant running with the land not to
6 undertake development.

7 (b) "Agricultural use" means the production of plants and
8 animals useful to humans, including forages and sod crops;
9 grains, feed crops, and field crops; ~~dairy and~~ dairy products;

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1 poultry and poultry products; livestock, including breeding and
2 grazing of cattle, swine, captive cervidae, and similar animals;
3 berries; herbs; flowers; seeds; grasses; nursery stock; fruits;
4 vegetables; Christmas trees; and other similar uses and
5 activities. Agricultural use includes use in a federal acreage
6 set-aside program or a federal conservation reserve program.
7 Agricultural use does not include the management and harvesting
8 of a woodlot.

9 (c) "Conservation district board" means that term as defined
10 in section 9301.

11 (d) "Development" means an activity that materially alters
12 or affects the existing conditions or use of any land.

13 (e) "Development rights" means an interest in land that
14 includes the right to construct a building or structure, to
15 improve land for development, to divide a parcel for development,
16 or to extract minerals incidental to a permitted use or as is set
17 forth in an instrument recorded under this part.

18 (f) "Development rights agreement" means a restrictive cove-
19 nant, evidenced by an instrument in which the owner and the
20 state, for a term of years, agree to jointly hold the right to
21 undertake development of the land, and that contains a covenant
22 running with the land, for a term of years, not to undertake
23 development, subject to permitted uses.

24 (g) "Development rights easement" means a grant, by an
25 instrument, in which the owner relinquishes to the public in per-
26 petuity or for a term of years the right to undertake development

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1 of the land, and that contains a covenant running with the land,
2 not to undertake development, subject to permitted uses.

3 (h) "Farmland" means 1 or more of the following:

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

6 (ii) A farm of NOT LESS THAN 5 acres or more ~~in 1 owner-~~
7 ~~ship, but less~~ than 40 acres IN 1 OWNERSHIP, with 51% or more of
8 the land area devoted to an agricultural use, that has produced a
9 gross annual income from agriculture of \$200.00 per year or more
10 per acre of cleared and tillable land. A farm described in this
11 subparagraph enrolled in a federal acreage set aside program or a
12 federal conservation reserve program is considered to have
13 produced a gross annual income from agriculture of \$200.00 per
14 year or more per acre of cleared and tillable land.

15 (iii) A farm designated by the department of agriculture as
16 a specialty farm in 1 ownership that has produced a gross annual
17 income from an agricultural use of \$2,000.00 or more. Specialty
18 farms include, but are not limited to, greenhouses; equine breed-
19 ing and grazing; the breeding and grazing of cervidae, pheasants,
20 and other game animals; FARMS FOR THE PRODUCTION OF bees and bee
21 products; ~~mushrooms~~ MUSHROOM FARMS; aquaculture FACILITIES; and
22 other similar uses and activities.

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

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1 (i) "Local governing body" means 1 of the following:

2 (i) With respect to farmland or open space land that is
3 located in a city or village, the legislative body of the city or
4 village.

5 (ii) With respect to farmland or open space land that is not
6 located in a city or village but that is located in a township
7 having a zoning ordinance in effect as provided by law, the town-
8 ship board of the township.

9 (iii) With respect to farmland or open space land that is
10 not described in subparagraph (i) or (ii), the county board of
11 commissioners.

12 (j) "Open space land" means 1 of the following:

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

14 (A) Any undeveloped site included in a national registry of
15 historic places or designated as a historic site pursuant to
16 state or federal law.

17 (B) Riverfront ownership subject to designation under part
18 305, to the extent that full legal descriptions may be declared
19 open space under the meaning of this part, if the undeveloped
20 parcel or government lot parcel or portions of the undeveloped
21 parcel or government lot parcel as assessed and owned is affected
22 by that part and lies within 1/4 mile of the river.

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

25 (ii) Any other area approved by the local governing body,
26 the preservation of which area in its present condition would

27 ~~conserve~~ DO 1 OR MORE OF THE FOLLOWING:

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1 (A) CONSERVE natural or scenic resources, including ~~the~~
2 ~~promotion of the conservation of~~ soils, wetlands, and beaches.
3 ~~the enhancement of~~

4 (B) ENHANCE recreation opportunities. ~~the preservation~~
5 of

6 (C) PRESERVE historic sites. ~~and~~

7 (D) CONSERVE idle potential farmland of not less than 40
8 acres that is substantially undeveloped and because of its soil,
9 terrain, and location is capable of being devoted to agricultural
10 uses as identified by the department of agriculture.

11 (E) CONSERVE FARMLAND.

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 a development rights agreement, development rights ease-
18 ment, or agriculture conservation easement that is consistent
19 with the farming operation or that does not alter the open space
20 character of the land. Storage, retail or wholesale marketing,
21 or processing of agricultural products is a permitted use in a
22 farming operation if more than 50% of the stored, processed, or
23 merchandised products are produced by the farm operator for at
24 least 3 of the immediately preceding 5 years. The state land use
25 agency shall determine whether a use is a permitted use pursuant
26 to section 36104a.

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1 (m) "Person" includes an individual, corporation, limited
2 liability company, business trust, estate, trust, partnership, or
3 association, or 2 or more persons having a joint or common inter-
4 est in land.

5 (n) "Planning commission" means a planning commission cre-
6 ated by the local governing body under 1945 PA 282, MCL 125.101
7 to 125.107, 1959 PA 168, MCL 125.321 to 125.333, or 1931 PA 285,
8 MCL 125.31 to 125.45, as applicable.

9 (o) "Prohibited use" means a use that is not consistent with
10 an agricultural use for farmland subject to a development rights
11 agreement or is not consistent with the open space character of
12 the land for lands subject to a development rights easement.

13 (p) "Property taxes" means general ad valorem taxes levied
14 after January 1, 1974, on lands and structures in this state,
15 including collection fees, but not including special assessments,
16 penalties, or interest.

17 (q) "Regional planning commission" means a regional planning
18 commission created pursuant to 1945 PA 281, MCL 125.11 to
19 125.25.

20 (r) "Regional planning district" means the planning and
21 development regions as established by executive directive 1968-1,
22 as amended, whose organizational structure is approved by the
23 regional council.

24 (s) "State income tax act" means the income tax act of 1967,
25 1967 PA 281, MCL 206.1 to 206.532, and in effect during the par-
26 ticular year of the reference to the act.

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1 (t) "State land use agency" means the department of
2 agriculture.

3 (u) "Substantially undeveloped" means any parcel or area of
4 land essentially unimproved except for a dwelling, building,
5 structure, road, or other improvement that is incidental to agri-
6 cultural and open space uses.

7 (v) "Unique or critical land area" means agricultural or
8 open space lands identified by the land use agency as an area
9 that should be preserved.

10 Sec. 36106. (1) An owner of open space land desiring an
11 open space development rights easement whose land is subject to
12 section 36101(j)(ii) may apply by filing an application with the
13 local governing body. The application shall be made on a form
14 prescribed by the state land use agency. The application shall
15 contain information reasonably necessary to properly identify the
16 land as open space. This information shall include a land survey
17 or a legal description of the land and a map showing the signifi-
18 cant natural features and all structures and physical improve-
19 ments located on the land.

20 (2) Upon receipt of an application, the local governing body
21 shall notify the county planning commission, the regional plan-
22 ning commission, and the soil conservation district agency. If
23 the local governing body is the county board of commissioners,
24 the county board shall also notify the township board of the
25 township in which the land is situated. If the land is within 3
26 miles of the boundary of a city or within 1 mile of the boundary

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1 of a village, the local governing body shall notify the governing
2 body of the city or village.

3 (3) An entity receiving notice under subsection (2) has 30
4 days to review, comment, and make recommendations to the local
5 governing body with which the application was filed.

6 (4) The local governing body shall approve or reject the
7 application after considering the comments and recommendations of
8 the reviewing entities and within 45 days after the application
9 was received by the local governing body, unless that period is
10 extended by agreement of the parties involved. The local govern-
11 ing body's approval or rejection of the application shall be
12 based upon, and consistent with, rules promulgated by the state
13 land use agency under section 36116. If the local governing body
14 does not act within the time prescribed or agreed upon, the
15 applicant may proceed as provided in subsection (9) as if the
16 application was rejected.

17 (5) If the application is approved by the local governing
18 body, the local governing body shall prepare the easement. If
19 the application is approved by the state land use agency on
20 appeal, the state land use agency shall prepare the easement. An
21 easement prepared under this section shall contain all of the
22 following provisions:

23 (a) A structure shall not be built on the land without the
24 approval of the local governing body. HOWEVER, IF THE LAND IS
25 FARMLAND, A STRUCTURE SHALL NOT BE BUILT ON THE LAND EXCEPT FOR
26 USE CONSISTENT WITH FARM OPERATIONS, WHICH INCLUDES A RESIDENCE
27 FOR AN INDIVIDUAL ESSENTIAL TO THE OPERATION OF THE FARM UNDER

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1 SECTION 36111(2)(B), OR LINES FOR UTILITY TRANSMISSION OR
2 DISTRIBUTION PURPOSES OR WITH THE APPROVAL OF THE LOCAL GOVERNING
3 BODY.

4 (b) An improvement to the land shall not be made without the
5 approval of the local governing body. HOWEVER, IF THE LAND IS
6 FARMLAND, AN IMPROVEMENT TO THE LAND SHALL NOT BE MADE EXCEPT FOR
7 USE CONSISTENT WITH FARM OPERATIONS OR WITH THE APPROVAL OF THE
8 LOCAL GOVERNING BODY.

9 (c) An interest in the land shall not be sold, except for a
10 scenic, access, or utility easement that does not substantially
11 hinder the character of the open space land.

12 (d) Public access to the open space land may be provided if
13 agreed upon by the owner and if access will not jeopardize the
14 conditions of the land.

15 (e) Any other condition or restriction on the land as agreed
16 to by both parties that is considered necessary to preserve the
17 land or appropriate portions of it as open space land.

18 (6) Upon receipt of the application, the local governing
19 body shall direct either the local assessing officer or an inde-
20 pendent certified assessor to make an on-site appraisal of the
21 land within 30 days in compliance with the Michigan state tax
22 commission assessors manual OR, IF THE LAND IS FARMLAND, WITH THE
23 AGRICULTURAL SECTION OF THE MICHIGAN STATE TAX COMMISSION ASSES-
24 SORS MANUAL. The approved application shall contain a statement
25 specifying the current fair market value of the land and the cur-
26 rent fair market value of the development rights, if any. A copy

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1 of the approved application and the development rights easement
2 shall be forwarded to the applicant for his or her execution.

3 (7) If the owner of the land executes the approved easement,
4 it shall be returned to the local governing body for its
5 execution. The local governing body shall record the development
6 rights easement with the register of deeds of the county. A copy
7 of the approved easement shall be forwarded to the local assess-
8 ing office and to the state land use agency for their
9 information.

10 (8) The decision of the local governing body may be appealed
11 to the state land use agency, pursuant to subsection (9).

12 (9) If an application for an open space development rights
13 easement is rejected by the local governing body, the local gov-
14 erning body shall notify the applicant and all reviewing entities
15 with a written statement of the reasons for rejection. ~~Within~~
16 UNLESS THE LAND IS FARMLAND, WITHIN 30 days after receipt of the
17 rejected application, the applicant may appeal the rejection to
18 the state land use agency. The state land use agency shall have
19 60 days to approve or reject the application. The state land use
20 agency shall submit to the legislature each approved application
21 for an open space development rights easement and an analysis of
22 its cost. The application shall be approved in both houses by a
23 resolution concurred in by a majority of the members elected and
24 serving in each house. The amount of the cost shall be returned
25 to the local governing body where lost revenues are indicated. A
26 copy of the approved application and an appropriate easement
27 shall be forwarded by the state land use agency to the applicant

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1 for execution and to the local governing body where the land is
2 situated.

3 (10) If an application for an open space development rights
4 easement is rejected under subsection (4) OR (9), the applicant
5 may reapply for an open space development rights easement begin-
6 ning 1 year after the final rejection.

7 (11) FARMLAND SUBJECT TO A DEVELOPMENT RIGHTS AGREEMENT
8 UNDER SECTION 36104 OR AN AGRICULTURAL CONSERVATION EASEMENT OR
9 PURCHASE OF DEVELOPMENT RIGHTS UNDER SECTION 36111B OR 36206 IS
10 NOT ELIGIBLE FOR AN OPEN SPACE DEVELOPMENT RIGHTS EASEMENT.
11 FARMLAND SUBJECT TO AN OPEN SPACE DEVELOPMENT RIGHTS EASEMENT IS
12 NOT ELIGIBLE FOR A DEVELOPMENT RIGHTS AGREEMENT UNDER SECTION
13 36104 OR AN AGRICULTURAL CONSERVATION EASEMENT OR PURCHASE OF
14 DEVELOPMENT RIGHTS UNDER SECTION 36111B OR 36206.

15 (12) ~~-(11)-~~ The development rights held by the local govern-
16 ing body as expressed in an open space development rights ease-
17 ment are exempt from ad valorem taxation.

18 (13) THIS STATE SHALL REIMBURSE INTERMEDIATE SCHOOL DIS-
19 TRICTS EACH YEAR FOR ALL TAX REVENUE LOST AS THE RESULT OF THE
20 EXEMPTION UNDER SUBSECTION (12).

21 (14) THIS STATE SHALL REIMBURSE LOCAL SCHOOL DISTRICTS EACH
22 YEAR FOR ALL TAX REVENUE LOST AS THE RESULT OF THE EXEMPTION
23 UNDER SUBSECTION (12) FROM TAXES LEVIED UNDER SECTION 1211 OF THE
24 REVISED SCHOOL CODE, 1976 PA 451, MCL 380.1211.

25 (15) THIS STATE SHALL REIMBURSE A COMMUNITY COLLEGE DISTRICT
26 EACH YEAR FOR ALL TAX REVENUE LOST AS A RESULT OF THE EXEMPTION

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1 UNDER SUBSECTION (12) FROM TAXES LEVIED OR COLLECTED UNDER THE
2 GENERAL PROPERTY TAX ACT, 1893 PA 206, MCL 211.1 TO 211.157.

3 (16) THIS STATE SHALL REIMBURSE, FROM THE GENERAL FUND, THE
4 SCHOOL AID FUND ESTABLISHED BY SECTION 11 OF ARTICLE IX OF THE
5 STATE CONSTITUTION OF 1963 FOR ALL REVENUES LOST AS THE RESULT OF
6 THE EXEMPTION UNDER SUBSECTION (12).