Legislative Analysis

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LIENS ON FARMLAND PREVIOUSLY SUBJECT TO A DEVELOPMENT RIGHTS AGREEMENT

House Bill 4158
Sponsor: Rep. Jeff Mayes
Committee: Agriculture

Complete to 7-29-09

A SUMMARY OF HOUSE BILL 4158 AS INTRODUCED 2-4-09

When a land owner enters into a Development Rights Agreement (DRA) with the state under Part 361 (Farmland and Open Space Preservation) of the Natural Resources and Environmental Protection Act (NREPA), the land owner receives certain tax benefits in exchange for keeping the land as farmland and not developing it for another use during the term of the agreement. The minimum term of a DRA is 10 years, and the maximum term is 90 years. Subsequent renewals must be for a minimum of seven years. (This program is still sometimes referred to as PA 116; see Background Information.)

With certain exceptions, if a DRA is not renewed at expiration, the land owner must pay the state for the tax credits received during the last seven years of the agreement. If a DRA is relinquished before its term expires, the land owner is also liable for interest at the annual rate of six percent on the amount due. If the total amount due is not paid within 30 days, the state must record a lien against the property for that amount. Farm property is not subject to such a lien if during or at the expiration of the DRA, the farmland becomes subject to another farmland preservation program such as an agricultural conservation easement or purchase of development rights under Parts 361 or 362 of NREPA. Lien payments are transferred to the Agricultural Preservation Fund described in Section 36202 of NREPA (MCL 324.36202).

House Bill 4158 would allow a landowner whose property is subject to this type of lien recorded before January 1, 2009 to pay off the lien at 10 percent less than its face value during the period July 1, 2009 to December 31, 2009. This would provide a financial benefit to land owners who took their property out of farmland preservation programs before 2009.

In addition, the bill would for the first time require a lien on land subject to an expired DRA (as opposed to one that was relinquished early) to include interest. Currently, only land taken out of a DRA before the end of the DRA's term is subject to a lien that includes interest. In that situation, the interest rate that applies is *six percent per annum simple interest from the time the credit was received until the lien is placed on the property*. In contrast, the interest rate that would apply under the bill to land subject to a DRA terminated at expiration would be "the current monthly interest rate of 1 percentage point above the adjusted prime rate per annum *from the time the lien is recorded until it is paid*." [Emphasis added.]

The interest would be determined by the Department of Treasury as provided in MCL 205.23, based on the "adjusted prime rate" charged by three commercial banks to large businesses plus one percentage point. [According to the Department of Treasury's Revenue Administration Bulletin 2009-4, the current effective annual rate for the period beginning on July 1, 2009 and ending on December 31, 2009, at the adjusted prime plus one percentage point under MCL 205.23, is 4.7 percent.]

The bill would also remove certain obsolete provisions in Section 36111. Subsection (10) required that proceeds from lien payments be used by the state land use agency (the Department of Agriculture) to administer Part 361 and to purchase certain development rights on farmland until October 1, 2000, and that on that date, all unexpended proceeds from lien payments made under Part 361 be transferred to the Agricultural Preservation Fund created in Section 36202. The bill would removed the outdated portions of this subsection, leaving it to read simply that: "The unappropriated proceeds from lien payments made under [Part 361] shall be forwarded to the state treasurer for deposit in the agricultural fund created in Section 36202." The bill would also remove subsection (13) which expired on April 1, 1997.

In addition, the bill also makes numerous stylistic or editorial changes to Section 36111.

BACKGROUND:

The Farmland Development Rights Agreement Program was originally created by the Farmland and Open Space Preservation Act, Public Act 116 of 1974 (which later became Part 361 of NREPA), and has been subsequently amended. It is sometimes still referred to PA 116.

In general, Section 36109 of NREPA (MCL 324.36109) permits the owner of land covered by a DRA to claim a credit against the state income tax, the former single business tax, or Michigan business tax for the amount by which the property taxes on the land and structures exceed 3.5 percent of the owner's household income or adjusted business income, as applicable. During the term of the DRA, the land is also not subject to special assessments for sanitary sewer, water, lights or non-farm drain projects (unless the assessments were imposed before the DRA was established).

FISCAL IMPACT:

As noted above, Section 36111 of the NREPA directs that the unappropriated proceeds from lien payments made under Part 361 be forwarded to the state treasurer for deposit in the Agricultural Preservation Fund. We do not currently have an estimate of the number of landowners who terminated DRAs and who would fall under the provisions of the bill; that is, landowners who had a lien under Section 36111 recorded before January 1, 2009. Nor do we have an estimate of the total amount of such liens. The bill would appear to provide a window during which landowners could pay 10% less than the face value of the lien. This would appear to result in a reduction of state restricted revenue. As a point of reference, during the last five years, deposits to the Agricultural Preservation Fund under provisions of Section 36111 averaged $1.3 million per year.

The Agriculture Preservation Fund supports Farmland and Open space programs of the Michigan Department of Agriculture, including the purchase of conservation easements to preserve farmland.

The bill would also, for the first time, require that liens on land subject to an expired DRA include interest. This provision would appear to increase state restricted revenue by an indeterminate amount. The Agriculture Preservation Fund currently averages approximately $40,000 each year on common cash interest earnings.

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