

# HOUSE BILL No. 5412

January 21, 2004, Introduced by Rep. Gielegem 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 section 36101 (MCL 324.36101), as amended by 2000 PA  
262, and by adding section 36115a.

## 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;  
10 poultry and poultry products; livestock, including breeding and

1 grazing of cattle, swine, captive cervidae, and similar animals;  
2 berries; herbs; flowers; seeds; grasses; nursery stock; fruits;  
3 vegetables; Christmas trees; and other similar uses and  
4 activities. Agricultural use includes use in a federal acreage  
5 set-aside program or a federal conservation reserve program.  
6 Agricultural use does not include the management and harvesting  
7 of a woodlot.

8 (c) "Conservation district board" means that term as defined  
9 in section 9301.

10 (d) "Development" means an activity that materially alters or  
11 affects the existing conditions or use of any land.

12 (e) "Development rights" means an interest in land that  
13 includes the right to construct a building or structure, to  
14 improve land for development, to divide a parcel for development,  
15 or to extract minerals incidental to a permitted use or as is set  
16 forth in an instrument recorded under this part.

17 (f) "Development rights agreement" means a restrictive  
18 covenant, evidenced by an instrument in which the owner and the  
19 state, for a term of years, agree to jointly hold the right to  
20 undertake development of the land, and that contains a covenant  
21 running with the land, for a term of years, not to undertake  
22 development, subject to permitted uses.

23 (g) "Development rights easement" means a grant, by an  
24 instrument, in which the owner relinquishes to the public in  
25 perpetuity or for a term of years the right to undertake  
26 development of the land, and that contains a covenant running  
27 with the land, not to undertake development, subject to permitted

1 uses.

2 (h) "Farmland" means 1 or more of the following:

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

5 (ii) A farm of **not less than** 5 acres or more ~~in 1 ownership,~~  
6 ~~but less~~ than 40 acres, **in 1 ownership**, with 51% or more of the  
7 land area devoted to an agricultural use, that has produced a  
8 gross annual income from agriculture of \$200.00 per year or more  
9 per acre of cleared and tillable land. A farm described in this  
10 subparagraph enrolled in a federal acreage set aside program or a  
11 federal conservation reserve program is considered to have  
12 produced a gross annual income from agriculture of \$200.00 per  
13 year or more per acre of cleared and tillable land.

14 (iii) A farm designated by the department of agriculture as a  
15 specialty farm in 1 ownership that has produced a gross annual  
16 income from an agricultural use of \$2,000.00 or more. Specialty  
17 farms include, but are not limited to, greenhouses; **farms for**  
18 equine breeding and grazing; **farms for** the breeding and grazing  
19 of cervidae, pheasants, and other game animals; **farms for the**  
20 **production of** bees and bee products; **or the production of**  
21 mushrooms; aquaculture **facilities**; and other similar uses and  
22 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 natural or scenic resources, including ~~the promotion of~~  
27 ~~the conservation of~~ soils, wetlands, and beaches, ~~;- the~~

1 ~~enhancement of~~ **enhance** recreation opportunities, ~~the~~  
2 ~~preservation of~~ **or preserve** historic sites; ~~and~~ idle potential  
3 farmland of not less than 40 acres that is substantially  
4 undeveloped and because of its soil, terrain, and location is  
5 capable of being devoted to agricultural uses as identified by  
6 the department of agriculture, **and farmland.**

7 (k) "Owner", **except as used in section 36115a**, means a person  
8 having a freehold estate in land coupled with possession and  
9 enjoyment. If land is subject to a land contract, owner means  
10 the vendee in agreement with the vendor.

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

22 (m) "Person" includes an individual, corporation, limited  
23 liability company, business trust, estate, trust, partnership, or  
24 association, or 2 or more persons having a joint or common  
25 interest in land.

26 (n) "Planning commission" means a planning commission created  
27 by the local governing body under 1945 PA 282, MCL 125.101 to

1 125.107, 1959 PA 168, MCL 125.321 to 125.333, or 1931 PA 285,  
2 MCL 125.31 to 125.45, as applicable.

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

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

11 (q) "Public project" means the construction or improvement of  
12 a road, street, sewer, water main, water or sewage treatment  
13 facility, parking lot or parking structure, office building,  
14 school, police or fire station, jail or prison, airport, or other  
15 infrastructure if the construction or improvement is financed in  
16 whole or part by a state or local government entity.

17 (r) ~~-(q)-~~ "Regional planning commission" means a regional  
18 planning commission created pursuant to 1945 PA 281, MCL 125.11  
19 to 125.25.

20 (s) ~~-(r)-~~ "Regional planning district" means the planning and  
21 development regions as established by executive directive 1968-1,  
22 as amended, whose organizational structure is approved by the  
23 regional council.

24 (t) ~~-(s)-~~ "State income tax act" means the income tax act of  
25 1967, 1967 PA 281, MCL 206.1 to 206.532, and in effect during the  
26 particular year of the reference to the act.

27 (u) ~~-(t)-~~ "State land use agency" means the department of

1 agriculture.

2       (v) ~~-(u)-~~ "Substantially undeveloped" means any parcel or  
3 area of land essentially unimproved except for a dwelling,  
4 building, structure, road, or other improvement that is  
5 incidental to agricultural and open space uses.

6       (w) ~~-(v)-~~ "Unique or critical land area" means agricultural  
7 or open space lands identified by the land use agency as an area  
8 that should be preserved.

9       Sec. 36115a. (1) If land that is suitable for agricultural  
10 use and has been in agricultural use at any time during the  
11 preceding 2 years is proposed as a site for a public project that  
12 will render the land unsuitable for agricultural use, before the  
13 land or an interest in the land is conveyed for the public  
14 project, the owner shall prepare an environmental impact  
15 statement and file a copy of the environmental impact statement  
16 with the clerk of the city, village, or township where the public  
17 project is located.

18       (2) An environmental impact statement under subsection (1)  
19 shall contain all of the following information:

20       (a) The name and address of the owner.

21       (b) A description of the owner's proprietary interest in the  
22 land.

23       (c) The name, address, and professional qualifications of the  
24 proposed professional design team members for the public project,  
25 including the designation of the person responsible for the  
26 preparation of the environmental impact statement.

27       (d) The description and purpose of the proposed public

1 project.

2 (e) Six copies and 1 reproducible transparency of a schematic  
3 use plan of the public project showing the general location of  
4 the public project and major existing physical and natural  
5 features on the site, including, but not limited to,  
6 watercourses, rock outcropping, wetlands, and wooded areas.

7 (f) The location of the existing utilities and drainageways.

8 (g) The location and notation of public streets, parks, and  
9 railroad and utility rights-of-way within or adjacent to the  
10 public project.

11 (h) The general location and dimensions of proposed streets,  
12 driveways, sidewalks, pedestrian ways, trails, off-street  
13 parking, and loading areas.

14 (i) The general location and approximate dimensions of  
15 proposed structures.

16 (j) Major proposed change of land forms such as new lakes,  
17 terracing, or excavating.

18 (k) Approximate existing and proposed contours and drainage  
19 patterns, showing contour intervals of 5 feet or less.

20 (l) Sketches showing the scale, character, and relationship  
21 of structures, streets or driveways, and open space.

22 (m) Approximate location and type of proposed drainage, water  
23 and sewage treatment and disposal facilities.

24 (n) A legal description of the property.

25 (o) An aerial photo and contour map showing the site in  
26 relation to the surrounding area.

27 (p) A description of the site, including its dominant

1 characteristics, its vegetative character, its present  
2 agricultural use, and other relevant information.

3 (q) A soil review giving a short descriptive summary of the  
4 soil types found on the site and whether the soil permits the use  
5 of septic tanks or requires central sewer. The review may be  
6 based on the "unified soil classification system" as adopted by  
7 the United States government corps of engineers and bureau of  
8 reclamation, dated January 1952, or the national cooperative soil  
9 survey classification system, and the standards for the  
10 development prospects that have been offered for each portion of  
11 the site.

12 (r) A natural hazards review consisting of a list of natural  
13 hazards such as periodic flooding, poor soil bearing conditions,  
14 and any other hazards peculiar to the site.

15 (s) A substrata review including a descriptive summary of the  
16 various geologic bedrock formations underlying the site,  
17 including the identification of known aquifers, the approximate  
18 depths of the aquifers, and, if being tapped for use, the  
19 principal uses to be made of these waters, including irrigation,  
20 domestic water supply, and industrial usage.

21 (t) An erosion review showing how erosion will be controlled  
22 and illustrating plans or programs that may be required by any  
23 existing soil erosion and sedimentation ordinance.

24 (u) At a minimum, plans for compliance with all of the  
25 following standards required for construction and  
26 postconstruction periods, as applicable:

27 (i) Surface drainage designs and structures shall be

1 erosion-proof through control of the direction, volume, and  
2 velocities of drainage patterns. These patterns shall promote  
3 natural vegetation growth that are included in the design so that  
4 drainage waters may be impeded in their flow and percolation  
5 encouraged.

6 (ii) The design shall include trash collection devices to  
7 contain solid waste and trash from street and parking drainage.

8 (iii) Watercourse designs, control volumes, and velocities of  
9 water shall prevent bottom and bank erosion including  
10 undercutting of banks from changes of water direction.

11 (iv) If vegetation has been removed or has not been able to  
12 grow on surface areas such as infill zones, the owner shall  
13 stabilize and control the impacted surface areas to prevent wind  
14 erosion and the blowing of surface material through the planting  
15 of grasses, windbreaks, and other similar barriers.

16 (3) To the extent consistent with applicable law, the cost of  
17 preparing an environmental impact statement under this section  
18 may be recovered from the state or local government financing  
19 being provided for the public project.