

# HOUSE BILL No. 4217

February 13, 2003, Introduced by Rep. DeRossett 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 2002 PA 75.

## 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  
5 development rights and makes a covenant running with the land not  
6 to 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 or  
12 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  
19 covenant, 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  
26 perpetuity or for a term of years the right to undertake  
27 development of the land, and that contains a covenant running

1 with the land, not to undertake development, subject to permitted  
2 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 ownership,~~  
7 ~~but less~~ than 40 acres **in 1 ownership**, with 51% or more of the  
8 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 a  
16 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  
19 breeding and grazing; the breeding and grazing of cervidae,  
20 pheasants, and other game animals; **farms for the production of**  
21 bees and bee products; ~~mushrooms~~ **mushroom farms**; aquaculture  
22 **facilities**; and 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.

27 (i) "Local governing body" means 1 of the following:

1           (i) With respect to farmland or open space land that is  
 2 located in a city or village, the legislative body of the city or  
 3 village.

4           (ii) With respect to farmland or open space land that is not  
 5 located in a city or village but that is located in a township  
 6 having a zoning ordinance in effect as provided by law, the  
 7 township board of the township.

8           (iii) With respect to farmland or open space land that is not  
 9 described in subparagraph (i) or (ii), the county board of  
 10 commissioners.

11           (j) "Open space land" means 1 of the following:

12           (i) Lands defined as 1 or more of the following:

13           (A) Any undeveloped site included in a national registry of  
 14 historic places or designated as a historic site pursuant to  
 15 state or federal law.

16           (B) Riverfront ownership subject to designation under part  
 17 305, to the extent that full legal descriptions may be declared  
 18 open space under the meaning of this part, if the undeveloped  
 19 parcel or government lot parcel or portions of the undeveloped  
 20 parcel or government lot parcel as assessed and owned is affected  
 21 by that part and lies within 1/4 mile of the river.

22           (C) Undeveloped lands designated as environmental areas under  
 23 part 323, including unregulated portions of those lands.

24           (ii) Any other area approved by the local governing body, the  
 25 preservation of which area in its present condition would

26 ~~conserve~~ **do 1 or more of the following:**

27           (A) **Conserve** natural or scenic resources, including ~~the~~

1 ~~promotion of the conservation of~~ soils, wetlands, and beaches.

2 ~~the enhancement of~~

3 (B) **Enhance** recreation opportunities. ~~the preservation of~~

4 (C) **Preserve** historic sites. ~~and~~

5 (D) **Conserve** idle potential farmland of not less than 40  
6 acres that is substantially undeveloped and because of its soil,  
7 terrain, and location is capable of being devoted to agricultural  
8 uses as identified by the department of agriculture.

9 (E) **Conserve farmland.**

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

14 (l) "Permitted use" means any use expressly authorized within  
15 a development rights agreement, development rights easement, or  
16 agriculture conservation easement that is consistent with the  
17 farming operation or that does not alter the open space character  
18 of the land. Storage, retail or wholesale marketing, or  
19 processing of agricultural products is a permitted use in a  
20 farming operation if more than 50% of the stored, processed, or  
21 merchandised products are produced by the farm operator for at  
22 least 3 of the immediately preceding 5 years. The state land use  
23 agency shall determine whether a use is a permitted use pursuant  
24 to section 36104a.

25 (m) "Person" includes an individual, corporation, limited  
26 liability company, business trust, estate, trust, partnership, or  
27 association, or 2 or more persons having a joint or common

1 interest in land.

2 (n) "Planning commission" means a planning commission created  
3 by the local governing body under 1945 PA 282, MCL 125.101 to  
4 125.107, 1959 PA 168, MCL 125.321 to 125.333, or 1931 PA 285,  
5 MCL 125.31 to 125.45, as applicable.

6 (o) "Prohibited use" means a use that is not consistent with  
7 an agricultural use for farmland subject to a development rights  
8 agreement or is not consistent with the open space character of  
9 the land for lands subject to a development rights easement.

10 (p) "Property taxes" means general ad valorem taxes levied  
11 after January 1, 1974, on lands and structures in this state,  
12 including collection fees, but not including special assessments,  
13 penalties, or interest.

14 (q) "Regional planning commission" means a regional planning  
15 commission created pursuant to 1945 PA 281, MCL 125.11 to  
16 125.25.

17 (r) "Regional planning district" means the planning and  
18 development regions as established by executive directive 1968-1,  
19 as amended, whose organizational structure is approved by the  
20 regional council.

21 (s) "State income tax act" means the income tax act of 1967,  
22 1967 PA 281, MCL 206.1 to 206.532, and in effect during the  
23 particular year of the reference to the act.

24 (t) "State land use agency" means the department of  
25 agriculture.

26 (u) "Substantially undeveloped" means any parcel or area of  
27 land essentially unimproved except for a dwelling, building,

1 structure, road, or other improvement that is incidental to  
2 agricultural and open space uses.

3 (v) "Unique or critical land area" means agricultural or open  
4 space lands identified by the land use agency as an area that  
5 should be preserved.

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

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

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

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

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

18       (a) A structure shall not be built on the land without the  
19 approval of the local governing body. **However, if the land is**  
20 **farmland, a structure shall not be built on the land except for a**  
21 **use consistent with farm operations, which includes a residence**  
22 **for an individual essential to the operation of the farm under**  
23 **section 36111(2)(b), or lines for utility transmission or**  
24 **distribution purposes or with the approval of the local governing**  
25 **body.**

26       (b) An improvement to the land shall not be made without the  
27 approval of the local governing body. **However, if the land is**



1 farmland, an improvement to the land shall not be made except for  
2 a use consistent with farm operations or with the approval of the  
3 local governing body.

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

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

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

13 (6) Upon receipt of the application, the local governing body  
14 shall direct either the local assessing officer or an independent  
15 certified assessor to make an on-site appraisal of the land  
16 within 30 days in compliance with the Michigan state tax  
17 commission assessors manual **or, if the land is farmland, with the**  
18 **agricultural section of the Michigan state tax commission**  
19 **assessors manual.** The approved application shall contain a  
20 statement specifying the current fair market value of the land  
21 and the current fair market value of the development rights, if  
22 any. A copy of the approved application and the development  
23 rights easement shall be forwarded to the applicant for his or  
24 her execution.

25 (7) If the owner of the land executes the approved easement,  
26 it shall be returned to the local governing body for its  
27 execution. The local governing body shall record the development

1 rights easement with the register of deeds of the county. A copy  
2 of the approved easement shall be forwarded to the local  
3 assessing office and to the state land use agency for their  
4 information.

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

7 (9) If an application for an open space development rights  
8 easement is rejected by the local governing body, the local  
9 governing body shall notify the applicant and all reviewing  
10 entities with a written statement of the reasons for rejection.  
11 ~~Within~~ **Unless the land is farmland, within** 30 days after  
12 receipt of the rejected application, the applicant may appeal the  
13 rejection to the state land use agency. The state land use  
14 agency shall have 60 days to approve or reject the application.  
15 The state land use agency shall submit to the legislature each  
16 approved application for an open space development rights  
17 easement and an analysis of its cost. The application shall be  
18 approved in both houses by a resolution concurred in by a  
19 majority of the members elected and serving in each house. The  
20 amount of the cost shall be returned to the local governing body  
21 where lost revenues are indicated. A copy of the approved  
22 application and an appropriate easement shall be forwarded by the  
23 state land use agency to the applicant for execution and to the  
24 local governing body where the land is situated.

25 (10) If an application for an open space development rights  
26 easement is rejected under subsection (4) **or (9)**, the applicant  
27 may reapply for an open space development rights easement

1 beginning 1 year after the final rejection.

2 (11) Farmland subject to a development rights agreement under  
3 section 36104 or an agricultural conservation easement or  
4 purchase of development rights under section 36111b or 36206 is  
5 not eligible for an open space development rights easement.  
6 Farmland subject to an open space development rights easement is  
7 not eligible for a development rights agreement under section  
8 36104 or an agricultural conservation easement or purchase of  
9 development rights under section 36111b or 36206.

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

13 (13) This state shall reimburse intermediate school districts  
14 each year for all tax revenue lost as the result of the exemption  
15 under subsection (12).

16 (14) This state shall reimburse local school districts each  
17 year for all tax revenue lost as the result of the exemption  
18 under subsection (12) from taxes levied under section 1211 of the  
19 revised school code, 1976 PA 451, MCL 380.1211.

20 (15) This state shall reimburse a community college district  
21 each year for all tax revenue lost as a result of the exemption  
22 under subsection (12) from taxes levied or collected under the  
23 general property tax act, 1893 PA 206, MCL 211.1 to 211.157.

24 (16) This state shall reimburse, from the general fund, the  
25 school aid fund established by section 11 of article IX of the  
26 state constitution of 1963 for all revenues lost as the result of  
27 the exemption under subsection (12).