

SENATE BILL No. 1661

December 2, 2008, Introduced by Senators BARCIA and BROWN and referred to the Committee on Finance.

A bill to amend 1994 PA 451, entitled
"Natural resources and environmental protection act,"
by amending section 36101 (MCL 324.36101), as amended by 2000 PA
262.

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
5 development rights and makes a covenant running with the land not
6 to undertake development.

7 (b) "Agricultural use" means the production of plants and
8 animals useful to humans, including forages and sod crops; grains,

1 feed crops, and field crops; dairy and dairy products; poultry and
2 poultry products; livestock, including breeding and grazing of
3 cattle, swine, captive cervidae, and similar animals; berries;
4 herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables;
5 Christmas trees; and other similar uses and activities.

6 Agricultural use includes use in a federal acreage set-aside
7 program or a federal conservation reserve program. **AGRICULTURAL USE**
8 **INCLUDES USE IN A WILDLIFE RISK MITIGATION ACTION PLAN FOR A BEEF**
9 **OR DAIRY FARM THAT IS LOCATED IN A MODIFIED ACCREDITED ZONE IF THAT**
10 **BEEF OR DAIRY FARM HAD A PREMISES IDENTIFICATION NUMBER REGISTERED**
11 **WITH THE DEPARTMENT OF AGRICULTURE FOR BOVINE TUBERCULOSIS TESTING**
12 **PRIOR TO SEPTEMBER 1, 2008.** Agricultural use does not include the
13 management and harvesting of 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 is set forth
22 in an instrument recorded under this part.

23 (f) "Development rights agreement" means a restrictive
24 covenant, evidenced by an instrument in which the owner and the
25 state, for a term of years, agree to jointly hold the right to
26 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" means a grant, by an
3 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 more
9 of the land area devoted to an agricultural use.

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

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

25 (iv) Parcels of land in 1 ownership that are not contiguous but
26 which 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) "Local governing body" means 1 of the following:

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

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

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

12 (J) "MODIFIED ACCREDITED ZONE" MEANS THOSE AREAS IDENTIFIED IN
13 THIS STATE UNDER 9 CFR 77.11 AS MODIFIED ACCREDITED ZONES.

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

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

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

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

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

27 (ii) Any other area approved by the local governing body, the

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

9 (I) ~~(K)~~ "Owner" means a person having a freehold estate in land
10 coupled with possession and enjoyment. If land is subject to a land
11 contract, owner means the vendee in agreement with the vendor.

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

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

26 (O) ~~(n)~~ "Planning commission" means ~~a planning commission~~
27 ~~created by the local governing body under 1945 PA 282, MCL 125.101~~

1 ~~to 125.107, 1959 PA 168, MCL 125.321 to 125.333, or 1931 PA 285,~~
2 ~~MCL 125.31 to 125.45, as applicable~~ **THAT TERM AS DEFINED IN SECTION**
3 **3 OF THE MICHIGAN PLANNING ENABLING ACT, 2008 PA 33, MCL 125.3803.**

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

8 **(Q) "PROJECT" MEANS CERTAIN RISK MITIGATING MEASURES, WHICH**
9 **MAY INCLUDE, BUT ARE NOT LIMITED TO, THE FOLLOWING:**

10 **(i) MAKING IT DIFFICULT FOR WILDLIFE TO ACCESS FEED BY STORING**
11 **LIVESTOCK FEED SECURELY, RESTRICTING WILDLIFE ACCESS TO FEEDING AND**
12 **WATERING AREAS, AND DETERRING OR REDUCING WILDLIFE PRESENCE AROUND**
13 **CATTLE AND CATTLE FEED BY STORING FEED IN AN ENCLOSED BARN,**
14 **WRAPPING BALES OR COVERING STACKS WITH TARPS, CLOSING ENDS OF BAGS,**
15 **STORING GRAINS IN ANIMAL-PROOF CONTAINERS OR BINS, MAINTAINING**
16 **FENCES, PRACTICING SMALL MAMMAL AND RODENT CONTROL, OR FEEDING AWAY**
17 **FROM DEER COVER.**

18 **(ii) MINIMIZING WILDLIFE ACCESS TO CATTLE FEED AND WATER BY**
19 **FEEDING CATTLE IN AN ENCLOSED AREA, FEEDING IN OPEN AREAS NEAR**
20 **BUILDINGS AND HUMAN ACTIVITY, REMOVING EXTRA OR WASTE FEED WHEN**
21 **CATTLE ARE MOVED, USING HAY FEEDERS TO REDUCE WASTE, USING**
22 **ARTIFICIAL WATER SYSTEMS TO HELP KEEP CATTLE FROM SHARING WATER**
23 **SOURCES WITH WILDLIFE, FENCING OFF STAGNANT PONDS AND WETLANDS, AND**
24 **KEEPING MINERAL FEEDERS NEAR BUILDINGS AND HUMAN ACTIVITY OR USING**
25 **DEVICES THAT RESTRICT DEER USAGE.**

26 **(R) ~~(p)~~** "Property taxes" means general ad valorem taxes levied
27 after January 1, 1974, on lands and structures in this state,

1 including collection fees, but not including special assessments,
2 penalties, or interest.

3 (S) ~~(q)~~—"Regional planning commission" means a regional
4 planning commission created pursuant to 1945 PA 281, MCL 125.11 to
5 125.25.

6 (T) ~~(r)~~—"Regional planning district" means the planning and
7 development regions as established by executive directive 1968-1,
8 as amended, whose organizational structure is approved by the
9 regional council.

10 (U) ~~(s)~~—"State income tax act" means the income tax act of
11 1967, 1967 PA 281, MCL 206.1 to 206.532, and in effect during the
12 particular year of the reference to the act.

13 (V) ~~(t)~~—"State land use agency" means the department of
14 agriculture.

15 (W) ~~(u)~~—"Substantially undeveloped" means any parcel or area
16 of land essentially unimproved except for a dwelling, building,
17 structure, road, or other improvement that is incidental to
18 agricultural and open space uses.

19 (X) ~~(v)~~—"Unique or critical land area" means agricultural or
20 open space lands identified by the land use agency as an area that
21 should be preserved.

22 (Y) "WILDLIFE RISK MITIGATION ACTION PLAN" MEANS A WRITTEN
23 PLAN CONSISTING OF 1 OR MORE PROJECTS TO HELP REDUCE THE RISKS OF
24 BOVINE TUBERCULOSIS SPREADING BETWEEN WILDLIFE AND LIVESTOCK AND IS
25 APPROVED BY THE DEPARTMENT OF AGRICULTURE UNDER THE ANIMAL INDUSTRY
26 ACT, 1988 PA 466, MCL 287.701 TO 287.745.