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House Bill 4083 (Substitute H-2 as passed by the House)
Sponsor: Representative Dale Sheltrown
House Committee: Agriculture and Resource Management
Senate Committee: Agriculture, Forestry and Tourism

Date Completed: 5-28-03

CONTENT

The bill would amend Part 361 (Farmland and Open Space Preservation) of the Natural Resources and Environmental Protection Act to require the State to subordinate its interest in a recorded farmland development rights agreement (FDRA), or an open space development rights easement, to a subsequently recorded mortgage lien, lease, or interest, under certain conditions.

The State would have to subordinate its interest in an FDRA or an easement under Section 36105 or 36106 (described in **BACKGROUND**, below) if both of the following conditions were present: 1) the parcel met the requirements of Section 36111(2) for relinquishment from an FDRA of farmland containing existing structures; and 2) the land owner requesting the subordination was an individual essential to the operation of the farm as defined in Section 36110(5).

(Under Section 36111(2), if approved by the local governing body and the Michigan Department of Agriculture, the State may relinquish from an FDRA land containing structures that were present before the agreement was recorded. Not more than two acres may be relinquished unless additional land area is needed to encompass all of the buildings on the parcel; in that case, up to five acres may be relinquished. If the area of the parcel is less than the minimum size required by local zoning, it may not be relinquished unless the local zoning board of appeals grants a variance.

Section 36110(5) defines "individual essential to the operation of the farm" as a co-owner, partner, shareholder, farm manager, or family member, who, to a material extent, cultivates, operates, or manages farmland under the Act. An individual is considered involved to a material extent if he or she has a financial interest equal to or greater than half the cost of producing the crops, livestock, or products, and inspects, advises and consults with the owner on production activities; or the individual works 1,040 hours or more annually in activities connected with production of the farming operation.)

MCL 324.36103

BACKGROUND

Farmland Development Rights Agreement

The FDRA program was created in 1974 upon the passage of the Farmland and Open Space Preservation Act (which later became Part 361 of the Natural Resources and Environmental Protection Act). Farmland eligibility for an agreement is based on the size of the farm and, in some cases, on its income. A land owner who wants to participate in the program must apply to the local governing body having jurisdiction (e.g., the legislative body of a city, if the land

is located in a city), which then must notify various local agencies and approve or reject the application. If the application is approved, the local governing body must send it to the Michigan Department of Agriculture (MDA) for approval or rejection. If the MDA approves the application, it must prepare a farmland development rights agreement for execution by the land owner and the Department, and for recording with the register of deeds.

While an agreement is in effect, the land owner may claim a credit against the State income tax or single business tax for the amount by which the property taxes on the land and structures used in the farming operation restricted by the agreement exceed 3.5% of the land owner's household income or adjusted business income, as applicable. The land also is exempt from special assessments for sanitary sewers, water, lights, or nonfarm drainage unless the assessments were imposed before the agreement was recorded.

An FDRA must be for an initial term of 10 years and may not exceed 90 years. When its term expires, the agreement must be relinquished by the State unless it is renewed with the consent of the land owner. A land owner who has complied with Part 361 may renew the agreement for a term of at least seven years. Under certain circumstances, an FDRA or a portion of the land covered by an agreement may be relinquished before the termination date. When an agreement is relinquished, the State must record a lien for the amount of the last seven years of tax credits. The lien may be paid and discharged at any time, and is payable at the time the land is sold.

Open Space Development Rights Easement

Under Sections 36105 and 36106, an owner of open space may apply to the MDA or a local governing body for a development rights easement, in which the owner relinquishes to the public in perpetuity or for a term of years the right to undertake development of the land. Development rights held by the State or a local governing body under an agreement are exempt from property taxes. ("Open space" includes an undeveloped site included in a national registry of historic places or designated as a historic site; riverfront ownership, under certain circumstances; undeveloped land designated as an environmental area; or any other area approved by the local governing body, whose preservation would conserve natural or scenic resources, the enhancement of recreational opportunities, the preservation of historic sites, and idle potential farmland of at least 40 acres that is capable of being devoted to agricultural uses.)

When an application is submitted, the land must be appraised and the application must specify the current fair market value of the land and of the development rights. If an application is submitted to the MDA, the Department must submit to the Legislature the application and an analysis of its cost to the State, and the application must be approved by a concurrent resolution of the Legislature. If an application is submitted to and rejected by a local governing body, the land owner may appeal to the MDA. If it approves the application, the MDA must submit it and a cost analysis to the Legislature for approval by concurrent resolution. In either case, the amount of the cost must be returned to the local governing body if lost revenues are indicated.

Legislative Analyst: Claire Layman

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Craig Thiel

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.