

**STATE OF MICHIGAN  
93RD LEGISLATURE  
REGULAR SESSION OF 2006**

**Introduced by Reps. Walker, Moolenaar, Palsrok, Hansen, Hummel, Moore, Ward, Huizenga, Nofs, Elsenheimer, Palmer, Emmons, Caul, Newell, Garfield, Hune, Phillips, Booher, Nitz, Proos, Meyer, Brown, Gillard, Shelton, Cushingberry, Farhat, Pastor, Espinoza, Kolb, Gosselin, Kooiman, McDowell, Alma Smith, Schuitmaker, Hildenbrand, Stakoe, Mayes, Robertson, Spade, Stewart, Drolet, Zelenko, Vander Veen, Williams, Vagnozzi, DeRoche, Taub, Gleason, Shaffer, Hoogendyk, Wenke, Steil, Stahl, Sheen, Angerer, Byrnes, Cheeks, Gonzales, Rick Jones, Kahn, Lemmons, III, Lemmons, Jr., Marleau, Pearce, Polidori and Rocca**

# **ENROLLED HOUSE BILL No. 4257**

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, assessments, and donations; to provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts," (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:*

**PART 361 FARMLAND AND OPEN SPACE PRESERVATION - DEVELOPMENT RIGHTS  
AGREEMENTS AND EASEMENTS**

**PART 363 FARMLAND PRESERVATION - AGRICULTURAL DISTRICTS**

Sec. 36301. As used in this part:

- (a) "Agricultural district" means an area of farmland designated in an agricultural district contract.
- (b) "Agricultural district contract" or "contract" means a contract under this part between the state land use agency and the owner of farmland.
- (c) "Agricultural use" means that term as defined in section 36101. Agricultural use does not include a residence other than a residence for migratory laborers.
- (d) "Comprehensive land use plan" means a land use plan adopted by a local unit of government that contains an agricultural preservation component consisting of all of the following:
  - (i) A future land use map of the local unit of government indicating areas intended for agricultural and farmland preservation.
  - (ii) A description of the strategies intended to be used to preserve the agricultural land and farmland in the local unit of government.

(iii) A description of the reasons why agricultural lands and farmland should be preserved in the local unit of government.

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

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

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

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

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

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

(g) "Farmland" means, except as provided in subparagraph (v) or farmland subject to a development rights agreement under part 361, farmland that is located in an area intended for agricultural and farmland preservation as described in the comprehensive land use plan and is 1 or more of the following:

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

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

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

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

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

(h) "General property tax act" means the general property tax act, 1893 PA 206, MCL 211.1 to 211.157.

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

(i) With respect to farmland that is located in a city or village, the legislative body of the city or village.

(ii) With respect to farmland that is not located in a city or village but that is located in a township having a zoning ordinance in effect as provided by law, the township board.

(iii) With respect to farmland that is not described in subparagraph (i) or (ii), the county board of commissioners.

(j) "Local unit of government" means a county, city, village, or township.

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

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

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

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

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

(p) "Property taxes" means that term as defined in section 36101.

(q) "Qualified local unit" means a local governing body that adopts a resolution to participate under this act and is located in a county or township that has created or updated a comprehensive land use plan within the immediately preceding 5 years that is consistent with this part as determined by the state land use agency.

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

(s) "State land use agency" means the department of agriculture.

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

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

(2) The application shall contain information reasonably necessary to classify as farmland the land to be covered by the agricultural district contract, including both of the following:

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

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

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

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

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

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

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

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

(a) Approve the application if all the land proposed for inclusion in the agricultural district is farmland, the farmland is located in a qualified local unit, and all the structures proposed for inclusion are devoted to an agricultural use. An authorized employee of the state land use agency shall record the approval and the date of the approval on the application.

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

Sec. 36305. (1) The state land use agency may execute an agricultural district contract on behalf of the state.

(2) The provisions of an agricultural district contract shall be consistent with the purposes of this part and shall not permit an action which will materially impair the character of the farmland involved.

(3) If the application is approved by the state land use agency, the state land use agency shall prepare an agricultural district contract that includes all of the following provisions:

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

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

(c) A landowner may grant easements for utilities and access under this part that do not substantially hinder farm operations.

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

(e) That the owner of record at the time of early withdrawal or expiration is responsible for the early withdrawal assessment or expiration assessment.

(f) The landowner shall notify the state land use agency of any oil or gas exploration, drilling, or removal on the farmland.

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

(4) The agricultural district contract shall be forwarded to the applicant for execution. An application that is approved by the local governing body by November 1 shall take effect for the current tax year.

(5) If the owner executes the agricultural district contract, the owner shall return it to the state land use agency for execution on behalf of the state. The state land use agency shall record the executed agricultural district contract with the register of deeds of the county in which the land is situated and shall notify the applicant, the local governing body and its assessing office, all reviewing agencies, and the department of treasury.

(6) The state land use agency may execute agricultural district contracts on behalf of this state up to the following maximum number of acres in the following years:

(a) In 2008, up to 75,000 acres.

(b) In 2009, up to 75,000 additional acres.

(c) In 2010, up to 75,000 additional acres.

(d) In 2011, up to 75,000 additional acres.

(e) In 2012, up to 75,000 additional acres.

(f) In 2013 and thereafter, the state land use agency shall not execute any agricultural district contracts.

(7) The state land use agency may charge and collect a fee of not more than \$100.00 to process or renew an agricultural district contract. If the state land use agency charges a fee to process or renew the agricultural district contract, the state land use agency shall not execute the agricultural district contract until the fee is paid.

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

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

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

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

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

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

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

Sec. 36309. (1) For tax years that begin after December 31, 2007, an owner of farmland subject to an agricultural district contract 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 that represents the difference between the property taxes on the farmland used in the farming operation, less the property taxes paid on the improvements on the farmland, subject to the agricultural district contract and \$7.00 per acre for each acre subject to the agricultural district contract. 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 an agricultural district contract. 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 USC 1361 to 1379, is considered an owner of farmland and related buildings covered by an agricultural district contract 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.

(c) 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 covered by an agricultural district contract and an individual is treated under subpart E of subchapter J of chapter 1 of subtitle A of the internal revenue code of 1986, 26 USC 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 covered by an agricultural district contract 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 covered by an agricultural district contract 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) For tax years that begin after December 31, 2007, an owner of farmland subject to 1 or more agricultural district contracts 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 that represents the difference between the property taxes on the land subject to the agricultural district contract, less the property taxes paid on the improvements on the farmland, and \$7.00 per acre for each acre subject to the agricultural district contract. However, the credit is limited to the millage rate in effect when the farmland becomes subject to the agricultural district contract. 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. 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 owner is subject to an agricultural district 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 covered by an agricultural district contract 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. 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 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.

Sec. 36310. (1) Land subject to an agricultural district contract may be sold or transferred without penalty under section 36311, if the use of the land by the successor in title complies with the provisions contained in the agricultural district contract. The seller shall notify the governmental authority having jurisdiction over the agricultural district contract of the change in ownership. If land subject to an agricultural district contract is sold or transferred, the successor in title shall file the affidavit provided in section 27a(7)(n) of the general property tax act, 1893 PA 206, MCL 211.27a, in a timely manner or shall be considered to be in violation of the contract.

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

(3) If an owner of land subject to an agricultural district contract becomes totally and permanently disabled or dies, land containing structures that were present before the recording of the development rights agreement may be relinquished from the contract, upon request of the disabled contract holder or upon request of the person who becomes an owner through survivorship or inheritance, and upon approval of the local governing body and the state land use agency. Not more than 2 acres may be relinquished under this subsection 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. The portion of the farmland relinquished from the agricultural district contract under this subsection is subject to a lien pursuant to section 36311(10).

(4) The land described in an agricultural district contract may be divided into smaller parcels of land, each of which shall be covered by a separate agricultural district contract and each of which shall be eligible for subsequent renewal. The separate agricultural district contracts shall contain the same terms and conditions as the original agricultural district contract. The smaller parcels created by the division must meet the minimum requirements for being enrolled under this part or be 40 acres or more in size. Farmland may be divided once under this subsection without fee by the state land use agency. When a division of an agricultural district contract is made under this subsection and is executed and recorded, the state land use agency shall notify the applicant, the local governing body and its assessing office, and the department of treasury.

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

(a) Has a financial interest equal to or greater than 1/2 the cost of producing the crops, livestock, or products and inspects and advises and consults with the owner on production activities.

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

(6) The state land use agency may charge and collect a reasonable fee not greater than the state land use agency's actual cost to process each change of ownership under subsection (1) or each division under subsection (4). The fee collected under this subsection shall be used by the state land use agency to administer this act.

Sec. 36311. (1) An agricultural district contract expires at the expiration of the term of the contract 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 agricultural district contracts, the owner is entitled to automatic renewal of the farmland covered by the contract upon written request of the owner. An agricultural district contract may be renewed for a term of not less than 10 years. If an agricultural district contract is renewed, the state land use agency shall send a copy of the renewal contract to the local governing body in which the farmland is located.

(2) An agricultural district contract or a portion of the farmland covered by an agricultural district contract may be relinquished as provided in this section and section 36312. Farmland may be relinquished by this state before a termination date contained in the contract 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 agricultural district contract may be relinquished from the contract. Not more than

2 acres may be relinquished under this subdivision unless additional land area is needed to encompass all of the buildings and structures 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 contract for the construction of a residence by an individual essential to the operation of the farm as defined in section 36310. 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) If the request for relinquishment of the agricultural district contract is approved, the state land use agency shall prepare an instrument, subject to subsections (4), (5), (6), and (7), and record it with the register of deeds of the county in which the land is situated.

(4) If an agricultural district contract or a portion of an agricultural district contract is to be relinquished pursuant to subsection (2) or section 36312, the state land use agency shall record a lien against the property formerly subject to the agricultural district contract for the total amount of the allocated tax credit of the last 10 years, including the year of termination, received by an owner for that property under the agreement under section 36309, attributable to the property formerly subject to the agricultural district contract, 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.

(5) If the property being relinquished from the agricultural district contract is less than all of the property subject to that agricultural district contract, the allocated tax credit for the agricultural district contract shall be multiplied by the property's share of the taxable value of the contract. 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 contracts by the quotient of the ad valorem property tax levied in that year on property subject to the agricultural district contract that included the property being relinquished from the contract divided by the total property taxes levied on property subject to any contract 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 contract divided by the total taxable value of property subject to the agricultural district contract that included the property being relinquished from the agricultural district contract.

(6) 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 agricultural district contract 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 agricultural district contract. The lien shall be discharged upon renewal or reentry in an agricultural district contract, except that a subsequent lien shall not be less than the lien discharged.

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

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

(9) The unappropriated proceeds from lien payments and early withdrawal assessments made under this part shall be forwarded to the state treasurer for deposit in the agricultural preservation fund created in section 36202. Not less than half of the amount described in this subsection shall be used for the purposes set forth in section 36202(4)(b) or (c) in the qualified local unit where the property that was subject to the lien is located.

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

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

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

(11) 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 agricultural district contract is terminated, and that the state has no further interest in the land under that contract.

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

(a) In the tenth year, an amount equal to 7% of the true cash value of the farmland subject to the contract or an amount equal to the tax credits received during the last 10 years that are attributable to the agricultural district contract plus interest at the rate of 6% per annum simple interest, whichever is greater.

(b) In the fifteenth year, an amount equal to 5% of the true cash value of the farmland subject to the contract or an amount equal to the tax credits received during the last 10 years that are attributable to the agricultural district contract plus interest at the rate of 6% per annum simple interest, whichever is greater.

(13) If a request is made under subsection (12), the state land use agency shall cause to be prepared a certified appraisal to determine the true cash value of the property. The cost for the certified appraisal shall be paid by the landowner making the request for termination from the program.

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

Sec. 36312. (1) Upon request from a landowner and a local governing body, the state land use agency shall relinquish farmland from the agricultural district contract 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 USC 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 unit of government 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.

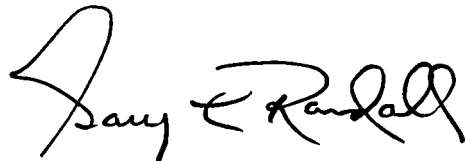
(b) Adding average yearly property tax credits afforded by the agricultural district contract over the immediately preceding 5-year period.

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



Clerk of the House of Representatives



Secretary of the Senate

Approved \_\_\_\_\_

\_\_\_\_\_  
Governor