Legislative Analysis

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LIENS ON FARMLAND PREVIOUSLY SUBJECT TO A DEVELOPMENT RIGHTS AGREEMENT

House Bill 4666 as enrolled
Public Act 79 of 2011
Sponsor: Rep. Andrea LaFontaine
House Committee: Agriculture
Senate Committee: Agriculture

Complete to 8-23-11

A SUMMARY OF HOUSE BILL 4666 AS ENROLLED

Land owners who enter 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) receive certain tax benefits in exchange for keeping the land as farmland and not developing it for another use for the duration of the agreement.

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 6% on the amount due. No interest is added when a DRA expires at the expiration of the agreement. 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 & 362 of NREPA. Lien payments are transferred to the Agricultural Preservation Fund, Section 36202 of NREPA (MCL 324.36202).

House Bill 4666 would allow a landowner whose property is subject to this type of lien recorded before January 1, 2011, to pay off the lien at 85% of its face value during the period July 1, 2011, through September 30, 2011. It also allows a landowner to pay off a lien recorded before January 1, 2011, at 90% of its face value during the period October 1, 2011, through March 31, 2012.

Additionally under the bill, for future development rights agreements, when a DRA expires at the end of the agreement, the lien on that property would also include interest. Interest would be added at the current monthly interest rate of one percentage point above the adjusted prime rate per annum from the time the lien is recorded until it is paid. This applies only to DRAs acted on (approved or rejected) by the local governing body under Section 36104 on or after July 1, 2012.

MCL 324.36111

BACKGROUND INFORMATION:

According to testimony by the Department of Agriculture and Rural Development, the majority of the liens imposed under the farmland and open space preservation program remain unpaid. This bill would provide an incentive for payments by allowing existing liens to be paid off at a reduced rate (85% or 90%) for a specified period of time. Also, under the bill, for future liens, interest will be added to unpaid liens due on property where the development rights agreement expired at the end of an agreement. (Interest is already charged on property prematurely withdrawn from the program.)

FISCAL IMPACT:

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, 2011. 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 a percentage, either 85% or 90%, of the face value of the lien. This would appear to result in a reduction of state restricted revenue, although it would provide an incentive for prompt or accelerated payment. As a point of reference, during the last four years, deposits to the Agricultural Preservation Fund under provisions of Section 36111 averaged $1.06 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 require that liens on land subject to an expired DRA entered into on or after January 1, 2012, include interest. This provision would appear to increase state restricted revenue by an indeterminate amount.

The Michigan Department Agriculture and Rural Development indicates that there are approximately 42,100 farmland agreements with an estimated 21,000 landowners (a landowner may have more than one agreement). The department also indicates that approximately $12.0 million is owed for expired agreements and anticipates that the incentives provided under the bill would result in the accelerated payment of $5.0 million of the amount owed.

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