

**SUBSTITUTE FOR
HOUSE BILL NO. 4887**

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 36101 and 36104a (MCL 324.36101 and
324.36104a), section 36101 as amended by 2008 PA 336 and section
36104a as added by 1996 PA 233.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 36101. As used in this part:

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

7 (b) "Agricultural use" means the production of plants and
8 animals useful to humans, including forages and sod crops; grains,
9 feed crops, and field crops; dairy and dairy products; poultry and

1 poultry products; livestock, including breeding and grazing of
2 cattle, swine, captive cervidae, and similar animals; berries;
3 herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables;
4 maple syrup; ~~production~~; Christmas trees; and other similar uses
5 and activities. Agricultural use includes use in a federal acreage
6 set-aside program or a federal conservation reserve program.
7 Agricultural use does not include the management and harvesting of
8 a woodlot.

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

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

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

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

24 (g) "Development rights easement" means a grant, by an
25 instrument, in which the owner relinquishes to the public in
26 perpetuity or for a term of years the right to undertake
27 development of the land, and that contains a covenant running with

1 the land, not to undertake development, subject to permitted uses.

2 (h) "Farmland" means 1 or more of the following:

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

5 (ii) A farm of 5 acres or more in 1 ownership, but less than 40
6 acres, with 51% or more of the land area devoted to an agricultural
7 use, that has produced a gross annual income from agriculture of
8 \$200.00 per year or more per acre of cleared and tillable land. A
9 farm described in this subparagraph enrolled in a federal acreage
10 set aside program or a federal conservation reserve program is
11 considered to have produced a gross annual income from agriculture
12 of \$200.00 per year or more per acre of cleared and tillable land.

13 (iii) A farm designated by the department of agriculture as a
14 specialty farm in 1 ownership that has produced a gross annual
15 income from an agricultural use of \$2,000.00 or more. Specialty
16 farms include, but are not limited to, greenhouses ~~;~~**AND FARMS**
17 **ENGAGED IN** equine breeding and grazing; the breeding and grazing of
18 cervidae, pheasants, and other game animals; **THE PRODUCTION OF** bees
19 and bee products; **THE PRODUCTION OF** mushrooms; aquaculture; and
20 other similar uses and activities.

21 (iv) Parcels of land in 1 ownership that are not contiguous but
22 that constitute an integral part of a farming operation being
23 conducted on land otherwise qualifying as farmland may be included
24 in an application under this part.

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

26 (i) With respect to farmland or open space land that is located
27 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~~ **UNDER THE MICHIGAN ZONING ENABLING ACT, 2006 PA 110, MCL 125.3101 TO 125.3702**, 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

1 substantially undeveloped and because of its soil, terrain, and
2 location is capable of being devoted to agricultural uses as
3 identified by the department of agriculture.

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

7 (l) "Permitted use" means any **OF THE FOLLOWING:**

8 (i) **ANY** use expressly authorized within a development rights
9 agreement, development rights easement, or agriculture conservation
10 easement that is consistent with the farming operation or that does
11 not alter the open space character of the land, **AS DETERMINED BY**
12 **THE STATE LAND USE AGENCY PURSUANT TO SECTION 36104A.**

13 (ii) Storage, retail or wholesale marketing, or processing of
14 agricultural products ~~is a permitted use in a farming operation if~~
15 more than 50% of the stored, processed, or merchandised **MARKETED**
16 products are produced by the farm operator for at least 3 of the
17 immediately preceding 5 years. ~~The state land use agency shall~~
18 ~~determine whether a use is a permitted use pursuant to section~~
19 ~~36104a.~~

20 (iii) **AT A FARM OPERATION, A RENEWABLE ENERGY SYSTEM.**

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

25 (n) "Planning commission" means a planning commission created
26 by the local governing body under **THE MICHIGAN PLANNING ENABLING**
27 **ACT, 2008 PA 33, MCL 125.3801 TO 125.3885, FORMER 1945 PA 282, MCL**

~~125.101 to 125.115, FORMER 1959 PA 168, MCL 125.321 to 125.333, or~~
~~FORMER 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) "RENEWABLE ENERGY SYSTEM" MEANS EITHER OF THE FOLLOWING:

**(i) A WIND ENERGY CONVERSION SYSTEM OR SOLAR ENERGY SYSTEM USED
 TO GENERATE ELECTRICITY.**

**(ii) A SYSTEM THAT USES BIOMASS TO GENERATE ENERGY. AS USED IN
 THIS SUBPARAGRAPH, "BIOMASS" MEANS THAT TERM AS DEFINED IN SECTION
 3 OF THE CLEAN, RENEWABLE, AND EFFICIENT ENERGY ACT, 2008 PA 295,
 MCL 460.1003.**

(T) ~~(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.~~

(U) ~~(t)~~—"State land use agency" means the department of

1 agriculture.

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

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

9 Sec. 36104a. In determining whether a use is a permitted use
10 **UNDER SECTION 36101(I)**, the state land use agency shall consider the
11 following criteria:

12 (a) Whether the use adversely affects the productivity of
13 farmland or adversely affects the character of open space land.

14 (b) Whether the use materially alters or negatively affects
15 the existing conditions or use of the land.

16 (c) Whether the use substantially alters the agricultural use
17 of farmland subject to a development rights agreement or
18 substantially alters the natural character of open space land
19 subject to an open space easement.

20 (d) Whether the use results in a material alteration of an
21 existing structure to a nonagricultural use.

22 (e) Whether the use conforms with all applicable federal ~~,~~ **AND**
23 state ~~,~~ **LAWS** and local ~~laws and~~ ordinances.