



SENATE BILL No. 352

March 1, 1995, Introduced by Senators MC MANUS, DE GROW, GOUGEON, GAST, KOIVISTO, CISKY, SHUGARS and SCHUETTE and referred to the Committee on Agriculture and Forestry.

A bill to amend sections 4, 11, and 12 of Act No. 116 of the Public Acts of 1974, entitled "Farmland and open space preservation act," section 12 as amended by Act No. 112 of the Public Acts of 1991, being sections 554.704, 554.711, and 554.712 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Section 1. Sections 4, 11, and 12 of Act No. 116 of the
2 Public Acts of 1974, section 12 as amended by Act No. 112 of the
3 Public Acts of 1991, being sections 554.704, 554.711, and 554.712
4 of the Michigan Compiled Laws, are amended to read as follows:
5 Sec. 4. (1) The execution and acceptance of a development
6 rights agreement or easement by the state or local governing body
7 and the owner ~~shall constitute a dedication~~ DEDICATES to the
8 public ~~of~~ the development rights in the land for the term

1 specified in the instrument. A development rights agreement or
2 easement shall be for ~~a~~ AN INITIAL term of not less than 10
3 years.

4 (2) The state or local governing body shall not sell, trans-
5 fer, convey, relinquish, vacate, or otherwise dispose of a devel-
6 opment rights agreement or easement except with the ~~mutual~~
7 agreement of the owner as provided in sections 12, 13, and 14.

8 (3) An agreement or easement ~~shall~~ DOES not supersede any
9 prior lien, lease, or interest ~~which~~ THAT is properly recorded
10 with the county register of deeds.

11 (4) A lien created under this act in favor of the state or a
12 local governing body ~~shall be~~ IS subordinate to a lien of a
13 mortgage ~~which~~ THAT is recorded in the office of the register
14 of deeds before the recording of the lien of the state or local
15 governing body.

16 Sec. 11. (1) Land subject to a development rights agreement
17 or easement may be sold without penalty under sections 12, 13,
18 and 14, if the use of the land by the successor in title complies
19 with the provisions contained in the development rights agreement
20 or easement. The seller shall notify the governmental authority
21 having jurisdiction over the development rights of the change in
22 ownership.

23 (2) When the owner of land subject to a development rights
24 agreement or easement dies or is totally and permanently disabled
25 OR WHEN AN INDIVIDUAL ESSENTIAL TO THE OPERATION OF THE FARM DIES
26 OR IS TOTALLY AND PERMANENTLY DISABLED, the land may be
27 ~~released~~ RELINQUISHED from the program under this act and

1 ~~shall be~~ IS subject to a proration pursuant to sections ~~12(7)~~
2 12(9), 13(7) and 14(7). A REQUEST FOR RELINQUISHMENT UNDER THIS
3 SECTION SHALL BE MADE WITHIN 3 YEARS FROM THE DATE OF DEATH OR
4 DISABILITY.

5 (3) THE LAND DESCRIBED IN A DEVELOPMENT RIGHTS AGREEMENT MAY
6 BE DIVIDED INTO SMALLER PARCELS OF LAND, EACH OF WHICH SHALL BE
7 COVERED BY A SEPARATE DEVELOPMENT RIGHTS AGREEMENT. THE SEPARATE
8 DEVELOPMENT RIGHTS AGREEMENT SHALL CONTAIN THE SAME TERMS AND
9 CONDITIONS AS THE ORIGINAL DEVELOPMENT RIGHTS AGREEMENT. THE
10 SMALLER PARCELS CREATED BY THE DIVISION MUST MEET THE MINIMUM
11 REQUIREMENTS FOR BEING ENROLLED UNDER THIS ACT. FARMLAND MAY BE
12 DIVIDED ONCE UNDER THIS SUBSECTION WITHOUT FEE BY THE STATE LAND
13 USE AGENCY. THE STATE LAND USE AGENCY MAY CHARGE A REASONABLE
14 FEE NOT GREATER THAN THE STATE LAND USE AGENCY'S ACTUAL COST OF
15 DIVIDING THE AGREEMENT FOR ALL SUBSEQUENT DIVISIONS OF THAT
16 FARMLAND. BEFORE A DIVISION IS MADE UNDER THIS SUBSECTION, THE
17 STATE LAND USE AGENCY SHALL GIVE THE LOCAL GOVERNING BODY OF THE
18 LOCAL UNIT OF GOVERNMENT IN WHICH THE LAND TO BE DIVIDED IS
19 LOCATED NOT LESS THAN 30 DAYS' NOTICE OF THE PROPOSED DIVISION.

20 (4) AS USED IN THIS SECTION, "INDIVIDUAL ESSENTIAL TO THE
21 OPERATION OF THE FARM" MEANS A CO-OWNER, PARTNER, SHAREHOLDER, OR
22 FAMILY MEMBER, WHO, TO A MATERIAL EXTENT, CULTIVATES, OPERATES,
23 OR MANAGES FARMLAND UNDER THIS ACT. AN INDIVIDUAL IS CONSIDERED
24 INVOLVED TO A MATERIAL EXTENT IF THAT INDIVIDUAL DOES 1 OR MORE
25 OF THE FOLLOWING:

26 (A) HAS A FINANCIAL INTEREST EQUAL TO OR GREATER THAN 1/2
27 THE COST OF PRODUCING THE CROPS, LIVESTOCK, OR PRODUCTS AND

1 INSPECTS, ADVISES, AND CONSULTS WITH THE OWNER ON PRODUCTION
2 ACTIVITIES.

3 (B) WORKS 1,040 HOURS OR MORE ANNUALLY IN ACTIVITIES CON-
4 NECTED WITH PRODUCTION OF THE FARMING OPERATION.

5 (5) THE STATE LAND USE AGENCY MAY CHARGE AND COLLECT A FEE
6 OF \$25.00 TO PROCESS EACH CHANGE OF OWNERSHIP UNDER SUBSECTION
7 (1) OR EACH DIVISION UNDER SUBSECTION (3).

8 Sec. 12. (1) A development rights agreement shall be relin-
9 quished by ~~the~~ THIS state at the expiration of the term of the
10 agreement unless renewed with the consent of the owner of the
11 land. If the owner of the land has complied with the require-
12 ments of this act regarding development rights agreements, the
13 owner is entitled to automatic renewal of THE FARMLAND COVERED BY
14 the agreement OR A PORTION OF THE FARMLAND COVERED BY THE DEVEL-
15 OPMENT RIGHTS AGREEMENT upon written request of the ~~landowner~~
16 OWNER. IF A PORTION OF THE FARMLAND COVERED BY THE DEVELOPMENT
17 RIGHTS AGREEMENT IS RENEWED, THAT PORTION OF THE FARMLAND RENEWED
18 SHALL OTHERWISE MEET THE REQUIREMENTS FOR BEING ENROLLED UNDER
19 THIS ACT. A DEVELOPMENT RIGHTS AGREEMENT MAY BE RENEWED FOR A
20 TERM OF NOT LESS THAT 5 YEARS. IF A DEVELOPMENT RIGHTS AGREEMENT
21 IS RENEWED, THE STATE LAND USE AGENCY SHALL SEND A COPY OF THE
22 RENEWAL CONTRACT TO THE LOCAL GOVERNING BODY OF THE LOCAL UNIT OF
23 GOVERNMENT IN WHICH THE FARMLAND IS LOCATED.

24 (2) A development rights agreement OR A PORTION OF THE FARM-
25 LAND COVERED BY A DEVELOPMENT RIGHTS AGREEMENT may be relin-
26 quished by the state before a termination date contained in the

1 instrument ~~as follows~~ UNDER 1 OR MORE OF THE FOLLOWING
2 CIRCUMSTANCES:

3 (a) ~~At any time~~ IF the state determines that the develop-
4 ment of the land is in the public interest and ~~in agreement~~
5 ~~with~~ the owner of the land AGREES.

6 (b) The owner of the land may submit an application to the
7 local governing body having jurisdiction under this act request-
8 ing that the development rights agreement be relinquished. The
9 application shall be made on a form prescribed by the state land
10 use agency. The request for relinquishment shall be processed
11 and is subject to the same provisions as provided for in section
12 5 for review and approval.

13 (C) IF APPROVED BY THE LOCAL GOVERNING BODY AND THE STATE
14 LAND USE AGENCY, LAND CONTAINING STRUCTURES THAT WERE PRESENT
15 BEFORE THE RECORDING OF THE DEVELOPMENT RIGHTS AGREEMENT MAY BE
16 RELINQUISHED FROM THE AGREEMENT. A MAXIMUM OF 2 ACRES MAY BE
17 RELINQUISHED UNDER THIS SUBSECTION UNLESS ADDITIONAL LAND AREA IS
18 NEEDED TO ENCOMPASS ALL OF THE BUILDINGS LOCATED ON THE PARCEL OR
19 IT IS NECESSARY TO COMPLY WITH LOCAL ZONING REQUIREMENTS FOR MIN-
20 IMUM LOT SIZE.

21 (D) IF APPROVED BY THE LOCAL GOVERNING BODY AND THE STATE
22 LAND USE AGENCY, LAND MAY BE RELINQUISHED FROM THE AGREEMENT FOR
23 THE CONSTRUCTION OF A RESIDENCE BY THE OWNER'S SON, DAUGHTER,
24 STEPSON, STEPDAUGHTER, SON-IN-LAW, OR DAUGHTER-IN-LAW WHO IS AN
25 INDIVIDUAL ESSENTIAL TO THE OPERATION OF THE FARM AS DEFINED IN
26 SECTION 11(4). A MAXIMUM OF 2 ACRES MAY BE RELINQUISHED UNDER

1 THIS SUBSECTION UNLESS ADDITIONAL LAND AREA IS NECESSARY TO
2 COMPLY WITH LOCAL ZONING REQUIREMENTS FOR MINIMUM LOT SIZE.

3 (3) UNTIL APRIL 1, 1995, IF AN OWNER MAKES A REQUEST, IN
4 WRITING, TO THE STATE LAND USE AGENCY, TO TERMINATE THE DEVELOP-
5 MENT RIGHTS AGREEMENT COVERING ALL OR A PORTION OF THE FARMLAND
6 OWNED BY THE OWNER, THE STATE LAND USE AGENCY SHALL APPROVE THE
7 REQUEST AND RELINQUISH THAT FARMLAND FROM THE DEVELOPMENT RIGHTS
8 AGREEMENT. IF FARMLAND IS RELINQUISHED UNDER THIS SUBSECTION,
9 THE STATE LAND USE AGENCY SHALL NOTIFY THE LOCAL GOVERNING BODY
10 OF THE LOCAL UNIT OF GOVERNMENT IN WHICH THE LAND IS LOCATED OF
11 THE RELINQUISHMENT.

12 (4) ~~(3)~~ If the request for relinquishment of the develop-
13 ment rights agreement is approved, the state land use agency
14 shall prepare an instrument, subject to subsections ~~(4)~~, (5),
15 (6), ~~and~~ (7), (8), AND (9), and record it with the register of
16 deeds of the county in which the land is situated.

17 (5) ~~(4) At the time~~ IF a development rights agreement is
18 to be relinquished pursuant to subsection (2)(b), the state land
19 use agency shall ~~prepare and~~ record a lien against the property
20 formerly subject to the development rights agreement for the
21 total amount of the credit received by the owner for that prop-
22 erty under section 10, plus interest at the rate of 6% per annum
23 compounded annually from the time the credit was received until
24 ~~it is paid~~ THE LIEN IS PLACED ON THE PROPERTY. Beginning
25 January 1, 1989, the credit for each year the property was
26 subject to the agreement is the allocated tax credit for the
27 agreement that included the property being withdrawn from the

1 agreement. However, if the property being withdrawn from the
2 agreement is less than all of the property subject to that agree-
3 ment, the allocated tax credit for the agreement shall be multi-
4 plied by the property's share of the assessed valuation of the
5 agreement. As used in this subsection:

6 (a) "The allocated tax credit for the agreement" means the
7 amount obtained by multiplying the owner's total farmland preser-
8 vation credit claimed in that year on all agreements by the quo-
9 tient of the ad valorem property tax levied in that year on prop-
10 erty subject to the development rights agreement that included
11 the property being withdrawn from the agreement divided by the
12 total property taxes levied on property subject to any develop-
13 ment rights agreement and used in determining the farmland pre-
14 servation credit in that year.

15 (b) "The property's share of the assessed value of the
16 agreement" means the quotient of the assessed value of the prop-
17 erty being released from the agreement divided by the total
18 assessed value of property subject to the development rights
19 agreement that included the property being released from the
20 agreement.

21 (6) IF A DEVELOPMENT RIGHTS AGREEMENT IS TO BE RELINQUISHED
22 PURSUANT TO SUBSECTION (3), THE STATE LAND USE AGENCY SHALL
23 RECORD A LIEN AGAINST THE PROPERTY FORMERLY SUBJECT TO THE DEVEL-
24 OPMENT RIGHTS AGREEMENT FOR THE TOTAL AMOUNT OF THE CREDIT UNDER
25 THE STATE INCOME TAX ACT FOR THE LAST 7 YEARS RECEIVED BY THE
26 OWNER UNDER SECTION 10 PLUS INTEREST AT A RATE OF 6% PER ANNUM

1 COMPOUNDED ANNUALLY FROM THE TIME THE CREDIT WAS RECEIVED UNTIL
2 THE LIEN IS PLACED ON THE PROPERTY.

3 (7) ~~-(5)-~~ The lien may be paid and discharged at any time
4 and is payable to the state by the owner of record at the time
5 the land or any portion of it is sold by the owner of record, or
6 if the land is converted to a use prohibited by the former devel-
7 opment rights agreement. The lien shall be discharged upon
8 renewal or reentry in a development rights agreement, except that
9 a subsequent lien shall not be less than the lien discharged.

10 (8) ~~-(6)-~~ Upon termination of the development rights agree-
11 ment pursuant to subsection (2)(a), the development rights shall
12 revert back to the owner without penalty or interest.

13 (9) ~~-(7)-~~ Upon the natural termination of the development
14 rights agreement pursuant to subsection (1), the state land use
15 agency shall prepare and record a lien against the property
16 formerly subject to the development rights agreement for the
17 total amount of the credit of the last 7 years, INCLUDING THE
18 YEAR OF NATURAL TERMINATION, received by the owner under section
19 10, ~~including the year of natural termination,~~ attributable to
20 ~~that~~ THE PROPERTY FORMERLY SUBJECT TO THE development rights
21 agreement. Beginning January 1, 1989, the credit for each year
22 shall be determined by multiplying the owner's total farmland
23 preservation credit on all agreements claimed in that year by the
24 quotient of the ad valorem property tax levied on property
25 subject to the expired development rights agreement that was used
26 in determining the farmland preservation credit in that year
27 divided by the total property taxes levied on property subject to

1 any development rights agreement and used in determining the
2 farmland preservation credit in that year. The lien shall be
3 without interest or penalty and is payable subject to subsection
4 ~~(5)~~ (7).

5 (10) ~~(8)~~ Upon termination OF A DEVELOPMENT RIGHTS
6 AGREEMENT, the state land use agency shall notify the department
7 of treasury for their records.

8 (11) ~~(9)~~ The proceeds from lien payments made under this
9 act shall be used BY THE STATE LAND USE AGENCY to administer this
10 act ~~by the state land use agency~~ for fiscal years 1991-92
11 through 1994-95 and to purchase development rights on land ~~that~~
12 ~~is considered by the state land use agency to be a unique or~~
13 ~~critical land area that should be preserved in its natural char-~~
14 ~~acter, but which~~ THAT does not necessitate direct purchase of
15 the fee interest in the land. It is the intent of the legisla-
16 ture that if the accumulated proceeds from lien payments received
17 under this act fall below \$2,000,000.00, then the funds used to
18 administer this act shall be appropriated from the general fund
19 until the proceeds from the lien payments received under this act
20 exceed \$2,000,000.00. However, the amount of lien payments used
21 to administer this act shall not exceed \$600,000.00 in any fiscal
22 year.

23 (12) FOR FARMLAND THAT WAS PREVIOUSLY SUBJECT TO THIS ACT,
24 THE STATE LAND USE AGENCY SHALL REDUCE A LIEN DESCRIBED IN
25 SUBSECTION (9) BY 1/7 OF THE AMOUNT OF THAT LIEN FOR EVERY YEAR
26 THAT THE OWNER OF THAT FARMLAND COMPLIES WITH ALL OF THE
27 FOLLOWING:

1 (A) MAINTAINS THAT FARMLAND IN AN AGRICULTURAL USE.

2 (B) MAINTAINS THAT FARMLAND IN A SUBSTANTIALLY UNDEVELOPED
3 MANNER.