

AG. PRESERVATION FUND

House Bill 5780 as enrolled
Public Act 262 of 2000
Second Analysis (1-22-01)

Sponsor: Rep. Jim Howell
House Committee: Agriculture and
Resource Management
Senate Committee: None

THE APPARENT PROBLEM:

There is a longstanding -- and ever increasing -- concern in some quarters over the loss of farmland in Michigan, and an interrelated concern about the steady conversion of farmland and other open spaces to new residential, commercial, and industrial uses. The state loses 75,000 acres of farmland each year and has lost over one million acres over the past 15 years, according to the Michigan Land Use Institute. The state lost over 1,000 farmers in the 1990's. Sometimes this issue is subsumed under the general problem of "urban sprawl", which connotes the exodus of residents and businesses from already developed and populated communities to neighboring undeveloped rural areas. From the point of view of farmers and other owners of agricultural property, however, the issue is better understood as stemming from the low profits associated with agricultural production and the way in which high property values and high property taxes increase the pressure to sell land for development and make it that much harder to stay on the farm.

A number of proposals have been made in recent years to address this problem, including taxing agricultural land based on its agricultural use value rather than its value as developable property; eliminating the assessment "pop-up" that removes the assessment cap and instantly increases the taxes on farmland when it is sold, thus increasing costs to new farmers when they acquire property; and encouraging the purchase of development rights from farmers to ensure that land will remain in agricultural production. So far, only this last proposal has been put into effect.

The loss of farmland and other open space is not a new problem: the state enacted a Farmland and Open Space Preservation Act in 1974, over a quarter of a century ago, to provide tax benefits to farmers who promise not to develop their land. Under this act, sometimes called Public Act 116, a landowner and the state may enter into a contract--known as a "development rights

agreement"--that grants a property tax credit to the landowner in return for a promise to keep farmland in agricultural use or as undeveloped open space. This act was incorporated into the Natural Resources and Environmental Protection Act [NREPA] of 1994, which codified all of the state's natural resources and environmental protection statutes into one comprehensive law. When land is withdrawn from the PA 116 program, either prematurely or because the agreement expires, the Department of Treasury calculates and places a lien upon the property to recapture some or all of the tax credits when the property is developed or sold. The repaid money is then used by the state to purchase development rights on other agricultural lands. The attractiveness of PA 116 declined considerably with the passage of Proposal A, which put in place a new school financing system and significantly reduced property taxes, particularly for homeowners and farmers.

Recent changes in the law have provided local units of government, including counties, townships, cities, and villages, with the authority to adopt development rights ordinances under which they can purchase development rights from willing landowners for the purpose of protecting farmland and adjoining land. The development rights ordinance must specify the level of development that would be permitted and the circumstances under which the landowner may repurchase those rights.

Now a new proposal aims at providing state grants to local units to assist them in purchasing development rights. These grants would be funded out of the lien payments made under the PA 116 program. Legislation has been proposed to create a special new fund and a grant application and review process.

THE CONTENT OF THE BILL:

The bill would amend the Natural Resources and Environmental Protection Act, known as NREPA, to create a new Part 362 establishing an Agricultural Preservation Fund within the state treasury. Money in the fund would be used to provide grants to local units of government for the purchase of agricultural easements and, if sufficient money remained, for the purchase of development rights in certain unique and critical land areas. A grant would be conditioned on a portion of the cost of acquiring an agricultural conservation easement being provided by the local unit applying or another person.

As of October 1, 2000, unexpended money from lien payments under the Farmland and Open Space Preservation Act (now absorbed into NREPA as Part 361) would be transferred to the new Agriculture Preservation Fund and, as of that date, all proceeds from new lien payments would go to the state treasurer for deposit in the new fund. Moreover, the bill would make the Department of Agriculture rather than the Department of Natural Resources the state land use agency for the purpose of administering the development rights program under Part 361.

The state treasurer also could receive money or other assets from any source for deposit in the fund, including gifts, bequests, and other donations. The treasurer would direct the investment of the fund and credit interest and earnings from investments to the fund. The bill would specify that expenditures of money in the fund “are consistent with the state’s interest in preserving farmland and are declared to be for an important public purpose.” Specifically, money in the fund could be spent, upon appropriation, as follows:

- Not more than \$700,000 annually for the administrative costs of the Department of Agriculture and Agricultural Preservation Fund Board. However, if deposits into the fund during any given fiscal year exceeded \$8.75 million, up to 8 percent of the deposits could be expended for administrative costs.
- After expenditures for administrative costs, money in the fund could be used to provide grants to local units of government for the purchase of agricultural conservation easements. An agricultural conservation easement would mean a conveyance, by a written instrument, in which, subject to permitted uses, the owner relinquished to the public in perpetuity his or her development rights and made a covenant running with the land not to undertake development.

— After the first two kinds of expenditures, if the amount of money remaining in the fund exceeded \$5 million, money in the fund could be used under Section 36111b for the purchase of development rights or the acquisition of agricultural conservation easements by the state. Section 36111b deals with “unique and critical” land areas (as well as farmland). A unique and critical land area is defined as agricultural and open space lands identified by the Department of Agriculture as an area that should be preserved.

Grant Program. The department would be required to establish a grant program to provide grants to eligible local units of government for the purchase of agricultural conservation easements. A local unit would be eligible to submit a grant application if the unit 1) had adopted a development rights ordinance providing for a purchase-of-development-rights program under the County Zoning Act, the Township Zoning Act, or the City and Village Zoning Act; and 2) had adopted within the previous 10 years a comprehensive land use plan that included a plan for agricultural preservation, or the local unit was included within a regional plan prepared within the previous 10 years that included a plan for agricultural preservation. The purchase-of-development-rights program would have to contain an application procedure, the criteria for a scoring system for parcel selections within the local unit of government, and a method to establish the price to be paid for development rights, which could include an appraisal, bidding, or formula-based process.

A grant application would be submitted on a form prescribed by the department and would have to include at a minimum a list of parcels proposed for acquisition of agricultural conservation easements, the size and location of each parcel, the amount of local matching funds, and the estimated acquisition value of the easements. The department would forward the applications to the Agricultural Preservation Fund Board.

Agricultural Preservation Fund Board. This board would consist of the director of the Department of Agriculture; the director of the Department of Natural Resources; and five individuals appointed by the governor, including two individuals representing agricultural interests, and one individual each to represent conservation interests, development interests, and the general public. The director of the Department of Agriculture could appoint two additional members

with knowledge and expertise in agriculture, land use, or local government, as nonvoting members.

Grant Selection Criteria. An application submitted to the board would have to be evaluated according to selection criteria established by the board. The criteria would have to place a priority on the acquisition of easements on the following: farmland that had a productive capacity suited for the production of feed, food, and fiber; farmland that would complement and was part of a documented, long-range effort or plan for land preservation by the local unit of government in which it was located; farmland that was located within an area that complemented other land protection efforts by creating a block of farmland that was subject to an agricultural conservation easement under the bill or a development rights agreement under Part 361 or for which development rights had been acquired under Part 361; farmland in which a greater portion of matching funds or a larger percentage of the agricultural easement value was provided by a local unit of government or sources other than the fund; and other factors considered important by the board.

After reviewing grant applications, the board would determine which grants should be awarded and the amount of the grants. The board would have to notify the department of its decisions and submit a report to the commission of agriculture. The board could establish a maximum amount per acre that could be spent using money from the fund for the purchase of easements. The department would distribute the grants to local units and would condition the receipt of a grant on the department's approval of the easements being acquired. A grant would require that a portion of the cost of acquiring an agricultural conservation easement be provided by the applicant or another person.

Permitted Uses. In reviewing permitted uses contained within an easement, the department would have to consider whether: the permitted uses adversely affected the productivity of farmland; the permitted uses materially altered or negatively affected the existing conditions or use of the land; the permitted uses resulted in a material alteration of an existing structure to a nonagricultural use; and the permitted uses conformed with all applicable federal, state, and local laws and ordinances.

The department could accept contributions of all or a portion of the development rights to one or more parcels of land, including a conservation easement or a historic preservation easement, as part of a transaction for the purchase of an agricultural conservation easement.

A local unit that purchased an easement with money from a grant could purchase the easement through an installment purchase agreement under terms negotiated by the local unit of government.

An easement acquired under this part would be held jointly by the state and local unit of government. However, the state could delegate enforcement authority of one or more agricultural easements to the local units. An easement acquired under this part could be transferred to the owner of the property subject to the easement if the state and local unit holding the easement agreed to the transfer and the terms of the transfer.

MCL 324.36101 et al.

FISCAL IMPLICATIONS:

As the House Fiscal Agency has noted, fund revenue can be appropriated for administrative costs of the Department of Agriculture and the Agricultural Preservation Fund Board. (HFA fiscal note dated 5-12-00)

ARGUMENTS:

For:

The Agricultural Preservation Fund Program will help protect valuable farmland by providing funding for local units of government to use in purchasing development rights from farmers. This program will allow farmers to avoid selling land for development and instead keep land in agricultural production. For farmers, the sale of development rights provides them with an immediate and substantial financial benefit that can be used for reducing debt, modernizing equipment, or reinvesting. In addition, any reduction in property values from the sale of development rights will mean lower property taxes for current operators and future generations of farmers on the land. The public will benefit from the preservation of farmland, both from the agricultural production that results and from the maintenance of the rural character of the countryside. The purchase of development rights is seen as an effective method of reducing urban sprawl.

Against:

A number of concerns have been raised about the bill. Critics say it needs to be tied to a larger source of funding to increase its likely effectiveness. (At one time the fund was expected to receive "recapture taxes" to be levied when farmland assessed at agricultural use value was sold for non-agricultural purposes. But the

use value concept was not enacted.) Further, some people think the bill should have greater focus on the preservation of open spaces that are not farmland (as well as farmland). Further, the development rights grant program should be administered at the county level with local input and not at the local level, say critics. They say that is the preferred model nationally.

Analyst: C. Couch

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