Legislative Analysis

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SOLAR FACILITIES UNDER FARMLAND DEVELOPMENT RIGHTS AGREEMENTS

Senate Bill 277 as reported from House committee
Sponsor: Sen. Kristen McDonald Rivet
House Committee: Energy, Communications and Technology
Senate Committee: Energy and Environment
Complete to 10-27-23

SUMMARY:

Senate Bill 277 would amend the Natural Resources and Environmental Protection Act (NREPA) to provide that a solar facility is a permitted use for farmland under a development rights agreement under the state's Farmland and Open Space Preservation Program (see **Background**, below). A landowner could not claim the tax credit under the program from the time the facility is being built to the time it is completely removed (this is referred to in the bill as the *deferment period*). The bill would more or less be codifying, or putting into law, what is already current policy regarding the siting of commercial solar panels on land enrolled in the program.[1]

The bill would provide that a ***solar facility*** is a permitted use under a development rights agreement if all of the following conditions are met:

- The land was subject to a development rights agreement before the solar facility became a permitted use.
- The ***landowner*** and the Michigan Department of Agriculture and Rural Development (MDARD, also called the state land use agency in this part of NREPA) amend the development rights agreement applicable to the solar facility site. If only a portion of the land is to be subject to a ***solar agreement***, the land subject to the development rights agreement would have to be divided under the applicable provisions of NREPA[2] before the resulting agreement is amended.
- At least 60 days have gone by since the development rights agreement was recorded.[3]
- The solar facility site is designed, planted, and maintained with groundcover that achieves a score of at least 76 on the Michigan Pollinator Habitat Planting Scorecard for Solar Sites developed by the Michigan State University Department of Entomology.[4]
- Any portion of the solar facility site not included in pollinator plantings as described above is designed, planted, and maintained in compliance with Cover Standard 327 of the United States Department of Agricultural Natural Resource Conservation Service.[5]

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[1] https://www.michigan.gov/mdard/-/media/Project/Websites/mdard/documents/environment/farmland/MDARD-Policy-on-Solar-Panel-and-PA116-Land-rev20230328.pdf
[2] Specifically, section 36110(4), which among other things requires the smaller parcels created by the division to meet the minimum requirements for being enrolled in the program or be at least 40 acres in size.
[3] **Note**: This appears to apply to the amended agreement, as under current policy, but as written could be imposing a requirement concerning the original agreement as well.
[4] https://www.canr.msu.edu/home_gardening/uploads/files/MSU_Solar_Pollinators_Scorecard_2018_October.pdf
[5] https://www.nrcs.usda.gov/sites/default/files/2022-09/Conservation_Cover_327_CPS.pdf

- A bond or irrevocable letter of credit payable to the state is maintained, from the time the facility is being built to the time it is completely removed, as financial assurance for the decommissioning of the solar facility and the return of the land to agricultural use. The amount of the financial surety would have to be calculated by a licensed professional engineer, and, every three years or as MDARD considers necessary, the amount of the bond or letter of credit would have to be adjusted as necessary to ensure that the financial assurance is sufficient for the decommissioning of the solar facility and the return of the land to agricultural use.
- The solar facility site is designed, established, and maintained in a manner that ensures the land can be returned to agricultural use when the facility is completely removed.
- The land is returned to normal agricultural operations and use by the first growing season after the facility is completely removed.

Solar facility would mean a facility that is owned by an ***electric provider*** and is for the generation of electricity using solar photovoltaic cells.

Electric provider would mean any of the following:

- Any person or entity that is regulated by the Public Service Commission for the purpose of selling electricity to retail customers in Michigan.
- A municipally owned electric utility in Michigan.
- A cooperative electric utility in Michigan.
- An alternative electric supplier licensed under section 10a of 1939 PA 3.[6]
- Electric generating equipment and associated facilities with a capacity of more than 100 kilowatts located in Michigan that are not owned and operated by an electric utility.

Landowner would mean a person that meets both of the following requirements:

- Has a freehold estate in land coupled with possession and enjoyment or, if land is subject to a land contract, is the vendee.
- Has signed a development rights agreement with MDARD, and, if the land is subject to a land contract, the vendor.

Solar agreement would mean an agreement entered into by the landowner and the solar facility owner or operator to authorize the installation and operation of a solar facility on all or a portion of the land and that contains all conditions specifically identified in the bill as the responsibility of the solar facility owner or operator.

The ***amended development rights agreement*** applicable to the proposed solar facility site would extend the existing development rights agreement beyond its original termination date for an amount of time equal to the deferment period (the length of time from when the facility is being built to when it is completely removed). However, that period could not exceed 90 years minus the remaining term of the development rights agreement.[7] A landowner could

[6] http://legislature.mi.gov/doc.aspx?mcl-460-10a

[7] The current MDARD policy provides that the amended agreement "shall extend the existing Farmland Development Rights Agreement for a period of time that is equivalent to the amount of time the land is used to generate solar power combined with the remaining term of the Farmland Development Rights Agreement. This will result in no net change in the length of the Farmland Development Rights Agreement." The bill would cap the length of time that a solar facility can be in operation so that, when that time is added to the time left in the original agreement, the agreement

enter into a subsequent amended development rights agreement to provide for an additional deferment period.

> ***Amended development rights agreement*** would mean a development rights agreement that includes the conditions required to allow a solar facility to be installed and operated on all or a portion of the land subject to the agreement.

The landowner could not claim a tax credit under the program during the deferment period (the time from when the facility is being built to when it is completely removed). If a landowner relinquishes the development rights agreement at any time during the deferment period, the past seven years of tax credits would be payable. The past seven years of tax credits would be calculated from the time the amended development rights agreement is recorded and would be held until the land is returned to agricultural production at the end of the deferment period.

The electric provider *could* assume responsibility under a solar agreement for compliance with the requirements described above related to groundcover, financial assurance, or designing, establishing, and maintaining the site to ensure that it can return to agricultural use in the end.

The electric provider *would have to* assume responsibility under the solar agreement for maintenance of any agricultural drain that is privately owned and necessary for exemption from regulation under Part 301 (Inland Lakes and Streams) or Part 303 (Wetlands Protection) of NREPA.

When the deferment period ends (that is, when the facility is completely removed), the solar facility would no longer be a permitted use.

MCL 324.36101 and 324.36104a and proposed MCL 324.36104c and 324.36104e

BACKGROUND:

The Farmland and Open Space Preservation Program that is the subject of Senate Bill 277 is housed in Part 361 of NREPA. The program is often referred to as the "PA 116 program," in reference to Public Act 116 of 1974, the Farmland and Open Space Act, the original public act that created the program and was subsequently incorporated into NREPA. The program is administered by the Michigan Department of Agriculture and Rural Development (MDARD).[8]

Under the program, landowners apply to enroll their farmland in an agreement with the state that restricts the use of the land to farming. These agreements last anywhere from 10 years to 90 years. As a benefit in exchange for restricting land use, the land is then exempt from certain special assessments. In addition, participating landowners receive a tax credit on their state income taxes. The program results in an annual income tax savings to those enrolled in the program of approximately $61.6 million.

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does not extend beyond 90 years after the start of construction on the solar facility site. However, a subsequent agreement could provide for an additional deferment period.

[8] See https://www.michigan.gov/mdard/environment/farmland and https://www.michigan.gov/mdard/environment/farmland/general/the-farmland-and-open-space-preservation-program

The act currently defines permitted uses and prohibited uses of land enrolled in the program. Prohibited land uses would cause the property to be ineligible for enrollment in the program.

Presently, there are more than 42,700 development rights agreements in the state, covering 3.1 million acres of farmland that are held by approximately 15,300 landowners.

FISCAL IMPACT:

The bill would codify a current MDARD policy with respect to the siting of commercial solar panels on land enrolled in farmland preservation programs.[9] As a result, the bill would have no direct fiscal impact on the state or local units of government.

POSITIONS:

A representative of the Michigan Conservative Energy Forum testified in support of the bill. (10-26-23)

The following entities indicated support for the bill (10-26-23):
- Department of Agriculture and Rural Development
- Evergreen Action
- Lightstar Renewables
- Michigan Chamber of Commerce
- Michigan Energy Innovation Business Council
- Michigan Environmental Council
- Michigan League of Conservation Voters
- Michigan Manufacturers Association
- National Grid Renewables
- Summit Ridge Energy

The Michigan Farm Bureau indicated a neutral position on the bill. (10-26-23)

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[9] See https://www.michigan.gov/whitmer/news/press-releases/2019/06/03/gov-whitmer-mdard-to-allow-commercial-solar-panels-on-michigan-farmland