

ALLOW A WIND, SOLAR, OR BIOMASS SYSTEM AS A PERMITTED USE OF PROTECTED FARMLAND

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House Bill 4887 (Anticipated Substitute H-1)

Sponsor: Rep. Jeff Mayes

Committee: Energy & Technology

Complete to 6-3-09

A SUMMARY OF HOUSE BILL 4887 AS REPORTED FROM COMMITTEE 6-3-09

The bill would amend Part 361 (Farmland and Open Space Preservation) of the Natural Resources and Environmental Protection Act to allow specified wind, solar, and biomass renewable energy systems to qualify as a "permitted use" of farmland covered by an easement or agreement designed to preserve it as farmland or open space under Part 361. This would allow an eligible system to be placed on the land as a permitted use without losing eligibility for farmland preservation programs.

Permitted use. In general, the bill would amend the definition of the term "permitted use." That term appears throughout Part 361, including in the definitions of "agricultural conservation easement," "development rights," "development rights agreement," and "development rights easement."

Currently, a "permitted use" is defined as:

"...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." MCL 324.36101(I)

Under the bill, a "permitted use" under Section 36101(I) would mean *any of the following*:

- 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, ***as determined by the state land use agency [Department of Agriculture] pursuant to Section 36104a.***
- Storage, retail, or wholesale marketing , or processing of agricultural products in a farming operation if more than 50 percent of the stored, processed or

marketed products are produced by the farm operator for at least three of the preceding five years.

- ***At a farm operation, a renewable energy system.***

Definition of renewable energy system. As amended in committee, the term "renewable energy system" would mean a: (1) a wind energy conversion system or solar energy system used to generate *electricity*; or (2) a system using biomass (as defined in the Clean, Renewable, and Efficient Energy Act) to generate *energy*. (This language would allow biomass systems that produce electricity *or other forms of energy* to qualify as a permitted use. For example, some methane digesters produce heat rather than electricity.)

"Biomass" would mean that term as defined in Section 3 of the Clean, Renewable, and Efficient Energy Act:

... any organic matter that is not derived from fossil fuels, that can be converted to usable fuel for the production of energy, and that replenishes over a human, not a geological, time frame, including, but not limited to, all of the following:

- Agricultural crops and crop wastes.
- Short-rotation energy crops.
- Herbaceous plants.
- Trees and wood, but only if derived from sustainably managed forests or procurement systems, as defined in section 261c of the management and budget act, 1984 PA 431, MCL 18.1261c.
- Paper and pulp products.
- Precommercial wood thinning waste, brush, or yard waste.
- Wood wastes and residues from the processing of wood products or paper.
- Animal wastes.
- Wastewater sludge or sewage.
- Aquatic plants.
- Food production and processing waste.
- Organic by-products from the production of biofuels.

Role of state land use agency in deciding permitted use questions. Under current law, the state land agency [Department of Agriculture] has the authority to determine whether any use is a permitted use under Section 36104a. The bill, however, would appear to limit the

department's authority only to land use decisions under the first subsection of Section 36101(l) (described in the first bullet point under "Permitted use," above).

MCL 324.36101 & 36104a

FISCAL IMPACT:

A fiscal analysis is in process.

POSITIONS:

The Department of Agriculture indicated support of the bill. (6-3-09)

The Michigan Agri-Business Association indicated support of the bill. (6-3-09)

The Michigan Farm Bureau indicated support of the bill. (6-3-09)

The Michigan Floriculture Growers Council indicated support of the bill. (6-3-09)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.