

SENATE BILL No. 472

June 15, 2011, Introduced by Senator MOOLENAAR and referred to the Committee on Agriculture.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending sections 36105 and 36106 (MCL 324.36105 and 324.36106),
as amended by 2002 PA 75.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 36105. (1) If an owner of open space land desires an open
2 space development rights easement, and the land is ~~subject to~~
3 **DESCRIBED IN** section 36101(j) (i), the ~~procedures for filing~~ **AND**
4 **PROCESSING OF** an application provided by the state land use agency
5 shall follow **THE SAME PROCEDURES** as provided in section 36104. ~~7~~
6 ~~except~~ **HOWEVER, SUBSECTIONS (2) TO (4) APPLY INSTEAD OF** section
7 36104(7) and ~~(12) do not apply to an open space development rights~~
8 ~~easement.~~ **(8), AND SUBSECTION (6) APPLIES INSTEAD OF SECTION**

1 36104(12).

2 (2) The state land use agency, within 60 days after the open
3 space development rights easement application is received, shall
4 approve or reject the application. **THE STATE LAND USE AGENCY SHALL**
5 **APPROVE THE APPLICATION IF THE LAND THAT IS THE SUBJECT OF THE**
6 **APPLICATION MEETS ALL OF THE FOLLOWING REQUIREMENTS:**

7 (A) IS 15 ACRES OR MORE IN SIZE.

8 (B) DOES NOT CONTAIN ANY RESIDENTIAL, COMMERCIAL, OR
9 INDUSTRIAL STRUCTURES.

10 (C) IS NOT OPERATED AS A COMMERCIAL FACILITY.

11 (3) If the application is approved by the state land use
12 agency, the state land use agency shall prepare an open space
13 development rights easement that includes **ALL OF** the following
14 provisions:

15 (a) A structure shall not be built on the land without the
16 approval of the state land use agency.

17 (b) Improvement to the land shall not be made without the
18 approval of the state land use agency.

19 (c) An interest in the land shall not be sold, except for a
20 scenic, access, or utility easement that does not substantially
21 hinder the character of the open space land.

22 (d) Access to the open space land may be provided if access is
23 agreed to by the owner and if access will not jeopardize the
24 conditions of the land.

25 (e) Any other condition or restriction on the land as agreed
26 to by the parties that is considered necessary to preserve the land
27 or appropriate portions of it as open space land.

1 (4) ~~(3)~~ Upon receipt of the application, the state land use
 2 agency shall notify the state tax commission. ~~Upon~~ **WITHIN 60 DAYS**
 3 **AFTER RECEIVING** notification, the state tax commission shall ~~within~~
 4 ~~60 days~~ make an on-site appraisal of the land in compliance with
 5 the Michigan state tax commission assessors manual. The application
 6 shall contain a statement specifying the current fair market value
 7 of the land and the current fair market value of the development
 8 rights. ~~The~~ **IF THE APPLICATION IS APPROVED BY THE STATE LAND USE**
 9 **AGENCY UNDER SUBSECTION (2), THE** state land use agency shall submit
 10 to the ~~legislature~~ **COMMISSION OF AGRICULTURE AND RURAL DEVELOPMENT**
 11 each application for an open space development rights easement and
 12 an analysis of its cost to the state. ~~The application shall be~~
 13 ~~approved in both houses by a resolution concurred in by a majority~~
 14 ~~of the members elected and serving in each house. The amount of the~~
 15 ~~cost shall be returned to the local governing body if lost revenues~~
 16 ~~are indicated. A~~ **COMMISSION OF AGRICULTURE AND RURAL DEVELOPMENT**
 17 **SHALL APPROVE OR REJECT THE APPLICATION. IF THE APPLICATION IS**
 18 **APPROVED, A** copy of the approved application and the open space
 19 development rights easement shall be forwarded by the state land
 20 use agency to the applicant for execution and to the local
 21 assessing office where the land is ~~situated~~ **LOCATED**.

22 (5) ~~(4)~~ If an application for an open space development rights
 23 easement is rejected under subsection (2) **OR (4)**, the applicant may
 24 reapply for an open space development rights easement beginning 1
 25 year after the rejection.

26 (6) ~~(5)~~ The development rights held by the state as expressed
 27 in an open space development rights easement under this section are

1 exempt from ad valorem taxation. **THE LEGISLATURE BY ANNUAL**
 2 **APPROPRIATION SHALL REIMBURSE THE LOCAL TAXING AUTHORITIES FOR**
 3 **REVENUE LOST AS A RESULT OF THE APPLICATION OF THIS SUBSECTION.**

4 Sec. 36106. (1) An owner of open space land desiring an open
 5 space development rights easement whose land is ~~subject to~~
 6 **DESCRIBED IN** section 36101(j)(ii) may apply by filing an application
 7 with the local governing body. The application shall be made on a
 8 form prescribed by the state land use agency. The application shall
 9 contain information reasonably necessary to ~~properly~~ identify the
 10 land as open space. This information shall include a land survey or
 11 a legal description of the land and a map showing the significant
 12 natural features and all structures and physical improvements
 13 located on the land. **IN THE APPLICATION, THE OWNER MAY WAIVE THE**
 14 **EXEMPTION FROM AD VALOREM TAXATION UNDER SUBSECTION (12) THAT WOULD**
 15 **OTHERWISE APPLY IF THE OPEN SPACE DEVELOPMENT RIGHTS EASEMENT IS**
 16 **APPROVED.**

17 (2) Upon receipt of an application, the local governing body
 18 shall notify the county planning commission, the regional planning
 19 commission, and the soil conservation district agency. If the local
 20 governing body is the county board of commissioners, the county
 21 board shall also notify the township board of the township in which
 22 the land is ~~situated.~~ **LOCATED.** If the land is **LOCATED** within 3
 23 miles of the boundary of a city or within 1 mile of the boundary of
 24 a village, the local governing body shall notify the governing body
 25 of the city or village.

26 (3) ~~An entity~~ **WITHIN 30 DAYS AFTER** receiving notice under
 27 subsection (2), ~~has 30 days to~~ **AN ENTITY MAY** review, comment, and

1 make recommendations to the local governing body with which the
2 application was filed.

3 (4) The local governing body shall approve or reject the
4 application after considering the comments and recommendations of
5 the reviewing entities and within 45 days after the application was
6 received by the local governing body, unless that period is
7 extended by agreement of the parties involved. The local governing
8 body's approval or rejection of the application shall be based
9 upon, and consistent with, rules promulgated by the state land use
10 agency under section 36116. If the local governing body does not
11 act within the time prescribed or agreed upon, the applicant may
12 proceed as provided in subsection (9) as if the application was
13 rejected.

14 (5) If the application is approved by the local governing
15 body, the local governing body shall prepare the **OPEN SPACE**
16 **DEVELOPMENT RIGHTS** easement. If the application is approved by the
17 state land use agency on appeal, the state land use agency shall
18 prepare the easement. An easement prepared under this section shall
19 contain all of the following provisions:

20 (a) A structure shall not be built on the land without the
21 approval of the local governing body.

22 (b) An improvement to the land shall not be made without the
23 approval of the local governing body.

24 (c) An interest in the land shall not be sold, except for a
25 scenic, access, or utility easement that does not substantially
26 hinder the character of the open space land.

27 (d) Public access to the open space land may be provided if

1 agreed upon by the owner and if access will not jeopardize the
2 conditions of the land.

3 (e) Any other condition or restriction on the land as agreed
4 to by both parties that is considered necessary to preserve the
5 land or appropriate portions of it as open space land.

6 (6) Upon receipt of the application, the local governing body
7 shall direct either the local assessing officer or an independent
8 certified assessor to make an on-site appraisal of the land within
9 30 days in compliance with the Michigan state tax commission
10 assessors manual. The approved application shall contain a
11 statement specifying the current fair market value of the land and
12 the current fair market value of the development rights, if any. A
13 **THIS SUBSECTION DOES NOT APPLY IF, IN THE APPLICATION UNDER**
14 **SUBSECTION (1), THE OWNER WAIVED THE EXEMPTION FROM AD VALOREM**
15 **TAXATION UNDER SUBSECTION (12).**

16 (7) **THE STATE LAND USE AGENCY OR LOCAL GOVERNING BODY,**
17 **WHICHEVER PREPARED THE DEVELOPMENT RIGHTS EASEMENT, SHALL FORWARD A**
18 copy of the approved application and the development rights
19 easement ~~shall be forwarded to the applicant for his or her~~
20 execution.

21 (8) ~~(7)~~ If the owner of the land executes the approved **OPEN**
22 **SPACE DEVELOPMENT RIGHTS** easement, ~~it shall be returned~~ **THE OWNER**
23 **SHALL RETURN IT** to the local governing body for ~~its~~ execution. The
24 local governing body shall ~~record~~ **EXECUTE** the **OPEN SPACE**
25 development rights easement **AND RECORD IT** with the register of
26 deeds of the county. ~~A~~ **THE LOCAL GOVERNING BODY SHALL FORWARD A**
27 copy of the approved ~~approved~~ **EXECUTED** easement ~~shall be forwarded to the~~ **TO**

1 BOTH OF THE FOLLOWING FOR THEIR INFORMATION:

2 (A) THE local assessing office. ~~and to the~~ HOWEVER, THIS
3 SUBDIVISION DOES NOT APPLY IF, IN THE APPLICATION, THE OWNER WAIVED
4 THE EXEMPTION FROM AD VALOREM TAXATION.

5 (B) THE state land use agency. ~~for their information.~~
6 ~~(8) The decision of the local governing body may be appealed~~
7 ~~to the state land use agency, pursuant to subsection (9).~~

8 (9) If an application for an open space development rights
9 easement is rejected by the local governing body, the local
10 governing body shall notify the applicant and all reviewing
11 entities with a written statement of the reasons for rejection.
12 Within 30 days after receipt of the NOTICE OF THE rejected
13 application, the applicant may appeal the rejection to the state
14 land use agency. ~~The state land use agency shall have 60 days to~~
15 ~~approve or reject the application. The state land use agency shall~~
16 ~~submit to the legislature each approved application for an open~~
17 ~~space development rights easement and an analysis of its cost. The~~
18 ~~application shall be approved in both houses by a resolution~~
19 ~~concurred in by a majority of the members elected and serving in~~
20 ~~each house. The amount of the cost shall be returned to the local~~
21 ~~governing body where lost revenues are indicated. A SUBJECT TO~~
22 **SUBSECTION (10), IF, IN THE APPLICATION, THE OWNER WAIVED THE**
23 **EXEMPTION FROM AD VALOREM TAXATION, THE STATE LAND USE AGENCY,**
24 **WITHIN 60 DAYS AFTER RECEIPT OF THE APPEAL, SHALL REJECT OR FINALLY**
25 **APPROVE THE APPLICATION. SUBJECT TO SUBSECTION (10), IF THE OWNER**
26 **DID NOT WAIVE THE EXEMPTION FROM AD VALOREM TAXATION, THE STATE**
27 **LAND USE AGENCY, WITHIN 60 DAYS AFTER RECEIPT OF THE APPEAL, SHALL**

1 REJECT THE APPLICATION OR APPROVE THE APPLICATION AND SUBMIT THE
2 APPROVED APPLICATION TO THE COMMISSION OF AGRICULTURE AND RURAL
3 DEVELOPMENT. THE COMMISSION OF AGRICULTURE AND RURAL DEVELOPMENT
4 SHALL REJECT OR FINALLY APPROVE THE APPLICATION IN WHICH THE OWNER
5 DID NOT WAIVE THE EXEMPTION FROM AD VALOREM TAXATION. IF AN
6 APPLICATION IS FINALLY APPROVED, A copy of the approved application
7 and an appropriate easement shall be forwarded by the state land
8 use agency to the applicant for execution and to the local
9 governing body where the land is ~~situated~~.LOCATED.

10 (10) THE STATE LAND USE AGENCY SHALL APPROVE AN APPLICATION
11 UNDER SUBSECTION (9) IF THE LAND THAT IS THE SUBJECT OF THE
12 APPLICATION MEETS ALL OF THE FOLLOWING REQUIREMENTS:

13 (A) IS 15 ACRES OR MORE IN SIZE.

14 (B) DOES NOT CONTAIN ANY RESIDENTIAL, COMMERCIAL, OR
15 INDUSTRIAL STRUCTURES.

16 (C) IS NOT OPERATED AS A COMMERCIAL FACILITY.

17 (D) BEARS SIGNIFICANT IMPORTANCE TO THE PUBLIC INTEREST OF
18 MORE THAN LOCAL CONCERN AS A VALUABLE LAND RESOURCE.

19 (11) ~~(10)~~ If an application for an open space development
20 rights easement is rejected under subsection (4), the applicant may
21 reapply for an open space development rights easement beginning 1
22 year after the final rejection.

23 (12) ~~(11)~~ The development rights held by the local governing
24 body ~~as expressed in~~ UNDER an open space development rights
25 easement are exempt from ad valorem taxation UNLESS, IN THE
26 APPLICATION UNDER SUBSECTION (1), THE OWNER WAIVED THE EXEMPTION.
27 THE LEGISLATURE BY ANNUAL APPROPRIATION SHALL REIMBURSE THE LOCAL

1 TAXING AUTHORITIES FOR REVENUE LOST AS A RESULT OF THE APPLICATION
2 OF THIS SUBSECTION.