

HOUSE BILL No. 5189

December 17, 2015, Introduced by Reps. Lauwers, Brett Roberts, Glardon, Johnson, Rendon, Victory, Hughes, Jenkins, Garcia, Pagel, Cole, Leutheuser, Barrett, Brunner, Lyons, Vaupel, Kelly, Aaron Miller, Canfield, LaFontaine, Smiley, LaVoy, McBroom, Franz, Outman, Potvin, Sheppard, Price and Lucido 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, 36104, 36109, and 36110 (MCL 324.36101, 324.36104, 324.36109, and 324.36110), section 36101 as amended by 2008 PA 336, sections 36104 and 36110 as amended by 1996 PA 233, and section 36109 as amended by 2007 PA 174; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 36101. As used in this part:

(a) "Agricultural conservation easement" means a conveyance, by a written instrument, in which, subject to permitted uses, the owner relinquishes to the public in perpetuity his or her development rights and makes a covenant running with the land not to undertake development.

1 (b) "Agricultural use" means the production of plants and
2 animals useful to humans, including forages and sod crops; grains,
3 feed crops, and field crops; dairy and dairy products; poultry and
4 poultry products; livestock, including breeding and grazing of
5 cattle, swine, captive cervidae, and similar animals; berries;
6 herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables;
7 maple syrup production; Christmas trees; and other similar uses and
8 activities. Agricultural use includes use in a federal acreage set-
9 aside program or a federal conservation reserve program.

10 Agricultural use does not include the management and harvesting of
11 a woodlot.

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

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

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

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

27 (g) "Development rights easement" **OR "EASEMENT"** means a grant,

1 by an instrument, in which the owner relinquishes to the public in
2 perpetuity or for a term of years the right to undertake
3 development of the land, and that contains a covenant running with
4 the land, not to undertake development, subject to permitted uses.

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

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

8 (ii) A farm of 5 acres or more in 1 ownership, but less than
9 40 acres, with 51% or more of the land area devoted to an
10 agricultural use, that has produced a gross annual income from
11 agriculture of \$200.00 per year or more per acre of cleared and
12 tillable land. A farm described in this subparagraph enrolled in a
13 federal acreage set aside program or a federal conservation reserve
14 program is considered to have produced a gross annual income from
15 agriculture of \$200.00 per year or more per acre of cleared and
16 tillable land.

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

25 (iv) Parcels of land in 1 ownership that are not contiguous
26 but that constitute an integral part of a farming operation being
27 conducted on land otherwise qualifying as farmland may be included

1 in an application under this part.

2 (I) "FUND" MEANS THE AGRICULTURAL PRESERVATION FUND CREATED IN
3 SECTION 36202.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (T) ~~(s)~~ "State income tax act" means the income tax act of
 22 1967, 1967 PA 281, MCL 206.1 to ~~206.532,~~ **206.713**, and in effect
 23 during the particular year of the reference to the act.

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

26 (V) ~~(u)~~ "Substantially undeveloped" means any parcel or area
 27 of land essentially unimproved except for a dwelling, building,

1 structure, road, or other improvement that is incidental to
2 agricultural and open space uses.

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

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

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

24 (3) An agency or local governing body receiving notice has 30
25 days to review, comment, and make recommendations to the local
26 governing body with which the application is filed. These reviewing
27 agencies do not have an approval or rejection power over the

1 application.

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

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

22 (6) If the application for a farmland development rights
23 agreement is rejected by the local governing body, the local
24 governing body shall return the application to the applicant with a
25 written statement regarding the reasons for rejection. Within 30
26 days after receipt of the rejected application, the applicant may
27 appeal the rejection by submitting the application to the state

1 land use agency.

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

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

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

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

25 (d) Public access is not permitted on the land unless agreed
26 to by the owner.

27 (e) Any other condition and restriction on the land as agreed

1 to by the parties that is considered necessary to preserve the land
2 or appropriate portions of it as farmland.

3 (8) A copy of the approved application and the farmland
4 development rights agreement shall be forwarded to the applicant
5 for execution. An application that is approved by the local
6 governing body by November 1 shall take effect for the current tax
7 year.

8 (9) If the owner executes the farmland development rights
9 agreement, the owner shall return it to the state land use agency
10 for execution on behalf of the state. The state land use agency
11 shall record the executed development rights agreement with the
12 register of deeds of the county in which the land is situated and
13 shall notify the applicant, the local governing body and its
14 assessing office, all reviewing agencies, and the department of
15 treasury.

16 (10) If an application for a farmland development rights
17 agreement is rejected by the state land use agency, the state land
18 use agency shall notify the affected local governing body, all
19 reviewing agencies concerned, and the applicant with a written
20 statement containing the reasons for rejection. An applicant
21 receiving a rejection from the state land use agency may appeal the
22 rejection pursuant to the administrative procedures act of 1969,
23 ~~Act No. 306 of the Public Acts of 1969, being sections 24.201 to~~
24 ~~24.328 of the Michigan Compiled Laws.1969 PA 306, MCL 24.201 TO~~
25 **24.328.**

26 (11) An applicant may reapply for a farmland development
27 rights agreement following a 1-year waiting period.

1 (12) The value of the jointly owned development rights as
2 expressed in a farmland development rights agreement is not exempt
3 from ad valorem taxation and shall be assessed to the owner of the
4 land as part of the value of that land.

5 Sec. 36109. (1) An owner of farmland and related buildings
6 subject to 1 or more development rights agreements under section
7 36104 or agricultural conservation easements or purchases of
8 development rights under section 36111b or 36206 who is required or
9 eligible to file a return as an individual or a claimant under the
10 state income tax act may claim a credit against ~~the~~ state income
11 tax liability for the amount by which the property taxes on the
12 land and structures used in the farming operation, including the
13 homestead, restricted by the development rights agreements,
14 agricultural conservation easements, or purchases of development
15 rights exceed 3.5% of the household income as defined in section
16 508 of the income tax act of 1967, 1967 PA 281, MCL 206.508,
17 excluding a deduction if taken under section 613 of the internal
18 revenue code of 1986, 26 USC 613. For the purposes of this section,
19 all of the following apply:

20 (a) A partner in a partnership is considered an owner of
21 farmland and related buildings owned by the partnership and covered
22 by a development rights agreement, agricultural conservation
23 easement, or purchase of development rights. A partner is
24 considered to pay a proportion of the property taxes on that
25 property equal to the partner's share of ownership of capital or
26 distributive share of ordinary income as reported by the
27 partnership to the ~~internal revenue service~~ **INTERNAL REVENUE**

1 **SERVICE** or, if the partnership is not required to report that
2 information to the ~~internal revenue service~~, **INTERNAL REVENUE**
3 **SERVICE**, as provided in the partnership agreement or, if there is
4 no written partnership agreement, a statement signed by all the
5 partners. A partner claiming a credit under this section based upon
6 the partnership agreement or a statement shall file a copy of the
7 agreement or statement with his or her income tax return. If the
8 agreement or statement is not filed, the department of treasury
9 shall deny the credit. All partners in a partnership claiming the
10 credit allowed under this section shall compute the credit using
11 the same basis for the apportionment of the property taxes.

12 (b) A shareholder of a corporation that has filed a proper
13 election under subchapter S of chapter 1 of subtitle A of the
14 internal revenue code of 1986, 26 USC 1361 to 1379, is considered
15 an owner of farmland and related buildings covered by a development
16 rights agreement that are owned by the corporation. A shareholder
17 is considered to pay a proportion of the property taxes on that
18 property equal to the shareholder's percentage of stock ownership
19 for the tax year as reported by the corporation to the internal
20 revenue service. Except as provided in subsection (8), this
21 subdivision applies to tax years beginning after 1987.

22 (c) Except as otherwise provided in this subdivision, an
23 individual in possession of property for life under a life estate
24 with remainder to another person or holding property under a life
25 lease is considered the owner of that property if it is farmland
26 and related buildings covered by a development rights agreement.
27 Beginning January 1, 1986, if an individual in possession of

1 property for life under a life estate with remainder to another
2 person or holding property under a life lease enters into a written
3 agreement with the person holding the remainder interest in that
4 land and the written agreement apportions the property taxes in the
5 same manner as revenue and expenses, the life lease or life estate
6 holder and the person holding the remainder interest may claim the
7 credit under this act as it is apportioned to them under the
8 written agreement upon filing a copy of the written agreement with
9 the return.

10 (d) If a trust holds farmland and related buildings covered by
11 a development rights agreement and an individual is treated under
12 subpart E of subchapter J of subchapter A of chapter 1 of the
13 internal revenue code of 1986, 26 USC 671 to 679, as the owner of
14 that portion of the trust that includes the farmland and related
15 buildings, that individual is considered the owner of that
16 property.

17 (e) An individual who is the sole beneficiary of a trust that
18 is the result of the death of that individual's spouse is
19 considered the owner of farmland and related buildings covered by a
20 development rights agreement and held by the trust if the trust
21 conforms to all of the following:

22 (i) One hundred percent of the trust income is distributed to
23 the beneficiary in the tax year in which the trust receives the
24 income.

25 (ii) The trust terms do not provide that any portion of the
26 trust is to be paid, set aside, or otherwise used in a manner that
27 would qualify for the deduction allowed by section 642(c) of the

1 internal revenue code of 1986, 26 USC 642.

2 (f) A member in a limited liability company is considered an
3 owner of farmland and related buildings covered by a development
4 rights agreement that are owned by the limited liability company. A
5 member is considered to pay a proportion of the property taxes on
6 that property equal to the member's share of ownership or
7 distributive share of ordinary income as reported by the limited
8 liability company to the ~~internal revenue service~~. **INTERNAL REVENUE**
9 **SERVICE.**

10 (2) An owner of farmland and related buildings subject to 1 or
11 more development rights agreements under section 36104 or
12 agricultural conservation easements or purchases of development
13 rights under section 36111b or 36206 to whom subsection (1) does
14 not apply may claim a credit under the former single business tax
15 act, 1975 PA 228, or the Michigan business tax act, 2007 PA 36, MCL
16 208.1101 to 208.1601, for the amount by which the property taxes on
17 the land and structures used in farming operations restricted by
18 the development rights agreements, agricultural conservation
19 easements, or purchases of development rights exceed 3.5% of the
20 adjusted business income of the owner as defined in section 36 of
21 the former single business tax act, 1975 PA 228, or the business
22 income tax base of the owner as defined in section 201 of the
23 Michigan business tax act, 2007 PA 36, MCL 208.1201, plus
24 compensation to shareholders not included in adjusted business
25 income or the business income tax base, excluding any deductions if
26 taken under section 613 of the internal revenue code of 1986, 26
27 USC 613. When calculating adjusted business income for tax years

beginning before 1987, federal taxable income shall not be less than zero for the purposes of this subsection only. A participant is not eligible to claim a credit and refund against the former single business tax act, 1975 PA 228, or the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, unless the participant demonstrates that the participant's agricultural gross receipts of the farming operation exceed 5 times the property taxes on the land for each of 3 out of the 5 tax years immediately preceding the year in which the credit is claimed. This eligibility requirement does not apply to those participants who executed farmland development rights agreements under this part before January 1, 1978. A participant may compare, during the contract period, the average of the most recent 3 years of agricultural gross receipts to property taxes in the first year that the participant entered the program under the present contract in calculating the gross receipts qualification. Once an election is made by the participant to compute the benefit in this manner, all future calculations shall be made in the same manner.

(3) If the farmland and related buildings covered by a development rights agreement under section 36104 or an agricultural conservation easement or purchase of development rights under section 36111b or 36206 are owned by more than 1 owner, each owner is allowed to claim a credit under this section based upon that owner's share of the property tax payable on the farmland and related buildings. The department of treasury shall consider the property tax equally apportioned among the owners unless a written agreement signed by all the owners is filed with the return, which

1 agreement apportions the property taxes in the same manner as all
2 other items of revenue and expense. If the property taxes are
3 considered equally apportioned, a husband and wife shall be
4 considered 1 owner, and a person with respect to whom a deduction
5 under section 151 of the internal revenue code of 1986, 26 USC 151,
6 is allowable to another owner of the property shall not be
7 considered an owner.

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

12 (5) If the allowable amount of the credit claimed exceeds the
13 state income tax or the state business tax otherwise due for the
14 tax year or if there is no state income tax or the state business
15 tax due for the tax year, the amount of the claim not used as an
16 offset against the state income tax or the state business tax,
17 after examination and review, shall be approved for payment to the
18 claimant pursuant to 1941 PA 122, MCL 205.1 to 205.31. The total
19 credit allowable under this part and chapter 9 of the income tax
20 act of 1967, 1967 PA 281, MCL 206.501 to 206.532, or the former
21 single business tax act, 1975 PA 228, or the Michigan business tax
22 act, 2007 PA 36, MCL 208.1101 to 208.1601, shall not exceed the
23 total property tax due and payable by the claimant in that year.
24 The amount the credit exceeds the property tax due and payable
25 shall be deducted from the credit claimed under this part.

26 (6) For purposes of audit, review, determination, appeals,
27 hearings, notices, assessments, and administration relating to the

1 credit program provided by this section, the state income tax act,
2 1967 PA 281, MCL 206.1 to ~~206.36~~, **206.532**, the former single
3 business tax act, 1975 PA 228, or the Michigan business tax act,
4 2007 PA 36, MCL 208.1101 to 208.1601, applies according to which
5 tax the credit is claimed against. If an individual is allowed to
6 claim a credit under subsection (1) based upon property owned or
7 held by a partnership, S corporation, or trust, the department of
8 treasury may require that the individual furnish ~~to the department~~
9 **IT WITH** a copy of a tax return, or portion of a tax return, and
10 supporting schedules that the partnership, S corporation, or trust
11 files under the internal revenue code.

12 (7) The department of treasury shall account separately for
13 payments under this part and not combine them with other credit
14 programs. A payment made to a claimant for a credit claimed under
15 this part shall be issued by 1 or more warrants made out to the
16 county treasurer in each county in which the claimant's property is
17 located and the claimant, unless the claimant specifies on the
18 return that a copy of the receipt showing payment of the property
19 taxes that became a lien in the year for which the credit is
20 claimed, or that became a lien in the year before the year for
21 which the credit is claimed, is attached to the income tax or
22 business tax return filed by the claimant. If the claimant
23 specifies that a copy of the receipt is attached to the return, the
24 payment shall be made directly to the claimant. A warrant made out
25 to a claimant and a county treasurer shall be used first to pay
26 delinquent property taxes, interest, penalties, and fees on
27 property restricted by the development rights agreement. If the

1 warrant exceeds the amount of delinquent taxes, interest,
2 penalties, and fees, the county treasurer shall remit the excess to
3 the claimant. If a claimant falsely specifies that the receipt
4 showing payment of the property taxes is attached to the return and
5 if the property taxes on the land subject to that development
6 rights agreement were not paid before the return was filed, all
7 future payments to that claimant of credits claimed under this act
8 attributable to that development rights agreement may be made
9 payable to the county treasurer of the county in which the property
10 subject to the development rights agreement is located and to that
11 claimant.

12 (8) For property taxes levied after 1987, a person that was an
13 S corporation and had entered into a development rights agreement
14 before January 1, 1989, and paid property taxes on that property,
15 may claim the credit allowed by this section as an owner eligible
16 under subsection (2). A subchapter S corporation claiming a credit
17 as permitted by this subsection for taxes levied in 1988 through
18 1990 shall claim the credit by filing an amended return under the
19 **FORMER** single business tax act, 1975 PA 228. , ~~MCL 208.1 to~~
20 ~~208.145.~~ If a subchapter S corporation files an amended return as
21 permitted by this subsection and if a shareholder of the subchapter
22 S corporation claimed a credit under subsection (1)(b) for the same
23 property taxes, the shareholder shall file an amended return under
24 the state income tax act. A subchapter S corporation is not
25 entitled to a credit under this subsection until all of its
26 shareholders file the amended returns required by this subsection.
27 The department of treasury shall first apply a credit due to a

1 subchapter S corporation under this subsection to repay credits
2 claimed under this section by the subchapter S corporation's
3 shareholders for property taxes levied in 1988 through 1990 and
4 shall refund any remaining credit to the S corporation. Interest or
5 penalty is not due or payable on an income tax liability resulting
6 from an amended return required by this subsection. A subchapter S
7 corporation electing to claim a credit as an owner eligible under
8 subsection (2) shall not claim a credit under subsection (1) for
9 property taxes levied after 1987.

10 (9) IF, IN ANY YEAR, A PERSON WHO IS ELIGIBLE FOR A CREDIT
11 UNDER THIS SECTION DOES NOT CLAIM THE CREDIT FOR WHICH HE OR SHE IS
12 ELIGIBLE, THE DEPARTMENT OF TREASURY SHALL CALCULATE THE AMOUNT OF
13 THE CREDIT. FROM REVENUES RECEIVED BY THE DEPARTMENT OF TREASURY
14 UNDER THE INCOME TAX ACT OF 1967, 1967 PA 281, MCL 206.1 TO
15 206.713, THE DEPARTMENT OF TREASURY SHALL DEPOSIT INTO THE FUND AN
16 AMOUNT EQUAL TO THE TOTAL AMOUNT OF UNCLAIMED CREDITS CALCULATED BY
17 THE DEPARTMENT OF TREASURY UNDER THIS SECTION.

18 Sec. 36110. (1) Land subject to a development rights agreement
19 or easement may be sold without penalty under sections 36111,
20 36112, and 36113, if the use of the land by the successor in title
21 complies with the provisions contained in the development rights
22 agreement or easement. The seller shall notify the governmental
23 authority having jurisdiction over the development rights of the
24 change in ownership.

25 (2) If the owner of land subject to a development rights
26 agreement or easement dies or becomes totally and permanently
27 disabled or when an individual essential to the operation of the

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

9 (3) If an owner of land subject to a development rights
10 agreement becomes totally and permanently disabled or dies, land
11 containing structures that were present before the recording of the
12 development rights agreement may be relinquished from the
13 agreement, upon request of the disabled agreement holder or upon
14 request of the person who becomes an owner through survivorship or
15 inheritance, and upon approval of the local governing body and the
16 state land use agency. Not more than 2 acres may be relinquished
17 under this subsection unless additional land area is needed to
18 encompass all of the buildings located on the parcel, in which case
19 not more than 5 acres may be relinquished. If the parcel proposed
20 to be relinquished is less in area than the minimum parcel size
21 required by local zoning, the parcel may not be relinquished unless
22 a variance is obtained from the local zoning board of appeals to
23 allow for the smaller parcel size. The portion of the farmland
24 relinquished from the development rights agreement under this
25 subsection is subject to a lien pursuant to section 36111(11).

26 (4) The land described in a development rights agreement may
27 be divided into smaller parcels of land ~~, each of which shall be~~

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

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

22 (a) Has a financial interest equal to or greater than 1/2 the
23 cost of producing the crops, livestock, or products and inspects
24 and advises and consults with the owner on production activities.

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

27 (6) The state land use agency may charge and collect a fee of

1 ~~\$25.00~~**\$50.00** to process each change of ownership under subsection
2 (1) or each division under subsection (4). The fee collected under
3 this subsection shall be ~~used by the state land use agency to~~
4 ~~administer this act.~~**FORWARDED TO THE STATE TREASURER FOR DEPOSIT**
5 **INTO THE FUND.**

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

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

11 Enacting section 3. This amendatory act does not take effect
12 unless Senate Bill No.____ or House Bill No. 5190 (request no.
13 03889'15) of the 98th Legislature is enacted into law.