

# HOUSE BILL No. 5808

March 19, 2002, Introduced by Reps. Gilbert, DeRossett, Mead, Van Woerkom, Jelinek, Palmer, Voorhees, Middaugh, Hager, Meyer, Ruth Johnson, Vander Veen, Scranton, Rocca, Sheltrown, Rivet, Neumann, Spade, Shackleton, Julian and Newell and referred to the Committee on Land Use and Environment.

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 1996 PA 233.

**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;

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

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.

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:

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.

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.

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(h)(ii)~~ 36101(J)(ii) may apply by filing an appli-  
13 cation with the local governing body. ~~having jurisdiction under~~  
14 ~~this part.~~ The application shall be made on a form prescribed by  
15 the state land use agency. The application shall contain infor-  
16 mation reasonably necessary to properly identify the land as open  
17 space. This information shall include a land survey or a legal  
18 description of the land and a map showing the significant natural  
19 features and all structures and physical improvements located on  
20 the land.

21 (2) Upon receipt of an application, the local governing body  
22 shall notify the county planning commission, the regional plan-  
23 ning commission, and the soil conservation district agency. If  
24 the ~~county has jurisdiction, the county~~ LOCAL GOVERNING BODY IS  
25 THE COUNTY BOARD OF COMMISSIONERS, THE COUNTY BOARD shall also  
26 notify the township board of the township in which the land is  
27 situated. If the land is within 3 miles of the boundary of a

1 city or within 1 mile of the boundary of a village, the ~~county~~  
2 LOCAL GOVERNING BODY shall notify the governing body of the city  
3 or village.

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

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

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

26 (a) A structure shall not be built on the land without the  
27 approval of the local governing body. HOWEVER, IF THE LAND IS

1 FARMLAND, A STRUCTURE SHALL NOT BE BUILT ON THE LAND EXCEPT FOR  
2 USE CONSISTENT WITH FARM OPERATIONS, WHICH INCLUDES A RESIDENCE  
3 FOR AN INDIVIDUAL ESSENTIAL TO THE OPERATION OF THE FARM UNDER  
4 SECTION 36111(2)(B), OR LINES FOR UTILITY TRANSMISSION OR DISTRI-  
5 BUTION PURPOSES OR WITH THE APPROVAL OF THE LOCAL GOVERNING BODY.

6 (b) An improvement to the land shall not be made without the  
7 approval of the local governing body. HOWEVER, IF THE LAND IS  
8 FARMLAND, AN IMPROVEMENT TO THE LAND SHALL NOT BE MADE EXCEPT FOR  
9 USE CONSISTENT WITH FARM OPERATIONS OR WITH THE APPROVAL OF THE  
10 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 OR, IF THE LAND IS FARMLAND, WITH THE  
26 AGRICULTURAL SECTION OF THE MICHIGAN STATE TAX COMMISSION  
27 ASSESSORS MANUAL. The approved application shall contain a

1 statement specifying the current fair market value of the land  
2 and the current fair market value of the development rights, if  
3 any. A copy of the approved application and the development  
4 rights easement shall be forwarded to the applicant for his or  
5 her execution.

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

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

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

1 resolution concurred in by a majority of the members elected and  
2 serving in each house. The amount of the cost shall be returned  
3 to the local governing body where lost revenues are indicated. A  
4 copy of the approved application and an appropriate easement  
5 shall be forwarded by the state land use agency to the applicant  
6 for execution and to the local governing body where the land is  
7 situated.

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

13 (11) FARMLAND SUBJECT TO A DEVELOPMENT RIGHTS AGREEMENT  
14 UNDER SECTION 36104 OR AN AGRICULTURAL CONSERVATION EASEMENT OR  
15 PURCHASE OF DEVELOPMENT RIGHTS UNDER SECTION 36111B OR 36206 IS  
16 NOT ELIGIBLE FOR AN OPEN SPACE DEVELOPMENT RIGHTS EASEMENT.  
17 FARMLAND SUBJECT TO AN OPEN SPACE DEVELOPMENT RIGHTS EASEMENT IS  
18 NOT ELIGIBLE FOR A DEVELOPMENT RIGHTS AGREEMENT UNDER SECTION  
19 36104 OR AN AGRICULTURAL CONSERVATION EASEMENT OR PURCHASE OF  
20 DEVELOPMENT RIGHTS UNDER SECTION 36111B OR 36206.

21 (12) ~~(11)~~ The development rights held by the local govern-  
22 ing body as expressed in an open space development rights ease-  
23 ment are exempt from ad valorem taxation.