

## OPEN SPACE DEVELOPMENT RIGHTS EASEMENT

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**Senate Bill 472**

**Sponsor: Sen. John Moolenaar**

**House Committee: Agriculture**

**Senate Committee: Agriculture**

**Complete to 2-7-12**

## A SUMMARY OF SENATE BILL 472 AS PASSED BY THE SENATE 9-7-11

Part 361 (Farmland and Open Space Preservation) of the Michigan Natural Resources and Environmental Protection Act (1994 PA 451) provides for voluntary open space development rights easements between landowners and the "state land use agency," meaning the Michigan Department of Agriculture and Rural Development, and between landowners and local units of government. Such easements are used to restrict development of land meeting the definition of "open space" under the act, and to preserve the character of such land as open space. Section 36103 of the act requires that such easements have an initial term of not less than ten years, with a maximum term of 90 years.

Landowners are not paid for the land or development rights under these easements, but do receive a reduction in property taxes related to the development rights of the land under easement. Under provisions of the act, the property owners are liable for ad valorem property taxes attributable to the land under easement, but are not be liable for ad valorem property taxes related to the easement property's development rights as separately valued and assessed. The act states that, when the state holds the development rights, "the amount of cost shall be returned to the local governing body if lost revenues are indicated." In effect, the State of Michigan reimburses the affected local units of government, e.g. a county or township government, or school district, for the revenue loss resulting from the sheltering of the development rights from property taxes.

Senate Bill 472 would make the following changes related to open space development rights easements:

### In Section 36105 (State holds development rights)

- Require the state land use agency (i.e., the Department of Agriculture and Rural Development) to approve an application for an open space development rights easement if the land meets all of the following requirements: (1) is 15 acres or more in size; (2) does not contain any residential, commercial or industrial structures; and (3) is not operated as a commercial facility.
- Require the state land use agency to submit applications for open space development rights easements to the Agriculture and Rural Development Commission for approval or rejection. Currently, applications must be submitted to the Legislature.

- Require the Legislature to appropriate funds to reimburse the local taxing authorities for revenue lost as a result of a tax exemption for development rights held by the state in an open space development rights easement. (Currently, the statute says that when the application is approved by both houses of the Legislature the amount of lost revenues "shall be returned" to the local governing body. That language would be struck.)

Section 36105 applies to open space defined as one of the following: (a) any undeveloped site included in a national registry of historic places or designated as a historic site under state or federal law; (b) certain riverfront ownership subject to designation under Part 305 (Natural Rivers); and (c) undeveloped lands designated as environmental areas under Part 323 (Great Lakes Shorelands), including unregulated portions of those lands.

In Section 36106 (Local unit holds development rights)

- Permit an owner of open space land, in an application to the local government for a development rights easement, to waive the tax exemption that would otherwise apply if the open space development rights easement is approved.
- Require the state land use agency to approve an appealed application (when denied at the local level) if the land meets all of the following requirements: (1) is 15 acres or more in size; (2) does not contain any residential, commercial, or industrial structures; (3) is not operated as a commercial facility; and (4) has significant importance to the public interest of more than local concern as a valuable land resource.
- Specify that if the land owner waived the tax exemption, the state land use agency would reject or finally approve the application. If the land owner did not waive the exemption, the state land use agency would reject or approve the application and would submit an approved application to the Commission of Agriculture and Rural Development, which would reject or finally approve the application.

Section 36106 applies to open space that is defined as: "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."

MCL 324.36105 and 324.36106

## **FISCAL IMPACT:**

Landowners are not paid for the land or development rights under these easements, but do receive a reduction in property taxes related to the development rights of the land under easement. Under provisions of the act, the property owners are liable for ad valorem property taxes attributable to the land under easement, but are not be liable for

ad valorem property taxes related to the easement property's development rights as separately valued and assessed. The act states that if development agreements are held by the state, then "the amount of cost shall be returned to the local governing body is lost revenues are indicated". In effect, in those cases, the State of Michigan reimburses affected local units of government, e.g. a county or township government, or school district, for the revenue loss resulting from the sheltering of the development rights from property taxes. Under the current program, reimbursement funds come from the state-restricted Agriculture Preservation Fund. The state reimbursement does not apply to local open space lands.

To the extent that the bill does not appear to materially change the current program requirements, it does not appear to have a significant fiscal impact.

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