

Act No. 75
Public Acts of 2002
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**STATE OF MICHIGAN
91ST LEGISLATURE
REGULAR SESSION OF 2002**

**Introduced by Senators Hammerstrom, Gast, Stille, Van Regenmorter, Bullard, Goschka, Garcia,
McManus, Gougeon, Schwarz and Shugars**

ENROLLED SENATE BILL No. 692

AN ACT to amend 1994 PA 451, entitled "An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, and assessments; to provide certain appropriations; to prescribe penalties and provide remedies; to repeal certain parts of this act on a specific date; and to repeal certain acts and parts of acts," 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:

Sec. 36105. (1) If an owner of open space land desires an open space development rights easement, and the land is subject to section 36101(j)(i), the procedures for filing an application provided by the state land use agency shall follow as provided in section 36104, except section 36104(7) and (12) do not apply to an open 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) An interest in the land shall not be sold, 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 application for an open space development rights easement and an analysis of its cost to the state.

The application shall be approved in both houses by a resolution concurred in by a majority of the members elected and serving in each house. The amount of the cost shall be returned to the local governing body if lost revenues are indicated. A copy of the approved application and the open space development rights easement shall be forwarded by the state land use agency to the applicant for execution and to the local assessing office where the land is situated.

(4) If an application for an open space development rights easement is rejected under subsection (2), the applicant may reapply for an open space development rights easement beginning 1 year after the rejection.

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

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

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

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

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

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

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

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

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

(d) Public access to the open space land may be provided if agreed upon 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 both parties that is considered necessary to preserve the land or appropriate portions of it as open space land.

(6) Upon receipt of the application, the local governing body shall direct either the local assessing officer or an independent certified assessor to make an on-site appraisal of the land within 30 days in compliance with the Michigan state tax commission assessors manual. The approved application shall contain a statement specifying the current fair market value of the land and the current fair market value of the development rights, if any. A copy of the approved application and the development rights easement shall be forwarded to the applicant for his or her execution.

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

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

(9) If an application for an open space development rights easement is rejected by the local governing body, the local governing body shall notify the applicant and all reviewing entities with a written statement of the reasons for rejection. Within 30 days after receipt of the rejected application, the applicant may appeal the rejection to the state land use agency. The state land use agency shall have 60 days to approve or reject the application. The state land use agency shall submit to the legislature each approved application for an open space development rights easement and an analysis of its cost. The application shall be approved in both houses by a resolution concurred in by a majority of the members elected and serving in each house. The amount of the cost shall be returned to the local governing body where

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

(10) If an application for an open space development rights easement is rejected under subsection (4), the applicant may reapply for an open space development rights easement beginning 1 year after the final rejection.

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

Sec. 36109. (1) An owner of farmland and related buildings subject to 1 or more development rights agreements under section 36104 or agricultural conservation easements or purchases of development rights under section 36111b or 36206 who is required or eligible to file a return as an individual or a claimant under the state income tax act may claim a credit against the state income tax liability for the amount by which the property taxes on the land and structures used in the farming operation, including the homestead, restricted by the development rights agreements, agricultural conservation easements, or purchases of development rights exceed 3.5% of the household income as defined in section 508 of the income tax act of 1967, 1967 PA 281, MCL 206.508, excluding a deduction if taken under section 613 of the internal revenue code of 1986. For the purposes of this section, all of the following apply:

(a) A partner in a partnership is considered an owner of farmland and related buildings owned by the partnership and covered by a development rights agreement, agricultural conservation easement, or purchase of development rights. A partner is considered to pay a proportion of the property taxes on that property equal to the partner's share of ownership of capital or distributive share of ordinary income as reported by the partnership to the internal revenue service or, if the partnership is not required to report that information to the internal revenue service, as provided in the partnership agreement or, if there is no written partnership agreement, a statement signed by all the partners. A partner claiming a credit under this section based upon the partnership agreement or a statement shall file a copy of the agreement or statement with his or her income tax return. If the agreement or statement is not filed, the department of treasury shall deny the credit. All partners in a partnership claiming the credit allowed under this section shall compute the credit using the same basis for the apportionment of the property taxes.

(b) A shareholder of a corporation that has filed a proper election under subchapter S of chapter 1 of subtitle A of the internal revenue code of 1986, 26 U.S.C. 1361 to 1379, is considered an owner of farmland and related buildings covered by a development rights agreement that are owned by the corporation. A shareholder is considered to pay a proportion of the property taxes on that property equal to the shareholder's percentage of stock ownership for the tax year as reported by the corporation to the internal revenue service. Except as provided in subsection (8), this subdivision applies to tax years beginning after 1987.

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

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

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

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

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

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

(2) An owner of farmland and related buildings subject to 1 or more development rights agreements under section 36104 or agricultural conservation easements or purchases of development rights under section 36111b or 36206 to whom subsection (1) does not apply may claim a credit under the single business tax act, 1975 PA 228, MCL 208.1 to 208.145, for the amount by which the property taxes on the land and structures used in farming operations restricted

by the development rights agreements, agricultural conservation easements, or purchases of development rights exceed 3.5% of the adjusted business income of the owner as defined in section 36 of the single business tax act, 1975 PA 228, MCL 208.36, plus compensation to shareholders not included in adjusted business income, excluding any deductions if taken under section 613 of the internal revenue code of 1986. When calculating adjusted business income for tax years beginning before 1987, federal taxable income shall not be less than zero for the purposes of this subsection only. A participant is not eligible to claim a credit and refund against the state single business tax unless the participant demonstrates that the participant's agricultural gross receipts of the farming operation exceed 5 times the property taxes on the land for each of 3 out of the 5 tax years immediately preceding the year in which the credit is claimed. This eligibility requirement does not apply to those participants who executed farmland development rights agreements under this part before January 1, 1978. A participant may compare, during the contract period, the average of the most recent 3 years of agricultural gross receipts to property taxes in the first year that the participant entered the program under the present contract in calculating the gross receipts qualification. Once an election is made by the participant to compute the benefit in this manner, all future calculations shall be made in the same manner.

(3) If the farmland and related buildings covered by a development rights agreement under section 36104 or an agricultural conservation easement or purchase of development rights under section 36111b or 36206 are owned by more than 1 owner, each owner is allowed to claim a credit under this section based upon that owner's share of the property tax payable on the farmland and related buildings. The department of treasury shall consider the property tax equally apportioned among the owners unless a written agreement signed by all the owners is filed with the return, which agreement apportions the property taxes in the same manner as all other items of revenue and expense. If the property taxes are considered equally apportioned, a husband and wife shall be considered 1 owner, and a person with respect to whom a deduction under section 151 of the internal revenue code of 1986 is allowable to another owner of the property shall not be considered an owner.

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

(5) If the allowable amount of the credit claimed exceeds the state income tax or the state single business tax otherwise due for the tax year or if there is no state income tax or the state single business tax due for the tax year, the amount of the claim not used as an offset against the state income tax or the state single business tax, after examination and review, shall be approved for payment to the claimant pursuant to 1941 PA 122, MCL 205.1 to 205.31. The total credit allowable under this part and chapter 9 of the income tax act of 1967, 1967 PA 281, MCL 206.501 to 206.532, or the single business tax act, 1975 PA 228, MCL 208.1 to 208.145, shall not exceed the total property tax due and payable by the claimant in that year. The amount the credit exceeds the property tax due and payable shall be deducted from the credit claimed under this part.

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

(7) The department of treasury shall account separately for payments under this part and not combine them with other credit programs. A payment made to a claimant for a credit claimed under this part shall be issued by 1 or more warrants made out to the county treasurer in each county in which the claimant's property is located and the claimant, unless the claimant specifies on the return that a copy of the receipt showing payment of the property taxes that became a lien in the year for which the credit is claimed, or that became a lien in the year before the year for which the credit is claimed, is attached to the income tax or single business tax return filed by the claimant. If the claimant specifies that a copy of the receipt is attached to the return, the payment shall be made directly to the claimant. A warrant made out to a claimant and a county treasurer shall be used first to pay delinquent property taxes, interest, penalties, and fees on property restricted by the development rights agreement. If the warrant exceeds the amount of delinquent taxes, interest, penalties, and fees, the county treasurer shall remit the excess to the claimant. If a claimant falsely specifies that the receipt showing payment of the property taxes is attached to the return and if the property taxes on the land subject to that development rights agreement were not paid before the return was filed, all future payments to that claimant of credits claimed under this act attributable to that development rights agreement may be made payable to the county treasurer of the county in which the property subject to the development rights agreement is located and to that claimant.

(8) For property taxes levied after 1987, a person that was an S corporation and had entered into a development rights agreement before January 1, 1989, and paid property taxes on that property, may claim the credit allowed by this section as an owner eligible under subsection (2). A subchapter S corporation claiming a credit as permitted by this subsection for taxes levied in 1988 through 1990 shall claim the credit by filing an amended return under the single business tax act, 1975 PA 228, MCL 208.1 to 208.145. If a subchapter S corporation files an amended return as permitted by this subsection and if a shareholder of the subchapter S corporation claimed a credit under subsection (1)(b) for the same property taxes, the shareholder shall file an amended return under the state income tax act. A subchapter S

corporation is not entitled to a credit under this subsection until all of its shareholders file the amended returns required by this subsection. The department of treasury shall first apply a credit due to a subchapter S corporation under this subsection to repay credits claimed under this section by the subchapter S corporation's shareholders for property taxes levied in 1988 through 1990 and shall refund any remaining credit to the S corporation. Interest or penalty is not due or payable on an income tax liability resulting from an amended return required by this subsection. A subchapter S corporation electing to claim a credit as an owner eligible under subsection (2) shall not claim a credit under subsection (1) for property taxes levied after 1987.

Sec. 36111. (1) A development rights agreement expires at the expiration of the term of the agreement unless renewed with the consent of the owner of the land. If the owner of the land has complied with the requirements of this part regarding development rights agreements, the owner is entitled to automatic renewal of the farmland covered by the agreement upon written request of the owner. A development rights agreement may be renewed for a term of not less than 7 years. If a development rights agreement is renewed, the state land use agency shall send a copy of the renewal contract to the local governing body of the local unit of government in which the farmland is located.

(2) A development rights agreement or a portion of the farmland covered by a development rights agreement may be relinquished as provided in this section and section 36111a. Farmland may be relinquished by this state before a termination date contained in the instrument under either of the following circumstances:

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

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

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

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

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

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

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

(b) "The property's share of the taxable value of the agreement" means the quotient of the taxable value of the property being relinquished from the agreement divided by the total taxable value of property subject to the development rights agreement that included the property being relinquished from the agreement. For years before 1995, taxable value means assessed value.

(7) Thirty days before the recording of a lien under this section, the state land use agency shall notify the owner of the farmland subject to the development rights agreement of the amount of the lien, including interest, if any. If the lien amount is paid before 30 days after the owner is notified, the lien shall not be recorded. The lien may be paid and discharged at any time and is payable to the state by the owner of record at the time the land or any portion of it is

sold by the owner of record, or if the land is converted to a use prohibited by the former development rights agreement. The lien shall be discharged upon renewal or reentry in a development rights agreement, except that a subsequent lien shall not be less than the lien discharged.

(8) Upon the termination of all or a portion of the development rights agreement under subsection (3), the termination of a development rights agreement under subsection (13), or, subject to subsection (15), the termination of a development rights agreement under subsection (1), the state land use agency shall prepare and record a lien, if any, against the property formerly subject to the development rights agreement for the total amount of the allocated tax credit of the last 7 years, including the year of termination, received by the owner under section 36109, attributable to the property formerly subject to the development rights agreement. The lien shall be without interest or penalty and is payable subject to subsection (7).

(9) Upon termination of a development rights agreement, the state land use agency shall notify the department of treasury for their records.

(10) Until October 1, 2000, the proceeds from lien payments made under this part shall be used by the state land use agency to administer this part and, pursuant to section 36111b, to purchase development rights on farmland that does not necessitate direct purchase of the fee interest in the land. Beginning on October 1, 2000, the unappropriated proceeds from lien payments made under this part shall be forwarded to the state treasurer for deposit in the agricultural preservation fund created in section 36202. On October 1, 2000, all unexpended proceeds from lien payments made under this part that are held by the state shall be transferred to the agricultural preservation fund created in section 36202.

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

(a) Establishing a term of years by multiplying 7 by a fraction, the numerator of which is the number of years the farmland was under the development rights agreement, including any extensions, and the denominator of which is the number representing the term of years of that agreement, including any extensions.

(b) The lien amount equals the total amount of the allocated tax credit claimed attributable to that development rights agreement in the immediately preceding term of years as determined in subdivision (a).

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

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

(14) A farmland development rights agreement is automatically relinquished when the farmland becomes subject to an agricultural conservation easement or purchase of development rights under section 36111b or 36206.

(15) If, upon expiration of the term of a farmland development rights agreement, the farmland becomes subject to an agricultural conservation easement or purchase of development rights under section 36111b or 36206 or if a farmland development rights agreement is automatically relinquished under subsection (14), 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 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) 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 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, 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.

Sec. 36206. (1) After the board determines which grants should be awarded, and the amount of the grants, the department shall distribute the grants to the local units of government awarded the grants. The department shall condition the receipt of a grant upon the department's approval of the agricultural conservation easements being acquired.

(2) In reviewing permitted uses contained within an agricultural conservation easement under subsection (1), the department shall consider all of the following:

- (a) Whether the permitted uses adversely affect the productivity of farmland.
- (b) Whether the permitted uses materially alter or negatively affect the existing conditions or use of the land.
- (c) Whether the permitted uses result in a material alteration of an existing structure to a nonagricultural use.
- (d) Whether the permitted uses conform with all applicable federal, state, and local laws and ordinances.

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

(4) A local unit of government that purchases an agricultural conservation easement with money from a grant may purchase the agricultural conservation easement through an installment purchase agreement under terms negotiated by the local unit of government.

(5) An agricultural conservation easement acquired under this part shall be held jointly by the state and the local unit of government in which the land subject to the agricultural conservation easement is located. However, the state may delegate enforcement authority of 1 or more agricultural conservation easements to the local units of government in which the agricultural conservation easements are located.

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

(7) Section 36109 provides for tax credits for an owner of farmland subject to an agricultural conservation easement under this section.

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate.

Dany E. Randall

Clerk of the House of Representatives.

Approved _____

Governor.