

SENATE BILL No. 1127

February 19, 2008, Introduced by Senators GLEASON, JELINEK and BARCIA and referred to the Committee on Agriculture.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 36110, 36112, and 36113 (MCL 324.36110,
324.36112, and 324.36113), section 36110 as amended by 1996 PA 233
and sections 36112 and 36113 as added by 1995 PA 59.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 36110. (1) Land subject to a development rights agreement
2 or easement may be sold without penalty under ~~sections~~ **SECTION**
3 36111, 36112, ~~and~~ **OR** 36113, if the use of the land by the successor
4 in title complies with the provisions contained in the development
5 rights agreement or easement. The seller shall notify the
6 governmental authority having jurisdiction over the development
7 rights of the change in ownership.

1 (2) If the owner of land subject to a development rights
2 agreement or easement dies or becomes totally and permanently
3 disabled or ~~when~~ **IF** an individual essential to the operation of the
4 farm dies or becomes totally and permanently disabled, the land may
5 be relinquished from the program under this part and is subject to
6 a lien pursuant to ~~sections~~ **SECTION 36111(11), 36112(7), and**
7 ~~36113(7)~~ **36112(9), OR 36113(9), AS APPLICABLE.** A request for
8 relinquishment under this section shall be made within 3 years from
9 the date of death or disability. A request for relinquishment under
10 this subsection shall be made only by the owner in case of a
11 disability or, ~~in case of death~~ **IF THE OWNER DIES**, the person who
12 becomes the owner through survivorship or inheritance.

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

1 relinquished from the development rights agreement under this
2 subsection is subject to a lien pursuant to section 36111(11).

3 (4) The land described in a development rights agreement may
4 be divided into smaller parcels of land, each of which shall be
5 covered by a separate development rights agreement and each of
6 which shall be eligible for subsequent renewal. The separate
7 development rights agreements shall contain the same terms and
8 conditions as the original development rights agreement. The
9 smaller parcels created by the division must meet the minimum
10 requirements for being enrolled under this act 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 agency
13 may charge a reasonable fee not greater than the state land use
14 agency's actual cost of dividing the agreement for all subsequent
15 divisions of that farmland. When a division of a development rights
16 agreement is made under this subsection and is executed and
17 recorded, the state land use agency shall notify the applicant, the
18 local governing body and its assessing office, all reviewing
19 agencies, 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, farm
22 manager, or family member, who, to a material extent, cultivates,
23 operates, or manages farmland under this act. An individual is
24 considered involved to a material extent if that individual does 1
25 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 activities.

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

4 (6) The state land use agency may charge and collect a fee of
5 \$25.00 to process each change of ownership under subsection (1) or
6 each division under subsection (4). The fee collected under this
7 subsection shall be used by the state land use agency to administer
8 this act ~~act~~ **PART AND PART 362.**

9 Sec. 36112. (1) An open space development rights easement
10 ~~pursuant to~~ **UNDER** section 36105 shall be relinquished by the state
11 at the expiration of the term of the easement unless renewed with
12 the consent of the owner of the land. If the owner of the land has
13 complied with the requirements of this part regarding open space
14 development rights easements, the owner is entitled to automatic
15 renewal of the agreement upon written request of the landowner.

16 (2) An open space development rights easement may be
17 relinquished by the state ~~prior to~~ **BEFORE** a termination date
18 contained in the instrument as follows:

19 (a) ~~At any time~~ **WHEN** the state determines that the development
20 of the land is in the public interest and in agreement with the
21 owner of the land.

22 (b) The owner of the land may submit an application to the
23 local governing body ~~where~~ **TO WHICH** the original application for an
24 open space development rights easement was submitted requesting
25 that the development rights easement be relinquished. The
26 application shall be made on a form prescribed by the state land
27 use agency. The request for relinquishment shall be processed **UNDER**

1 and ~~shall be subject to the provisions as provided in sections~~
2 36104 and 36105. ~~for review and approval.~~

3 (3) AN OPEN SPACE DEVELOPMENT RIGHTS EASEMENT UNDER SECTION
4 36105 SHALL BE RELINQUISHED BY THE STATE BEFORE A TERMINATION DATE
5 CONTAINED IN THE INSTRUMENT IF THE LAND WILL BE DEVOTED TO THE
6 PRODUCTION OF CROPS AS BIOMASS FOR THE GENERATION OF ENERGY.

7 (4) ~~(3)~~ If ~~the~~ **A** request for relinquishment of the development
8 rights easement **UNDER SUBSECTION (2)** is approved, the state land
9 use agency shall prepare an instrument providing for the
10 relinquishment of the open space development rights easement,
11 subject to subsections ~~(4)~~, (5), (6), and (7), and shall record it
12 with the register of deeds of the county in which the land is
13 ~~situated~~ **LOCATED**.

14 (5) ~~(4)~~ ~~At the time~~ **WHEN** a development rights easement is to
15 be relinquished pursuant to subsection (2)(b), the state land use
16 agency shall cause to be prepared and recorded a lien against the
17 property formerly subject to the development rights easement for
18 the total amount of the ad valorem taxes not paid on the
19 development rights during the period it was held by the state, if
20 any. The lien shall provide that interest at the rate of 6% per
21 annum compounded shall be added to the ad valorem taxes not paid
22 from the time the exemption was received until it is paid.

23 (6) ~~(5)~~ The lien ~~shall become~~ **UNDER SUBSECTION (5) BECOMES**
24 payable to the state by the owner of record ~~at the time~~ **WHEN** the
25 land or any portion of it is sold by the owner of record, or if the
26 land is converted to a use prohibited by the former open space
27 development rights easement.

1 (7) ~~(6)~~—Upon the termination of the open space development
2 rights easement pursuant to subsection (2)(a), the development
3 rights revert back to the owner without penalty or interest.

4 (8) IF A DEVELOPMENT RIGHTS AGREEMENT IS TO BE RELINQUISHED
5 PURSUANT TO SUBSECTION (3), THE STATE LAND USE AGENCY SHALL PREPARE
6 AND RECORD A LIEN AS PROVIDED UNDER SUBSECTIONS (5) AND (6).
7 HOWEVER, A LIEN SHALL NOT BE RECORDED AND THE DEVELOPMENT RIGHTS
8 REVERT BACK TO THE OWNER WITHOUT PENALTY OR INTEREST IF THE LAND IS
9 SUBJECT TO A FARMLAND DEVELOPMENT RIGHTS EASEMENT UNDER SECTION
10 36104. IF THE LAND BECOMES SUBJECT TO A FARMLAND DEVELOPMENT RIGHTS
11 EASEMENT UNDER SECTION 36104 AFTER THE LIEN IS RECORDED, THE LIEN
12 IS RELEASED AND THE STATE LAND USE AGENCY SHALL PREPARE AND RECORD
13 A DISCHARGE OF LIEN WITH THE REGISTER OF DEEDS IN THE COUNTY IN
14 WHICH THE LAND IS LOCATED.

15 (9) ~~(7)~~—Upon the ~~natural~~ termination of the open space
16 development rights easement pursuant to subsection (1), the state
17 land use agency shall cause to be prepared and recorded a lien
18 against the property formerly subject to the open space development
19 rights easement. The amount of the lien shall be the total amount
20 of the last 7 years ad valorem taxes not paid on the development
21 rights during the period it was held by the state, if any. The lien
22 shall be without penalty or interest and shall be payable subject
23 to subsection ~~(5)~~—(6).

24 (10) ~~(8)~~—A copy of the renewal or relinquishment of an open
25 space development rights easement shall be sent to the local
26 governing body's assessing office.

27 Sec. 36113. (1) An open space development rights easement

1 pursuant to section 36106 shall be relinquished by the local
2 governing body **TO WHICH THE EASEMENT WAS GRANTED** at the expiration
3 of the term of the easement unless renewed with the consent of the
4 owner of the land. ~~if~~**IF** the owner of the land has complied with
5 the requirements of this part regarding open space development
6 rights easements, the owner shall be entitled to automatic renewal
7 of the agreement upon written request of the landowner.

8 (2) An open space development rights easement may be
9 relinquished by the local governing body ~~prior to~~**BEFORE** a
10 termination date contained in the instrument as follows:

11 (a) ~~At any time~~**WHEN** the local governing body determines that
12 the development of the land is in the public interest and in
13 agreement with the owner of the land.

14 (b) The owner of the land may submit an application to the
15 local governing body ~~having jurisdiction~~ requesting that the
16 development rights easement be relinquished. The application shall
17 be made on a form prescribed by the state land use agency. The
18 request for relinquishment shall be processed **UNDER** and ~~shall be~~
19 subject to ~~the provisions as provided in section 36106. for review~~
20 ~~and approval.~~

21 (3) **AN OPEN SPACE DEVELOPMENT RIGHTS EASEMENT UNDER SECTION**
22 **36106 SHALL BE RELINQUISHED BY THE LOCAL GOVERNING BODY BEFORE A**
23 **TERMINATION DATE CONTAINED IN THE INSTRUMENT IF THE LAND WILL BE**
24 **DEVOTED TO THE PRODUCTION OF CROPS AS BIOMASS FOR THE GENERATION OF**
25 **ENERGY.**

26 (4) ~~(3)~~ If the request for relinquishment of the open space
27 development rights easement **UNDER SUBSECTION (2)** is approved, the

1 local governing body shall prepare an instrument providing for the
 2 relinquishment of the open space development rights easement,
 3 subject to subsections ~~(4),~~ (5), (6), and (7), and shall record it
 4 with the register of deeds of the county in which the land is
 5 ~~situated~~ **LOCATED**.

6 (5) ~~(4) At the time~~ **WHEN** an open space development rights
 7 easement is to be relinquished pursuant to subsection (2)(b), the
 8 local governing body shall cause to have prepared and recorded a
 9 lien against the property formerly subject to the open space
 10 development rights easement. The amount of the lien shall be the
 11 total amount of the ad valorem taxes not paid on the development
 12 rights during the period it was held by the local governing body,
 13 if any. The lien shall provide that interest at the rate of 6% per
 14 annum compounded shall be added to the ad valorem taxes exemption
 15 from the time granted until the lien is paid.

16 (6) ~~(5) The lien shall become~~ **UNDER SUBSECTION (5) BECOMES**
 17 payable to the local governing body by the owner of record ~~at the~~
 18 ~~time~~ **WHEN** the land or any portion of it is sold by the owner of
 19 record, or if the land is converted to a use prohibited by the
 20 former open space development rights easement.

21 (7) ~~(6) Upon the termination of the open space development~~
 22 rights easement pursuant to subsection (2)(a), the development
 23 rights revert back to the owner without penalty or interest. ~~and~~
 24 ~~the development rights easement upon the land expire.~~

25 (8) **IF A DEVELOPMENT RIGHTS AGREEMENT IS TO BE RELINQUISHED**
 26 **PURSUANT TO SUBSECTION (3), THE LOCAL GOVERNING BODY SHALL PREPARE**
 27 **AND RECORD A LIEN AS PROVIDED UNDER SUBSECTIONS (5) AND (6).**

1 HOWEVER, A LIEN SHALL NOT BE RECORDED AND THE DEVELOPMENT RIGHTS
2 REVERT BACK TO THE OWNER WITHOUT PENALTY OR INTEREST IF THE LAND IS
3 SUBJECT TO A FARMLAND DEVELOPMENT RIGHTS EASEMENT UNDER SECTION
4 36104. IF THE LAND BECOMES SUBJECT TO A FARMLAND DEVELOPMENT RIGHTS
5 EASEMENT UNDER SECTION 36104 AFTER THE LIEN IS RECORDED, THE LIEN
6 IS RELEASED AND THE LOCAL GOVERNING BODY SHALL PREPARE AND RECORD A
7 DISCHARGE OF LIEN WITH THE REGISTER OF DEEDS IN THE COUNTY IN WHICH
8 THE LAND IS LOCATED.

9 (9) ~~(7)~~—Upon the ~~natural~~ termination of the open space
10 development rights easement pursuant to subsection (1), the local
11 governing body shall cause to be prepared and recorded a lien
12 against the property formerly subject to the open space development
13 rights easement. The amount of the lien shall be the total amount
14 of the last 7 years ad valorem taxes not paid on the development
15 rights during the period it was held by the local governing body,
16 if any. The lien shall be without penalty or interest and will be
17 payable subject to subsection ~~(5)~~—(6).

18 (10) ~~(8)~~—A copy of the renewal or relinquishment of an open
19 space development rights easement shall be sent to the local
20 assessing office.