

SUBSTITUTE FOR  
HOUSE BILL NO. 5030

A bill to amend 1994 PA 451, entitled  
"Natural resources and environmental protection act,"  
(MCL 324.101 to 324.90106) by amending the part heading of part  
361 and by adding part 363.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 PART 361 FARMLAND AND OPEN SPACE PRESERVATION - DEVELOPMENT

2 RIGHTS AGREEMENTS AND EASEMENTS

3 PART 363 FARMLAND PRESERVATION - AGRICULTURAL DISTRICTS

4 Sec. 36301. As used in this part:

5 (a) "Agricultural district" means an area of farmland  
6 designated in an agricultural district contract.

7 (b) "Agricultural district contract" or "contract" means a  
8 contract under this part between the state land use agency and  
9 the owner of farmland.

10 (c) "Agricultural use" means that term as defined in section

1 36101. Agricultural use does not include a residence other than  
2 a residence for agricultural laborers.

3 (d) "Comprehensive land use plan" means a land use plan  
4 adopted by a county that contains an agricultural preservation  
5 component consisting of all of the following:

6 (i) A future land use map of the county indicating areas  
7 intended for agricultural and farmland preservation.

8 (ii) A description of the strategies intended to be used to  
9 preserve the agricultural land and farmland in the county.

10 (iii) A description of the reasons why agricultural lands and  
11 farmland should be preserved in the county.

12 (iv) A description of how and why the specific agricultural  
13 lands and farmland was selected for preservation.

14 (v) A description of any joint planning plans or agreements  
15 under the joint municipal planning act, 2003 PA 226, MCL 125.131  
16 to 125.141.

17 (e) "Conservation easement" means either of the following:

18 (i) A permanent agricultural conservation easement or  
19 development rights easement under part 361, as those terms are  
20 defined in section 36101.

21 (ii) An agricultural conservation easement under part 362, as  
22 that term is defined in section 36201.

23 (f) "Development" means that term as defined in section  
24 36101.

25 (g) "Farmland" means, except as provided in subparagraph (v)  
26 or farmland subject to a development rights agreement under part  
27 361, 1 or more of the following:

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

3       (ii) A farm of 5 acres or more in 1 ownership, but less than  
4 40 acres, with 51% or more of the land area devoted to an  
5 agricultural use, that has produced a gross annual income from  
6 agriculture of \$200.00 per year or more per acre of cleared and  
7 tillable land. A farm described in this subparagraph enrolled in  
8 a federal acreage set aside program or a federal conservation  
9 reserve program is considered to have produced a gross annual  
10 income from agriculture of \$200.00 per year or more per acre of  
11 cleared and tillable land.

12       (iii) A farm designated by the department of agriculture as a  
13 specialty farm in 1 ownership that has produced a gross annual  
14 income from an agricultural use of \$2,000.00 or more. Specialty  
15 farms include, but are not limited to, greenhouses; equine  
16 breeding and grazing; the breeding and grazing of cervidae,  
17 pheasants, and other game animals; bees and bee products;  
18 mushrooms; aquaculture; and other similar uses and activities.

19       (iv) Parcels of land in 1 ownership that are not contiguous  
20 but which constitute an integral part of a farming operation  
21 being conducted on land otherwise qualifying as farmland.

22       (v) Farmland does not include property exempt under section  
23 7cc of the general property tax act, 1893 PA 206, MCL 211.7cc,  
24 and surrounding property sufficient to equal the minimum lot size  
25 if the local governing body has implemented a minimum lot size by  
26 ordinance.

27       (h) "General property tax act" means the general property tax

1 act, 1893 PA 206, MCL 211.1 to 211.157.

2 (i) "Local governing body" means the legislative body of the  
3 qualified local unit.

4 (j) "Local unit" means 1 of the following:

5 (i) With respect to farmland that is located in a city or  
6 village, the city or village.

7 (ii) With respect to farmland that is not located in a city  
8 or village, the township where the farmland is located.

9 (k) "Migratory laborer" means that term as defined in section  
10 12401 of the public health code, 1978 PA 368, MCL 333.12401.

11 (l) "Owner" means a person having a freehold estate in real  
12 property coupled with possession and enjoyment. If real property  
13 is subject to a land contract, owner means the vendee in  
14 agreement with the vendor.

15 (m) "Permitted use" means any use expressly authorized within  
16 an agricultural district contract that is consistent with the  
17 farming operation. Storage, retail or wholesale marketing, or  
18 processing of agricultural products is a permitted use in a  
19 farming operation if more than 50% of the stored, processed, or  
20 merchandised products are produced by the farm operator for at  
21 least 3 of the immediately preceding 5 years. The state land use  
22 agency shall determine whether a use is a permitted use pursuant  
23 to section 36104a.

24 (n) "Person" means that term as defined in section 36101.

25 (o) "Prohibited use" means a use that is not consistent with  
26 an agricultural use for farmland.

27 (p) "Property taxes" means that term as defined in section

1 36101.

2 (q) "Qualified agricultural property" means that term as  
3 defined in section 7dd of the general property tax act, 1893 PA  
4 206, MCL 211.7dd.

5 (r) "Qualified local unit" means a local unit that adopts a  
6 resolution to participate under this act and is located in a  
7 county that has implemented or updated a comprehensive land use  
8 plan within the immediately preceding 5 years and is in  
9 compliance with the comprehensive land use plan.

10 (s) "State income tax act" means the income tax act of 1967,  
11 1967 PA 281, MCL 206.1 to 206.532, and in effect during the  
12 particular year of the reference to the act.

13 (t) "State land use agency" means the department of  
14 agriculture.

15 (u) "True cash value" means that term as defined in section  
16 27 of the general property tax act, 1893 PA 206, MCL 211.27.

17 Sec. 36303. (1) An owner of farmland who desires to  
18 establish an agricultural district consisting of that farmland  
19 may apply by filing a signed application with the qualified local  
20 governing body in which the farmland is located. The owner shall  
21 apply on a form prescribed by the state land use agency.

22 (2) The application shall contain all of the following:

23 (a) The terms, restrictions, and conditions governing the  
24 agricultural district as set forth in this part.

25 (b) Information reasonably necessary to classify as farmland  
26 the land to be covered by the agricultural district contract,  
27 including both of the following:

1 (i) A land survey or a legal description of the land.

2 (ii) A map showing the significant natural features and all  
3 structures and physical improvements located on the land.

4 (c) That the applicant agrees to all of the following:

5 (i) A structure shall not be built on the land except for use  
6 consistent with farm operations, which includes a residence for  
7 an individual essential to the operation of the farm under  
8 section 36310(5), or lines for utility transmission or  
9 distribution purposes or with the approval of the local governing  
10 body and the state land use agency.

11 (ii) That land improvements shall not be made except for use  
12 consistent with farm operations or with the approval of the local  
13 governing body and the state land use agency.

14 (iii) That public access is not permitted on the land unless  
15 agreed to by the owner.

16 (iv) That the owner of record at the time of early withdrawal  
17 is responsible for the early withdrawal assessment.

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

21 (3) The qualified local unit may charge an applicant a  
22 reasonable assessment not exceeding the cost of processing an  
23 application. If the qualified local unit charges such an  
24 assessment, the application is not complete unless it is  
25 accompanied by the assessment.

26 (4) The clerk of the local governing body shall record the  
27 date of receipt on the application.

1       (5) Within 42 days after receiving the application, the local  
2 governing body shall do 1 of the following:

3       (a) Approve the application if all the land proposed for  
4 inclusion in the agricultural district is farmland, the local  
5 unit in which the land is located is a qualified local unit, and  
6 all of the structures proposed for inclusion are devoted to an  
7 agricultural use. If action is not taken by the local governing  
8 body by the date required by this subsection, the local governing  
9 body shall be considered to have approved the application on that  
10 date. The clerk of the local governing body shall promptly  
11 record the local governing body's approval and the date of the  
12 approval on the application, sign the application, and comply  
13 with section 36305.

14       (b) Reject the application if the land proposed for inclusion  
15 in the agricultural district is not farmland, the local unit in  
16 which the land is located is not a qualified local unit, or any  
17 of the structures proposed for inclusion are not devoted to an  
18 agricultural use. The clerk of the local governing body shall  
19 promptly record the local governing body's rejection, the date of  
20 the rejection, and the reasons for the rejection on the  
21 application, sign the application, and return the application to  
22 the owner.

23       (6) Within 28 days after rejection of an application by the  
24 local governing body, the owner may appeal the rejection by  
25 filing the rejected application with the state land use agency.  
26 Within 42 days after receiving the rejected application, the  
27 state land use agency shall do 1 of the following:

1           (a) Approve the application if all the land proposed for  
2 inclusion in the agricultural district is farmland, the local  
3 unit in which the land is located is a qualified local unit, and  
4 all the structures proposed for inclusion are devoted to an  
5 agricultural use. An authorized employee of the state land use  
6 agency shall do all of the following:

7           (i) Record the approval and the date of the approval on the  
8 application.

9           (ii) Sign the application. When the application is signed by  
10 the authorized employee, the application constitutes the legally  
11 binding agricultural district contract.

12           (iii) Return the application to the clerk of the local  
13 governing body.

14           (b) Reject the application if the land proposed for inclusion  
15 in the agricultural district is not farmland, the local unit in  
16 which the land is located is not a qualified local unit, or any  
17 of the structures proposed for inclusion are not devoted to an  
18 agricultural use. An authorized employee of the state land use  
19 agency shall record its rejection, the date of the rejection, and  
20 the reasons for rejection on the application, sign the  
21 application, and return the application to the owner.

22           Sec. 36305. Upon approval of an application under section  
23 36303(5) or receiving an application approved by the state land  
24 use agency under section 36303(6), the state land use agency  
25 shall record the agricultural district contract with the register  
26 of deeds of the county in which the land is located and shall  
27 notify the applicant, the qualified local unit's assessing



1 office, and the department of treasury. An agricultural district  
2 contract that is approved by November 1 shall take effect on  
3 December 31 of that tax year.

4       Sec. 36306. (1) The execution and acceptance of an  
5 agricultural district contract by the state land use agency and  
6 the owner contractually binds the owner to keep the farmland in  
7 an agricultural use for the term specified in the agricultural  
8 district contract. An agricultural district contract shall be  
9 for an initial term of not less than 20 years.

10       (2) Except as otherwise provided in this part, the state or  
11 local governing body shall not sell, transfer, convey,  
12 relinquish, vacate, or otherwise dispose of an agricultural  
13 district contract except with the agreement of the owner.

14       (3) An agricultural district contract does not supersede any  
15 prior lien, lease, or interest that is properly recorded with the  
16 county register of deeds.

17       (4) A lien created under this part in favor of the state or a  
18 local governing body is subordinate to a lien of a mortgage that  
19 is recorded in the office of the register of deeds before the  
20 recording of the lien of this state or local governing body.

21       Sec. 36307. (1) All participants owning land under an  
22 agricultural district contract shall notify, on a form provided  
23 by the state land use agency for informational purposes only, the  
24 state or the local governing body holding the agricultural  
25 district contract, 6 months before the natural termination date  
26 of the agricultural district contract, of the owners' intentions  
27 regarding whether the contract should be extended or allowed to

1 expire.

2       (2) The state land use agency shall notify the landowner via  
3 first-class mail at least 10 years before the expiration of an  
4 agricultural district contract that a lien may be placed at the  
5 time of expiration of the agricultural district contract on the  
6 farmland if the landowner does not extend the agricultural  
7 district contract and shall indicate to the landowner the option  
8 of not claiming credits during all or a portion of the next 10  
9 years.

10       Sec. 36308. Special assessments on farmland in an  
11 agricultural district are subject to section 36108.

12       Sec. 36309. (1) For tax years that begin after December 31,  
13 2005, an owner of farmland subject to an agricultural district  
14 contract who is required or eligible to file a return as an  
15 individual or a claimant under the state income tax act may claim  
16 a credit against the state income tax liability for the amount  
17 that represents the difference between the property taxes on the  
18 farmland [                    ] used in the farming operation, subject to  
19 the agricultural district contract and \$5.00 per acre for each  
20 acre subject to the agricultural district contract. For the  
21 purposes of this section, all of the following apply:

22       (a) A partner in a partnership is considered an owner of  
23 farmland and related buildings owned by the partnership and  
24 covered by an agricultural district contract. A partner is  
25 considered to pay a proportion of the property taxes on that  
26 property equal to the partner's share of ownership of capital or  
27 distributive share of ordinary income as reported by the

1 partnership to the internal revenue service or, if the  
2 partnership is not required to report that information to the  
3 internal revenue service, as provided in the partnership  
4 agreement or, if there is no written partnership agreement, a  
5 statement signed by all the partners. A partner claiming a  
6 credit under this section based upon the partnership agreement or  
7 a statement shall file a copy of the agreement or statement with  
8 his or her income tax return. If the agreement or statement is  
9 not filed, the department of treasury shall deny the credit. All  
10 partners in a partnership claiming the credit allowed under this  
11 section shall compute the credit using the same basis for the  
12 apportionment of the property taxes.

13 (b) A shareholder of a corporation that has filed a proper  
14 election under subchapter S of chapter 1 of subtitle A of the  
15 internal revenue code of 1986, 26 USC 1361 to 1379, is considered  
16 an owner of farmland and related buildings covered by an  
17 agricultural district contract that are owned by the  
18 corporation. A shareholder is considered to pay a proportion of  
19 the property taxes on that property equal to the shareholder's  
20 percentage of stock ownership for the tax year as reported by the  
21 corporation to the internal revenue service.

22 (c) If an individual in possession of property for life under  
23 a life estate with remainder to another person or holding  
24 property under a life lease enters into a written agreement with  
25 the person holding the remainder interest in that land and the  
26 written agreement apportions the property taxes in the same  
27 manner as revenue and expenses, the life lease or life estate

## House Bill No. 5030 (H-2) as amended June 30, 2004

1 holder and the person holding the remainder interest may claim  
2 the credit under this act as it is apportioned to them under the  
3 written agreement upon filing a copy of the written agreement  
4 with the return.

5 (d) If a trust holds farmland [ ] covered  
6 by an agricultural district contract and an individual is treated  
7 under subpart E of subchapter J of subchapter A of chapter 1 of  
8 the internal revenue code of 1986, 26 USC 671 to 679, as the  
9 owner of that portion of the trust that includes the farmland and  
10 related buildings, that individual is considered the owner of  
11 that property.

12 (e) An individual who is the sole beneficiary of a trust that  
13 is the result of the death of that individual's spouse is  
14 considered the owner of farmland [ ] covered by  
15 an agricultural district contract and held by the trust if the  
16 trust conforms to all of the following:

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

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

24 (f) A member in a limited liability company is considered an  
25 owner of farmland [ ] covered by an  
26 agricultural district contract that are owned by the limited  
27 liability company. A member is considered to pay a proportion of

## House Bill No. 5030 (H-2) as amended June 30, 2004

1 the property taxes on that property equal to the member's share  
2 of ownership or distributive share of ordinary income as reported  
3 by the limited liability company to the internal revenue  
4 service.

5 (2) For tax years that begin after December 31, 2005, an  
6 owner of farmland [ ] subject to 1 or more  
7 agricultural district contracts to whom subsection (1) does not  
8 apply may claim a credit under the single business tax act, 1975  
9 PA 228, MCL 208.1 to 208.145, for the amount that represents the  
10 difference between the property taxes on the land [ ]  
11 [ ] subject to the agricultural district  
12 contract and \$5.00 per acre for each acre subject to the  
13 agricultural district contract. A participant is not eligible to  
14 claim a credit and refund against the state single business tax  
15 unless the participant demonstrates that the participant's  
16 agricultural gross receipts of the farming operation exceed 5  
17 times the property taxes on the land for each of 3 out of the 5  
18 tax years immediately preceding the year in which the credit is  
19 claimed. A participant may compare, during the contract period,  
20 the average of the most recent 3 years of agricultural gross  
21 receipts to property taxes in the first year that the owner is  
22 subject to an agricultural district contract in calculating the  
23 gross receipts qualification. Once an election is made by the  
24 participant to compute the benefit in this manner, all future  
25 calculations shall be made in the same manner.

26 (3) If the farmland [ ] covered by an  
27 agricultural district contract are owned by more than 1 owner,

## House Bill No. 5030 (H-2) as amended June 30, 2004

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

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

17 (5) If the allowable amount of the credit claimed exceeds the  
18 state income tax or the state single business tax otherwise due  
19 for the tax year or if there is no state income tax or the state  
20 single business tax due for the tax year, the amount of the claim  
21 not used as an offset against the state income tax or the state  
22 single business tax, after examination and review, shall be  
23 approved for payment to the claimant pursuant to 1941 PA 122, MCL  
24 205.1 to 205.31. The total credit allowable under this part and  
25 chapter 9 of the income tax act of 1967, 1967 PA 281, MCL 206.501  
26 to 206.532, or the single business tax act, 1975 PA 228, MCL  
27 208.1 to 208.145, shall not exceed the total property tax due and

## House Bill No. 5030 (H-2) as amended June 30, 2004

1 payable by the claimant in that year. The amount the credit  
2 exceeds the property tax due and payable shall be deducted from  
3 the credit claimed under this part.

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

16 (7) The department of treasury shall account separately for  
17 payments under this part and not combine them with other credit  
18 programs. A payment made to a claimant for a credit claimed  
19 under this part shall be issued by 1 or more warrants made out to  
20 the claimant.

[(8) This state shall reimburse the state school aid fund  
established by section 11 of article IX of the state constitution of 1963  
for all revenues lost as the result of the tax credits paid under this  
act.]

21 Sec. 36310. (1) Land subject to an agricultural district  
22 contract may be sold without penalty under section 36311, if the  
23 use of the land by the successor in title complies with the  
24 provisions contained in the agricultural district contract. The  
25 seller shall notify the governmental authority having  
26 jurisdiction over the agricultural district contract of the  
27 change in ownership.

1       (2) If the owner of land subject to an agricultural district  
2 contract dies or becomes totally and permanently disabled or when  
3 an individual essential to the operation of the farm dies or  
4 becomes totally and permanently disabled, the land may be  
5 relinquished from the contract under this part and is subject to  
6 a lien pursuant to section 36311(11). A request for  
7 relinquishment under this section shall be made within 3 years  
8 from the date of death or disability. A request for  
9 relinquishment under this subsection shall be made only by the  
10 owner in case of a disability or, in case of death, the person  
11 who becomes the owner through survivorship or inheritance.

12       (3) If an owner of land subject to an agricultural district  
13 contract becomes totally and permanently disabled or dies, land  
14 containing structures that were present before the recording of  
15 the development rights agreement may be relinquished from the  
16 contract, upon request of the disabled contract holder or upon  
17 request of the person who becomes an owner through survivorship  
18 or inheritance, and upon approval of the local governing body and  
19 the state land use agency. Not more than 2 acres may be  
20 relinquished under this subsection unless additional land area is  
21 needed to encompass all of the buildings located on the parcel,  
22 in which case not more than 5 acres may be relinquished. If the  
23 parcel proposed to be relinquished is less in area than the  
24 minimum parcel size required by local zoning, the parcel may not  
25 be relinquished unless a variance is obtained from the local  
26 zoning board of appeals to allow for the smaller parcel size.  
27 The portion of the farmland relinquished from the agricultural



1 district contract under this subsection is subject to a lien  
2 pursuant to section 36311(10).

3 (4) The land described in an agricultural district contract  
4 may be divided into smaller parcels of land, each of which shall  
5 be covered by a separate agricultural district contract and each  
6 of which shall be eligible for subsequent renewal. The separate  
7 agricultural district contracts shall contain the same terms and  
8 conditions as the original agricultural district contract. The  
9 smaller parcels created by the division must meet the minimum  
10 requirements for being enrolled under this part or be 40 acres or  
11 more in size. Farmland may be divided once under this subsection  
12 without fee by the state land use agency. The state land use  
13 agency may charge a reasonable fee not greater than the state  
14 land use agency's actual cost of dividing the agreement for all  
15 subsequent divisions of that farmland. When a division of an  
16 agricultural district contract is made under this subsection and  
17 is executed and recorded, the state land use agency shall notify  
18 the applicant, the local governing body and its assessing office,  
19 and the department of treasury.

20 (5) As used in this section, "individual essential to the  
21 operation of the farm" means a co-owner, partner, shareholder,  
22 farm manager, or family member, who, to a material extent,  
23 cultivates, operates, or manages farmland under this part. An  
24 individual is considered involved to a material extent if that  
25 individual does 1 or more of the following:

26 (a) Has a financial interest equal to or greater than 1/2 the  
27 cost of producing the crops, livestock, or products and inspects

1 and advises and consults with the owner on production  
2 activities.

3 (b) Works 1,040 hours or more annually in activities  
4 connected with production of the farming operation.

5 (6) The state land use agency may charge and collect a fee of  
6 \$25.00 to process each change of ownership under subsection (1)  
7 or each division under subsection (4). The fee collected under  
8 this subsection shall be used by the state land use agency to  
9 administer this act.

10 Sec. 36311. (1) An agricultural district contract expires  
11 at the expiration of the term of the contract unless renewed with  
12 the consent of the owner of the land. If the owner of the land  
13 has complied with the requirements of this part regarding  
14 agricultural district contracts, the owner is entitled to  
15 automatic renewal of the farmland covered by the contract upon  
16 written request of the owner. An agricultural district contract  
17 may be renewed for a term of not less than 10 years. If an  
18 agricultural district contract is renewed, the state land use  
19 agency shall send a copy of the renewal contract to the local  
20 governing body of the local unit of government in which the  
21 farmland is located.

22 (2) An agricultural district contract or a portion of the  
23 farmland covered by an agricultural district contract may be  
24 relinquished as provided in this section and section 36312.  
25 Farmland may be relinquished by this state before a termination  
26 date contained in the contract under either of the following  
27 circumstances:

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

13       (b) If approved by the local governing body and the state  
14 land use agency, land may be relinquished from the contract for  
15 the construction of a residence by an individual essential to the  
16 operation of the farm as defined in section 36310. Not more than  
17 2 acres may be relinquished under this subdivision. If the  
18 parcel proposed to be relinquished is less in area than the  
19 minimum parcel size required by local zoning, the parcel may not  
20 be relinquished unless a variance is obtained from the local  
21 zoning board of appeals to allow for the smaller parcel size.

22       (3) If the request for relinquishment of the agricultural  
23 district contract is approved, the state land use agency shall  
24 prepare an instrument, subject to subsections (4), (5), (6), and  
25 (7), and record it with the register of deeds of the county in  
26 which the land is situated.

27       (4) If an agricultural district contract or a portion of an

1 agricultural district contract is to be relinquished pursuant to  
2 subsection (2) or section 36312, the state land use agency shall  
3 record a lien against the property formerly subject to the  
4 agricultural district contract for the total amount of the  
5 allocated tax credit of the last 10 years, including the year of  
6 termination, received by an owner for that property under the  
7 agreement under section 36309, attributable to the property  
8 formerly subject to the agricultural district contract, plus  
9 interest at the rate of 6% per annum simple interest from the  
10 time the credit was received until the lien is placed on the  
11 property.

12 (5) If the property being relinquished from the agricultural  
13 district contract is less than all of the property subject to  
14 that agricultural district contract, the allocated tax credit for  
15 the agricultural district contract shall be multiplied by the  
16 property's share of the taxable value of the contract. As used  
17 in this subsection:

18 (a) "The allocated tax credit" means the amount obtained by  
19 multiplying the owner's total farmland preservation credit  
20 claimed in that year on all contracts by the quotient of the ad  
21 valorem property tax levied in that year on property subject to  
22 the agricultural district contract that included the property  
23 being relinquished from the contract divided by the total  
24 property taxes levied on property subject to any contract and  
25 used in determining the farmland preservation credit in that  
26 year.

27 (b) "The property's share of the taxable value of the

1 agreement" means the quotient of the taxable value of the  
2 property being relinquished from the contract divided by the  
3 total taxable value of property subject to the agricultural  
4 district contract that included the property being relinquished  
5 from the agricultural district contract.

6       (6) Thirty days before the recording of a lien under this  
7 section, the state land use agency shall notify the owner of the  
8 farmland subject to the agricultural district contract of the  
9 amount of the lien, including interest, if any. If the lien  
10 amount is paid before 30 days after the owner is notified, the  
11 lien shall not be recorded. The lien may be paid and discharged  
12 at any time and is payable to the state by the owner of record at  
13 the time the land or any portion of it is sold by the owner of  
14 record, or if the land is converted to a use prohibited by the  
15 former agricultural district contract. The lien shall be  
16 discharged upon renewal or reentry in an agricultural district  
17 contract, except that a subsequent lien shall not be less than  
18 the lien discharged.

19       (7) Upon the termination of all or a portion of the  
20 agricultural district contract under subsection (3) or the  
21 expiration of an agricultural district contract under subsection  
22 (1), the state land use agency shall prepare and record a lien,  
23 if any, against the property formerly subject to the agricultural  
24 district contract for the total amount of the allocated tax  
25 credit of the last 10 years, including the year of termination,  
26 received by the owner under section 36309, attributable to the  
27 property formerly subject to the agricultural district contract,

1 plus interest at the rate of 6% per annum simple interest from  
2 the time the credit was received until the lien is placed on the  
3 property.

4 (8) Upon termination of an agricultural district contract,  
5 the state land use agency shall notify the department of treasury  
6 for their records.

7 (9) The unappropriated proceeds from lien payments and early  
8 withdrawal assessments made under this part shall be forwarded to  
9 the state treasurer for deposit in the agricultural preservation  
10 fund created in section 36202.

11 (10) Upon the relinquishment of all of the farmland under  
12 section 36310(2) or a portion of the farmland under section  
13 36310(3), the state land use agency shall prepare and record a  
14 lien against the property formerly subject to an agricultural  
15 district contract in an amount calculated as follows:

16 (a) Establishing a term of years by multiplying 10 by a  
17 fraction, the numerator of which is the number of years the  
18 farmland was under the agricultural district contract, including  
19 any extensions, and the denominator of which is the number  
20 representing the term of years of that contract, including any  
21 extensions.

22 (b) The lien amount equals the total amount of the allocated  
23 tax credit claimed attributable to that agricultural district  
24 contract in the immediately preceding term of years as determined  
25 in subdivision (a).

26 (11) When a lien is paid under this section, the state land  
27 use agency shall prepare and record a discharge of lien with the

1 register of deeds in the county in which the land is located.  
2 The discharge of lien shall specifically state that the lien has  
3 been paid in full, that the lien is discharged, that the  
4 agricultural district contract is terminated, and that the state  
5 has no further interest in the land under that contract.

6 (12) An owner of farmland subject to an agricultural district  
7 contract, upon written request to the state land use agency  
8 between January 1 and April 1, in the tenth and fifteenth years  
9 of the initial term of the contract, may elect to terminate the  
10 contract upon payment of the early withdrawal assessment provided  
11 in this section to the state land use agency. The early  
12 withdrawal assessment is as follows:

13 (a) In the tenth year, an amount equal to 7% of the true cash  
14 value of the farmland subject to the contract.

15 (b) In the fifteenth year, an amount equal to 5% of the true  
16 cash value of the farmland subject to the contract.

17 (13) If, upon expiration of the term of an agricultural  
18 district contract, the farmland becomes subject to an  
19 agricultural conservation easement or purchase of development  
20 rights under section 36111b or 36206 or if an agricultural  
21 district contract is terminated under subsection (12), the  
22 farmland is not subject to a lien under this section.

23 Sec. 36312. (1) Upon request from a landowner and a local  
24 governing body, the state land use agency shall relinquish  
25 farmland from the agricultural district contract if 1 or both of  
26 the following occur:

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

1 following:

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

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

8 (iii) That significant natural physical changes in the  
9 farmland have occurred that are generally irreversible and  
10 permanently limit the productivity of the farmland.

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

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

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

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

20 (iii) The farmland is zoned for commercial or industrial use  
21 and the relinquishment of the farmland will be mitigated by 1 of  
22 the following means:

23 (A) For every 1 acre of farmland to be relinquished, an  
24 agricultural conservation easement will be acquired over 2 acres  
25 of farmland of comparable or better quality located within the  
26 same local unit of government where the farmland to be  
27 relinquished is located. The agricultural conservation easement



1 shall be held by the local unit of government where the farmland  
2 to be relinquished is located or, if the local governing body  
3 declines to hold the agricultural conservation easement, by the  
4 state land use agency.

5 (B) If an agricultural conservation easement cannot be  
6 acquired as provided under sub-subparagraph (A), there will be  
7 deposited into the state agricultural preservation fund created  
8 in section 36202 an amount equal to twice the value of the  
9 development rights to the farmland being relinquished, as  
10 determined by a certified appraisal.

11 (iv) The farmland is to be owned, operated, and maintained by  
12 an organization exempt from taxation under section 501(c)(3) of  
13 the internal revenue code of 1986, 26 USC 501, and the  
14 relinquishment will be beneficial to the local community.

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

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

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

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

26 (3) If a landowner's relinquishment application under this  
27 section is denied by the local governing body, the landowner may

1 appeal that denial to the state land use agency. In determining  
2 whether to grant the appeal and approve the relinquishment, the  
3 state land use agency shall follow the criteria established in  
4 subsection (1)(a) or follow the criteria in subsection (1)(b) and  
5 consider the factors described in subsection (2).

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

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

20 (6) A decision by the state land use agency to grant or deny  
21 an application for relinquishment under this section that  
22 adversely affects a land owner or a local governing body is  
23 subject to a contested case hearing as provided under this act  
24 and the administrative procedures act of 1969, 1969 PA 306, MCL  
25 24.201 to 24.328.

26 (7) As used in this section, "economic viability" means that  
27 the cash flow returning to the farming operation is positive.

1 The local governing body or state land use agency shall evaluate  
2 an application for relinquishment, and determine the economic  
3 viability of the affected farming operation, by doing all of the  
4 following:

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

10 (b) Adding average yearly property tax credits afforded by  
11 the agricultural district contract over the immediately preceding  
12 5-year period.

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

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

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

25 Sec. 36313. The state land use agency may promulgate rules  
26 to implement this part pursuant to the administrative procedures  
27 act of 1969, 1969 PA 306, MCL 24.201 to 24.328.