

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5189**

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 36101, 36104, 36109, 36110, 36111, and 36202 (MCL 324.36101, 324.36104, 324.36109, 324.36110, 324.36111, and 324.36202), section 36101 as amended by 2008 PA 336, sections 36104 and 36110 as amended by 1996 PA 233, section 36109 as amended by 2007 PA 174, section 36111 as amended by 2011 PA 79, and section 36202 as amended by 2013 PA 86; and to repeal acts and parts of acts.

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

1 development rights and makes a covenant running with the land not
2 to undertake development.

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

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

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

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

23 (f) "Development rights agreement" **OR "AGREEMENT"** means a
24 restrictive covenant, evidenced by an instrument in which the owner
25 and the state, for a term of years, agree to jointly hold the right
26 to undertake development of the land, and that contains a covenant
27 running with the land, for a term of years, not to undertake

1 development, subject to permitted uses.

2 (g) "Development rights easement" OR "**EASEMENT**" means a grant,
3 by an instrument, in which the owner relinquishes to the public in
4 perpetuity or for a term of years the right to undertake
5 development of the land, and that contains a covenant running with
6 the land, not to undertake development, subject to permitted uses.

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

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

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

19 (iii) A farm designated by the department of agriculture **AND**
20 **RURAL DEVELOPMENT** as a specialty farm in 1 ownership that has
21 produced a gross annual income from an agricultural use of
22 \$2,000.00 or more. Specialty farms include, but are not limited to,
23 greenhouses; equine breeding and grazing; the breeding and grazing
24 of cervidae, pheasants, and other game animals; bees and bee
25 products; mushrooms; aquaculture; and other similar uses and
26 activities.

27 (iv) Parcels of land in 1 ownership that are not contiguous

1 but that constitute an integral part of a farming operation being
2 conducted on land otherwise qualifying as farmland may be included
3 in an application under this part.

4 (I) "FUND" MEANS THE AGRICULTURAL PRESERVATION FUND CREATED IN
5 SECTION 36202.

6 (J) ~~(i)~~—"Local governing body" means 1 of the following:

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

10 (ii) With respect to farmland or open space land that is not
11 located in a city or village but that is located in a township
12 having a zoning ordinance in effect as provided by law, the
13 township board of the township.

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

17 (K) ~~(j)~~—"Open space land" means 1 of the following:

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

19 (A) Any undeveloped site included in a national registry of
20 historic places or designated as a historic site pursuant to state
21 or federal law.

22 (B) Riverfront ownership subject to designation under part
23 305, to the extent that full legal descriptions may be declared
24 open space under the meaning of this part, if the undeveloped
25 parcel or government lot parcel or portions of the undeveloped
26 parcel or government lot parcel as assessed and owned is affected
27 by that part and lies within 1/4 mile of the river.

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

3 (ii) Any other area approved by the local governing body, the
4 preservation of which area in its present condition would conserve
5 natural or scenic resources, including the promotion of the
6 conservation of soils, wetlands, and beaches; the enhancement of
7 recreation opportunities; the preservation of historic sites; and
8 idle potential farmland of not less than 40 acres that is
9 substantially undeveloped and because of its soil, terrain, and
10 location is capable of being devoted to agricultural uses as
11 identified by the department of agriculture **AND RURAL DEVELOPMENT**.

12 (I) ~~(k)~~—"Owner" means a person having a freehold estate in
13 land coupled with possession and enjoyment. If land is subject to a
14 land contract, owner means the vendee in agreement with the vendor
15 **AND RURAL DEVELOPMENT**.

16 (M) ~~(l)~~—"Permitted use" means any use expressly authorized
17 within a development rights agreement, development rights easement,
18 or agriculture conservation easement that is consistent with the
19 farming operation or that does not alter the open space character
20 of the land. Storage, retail or wholesale marketing, or processing
21 of agricultural products is a permitted use in a farming operation
22 if more than 50% of the stored, processed, or merchandised products
23 are produced by the farm operator for at least 3 of the immediately
24 preceding 5 years. The state land use agency shall determine
25 whether a use is a permitted use pursuant to section 36104a.

26 (N) ~~(m)~~—"Person" includes an individual, corporation, limited
27 liability company, business trust, estate, trust, partnership, or

1 association, or 2 or more persons having a joint or common interest
2 in land.

3 (O) ~~(n)~~-"Planning commission" means a planning commission
4 created by the local governing body under 1945 PA 282, MCL 125.101
5 to 125.115, 1959 PA 168, MCL 125.321 to 125.333, or 1931 PA 285,
6 MCL 125.31 to 125.45, as applicable. **UNDER THE MICHIGAN PLANNING**
7 **ENABLING ACT, 2008 PA 33, MCL 125.3801 TO 125.3885.**

8 (P) ~~(o)~~-"Prohibited use" means a use that is not consistent
9 with an agricultural use for farmland subject to a development
10 rights agreement or is not consistent with the open space character
11 of the land for lands subject to a development rights easement.

12 (Q) ~~(p)~~-"Property taxes" means general ad valorem taxes levied
13 after January 1, 1974, on lands and structures in this state,
14 including collection fees, but not including special assessments,
15 penalties, or interest.

16 (R) ~~(q)~~-"Regional planning commission" means a regional
17 planning commission created pursuant to 1945 PA 281, MCL 125.11 to
18 125.25.

19 (S) ~~(r)~~-"Regional planning district" means the planning and
20 development regions as established by executive directive 1968-1,
21 as amended, whose organizational structure is approved by the
22 regional council.

23 (T) ~~(s)~~-"State income tax act" means the income tax act of
24 1967, 1967 PA 281, MCL 206.1 to 206.532, **206.713**, and in effect
25 during the particular year of the reference to the act.

26 (U) ~~(t)~~-"State land use agency" means the department of
27 agriculture **AND RURAL DEVELOPMENT.**

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

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

8 Sec. 36104. (1) An owner of land desiring a farmland
9 development rights agreement may apply by filing an application
10 with the local governing body having jurisdiction under this part.
11 The owner shall apply on a form prescribed by the state land use
12 agency. The application shall contain information reasonably
13 necessary to properly classify the land as farmland. This
14 information shall include a land survey or a legal description of
15 the land and a map showing the significant natural features and all
16 structures and physical improvements located on the land.

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

26 (3) An agency or local governing body receiving notice has 30
27 days to review, comment, and make recommendations to the local

1 governing body with which the application is filed. These reviewing
2 agencies do not have an approval or rejection power over the
3 application.

4 (4) After considering the comments and recommendations of the
5 reviewing agencies and local governing bodies, the local governing
6 body holding the application shall approve or reject the
7 application within 45 days after the application is received,
8 unless that period is extended by agreement of the parties
9 involved. The local governing body's approval or rejection of the
10 application shall be based upon, and consistent with, rules
11 promulgated ~~by the state land use agency~~ under section 36116.

12 (5) If an application for a farmland development rights
13 agreement is approved by the local governing body having
14 jurisdiction, the local governing body shall forward a copy, along
15 with the comments and recommendations of the reviewing bodies, to
16 the state land use agency. The application shall contain a
17 statement from the assessing officer where the property is located
18 specifying the current fair market value of the land and structures
19 in compliance with the agricultural section of the Michigan state
20 tax commission assessor manual. If action is not taken by the local
21 governing body within the time prescribed or agreed upon, the
22 applicant may proceed as provided in subsection (6) as if the
23 application was rejected.

24 (6) If the application for a farmland development rights
25 agreement is rejected by the local governing body, the local
26 governing body shall return the application to the applicant with a
27 written statement regarding the reasons for rejection. Within 30

1 days after receipt of the rejected application, the applicant may
2 appeal the rejection by submitting the application to the state
3 land use agency.

4 (7) The state land use agency, within 60 days after a farmland
5 development rights agreement application is received under
6 subsection (5) or (6), shall approve or reject the application. A
7 ~~rejection of~~ **THE STATE LAND USE AGENCY MAY REJECT** an application
8 for a farmland development rights agreement that has been approved
9 by a local governing body ~~by the state land use agency shall be for~~
10 ~~nonconformance~~ **ONLY IF THE PROPOSED AGREEMENT WOULD BE INCONSISTENT**
11 with section 36101(f). ~~only.~~ If the application is approved by the
12 state land use agency, the state land use agency shall prepare a
13 farmland development rights agreement that includes all of the
14 following provisions:

15 (a) A structure shall not be built on the land except for use
16 consistent with farm operations, which includes a residence for an
17 individual essential to the operation of the farm under section
18 36111(2)(b), or lines for utility transmission or distribution
19 purposes or with the approval of the local governing body and the
20 state land use agency.

21 (b) Land improvements shall not be made except for use
22 consistent with farm operations or with the approval of the local
23 governing body and the state land use agency.

24 (c) Any interest in the land shall not be sold except a
25 scenic, access, or utility easement that does not substantially
26 hinder farm operations.

27 (d) Public access is not permitted on the land unless agreed

1 to by the owner.

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

5 ~~(8) A copy of the approved application and~~ **UPON APPROVAL OF AN**
6 **APPLICATION BY THE STATE, THE STATE LAND USE AGENCY SHALL EXECUTE**
7 the farmland development rights agreement **ON BEHALF OF THE STATE**
8 **AND** shall ~~be forwarded~~ **FORWARD THE AGREEMENT** to the applicant for
9 execution. ~~An application that is approved by the local governing~~
10 ~~body by November 1 shall take effect for the current tax year.~~ **AFTER**
11 **THE APPLICANT EXECUTES THE FARMLAND DEVELOPMENT RIGHTS AGREEMENT,**
12 **THE APPLICANT SHALL HAVE THE EXECUTED FARMLAND DEVELOPMENT RIGHTS**
13 **AGREEMENT RECORDED BY THE REGISTER OF DEEDS IN THE COUNTY IN WHICH**
14 **THE PROPERTY IS LOCATED. THE APPLICANT SHALL PROVIDE A COPY OF THE**
15 **RECORDED FARMLAND DEVELOPMENT RIGHTS AGREEMENT TO THE STATE LAND**
16 **USE AGENCY.**

17 ~~(9) If the owner executes the farmland development rights~~
18 ~~agreement, the owner shall return it to the state land use agency~~
19 ~~for execution on behalf of the state. The state land use agency~~
20 ~~shall record the executed development rights agreement with the~~
21 ~~register of deeds of the county in which the land is situated and~~
22 ~~shall notify the applicant, the local governing body and its~~
23 ~~assessing office, all reviewing agencies, and the department of~~
24 ~~treasury.~~ **ANNUALLY PROVIDE A LISTING OF CURRENT FARMLAND DEVELOPMENT**
25 **RIGHTS AGREEMENTS TO COUNTY EQUALIZATION OFFICES WHERE THE LAND IS**
26 **LOCATED AND TO THE APPROVING LOCAL GOVERNING BODY.**

27 (10) **AN APPLICATION THAT IS APPROVED BY THE LOCAL GOVERNING**

1 **BODY BY NOVEMBER 1 SHALL TAKE EFFECT FOR THE CURRENT TAX YEAR.**

2 (11) ~~(10)~~—If an application for a farmland development rights
3 agreement is rejected by the state land use agency, the state land
4 use agency shall notify the affected local governing body, all
5 reviewing agencies concerned, and the applicant with a written
6 statement containing the reasons for rejection. An applicant
7 receiving a rejection from the state land use agency may appeal the
8 rejection pursuant to the administrative procedures act of 1969,
9 ~~Act No. 306 of the Public Acts of 1969, being sections 24.201 to~~
10 ~~24.328 of the Michigan Compiled Laws.1969 PA 306, MCL 24.201 TO~~
11 **24.328.**

12 (12) ~~(11)~~—An applicant may reapply for a farmland development
13 rights agreement following a 1-year waiting period.

14 (13) ~~(12)~~—The value of the jointly owned development rights as
15 expressed in a farmland development rights agreement is not exempt
16 from ad valorem taxation and shall be assessed to the owner of the
17 land as part of the value of that land.

18 Sec. 36109. (1) An owner of farmland and related buildings
19 subject to 1 or more development rights agreements under section
20 36104 or agricultural conservation easements or purchases of
21 development rights under section 36111b or 36206 who is required or
22 eligible to file a return as an individual or a claimant under the
23 state income tax act may claim a credit against ~~the~~ state income
24 tax liability for the amount by which the property taxes on the
25 land and structures used in the farming operation, including the
26 homestead, restricted by the development rights agreements,
27 agricultural conservation easements, or purchases of development

1 rights exceed 3.5% of the household income as defined in section
2 508 of the income tax act of 1967, 1967 PA 281, MCL 206.508,
3 excluding a deduction if taken under section 613 of the internal
4 revenue code of 1986, 26 USC 613. For the purposes of this section,
5 all of the following apply:

6 (a) A partner in a partnership is considered an owner of
7 farmland and related buildings owned by the partnership and covered
8 by a development rights agreement, agricultural conservation
9 easement, or purchase of development rights. A partner is
10 considered to pay a proportion of the property taxes on that
11 property equal to the partner's share of ownership of capital or
12 distributive share of ordinary income as reported by the
13 partnership to the ~~internal revenue service~~ **INTERNAL REVENUE**
14 **SERVICE** or, if the partnership is not required to report that
15 information to the ~~internal revenue service~~, **INTERNAL REVENUE**
16 **SERVICE**, as provided in the partnership agreement or, if there is
17 no written partnership agreement, a statement signed by all the
18 partners. A partner claiming a credit under this section based upon
19 the partnership agreement or a statement shall file a copy of the
20 agreement or statement with his or her income tax return. If the
21 agreement or statement is not filed, the department of treasury
22 shall deny the credit. All partners in a partnership claiming the
23 credit allowed under this section shall compute the credit using
24 the same basis for the apportionment of the property taxes.

25 (b) A shareholder of a corporation that has filed a proper
26 election under subchapter S of chapter 1 of subtitle A of the
27 internal revenue code of 1986, 26 USC 1361 to 1379, is considered

1 an owner of farmland and related buildings covered by a development
2 rights agreement that are owned by the corporation. A shareholder
3 is considered to pay a proportion of the property taxes on that
4 property equal to the shareholder's percentage of stock ownership
5 for the tax year as reported by the corporation to the internal
6 revenue service. Except as provided in subsection (8), this
7 subdivision applies to tax years beginning after 1987.

8 (c) Except as otherwise provided in this subdivision, an
9 individual in possession of property for life under a life estate
10 with remainder to another person or holding property under a life
11 lease is considered the owner of that property if it is farmland
12 and related buildings covered by a development rights agreement.
13 Beginning January 1, 1986, if an individual in possession of
14 property for life under a life estate with remainder to another
15 person or holding property under a life lease enters into a written
16 agreement with the person holding the remainder interest in that
17 land and the written agreement apportions the property taxes in the
18 same manner as revenue and expenses, the life lease or life estate
19 holder and the person holding the remainder interest may claim the
20 credit under this act as it is apportioned to them under the
21 written agreement upon filing a copy of the written agreement with
22 the return.

23 (d) If a trust holds farmland and related buildings covered by
24 a development rights agreement and an individual is treated under
25 subpart E of subchapter J of subchapter A of chapter 1 of the
26 internal revenue code of 1986, 26 USC 671 to 679, as the owner of
27 that portion of the trust that includes the farmland and related

1 buildings, that individual is considered the owner of that
2 property.

3 (e) An individual who is the sole beneficiary of a trust that
4 is the result of the death of that individual's spouse is
5 considered the owner of farmland and related buildings covered by a
6 development rights agreement and held by the trust if the trust
7 conforms to all of the following:

8 (i) One hundred percent of the trust income is distributed to
9 the beneficiary in the tax year in which the trust receives the
10 income.

11 (ii) The trust terms do not provide that any portion of the
12 trust is to be paid, set aside, or otherwise used in a manner that
13 would qualify for the deduction allowed by section 642(c) of the
14 internal revenue code of 1986, 26 USC 642.

15 (f) A member in a limited liability company is considered an
16 owner of farmland and related buildings covered by a development
17 rights agreement that are owned by the limited liability company. A
18 member is considered to pay a proportion of the property taxes on
19 that property equal to the member's share of ownership or
20 distributive share of ordinary income as reported by the limited
21 liability company to the ~~internal revenue service~~. **INTERNAL REVENUE**
22 **SERVICE.**

23 (2) An owner of farmland and related buildings subject to 1 or
24 more development rights agreements under section 36104 or
25 agricultural conservation easements or purchases of development
26 rights under section 36111b or 36206 to whom subsection (1) does
27 not apply may claim a credit under the former single business tax

1 act, 1975 PA 228, or the Michigan business tax act, 2007 PA 36, MCL
2 208.1101 to 208.1601, for the amount by which the property taxes on
3 the land and structures used in farming operations restricted by
4 the development rights agreements, agricultural conservation
5 easements, or purchases of development rights exceed 3.5% of the
6 adjusted business income of the owner as defined in section 36 of
7 the former single business tax act, 1975 PA 228, or the business
8 income tax base of the owner as defined in section 201 of the
9 Michigan business tax act, 2007 PA 36, MCL 208.1201, plus
10 compensation to shareholders not included in adjusted business
11 income or the business income tax base, excluding any deductions if
12 taken under section 613 of the internal revenue code of 1986, 26
13 USC 613. When calculating adjusted business income for tax years
14 beginning before 1987, federal taxable income shall not be less
15 than zero for the purposes of this subsection only. A participant
16 is not eligible to claim a credit and refund against the former
17 single business tax act, 1975 PA 228, or the Michigan business tax
18 act, 2007 PA 36, MCL 208.1101 to 208.1601, unless the participant
19 demonstrates that the participant's agricultural gross receipts of
20 the farming operation exceed 5 times the property taxes on the land
21 for each of 3 out of the 5 tax years immediately preceding the year
22 in which the credit is claimed. This eligibility requirement does
23 not apply to those participants who executed farmland development
24 rights agreements under this part before January 1, 1978. A
25 participant may compare, during the contract period, the average of
26 the most recent 3 years of agricultural gross receipts to property
27 taxes in the first year that the participant entered the program

1 under the present contract in calculating the gross receipts
2 qualification. Once an election is made by the participant to
3 compute the benefit in this manner, all future calculations shall
4 be made in the same manner.

5 (3) If the farmland and related buildings covered by a
6 development rights agreement under section 36104 or an agricultural
7 conservation easement or purchase of development rights under
8 section 36111b or 36206 are owned by more than 1 owner, each owner
9 is allowed to claim a credit under this section based upon that
10 owner's share of the property tax payable on the farmland and
11 related buildings. The department of treasury shall consider the
12 property tax equally apportioned among the owners unless a written
13 agreement signed by all the owners is filed with the return, which
14 agreement apportions the property taxes in the same manner as all
15 other items of revenue and expense. If the property taxes are
16 considered equally apportioned, a husband and wife shall be
17 considered 1 owner, and a person with respect to whom a deduction
18 under section 151 of the internal revenue code of 1986, 26 USC 151,
19 is allowable to another owner of the property shall not be
20 considered an owner.

21 (4) A beneficiary of an estate or trust to which subsection
22 (1) does not apply is entitled to the same percentage of the credit
23 provided in this section as that person's percentage of all other
24 distributions by the estate or trust.

25 (5) If the allowable amount of the credit claimed exceeds the
26 state income tax or the state business tax otherwise due for the
27 tax year or if there is no state income tax or the state business

1 tax due for the tax year, the amount of the claim not used as an
2 offset against the state income tax or the state business tax,
3 after examination and review, shall be approved for payment to the
4 claimant pursuant to 1941 PA 122, MCL 205.1 to 205.31. The total
5 credit allowable under this part and chapter 9 of the income tax
6 act of 1967, 1967 PA 281, MCL 206.501 to 206.532, or the former
7 single business tax act, 1975 PA 228, or the Michigan business tax
8 act, 2007 PA 36, MCL 208.1101 to 208.1601, shall not exceed the
9 total property tax due and payable by the claimant in that year.
10 The amount the credit exceeds the property tax due and payable
11 shall be deducted from the credit claimed under this part.

12 (6) For purposes of audit, review, determination, appeals,
13 hearings, notices, assessments, and administration relating to the
14 credit program provided by this section, the state income tax act,
15 ~~1967 PA 281, MCL 206.1 to 206.36,~~ the former single business tax
16 act, 1975 PA 228, or the Michigan business tax act, 2007 PA 36, MCL
17 208.1101 to 208.1601, applies according to which tax the credit is
18 claimed against. If an individual is allowed to claim a credit
19 under subsection (1) based upon property owned or held by a
20 partnership, S corporation, or trust, the department of treasury
21 may require that the individual furnish ~~to the department~~ **IT WITH** a
22 copy of a tax return, or portion of a tax return, and supporting
23 schedules that the partnership, S corporation, or trust files under
24 the internal revenue code.

25 (7) The department of treasury shall account separately for
26 payments under this part and not combine them with other credit
27 programs. A payment made to a claimant for a credit claimed under

1 this part shall be issued by 1 or more warrants made out to the
2 county treasurer in each county in which the claimant's property is
3 located and the claimant, unless the claimant specifies on the
4 return that a copy of the receipt showing payment of the property
5 taxes that became a lien in the year for which the credit is
6 claimed, or that became a lien in the year before the year for
7 which the credit is claimed, is attached to the income tax or
8 business tax return filed by the claimant. If the claimant
9 specifies that a copy of the receipt is attached to the return, the
10 payment shall be made directly to the claimant. A warrant made out
11 to a claimant and a county treasurer shall be used first to pay
12 delinquent property taxes, interest, penalties, and fees on
13 property restricted by the development rights agreement. If the
14 warrant exceeds the amount of delinquent taxes, interest,
15 penalties, and fees, the county treasurer shall remit the excess to
16 the claimant. If a claimant falsely specifies that the receipt
17 showing payment of the property taxes is attached to the return and
18 if the property taxes on the land subject to that development
19 rights agreement were not paid before the return was filed, all
20 future payments to that claimant of credits claimed under this act
21 attributable to that development rights agreement may be made
22 payable to the county treasurer of the county in which the property
23 subject to the development rights agreement is located and to that
24 claimant.

25 (8) For property taxes levied after 1987, a person that was an
26 S corporation and had entered into a development rights agreement
27 before January 1, 1989, and paid property taxes on that property,

1 may claim the credit allowed by this section as an owner eligible
2 under subsection (2). A subchapter S corporation claiming a credit
3 as permitted by this subsection for taxes levied in 1988 through
4 1990 shall claim the credit by filing an amended return under the
5 **FORMER** single business tax act, 1975 PA 228. ~~7, MCL 208.1 to~~
6 ~~208.145.~~ If a subchapter S corporation files an amended return as
7 permitted by this subsection and if a shareholder of the subchapter
8 S corporation claimed a credit under subsection (1)(b) for the same
9 property taxes, the shareholder shall file an amended return under
10 the state income tax act. A subchapter S corporation is not
11 entitled to a credit under this subsection until all of its
12 shareholders file the amended returns required by this subsection.
13 The department of treasury shall first apply a credit due to a
14 subchapter S corporation under this subsection to repay credits
15 claimed under this section by the subchapter S corporation's
16 shareholders for property taxes levied in 1988 through 1990 and
17 shall refund any remaining credit to the S corporation. Interest or
18 penalty is not due or payable on an income tax liability resulting
19 from an amended return required by this subsection. A subchapter S
20 corporation electing to claim a credit as an owner eligible under
21 subsection (2) shall not claim a credit under subsection (1) for
22 property taxes levied after 1987.

23 Sec. 36110. (1) Land subject to a development rights agreement
24 or easement may be sold without penalty under sections 36111,
25 36112, and 36113, if the use of the land by the successor in title
26 complies with the provisions contained in the development rights
27 agreement or easement. The seller shall notify the governmental

1 authority having jurisdiction over the development rights of the
2 change in ownership.

3 (2) If the owner of land subject to a development rights
4 agreement or easement dies or becomes totally and permanently
5 disabled or when an individual essential to the operation of the
6 farm dies or becomes totally and permanently disabled, the land may
7 be relinquished from the program under this part and is subject to
8 a lien pursuant to sections 36111(11), 36112(7), and 36113(7). A
9 request for relinquishment under this section shall be made within
10 3 years from the date of death or disability. A request for
11 relinquishment under this subsection shall be made only by the
12 owner in case of a disability or, in case of death, the person who
13 becomes the owner through survivorship or inheritance.

14 (3) If an owner of land subject to a development rights
15 agreement becomes totally and permanently disabled or dies, land
16 containing structures that were present before the recording of the
17 development rights agreement may be relinquished from the
18 agreement, upon request of the disabled agreement holder or upon
19 request of the person who becomes an owner through survivorship or
20 inheritance, and upon approval of the local governing body and the
21 state land use agency. Not more than 2 acres may be relinquished
22 under this subsection unless additional land area is needed to
23 encompass all of the buildings located on the parcel, in which case
24 not more than 5 acres may be relinquished. If the parcel proposed
25 to be relinquished is less in area than the minimum parcel size
26 required by local zoning, the parcel may not be relinquished unless
27 a variance is obtained from the local zoning board of appeals to

1 allow for the smaller parcel size. The portion of the farmland
2 relinquished from the development rights agreement under this
3 subsection is subject to a lien pursuant to section 36111(11).

4 (4) The land described in a development rights agreement may
5 be divided into smaller parcels of land ~~, each of which shall be~~
6 ~~covered by a separate development rights agreement and each of~~
7 ~~which shall be eligible for subsequent renewal. The separate~~
8 ~~development rights agreements shall contain~~ **AND CONTINUED UNDER** the
9 same terms and conditions as the original development rights
10 agreement. The smaller parcels created by the division must meet
11 the minimum requirements for being enrolled under this act or be 40
12 acres or more in size. Farmland may be divided once under this
13 subsection without fee by the state land use agency. The state land
14 use agency may charge a reasonable fee not greater than the state
15 land use agency's actual cost of dividing the agreement for all
16 subsequent divisions of that farmland. When a division of a
17 development rights agreement is made under this subsection and is
18 executed and recorded, the state land use agency shall notify the
19 applicant, the local governing body and its assessing office, all
20 reviewing agencies, and the department of treasury.

21 (5) As used in this section, "individual essential to the
22 operation of the farm" means a co-owner, partner, shareholder, farm
23 manager, or family member, who, to a material extent, cultivates,
24 operates, or manages farmland under this ~~act.~~ **PART.** An individual
25 is considered involved to a material extent if that individual does
26 1 or more of the following:

27 (a) Has a financial interest equal to or greater than 1/2 the

1 cost of producing the crops, livestock, or products and inspects
2 and advises and consults with the owner on production activities.

3 (b) Works 1,040 hours or more annually in activities connected
4 with production of the farming operation.

5 (6) The state land use agency ~~may~~ **SHALL NOT** charge and collect
6 a fee of ~~\$25.00~~ to process each ~~A~~ change of ownership under
7 subsection (1) or each ~~A~~ division under subsection (4). The fee
8 collected under this subsection shall be used by the state land use
9 agency to administer this act.

10 Sec. 36111. (1) A development rights agreement expires at the
11 expiration of the term of the agreement unless renewed with the
12 consent of the owner of the land. If the owner of the land has
13 complied with the requirements of this part regarding development
14 rights agreements, the owner is entitled to automatic renewal of
15 the agreement upon written request of the owner. A development
16 rights agreement may be renewed for a term of not less than 7
17 years. If a development rights agreement is renewed, the state land
18 use agency shall send a copy of the renewal contract to the local
19 governing body.

20 (2) A development rights agreement or a portion of the
21 farmland covered by a development rights agreement may be
22 relinquished as provided in this section and section 36111a.
23 Farmland may be relinquished by this state before a termination
24 date contained in the instrument under either of the following
25 circumstances:

26 (a) If approved by the local governing body and the state land
27 use agency, land containing structures that were present before the

1 recording of the development rights agreement may be relinquished
2 from the agreement. Not more than 2 acres may be relinquished under
3 this subdivision unless additional land area is needed to encompass
4 all of the buildings located on the parcel, in which case not more
5 than 5 acres may be relinquished. If the size of the parcel
6 proposed to be relinquished is less than that required by local
7 zoning, the parcel shall not be relinquished unless a variance is
8 obtained from the local zoning board of appeals to allow for the
9 smaller parcel size.

10 (b) If approved by the local governing body and the state land
11 use agency, land may be relinquished from the agreement for the
12 construction of a residence by an individual essential to the
13 operation of the farm as defined in section 36110(5). Not more than
14 2 acres may be relinquished under this subdivision. If the size of
15 the parcel proposed to be relinquished is less than that required
16 by local zoning, the parcel shall not be relinquished unless a
17 variance is obtained from the local zoning board of appeals to
18 allow for the smaller parcel size.

19 (3) Until April 1, 1997, if an owner who entered into or
20 renewed a development rights agreement before April 15, 1994 makes
21 a request, in writing, to the state land use agency, to terminate
22 that development rights agreement with respect to all or a portion
23 of the farmland covered by the agreement, the state land use agency
24 shall approve the request and relinquish that farmland from the
25 development rights agreement. If farmland is relinquished under
26 this subsection, the state land use agency shall notify the local
27 governing body of the local unit of government in which the land is

1 located of the relinquishment.

2 (4) If the request for relinquishment of the development
3 rights agreement is approved, the state land use agency shall
4 prepare an instrument, subject to subsections (5) to (8), and
5 ~~record it with the register of deeds of the county in which the~~
6 ~~land is situated.~~ **SHALL FORWARD THE ORIGINAL RELINQUISHMENT**
7 **INSTRUMENT TO THE APPLICANT. THE APPLICANT SHALL HAVE THE**
8 **RELINQUISHMENT INSTRUMENT RECORDED BY THE REGISTER OF DEEDS IN THE**
9 **COUNTY IN WHICH THE PROPERTY IS LOCATED. THE APPLICANT SHALL**
10 **PROVIDE A COPY OF THE RECORDED RELINQUISHMENT INSTRUMENT TO THE**
11 **DEPARTMENT.**

12 (5) If a development rights agreement or a portion of a
13 development rights agreement is to be relinquished pursuant to
14 subsection (2) or section 36111a, the state land use agency shall
15 record a lien against the property formerly subject to the
16 development rights agreement for the total amount of the allocated
17 tax credit of the last 7 years, including the year of termination,
18 received by an owner under section 36109 and attributable to the
19 property formerly subject to the development rights agreement, plus
20 interest at the rate of 6% per annum simple interest from the time
21 the credit was received until the lien is placed on the property.

22 (6) If the property being relinquished from the development
23 rights agreement is less than all of the property subject to that
24 development rights agreement, the allocated tax credit for the
25 development rights agreement shall be multiplied by the property's
26 share of the taxable value of the agreement. As used in this
27 subsection:

1 (a) "The allocated tax credit" means the amount obtained by
2 multiplying the owner's total farmland preservation credit claimed
3 in that year on all agreements by the quotient of the ad valorem
4 property tax levied in that year on property subject to the
5 development rights agreement that included the property being
6 relinquished from the agreement divided by the total property taxes
7 levied on property subject to any development rights agreement and
8 used in determining the farmland preservation credit in that year.

9 (b) "The property's share of the taxable value of the
10 agreement" means the quotient of the taxable value of the property
11 being relinquished from the agreement divided by the total taxable
12 value of property subject to the development rights agreement that
13 included the property being relinquished from the agreement. For
14 years before 1995, taxable value means assessed value.

15 (7) Thirty days before the recording of a lien under this
16 section, the state land use agency shall notify the owner of the
17 farmland subject to the development rights agreement of the amount
18 of the lien, including interest, if any. If the lien amount is paid
19 before 30 days after the owner is notified, the lien shall not be
20 recorded. The lien may be paid and discharged at any time and is
21 payable to the state by the owner of record when the land or any
22 portion of it is sold by the owner of record, or if the land is
23 converted to a use prohibited by the former development rights
24 agreement. The lien shall be discharged upon renewal or reentry in
25 a development rights agreement, except that a subsequent lien shall
26 not be less than the lien discharged. Notwithstanding any other
27 provision of this section, from July 1, 2011 through September 30,

1 2011, a lien under this section recorded before January 1, 2011 may
2 be paid at 85% of the face value of the lien. From October 1, 2011
3 through March 31, 2012, a lien under this section recorded before
4 January 1, 2011 may be paid at 90% of the face value of the lien.

5 (8) Upon the termination of all or a portion of the
6 development rights agreement under subsection (3) or, subject to
7 subsection (14), the termination of a development rights agreement
8 under subsection (1), the state land use agency shall prepare and
9 record a lien, if any, against the property formerly subject to the
10 development rights agreement for the total amount of the allocated
11 tax credit of the last 7 years, including the year of termination,
12 received by the owner under section 36109, attributable to the
13 property formerly subject to the development rights agreement. The
14 lien shall be without interest or penalty and is payable as
15 provided in subsection (7). However, if the development rights
16 agreement was approved or rejected by the local governing body
17 under section 36104 on or after July 1, 2012 and is terminated
18 under subsection (1), the amount of the lien shall include interest
19 at the current monthly interest rate of 1 percentage point above
20 the adjusted prime rate per annum from the time the lien is
21 recorded until it is paid. The adjusted prime rate shall be
22 determined as provided in section 23 of 1941 PA 122, MCL 205.23.

23 (9) The state land use agency shall notify the department of
24 treasury of the termination of a development rights agreement.

25 (10) The unappropriated proceeds from lien payments made under
26 this part shall be forwarded to the state treasurer for deposit in
27 the agricultural preservation fund created in section 36202.

1 (11) Upon the relinquishment of all of the farmland under
2 section 36110(2) or a portion of the farmland under section
3 36110(3), the state land use agency shall prepare and record a lien
4 against the property formerly subject to a development rights
5 agreement in an amount calculated as follows:

6 (a) Establishing a term of years by multiplying 7 by a
7 fraction, the numerator of which is the number of years the
8 farmland was under the development rights agreement, including any
9 extensions, and the denominator of which is the number representing
10 the term of years of that agreement, including any extensions.

11 (b) The lien amount equals the total amount of the allocated
12 tax credit claimed attributable to that development rights
13 agreement in the immediately preceding term of years as determined
14 in subdivision (a).

15 (12) When a lien is paid under this section, the state land
16 use agency shall prepare and record a discharge of lien with the
17 register of deeds in the county in which the land is located. The
18 discharge of lien shall specifically state that the lien has been
19 paid in full, that the lien is discharged, that the development
20 rights agreement and accompanying contract are terminated, and that
21 the state has no further interest in the land under that agreement.

22 (13) A farmland development rights agreement is automatically
23 relinquished when the farmland becomes subject to an agricultural
24 conservation easement or purchase of development rights under
25 section 36111b or 36206.

26 (14) If, upon expiration of the term of a farmland development
27 rights agreement, the farmland becomes subject to an agricultural

1 conservation easement or purchase of development rights under
2 section 36111b or 36206 or if a farmland development rights
3 agreement is automatically relinquished under subsection (13), the
4 farmland is not subject to a lien under this section.

5 Sec. 36202. (1) The agricultural preservation fund is created
6 within the state treasury.

7 (2) The state treasurer may receive money or other assets from
8 any source for deposit into the fund, including federal funds,
9 other state revenues, gifts, bequests, and other donations. The
10 state treasurer shall direct the investment of the fund and shall
11 credit to the fund interest and earnings from fund investments.

12 (3) Money in the fund at the close of the fiscal year shall
13 remain in the fund and shall not lapse to the general fund.

14 (4) The department shall be the administrator of the fund for
15 auditing purposes.

16 (5) Money in the fund may be expended, upon appropriation,
17 ~~following approval of the board and the commission,~~ as follows:

18 (a) Not more than \$1,400,000.00 annually for the
19 administrative costs of the department and the board in
20 implementing this part and part 361.

21 (b) After expenditures for the administrative costs under
22 subdivision (a), money in the fund may be used, **UPON APPROVAL OF**
23 **THE BOARD**, to provide grants to local units of government pursuant
24 to section 36203.

25 (c) After expenditures under subdivisions (a) and (b) have
26 been made, if the amount of money remaining in the fund exceeds
27 \$5,000,000.00, money in the fund may be used, **UPON APPROVAL OF THE**

1 **BOARD**, pursuant to part 361 for the purchase of development rights
2 to farmland or the acquisition of agricultural conservation
3 easements.

4 (6) Expenditures of money in the fund as provided in this part
5 are consistent with the state's interest in preserving farmland and
6 are for an important public purpose.

7 Enacting section 1. Section 36117 of the natural resources and
8 environmental protection act, 1994 PA 451, MCL 324.36117, is
9 repealed.

10 Enacting section 2. This amendatory act takes effect 90 days
11 after the date it is enacted into law.

12 Enacting section 3. This amendatory act does not take effect
13 unless House Bill No. 5190 of the 98th Legislature is enacted into
14 law.