

HOUSE BILL No. 4887

May 5, 2009, Introduced by Rep. Mayes and referred to the Committee on Agriculture.

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

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

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

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

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

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

26 (g) "Development rights easement" means a grant, by an
27 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 ~~+~~**AND FARMS ENGAGED IN** equine breeding and grazing; the breeding and grazing of cervidae, pheasants, and other game animals; **THE PRODUCTION OF** bees and bee products; **THE PRODUCTION OF** 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:

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

3 (ii) With respect to farmland or open space land that is not
4 located in a city or village but that is located in a township
5 having a zoning ordinance in effect ~~as provided by law~~ **UNDER THE**
6 **MICHIGAN ZONING ENABLING ACT, 2006 PA 110, MCL 125.3101 TO**
7 **125.3702**, the township board of the township.

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

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

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

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

16 (B) Riverfront ownership subject to designation under part
17 305, to the extent that full legal descriptions may be declared
18 open space under the meaning of this part, if the undeveloped
19 parcel or government lot parcel or portions of the undeveloped
20 parcel or government lot parcel as assessed and owned is affected
21 by that part and lies within 1/4 mile of the river.

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

24 (ii) Any other area approved by the local governing body, the
25 preservation of which area in its present condition would conserve
26 natural or scenic resources, including the promotion of the
27 conservation of soils, wetlands, and beaches; the enhancement of

1 recreation opportunities; the preservation of historic sites; and
2 idle potential farmland of not less than 40 acres that is
3 substantially undeveloped and because of its soil, terrain, and
4 location is capable of being devoted to agricultural uses as
5 identified by the department of agriculture.

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

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

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

15 (ii) Storage, retail or wholesale marketing, or processing of
16 agricultural products ~~is a permitted use in a farming operation if~~
17 more than 50% of the stored, processed, or ~~merchandised~~ **MARKETED**
18 products are produced by the farm operator for at least 3 of the
19 immediately preceding 5 years. ~~The state land use agency shall~~
20 ~~determine whether a use is a permitted use pursuant to section~~
21 ~~36104a.~~

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

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

27 (n) "Planning commission" means a planning commission created

by the local governing body under **THE MICHIGAN PLANNING ENABLING 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 THAT TERM AS DEFINED IN SECTION 11 OF THE CLEAN, RENEWABLE, AND EFFICIENT ENERGY ACT, 2008 PA 295, MCL 460.1011, BUT DOES NOT INCLUDE AN INCINERATOR.

(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 agriculture.

(V) ~~(u)~~"Substantially undeveloped" means any parcel or area

1 of land essentially unimproved except for a dwelling, building,
2 structure, road, or other improvement that is incidental to
3 agricultural and open space uses.

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

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

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

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

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

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

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