

Act No. 336
Public Acts of 2008
Approved by the Governor
December 23, 2008
Filed with the Secretary of State
December 23, 2008
EFFECTIVE DATE: December 23, 2008

**STATE OF MICHIGAN
94TH LEGISLATURE
REGULAR SESSION OF 2008**

Introduced by Reps. Palsrok, Elsenheimer, Sheltroun, Walker, Booher, Hansen, Ball, Stahl and Mayes

ENROLLED HOUSE BILL No. 5677

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," by amending section 36101 (MCL 324.36101), as amended by 2000 PA 262.

The People of the State of Michigan enact:

Sec. 36101. As used in this part:

(a) "Agricultural conservation easement" means a conveyance, by a written instrument, in which, subject to permitted uses, the owner relinquishes to the public in perpetuity his or her development rights and makes a covenant running with the land not to undertake development.

(b) "Agricultural use" means the production of plants and animals useful to humans, including forages and sod crops; grains, feed crops, and field crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing of cattle, swine, captive cervidae, and similar animals; berries; herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables; maple syrup production; Christmas trees; and other similar uses and activities. Agricultural use includes use in a federal acreage set-aside program or a federal conservation reserve program. Agricultural use does not include the management and harvesting of a woodlot.

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

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

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

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

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

(h) "Farmland" means 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 that constitute an integral part of a farming operation being conducted on land otherwise qualifying as farmland may be included in an application under this part.

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

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

(ii) With respect to farmland or open space land 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 of the township.

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

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

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

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

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

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

(ii) Any other area approved by the local governing body, the preservation of which area in its present condition would conserve natural or scenic resources, including the promotion of the conservation of soils, wetlands, and beaches; the enhancement of recreation opportunities; the preservation of historic sites; and idle potential farmland of not less than 40 acres that is substantially undeveloped and because of its soil, terrain, and location is capable of being devoted to agricultural uses as identified by the department of agriculture.

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

(l) "Permitted use" means any use expressly authorized within a development rights agreement, development rights easement, or agriculture conservation easement that is consistent with the farming operation or that does not alter the open space character of the land. 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.

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

(n) "Planning commission" means a planning commission created by the local governing body under 1945 PA 282, MCL 125.101 to 125.115, 1959 PA 168, MCL 125.321 to 125.333, or 1931 PA 285, MCL 125.31 to 125.45, as applicable.

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

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

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

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

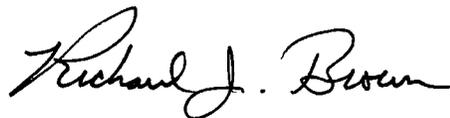
(s) "State income tax act" means the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, and in effect during the particular year of the reference to the act.

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

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

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor