

Senate Bill 692

[A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 36105, 36106, 36109, 36111, 36111a, and 36206
(MCL 324.36105, 324.36106, 324.36109, 324.36111, 324.36111a, and
324.36206), sections 36105 and 36106 as amended and section 36111a as
added by 1996 PA 233, section 36109 as amended by 2000 PA 421, and section
36111 as amended and section 36206 as added by 2000 PA 262.]

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 36105. (1) If an owner of open space land desires an
2 open space development rights easement, and the land is subject
3 to section ~~36101(h)(i)~~ 36101(J)(i), the procedures for filing
4 an application provided by the state land use agency shall follow
5 as provided in section 36104, except ~~subsections (7) and (12) of~~
6 ~~section 36104~~ SECTION 36104(7) AND (12) DO NOT APPLY TO AN OPEN
7 SPACE DEVELOPMENT RIGHTS EASEMENT.

(2) The state land use agency, within 60 days after the open space development rights easement application is received, shall approve or reject the application. If the application is approved by the state land use agency, the state land use agency shall prepare an open space development rights easement that includes the following provisions:

(a) A structure shall not be built on the land without the approval of the state land use agency.

(b) Improvement to the land shall not be made without the approval of the state land use agency.

(c) ~~Any~~ AN interest in the land shall NOT be sold, ~~only~~ EXCEPT for a scenic, access, or utility easement that does not substantially hinder the character of the open space land.

(d) Access to the open space land may be provided if access is agreed to by the owner and if access will not jeopardize the conditions of the land.

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

(3) Upon receipt of the application, the state land use agency shall notify the state tax commission. Upon notification, the state tax commission shall within 60 days make an on-site appraisal of the land in compliance with the Michigan state tax commission assessors manual. The application shall contain a statement specifying the current fair market value of the land and the current fair market value of the development rights. The state land use agency shall submit to the legislature each

1 application for an open space development rights easement and an
2 analysis of its cost to the state. The application shall be
3 approved in both houses by a resolution concurred in by a major-
4 ity of the members elected and serving in each house. The amount
5 of the cost shall be returned to the local governing body if lost
6 revenues are indicated. A copy of the approved application and
7 the open space development rights easement shall be forwarded by
8 the state land use agency to the applicant for execution and to
9 the local assessing office where the land is situated.

10 (4) IF AN APPLICATION FOR AN OPEN SPACE DEVELOPMENT RIGHTS
11 EASEMENT IS REJECTED UNDER SUBSECTION (2), THE APPLICANT MAY
12 REAPPLY FOR AN OPEN SPACE DEVELOPMENT RIGHTS EASEMENT BEGINNING 1
13 YEAR AFTER THE REJECTION.

14 (5) ~~-(3)-~~ The development rights held by the state as
15 expressed in an open space development rights easement under this
16 section are exempt from ad valorem taxation.

17 Sec. 36106. (1) An owner of open space land desiring an
18 open space development rights easement whose land is subject to
19 section ~~36101(h)(ii)~~ 36101(J)(ii) may apply by filing an appli-
20 cation with the local governing body. ~~having jurisdiction under~~
21 ~~this part.~~ The application shall be made on a form prescribed by
22 the state land use agency. The application shall contain infor-
23 mation reasonably necessary to properly identify the land as open
24 space. This information shall include a land survey or a legal
25 description of the land and a map showing the significant natural
26 features and all structures and physical improvements located on
27 the land.

1 (2) Upon receipt of an application, the local governing body
2 shall notify the county planning commission, the regional plan-
3 ning commission, and the soil conservation district agency. If
4 the ~~county has jurisdiction, the county~~ LOCAL GOVERNING BODY IS
5 THE COUNTY BOARD OF COMMISSIONERS, THE COUNTY BOARD shall also
6 notify the township board of the township in which the land is
7 situated. If the land is within 3 miles of the boundary of a
8 city or within 1 mile of the boundary of a village, the ~~county~~
9 LOCAL GOVERNING BODY shall notify the governing body of the city
10 or village.

11 (3) An ~~agency or local governing body~~ ENTITY receiving
12 notice ~~shall have~~ UNDER SUBSECTION (2) HAS 30 days to review,
13 comment, and make recommendations to the local governing body
14 with which the application was filed.

15 (4) ~~After considering the comments and recommendations of~~
16 ~~the reviewing agencies, the~~ THE local governing body shall
17 approve or reject the application AFTER CONSIDERING THE COMMENTS
18 AND RECOMMENDATIONS OF THE REVIEWING ENTITIES AND within 45 days
19 after the application ~~has been~~ WAS received by the local gov-
20 erning body, unless ~~time~~ THAT PERIOD is extended by agreement
21 of the parties involved. The local governing body's approval or
22 rejection of the application shall be based upon, and consistent
23 with, rules promulgated by the state land use agency under sec-
24 tion 36116. If the local governing body does not act within the
25 time prescribed or agreed upon, the applicant may proceed as pro-
26 vided in subsection (9) as if the application was rejected.

1 (5) If the application is approved by the local governing
2 body, the local governing body shall prepare the easement. If
3 the application is approved by the state land use agency on
4 appeal, the state land use agency shall prepare the easement. An
5 easement prepared under this section shall contain all of the
6 following provisions:

7 (a) A structure shall not be built on the land without the
8 approval of the local governing body.

9 (b) An improvement to the land shall not be made without the
10 approval of the local governing body.

11 (c) ~~Any~~ AN interest in the land shall not be sold, except
12 for A scenic, access, or utility ~~easements~~ EASEMENT that ~~do~~
13 DOES not substantially hinder the character of the open space
14 land.

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

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

21 (6) Upon receipt of the application, the local governing
22 body shall direct either the local assessing officer or an inde-
23 pendent certified assessor to make an on-site appraisal of the
24 land within 30 days in compliance with the Michigan state tax
25 commission assessors manual. The approved application shall con-
26 tain a statement specifying the current fair market value of the
27 land and the current fair market value of the development rights,

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

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

11 (8) The decision of the local governing body ~~having juris-~~
12 ~~diction under this part~~ may be appealed to the state land use
13 agency, pursuant to subsection (9).

14 (9) If an application for an open space development rights
15 easement is rejected by the local governing body, the local gov-
16 erning body shall notify the applicant and all reviewing
17 ~~agencies concerned~~ ENTITIES with a written statement
18 ~~regarding~~ OF the reasons for rejection. Within 30 days after
19 receipt of the rejected application, the applicant may appeal the
20 rejection to the state land use agency. The state land use
21 agency shall have 60 days to approve or reject the application.
22 The state land use agency shall submit to the legislature each
23 approved application for an open space development rights ease-
24 ment and an analysis of its cost. The application shall be
25 approved in both houses by a resolution concurred in by a major-
26 ity of the members elected and serving in each house. The amount
27 of the cost shall be returned to the local governing body where

1 lost revenues are indicated. A copy of the approved application
2 and an appropriate easement shall be forwarded by the state land
3 use agency to the applicant for execution and to the local gov-
4 erning body where the land is situated.

5 (10) ~~An~~ IF AN APPLICATION FOR AN OPEN SPACE DEVELOPMENT
6 RIGHTS EASEMENT IS REJECTED UNDER SUBSECTION [(4)], THE applicant
7 may reapply for an open space development rights easement
8 ~~following a 1-year waiting period~~ BEGINNING 1 YEAR AFTER THE
9 FINAL REJECTION.

10 (11) The development rights held by the local governing body
11 as expressed in an open space development rights easement are
12 exempt from ad valorem taxation.

13 Sec. 36109. (1) An owner of farmland and related buildings
14 ~~covered by~~ SUBJECT TO 1 or more development rights agreements
15 ~~meeting the requirements of this part~~ UNDER SECTION 36104 OR
16 AGRICULTURAL CONSERVATION EASEMENTS OR PURCHASES OF DEVELOPMENT
17 RIGHTS UNDER SECTION 36111B OR 36206 who is required or eligible
18 to file a return as an individual or a claimant under the state
19 income tax act may claim a credit against the state income tax
20 liability for the amount by which the property taxes on the land
21 and structures used in the farming operation, including the home-
22 stead, restricted by the development rights agreements, AGRICUL-
23 TURAL CONSERVATION EASEMENTS, OR PURCHASES OF DEVELOPMENT RIGHTS
24 exceed 3.5% of the household income as defined in ~~chapter 9 of~~
25 ~~the state~~ SECTION 508 OF THE income tax act OF 1967, 1967
26 PA 281, MCL ~~206.501 to 206.532~~ 206.508, excluding a deduction

1 if taken under section 613 of the internal revenue code of 1986.

2 For the purposes of this section, all of the following apply:

3 (a) A partner in a partnership is considered an owner of
4 farmland and related buildings OWNED BY THE PARTNERSHIP AND cov-
5 ered by a development rights agreement ~~that are owned by the~~
6 ~~partnership~~ AGRICULTURAL CONSERVATION EASEMENT, OR PURCHASE OF
7 DEVELOPMENT RIGHTS. A partner is considered to pay a proportion
8 of the property taxes on that property equal to the partner's
9 share of ownership of capital or distributive share of ordinary
10 income as reported by the partnership to the internal revenue
11 service or, if the partnership is not required to report that
12 information to the internal revenue service, as provided in the
13 partnership agreement or, if there is no written partnership
14 agreement, a statement signed by all the partners. A partner
15 claiming a credit under this section based upon the partnership
16 agreement or a statement shall file a copy of the agreement or
17 statement with his or her income tax return. If the agreement or
18 statement is not filed, the department of treasury shall deny the
19 credit. All partners in a partnership claiming the credit
20 allowed under this section shall compute the credit using the
21 same basis for the apportionment of the property taxes.

22 (b) A shareholder of a corporation that has filed a proper
23 election under subchapter S of chapter 1 of subtitle A of the
24 internal revenue code of 1986, 26 U.S.C. 1361 to 1379, is consid-
25 ered an owner of farmland and related buildings covered by a
26 development rights agreement that are owned by the corporation.
27 A shareholder is considered to pay a proportion of the property

1 taxes on that property equal to the shareholder's percentage of
2 stock ownership for the tax year as reported by the corporation
3 to the internal revenue service. Except as provided in
4 subsection (8), this subdivision applies to tax years beginning
5 after 1987.

6 (c) Except as otherwise provided in this subdivision, an
7 individual in possession of property for life under a life estate
8 with remainder to another person or holding property under a life
9 lease is considered the owner of that property if it is farmland
10 and related buildings covered by a development rights agreement.
11 Beginning January 1, 1986, if an individual in possession of
12 property for life under a life estate with remainder to another
13 person or holding property under a life lease enters into a writ-
14 ten agreement with the person holding the remainder interest in
15 that land and the written agreement apportions the property taxes
16 in the same manner as revenue and expenses, the life lease or
17 life estate holder and the person holding the remainder interest
18 may claim the credit under this act as it is apportioned to them
19 under the written agreement upon filing a copy of the written
20 agreement with the return.

21 (d) If a trust holds farmland and related buildings covered
22 by a development rights agreement and an individual is treated
23 under subpart E of subchapter J of subchapter A of chapter 1 of
24 the internal revenue code of 1986, 26 U.S.C. 671 to 679, as the
25 owner of that portion of the trust that includes the farmland and
26 related buildings, that individual is considered the owner of
27 that property.

1 (e) An individual who is the sole beneficiary of a trust
2 that is the result of the death of that individual's spouse is
3 considered the owner of farmland and related buildings covered by
4 a development rights agreement and held by the trust if the trust
5 conforms to all of the following:

6 (i) One hundred percent of the trust income is distributed
7 to the beneficiary in the tax year in which the trust receives
8 the income.

9 (ii) The trust terms do not provide that any portion of the
10 trust is to be paid, set aside, or otherwise used in a manner
11 that would qualify for the deduction allowed by section 642(c) of
12 the internal revenue code of 1986.

13 (f) A member in a limited liability company is considered an
14 owner of farmland and related buildings covered by a development
15 rights agreement that are owned by the limited liability
16 company. A member is considered to pay a proportion of the prop-
17 erty taxes on that property equal to the member's share of owner-
18 ship or distributive share of ordinary income as reported by the
19 limited liability company to the internal revenue service.

20 (2) An owner of farmland and related buildings ~~covered by~~
21 SUBJECT TO 1 or more development rights agreements ~~meeting the~~
22 ~~requirements of this part~~ UNDER SECTION 36104 OR AGRICULTURAL
23 CONSERVATION EASEMENTS OR PURCHASES OF DEVELOPMENT RIGHTS UNDER
24 SECTION 36111B OR 36206 to whom subsection (1) does not apply may
25 claim a credit under the single business tax act, 1975 PA 228,
26 MCL 208.1 to 208.145, for the amount by which the property taxes
27 on the land and structures used in farming operations restricted

1 by the development rights agreements, AGRICULTURAL CONSERVATION
2 EASEMENTS, OR PURCHASES OF DEVELOPMENT RIGHTS exceed 3.5% of the
3 adjusted business income of the owner as defined in section 36 of
4 the single business tax act, 1975 PA 228, MCL 208.36, plus com-
5 pensation to shareholders not included in adjusted business
6 income, excluding any deductions if taken under section 613 of
7 the internal revenue code of 1986. When calculating adjusted
8 business income for tax years beginning before 1987, federal tax-
9 able income shall not be less than zero for the purposes of this
10 subsection only. A participant is not eligible to claim a credit
11 and refund against the state single business tax unless the par-
12 ticipant demonstrates that the participant's agricultural gross
13 receipts of the farming operation exceed 5 times the property
14 taxes on the land for each of 3 out of the 5 tax years immedi-
15 ately preceding the year in which the credit is claimed. This
16 eligibility requirement does not apply to those participants who
17 executed farmland development rights agreements under this part
18 before January 1, 1978. A participant may compare, during the
19 contract period, the average of the most recent 3 years of agri-
20 cultural gross receipts to property taxes in the first year that
21 the participant entered the program under the present contract in
22 calculating the gross receipts qualification. Once an election
23 is made by the participant to compute the benefit in this manner,
24 all future calculations shall be made in the same manner.

25 (3) If the farmland and related buildings covered by a
26 development rights agreement UNDER SECTION 36104 OR AN
27 AGRICULTURAL CONSERVATION EASEMENT OR PURCHASE OF DEVELOPMENT

1 RIGHTS UNDER SECTION 36111B OR 36206 are owned by more than 1
2 owner, each owner is allowed to claim a credit under this section
3 based upon that owner's share of the property tax payable on the
4 farmland and related buildings. The department of treasury shall
5 consider the property tax equally apportioned among the owners
6 unless a written agreement signed by all the owners is filed with
7 the return, which agreement apportions the property taxes in the
8 same manner as all other items of revenue and expense. If the
9 property taxes are considered equally apportioned, a husband and
10 wife shall be considered 1 owner, and a person with respect to
11 whom a deduction under section 151 of the internal revenue code
12 of 1986 is allowable to another owner of the property shall not
13 be considered an owner.

14 (4) A beneficiary of an estate or trust to which subsection
15 (1) does not apply is entitled to the same percentage of the
16 credit provided in this section as that person's percentage of
17 all other distributions by the estate or trust.

18 (5) If the allowable amount of the credit claimed exceeds
19 the state income tax or the state single business tax otherwise
20 due for the tax year or if there is no state income tax or the
21 state single business tax due for the tax year, the amount of the
22 claim not used as an offset against the state income tax or the
23 state single business tax, after examination and review, shall be
24 approved for payment to the claimant pursuant to 1941 PA 122,
25 MCL 205.1 to 205.31. The total credit allowable under this part
26 and chapter 9 of the ~~state~~ income tax act OF 1967, 1967 PA 281,
27 MCL 206.501 TO 206.532, or the single business tax act, 1975

1 PA 228, MCL 208.1 to 208.145, shall not exceed the total property
2 tax due and payable by the claimant in that year. The amount the
3 credit exceeds the property tax due and payable shall be deducted
4 from the credit claimed under this part.

5 (6) For purposes of audit, review, determination, appeals,
6 hearings, notices, assessments, and administration relating to
7 the credit program provided by this section, the state income tax
8 act or single business tax act, 1975 PA 228, MCL 208.1 to
9 208.145, applies according to which tax the credit is claimed
10 against. If an individual is allowed to claim a credit under
11 subsection (1) based upon property owned or held by a partner-
12 ship, S corporation, or trust, the department of treasury may
13 require that the individual furnish to the department a copy of a
14 tax return, or portion of a tax return, and supporting schedules
15 that the partnership, S corporation, or trust files under the
16 internal revenue code.

17 (7) The department of treasury shall account separately for
18 payments under this part and not combine them with other credit
19 programs. A payment made to a claimant for a credit claimed
20 under this part shall be issued by 1 or more warrants made out to
21 the county treasurer in each county in which the claimant's prop-
22 erty is located and the claimant, unless the claimant specifies
23 on the return that a copy of the receipt showing payment of the
24 property taxes that became a lien in the year for which the
25 credit is claimed, or that became a lien in the year before the
26 year for which the credit is claimed, is attached to the income
27 tax or single business tax return filed by the claimant. If the

1 claimant specifies that a copy of the receipt is attached to the
2 return, the payment shall be made directly to the claimant. A
3 warrant made out to a claimant and a county treasurer shall be
4 used first to pay delinquent property taxes, interest, penalties,
5 and fees on property restricted by the development rights
6 agreement. If the warrant exceeds the amount of delinquent
7 taxes, interest, penalties, and fees, the county treasurer shall
8 remit the excess to the claimant. If a claimant falsely speci-
9 fies that the receipt showing payment of the property taxes is
10 attached to the return and if the property taxes on the land
11 subject to that development rights agreement were not paid before
12 the return was filed, all future payments to that claimant of
13 credits claimed under this act attributable to that development
14 rights agreement may be made payable to the county treasurer of
15 the county in which the property subject to the development
16 rights agreement is located and to that claimant.

17 (8) For property taxes levied after 1987, a person that was
18 an S corporation and had entered into a development rights agree-
19 ment before January 1, 1989, and paid property taxes on that
20 property, may claim the credit allowed by this section as an
21 owner eligible under subsection (2). A subchapter S corporation
22 claiming a credit as permitted by this subsection for taxes
23 levied in 1988 through 1990 shall claim the credit by filing an
24 amended return under the single business tax act, 1975 PA 228,
25 MCL 208.1 to 208.145. If a subchapter S corporation files an
26 amended return as permitted by this subsection and if a
27 shareholder of the subchapter S corporation claimed a credit

1 under subsection (1)(b) for the same property taxes, the
2 shareholder shall file an amended return under the state income
3 tax act. A subchapter S corporation is not entitled to a credit
4 under this subsection until all of its shareholders file the
5 amended returns required by this subsection. The department of
6 treasury shall first apply a credit due to a subchapter S corpo-
7 ration under this subsection to repay credits claimed under this
8 section by the subchapter S corporation's shareholders for prop-
9 erty taxes levied in 1988 through 1990 and shall refund any
10 remaining credit to the S corporation. Interest or penalty is
11 not due or payable on an income tax liability resulting from an
12 amended return required by this subsection. A subchapter S cor-
13 poration electing to claim a credit as an owner eligible under
14 subsection (2) shall not claim a credit under subsection (1) for
15 property taxes levied after 1987.

16 Sec. 36111. (1) A development rights agreement ~~shall be~~
17 ~~relinquished by the state~~ EXPIRES at the expiration of the term
18 of the agreement unless renewed with the consent of the owner of
19 the land. If the owner of the land has complied with the
20 requirements of this part regarding development rights agree-
21 ments, the owner is entitled to automatic renewal of the farmland
22 covered by the agreement upon written request of the owner. A
23 development rights agreement may be renewed for a term of not
24 less than 7 years. If a development rights agreement is renewed,
25 the state land use agency shall send a copy of the renewal con-
26 tract to the local governing body of the local unit of government
27 in which the farmland is located.

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

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

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

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

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

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

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

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

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

23 (7) Thirty days before the recording of a lien under this
24 section, the state land use agency shall notify the owner of the
25 farmland subject to the development rights agreement of the
26 amount of the lien, including interest, if any. If the lien
27 amount is paid before 30 days after the owner is notified, the

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

9 (8) Upon ~~the natural termination of the development rights~~
10 ~~agreement under subsections (1) or (13), or~~ the termination of
11 all or a portion of the development rights agreement under sub-
12 section (3), THE TERMINATION OF A DEVELOPMENT RIGHTS AGREEMENT
13 UNDER SUBSECTION (13), OR, SUBJECT TO SUBSECTION (15), THE TERMI-
14 NATION OF A DEVELOPMENT RIGHTS AGREEMENT UNDER SUBSECTION (1),
15 the state land use agency shall prepare and record a lien, if
16 any, against the property formerly subject to the development
17 rights agreement for the total amount of the allocated tax credit
18 of the last 7 years, including the year of ~~natural~~ termination,
19 received by the owner under section 36109, attributable to the
20 property formerly subject to the development rights agreement.
21 The lien shall be without interest or penalty and is payable
22 subject to subsection (7).

23 (9) Upon termination OF A DEVELOPMENT RIGHTS AGREEMENT, the
24 state land use agency shall notify the department of treasury for
25 their records.

26 (10) Until October 1, 2000, the proceeds from lien payments
27 made under this part shall be used by the state land use agency

1 to administer this part and, pursuant to section 36111b, to
2 purchase development rights on farmland that does not necessitate
3 direct purchase of the fee interest in the land. Beginning on
4 October 1, 2000, the unappropriated proceeds from lien payments
5 made under this part shall be forwarded to the state treasurer
6 for deposit in the agricultural preservation fund created in sec-
7 tion 36202. On October 1, 2000, all unexpended proceeds from
8 lien payments made under this part that are held by the state
9 shall be transferred to the agricultural preservation fund cre-
10 ated in section 36202.

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

16 (a) Establishing a term of years by multiplying 7 by a frac-
17 tion, the numerator of which is the number of years the farmland
18 was under the development rights agreement, including any exten-
19 sions, and the denominator of which is the number representing
20 the term of years of that agreement, including any extensions.

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

25 (12) When a lien is paid under this section, the state land
26 use agency shall prepare and record a discharge of lien with the
27 register of deeds in the county in which the land is located.

1 The discharge of lien shall specifically state that the lien has
2 been paid in full, that the lien is discharged, that the develop-
3 ment rights agreement and accompanying contract are terminated,
4 and that the state has no further interest in the land under that
5 agreement.

6 (13) An owner of farmland, upon written request to the state
7 land use agency on or before April 1, 1997, may elect to have the
8 remaining term of the development rights agreement reduced to 7
9 years if the farmland has been subject to that development rights
10 agreement for 10 or more years. If the farmland has not been
11 subject to a development rights agreement for 10 or more years,
12 an owner of farmland may, upon written request to the state land
13 use agency on or before April 1, 1997, elect to have the term of
14 the development rights agreement reduced to 17 years from the
15 initial year of enrollment.

16 (14) A FARMLAND DEVELOPMENT RIGHTS AGREEMENT IS AUTOMATI-
17 CALLY RELINQUISHED WHEN THE FARMLAND BECOMES SUBJECT TO [AN AGRICULTURAL
18 CONSERVATION EASEMENT OR PURCHASE OF DEVELOPMENT RIGHTS] UNDER SECTION
36111B OR 36206.

19 (15) IF, UPON EXPIRATION OF THE TERM OF A FARMLAND DEVELOP-
20 MENT RIGHTS AGREEMENT, THE FARMLAND BECOMES SUBJECT TO AN AGRI-
21 CULTURAL CONSERVATION EASEMENT OR PURCHASE OF DEVELOPMENT RIGHTS
22 UNDER SECTION 36111B OR 36206 OR IF A FARMLAND DEVELOPMENT RIGHTS
23 AGREEMENT IS AUTOMATICALLY RELINQUISHED UNDER SUBSECTION (14),
24 THE FARMLAND IS NOT SUBJECT TO A LIEN UNDER THIS SECTION.

[Sec. 36111a. (1) Upon request from a landowner and a local governing body, the state land use agency shall relinquish farmland from the development rights agreement if 1 or both of the following occur:

(a) The local governing body determines 1 or more of the following:

(i) That, because of the quality of the farmland, agricultural production cannot be made economically viable with generally accepted agricultural and management practices.

(ii) That surrounding conditions impose physical obstacles to the agricultural operation or prohibit essential agricultural practices.

(iii) That significant natural physical changes in the farmland have occurred that are generally irreversible and permanently limit the

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productivity of the farmland.

(iv) That a court order restricts the use of the farmland so that agricultural production cannot be made economically viable.

(b) The local governing body determines that the relinquishment is in the public interest and that the farmland to be relinquished meets 1 or more of the following conditions:

(i) The farmland is to be owned, operated, and maintained by a public body for a public use.

(ii) The farmland had been zoned for the immediately preceding 3 years for a commercial or industrial use.

(iii) THE FARMLAND IS ZONED FOR COMMERCIAL OR INDUSTRIAL USE AND THE RELINQUISHMENT OF THE FARMLAND WILL BE MITIGATED BY 1 OF THE FOLLOWING MEANS:

(A) FOR EVERY 1 ACRE OF FARMLAND TO BE RELINQUISHED, AN AGRICULTURAL CONSERVATION EASEMENT WILL BE ACQUIRED OVER 2 ACRES OF FARMLAND OF COMPARABLE OR BETTER QUALITY LOCATED WITHIN THE SAME LOCAL UNIT OF GOVERNMENT WHERE THE FARMLAND TO BE RELINQUISHED IS LOCATED. THE AGRICULTURAL CONSERVATION EASEMENT SHALL BE HELD BY THE LOCAL UNIT OF GOVERNMENT WHERE THE FARMLAND TO BE RELINQUISHED IS LOCATED OR, IF THE LOCAL GOVERNING BODY DECLINES TO HOLD THE AGRICULTURAL CONSERVATION EASEMENT, BY THE STATE LAND USE AGENCY.

(B) IF AN AGRICULTURAL CONSERVATION EASEMENT CANNOT BE ACQUIRED AS PROVIDED UNDER SUB-SUBPARAGRAPH (A), THERE WILL BE DEPOSITED INTO THE STATE AGRICULTURAL PRESERVATION FUND CREATED IN SECTION 36202 AN AMOUNT EQUAL TO TWICE THE VALUE OF THE DEVELOPMENT RIGHTS TO THE FARMLAND BEING RELINQUISHED, AS DETERMINED BY A CERTIFIED APPRAISAL.

(iv) ~~(iii)~~ The farmland is to be owned, operated, and maintained by an organization exempt from taxation under section 501(c)(3) of the internal revenue code of 1986, 26 U.S.C. 501, and the relinquishment will be beneficial to the local community.

(2) In determining public interest under subsection (1)(b), the governing body shall consider all of the following:

(a) The long-term effect of the relinquishment upon the preservation and enhancement of agriculture in the surrounding area, including any nonfarm encroachment upon other agricultural operations in the surrounding area.

(b) Any other reasonable and prudent site alternatives to the farmland to be relinquished.

(c) Any infrastructure changes and costs to the local governmental unit that will result from the development of the farmland to be relinquished.

(3) If a landowner's relinquishment application under this section is denied by the local governing body, the landowner may appeal that denial to the state land use agency. In determining whether to grant the appeal and approve the relinquishment, the state land use agency shall follow the criteria established in subsection (1)(a) or follow the criteria in subsection (1)(b) and consider the factors described in subsection (2).

(4) The state land use agency shall review an application approved by the local governing body to verify that the criteria provided in subsection (1)(a) were met or the criteria in subsection (1)(b) were met and the factors in subsection (2) were considered. If the local governing body did not render a determination in accordance with this subsection, the state land use agency shall not relinquish the farmland from the development rights agreement.

(5) A local governing body may elect to waive its right to make a relinquishment determination under subsection (1)(a) or (b) by providing written notice of that election to the state land use agency. The written notice shall grant the state land use agency sole authority to grant or deny the application as provided in this section.

(6) A decision by the state land use agency to grant or deny an

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application for relinquishment under this section that adversely affects a land owner or a local governing body is subject to a contested case hearing as provided under this act and the

administrative procedures act of 1969, ~~Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws 1969 PA 306, MCL 24.201 TO 24.328.~~

(7) As used in this section, "economic viability" means that the cash flow returning to the farming operation is positive. The local governing body or state land use agency shall evaluate an application for relinquishment, and determine the economic viability of the affected farming operation, by doing all of the following:

(a) Estimating crop, livestock, or product value of the farmland using locally accepted production methods and local United States department of agriculture yield capabilities for the specific soil types and average price for crop, livestock, or product over the past 5 years.

(b) Adding average yearly property tax credits afforded by the development rights agreement over the immediately preceding 5-year period.

(c) Subtracting estimated expenses directly attributed to the production of the crop, livestock, or product, including, but not limited to, seed, fertilizer, insecticide, building and machinery repair, drying, trucking, and property taxes.

(d) Subtracting the estimated cost of the operator's labor and management time at rates established by the United States department of agriculture for "all labor", Great Lakes area, as published in the United States department of agriculture labor reports.

(e) Subtracting typical capital replacement cost per acre of nonland assets using a useful life depreciation rate for comparable farming operations.]

25 Sec. 36206. (1) After the board determines which grants
26 should be awarded, and the amount of the grants, the department
27 shall distribute the grants to the local units of government

1 awarded the grants. The department shall condition the receipt
2 of a grant upon the department's approval of the agricultural
3 conservation easements being acquired.

4 (2) In reviewing permitted uses contained within an agricul-
5 tural conservation easement under subsection (1), the department
6 shall consider all of the following:

7 (a) Whether the permitted uses adversely affect the produc-
8 tivity of farmland.

9 (b) Whether the permitted uses materially alter or nega-
10 tively affect the existing conditions or use of the land.

11 (c) Whether the permitted uses result in a material alter-
12 ation of an existing structure to a nonagricultural use.

13 (d) Whether the permitted uses conform with all applicable
14 federal, state, and local laws and ordinances.

15 (3) The department may accept contributions of all or a por-
16 tion of the development rights to 1 or more parcels of land,
17 including a conservation easement or a historic preservation
18 easement as defined in section 2140, as part of a transaction for
19 the purchase of an agricultural conservation easement.

20 (4) A local unit of government that purchases an agricul-
21 tural conservation easement with money from a grant may purchase
22 the agricultural conservation easement through an installment
23 purchase agreement under terms negotiated by the local unit of
24 government.

25 (5) An agricultural conservation easement acquired under
26 this part shall be held jointly by the state and the local unit
27 of government in which the land subject to the agricultural

1 conservation easement is located. However, the state may
2 delegate enforcement authority of 1 or more agricultural conser-
3 vation easements to the local units of government in which the
4 agricultural conservation easements are located.

5 (6) An agricultural conservation easement acquired under
6 this part may be transferred to the owner of the property subject
7 to the agricultural conservation easement if the state and the
8 local unit of government holding the agricultural conservation
9 easement agree to the transfer and the terms of the transfer.

10 (7) SECTION 36109 PROVIDES FOR TAX CREDITS FOR AN OWNER OF
11 FARMLAND SUBJECT TO AN AGRICULTURAL CONSERVATION EASEMENT UNDER
12 THIS SECTION.