

Legislative Analysis



FARMLAND TAX CREDIT AMENDMENTS

Phone: (517) 373-8080
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House Bills 5189 and 5191, as introduced
Sponsor: Rep. Dan Lauwers

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5190 as introduced
Sponsor: Rep. Brett Roberts
Committee: Agriculture
Complete to 1-27-16

SUMMARY:

The bills would amend three separate acts to address the Farmland and Open Space Preservation Program. Under the Farmland and Open Space Preservation Program, found in NREPA, farm owners enter into agreements with the state to keep land in agricultural use for ten or more years and can receive an income tax credit (and be exempt from certain special assessments).

House Bill 5189 would amend the Natural Resources and Environmental Protection Act (NREPA) to specify that if in any year a person who is eligible for an income tax credit under the preservation program does not claim the credit, then an amount equal to the credit would be deposited into the Agricultural Preservation Fund. The Department of Treasury would have to calculate each eligible credit not claimed and then deposit the total of all such credits into the Fund. House Bill 5189 is tie-barred to House Bill 5190.

The Agricultural Preservation Fund, which was created by Section 36202 of NREPA, is used for (1) administrative costs of the Department of Agriculture and Rural Development (up to \$1.4 million); (2) grants to local units of government for the purchase of agricultural conservation easements; and (3) if the money in the Fund exceeds \$5 million after the first two kinds of expenditure, then the purchase of development rights to farmland or the acquisition of agricultural conservation easements by the state.

House Bill 5190 would make a complementary amendment to the Income Tax Act, directing unclaimed farmland tax credits to the Agricultural Preservation Fund. The bill also would, beginning with the 2016 tax year, (1) require the Department of Treasury to include a checkbox on the farmland preservation tax credit form for a taxpayer to designate whether he or she is claiming the tax credit for that tax year, and (2) allow a taxpayer, regardless of the number of development rights agreements entered into, to electronically file a farmland preservation tax credit claim with the taxpayer's annual return.

House Bill 5191 would amend the Revenue Act to make proposed new provisions regarding the calculation of interest on refunds from the Department of Treasury also apply to refunds of farmland tax credits. (Note that these proposed new refund provisions are also contained in House Bill 4461, which passed the House on 10-7-15.)

Other provisions in the bills are explained below.

House Bill 5189

House Bill 5189 would amend Sections 36101, 36104, 36109, and 36110 of the Natural Resources and Environmental Protection Act (NREPA) to do the following.

Section 36101 makes technical changes to existing definitions that do not substantially impact their current meaning, and adds a definition to refer to the Agricultural Preservation Fund.

Section 36104 outlines how a landowner may apply for a farmland development rights agreement. This section would be amended by removing a requirement that if land that is part of the agreement is located within three miles of the boundary of a city or within one mile of the boundary of a village, the county or township governing body having jurisdiction must notify the governing body of that city or village. The bill also would make other technical changes.

Section 36109 deals with unclaimed income tax credits, as described earlier.

Section 36110 contains provisions that deal with the sale or transfer of land involved in a development rights agreement or easement. The bill would amend this section by removing language which says that if the land in a development rights agreement is subdivided, each subdivided parcel must be covered by a separate agreement, each of which would be eligible for subsequent renewal. HB 5189 make this provision say that land described in a development rights agreement could be divided into smaller parcels of land and continued under the same terms and conditions as the original development rights agreement. [New language underlined.]

In addition, the bill would modify the definition of the term "individual essential to the operation of the farm" by making the term refer to a co-owner, partner, shareholder, farm manager, or family member who, to a material extent, cultivates, operates, or manages farmland under this part (Part 361 of NREPA). Currently, the term means one of the aforementioned individuals under this act.

HB 5189 also would repeal Section 36117 of NREPA, which contains an obsolete reporting requirement (with the report due no later than January 30, 1976).

Lastly, the bill would increase the amount of a fee, to \$50 from \$25, which the state land use agency may charge and collect to process each change of ownership or subdivision. The fee would then be forwarded to the state treasurer for deposit into the Agricultural Preservation Fund. Currently this section states that the proceeds of the fee are to be used by the agency to administer NREPA.

House Bill 5191

HB 5191 contains language similar to that in House Bill 4461 to change the manner in which interest is to be applied to individual income tax refunds issued by the Department

of Treasury, but would also add that the new calculation also applies to interest on farmland tax credit refunds. It would amend Section 30 of the Revenue Act.

Under current law, the Department of Treasury has 45 days to issue a refund for individual income taxes, starting from the date the return is filed or the deadline for filing that return, whichever is later. After that time, interest is added to the refund at the rate established for delinquent payments in Section 23 of the act.

The new provisions would continue to require the department to issue refunds within 45 days, but starting in tax year 2016, the penalty interest would be calculated starting from the date the original return was due (regardless of extensions) or the date of overpayment "until a date preceding the date of the refund by not more than 7 days." (For example, under current law, a refund issued after 46 days would have one day's worth of interest added. Under the proposed changes, a refund issued after 46 days would have at least 39 days' worth of interest added.)

FISCAL IMPACT:

As written, the HB 5189 could potentially reduce income tax revenue by an unknown amount to the extent that eligible farmland development credits are not claimed. Any revenue reduction is predicated on the assumption that the department of Treasury would be able to identify the taxpayers that would have been eligible for a credit but chose not to claim it, and that the department would have the information necessary to actually calculate the credit.

Legislative Analyst: Josh Roesner
Fiscal Analyst: Jim Stansell

■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.