

**SUBSTITUTE FOR  
HOUSE BILL NO. 5189**

A bill to amend 1994 PA 451, entitled  
"Natural resources and environmental protection act,"  
by amending sections 36101, 36104, 36109, and 36110 (MCL 324.36101,  
324.36104, 324.36109, and 324.36110), section 36101 as amended by  
2008 PA 336, sections 36104 and 36110 as amended by 1996 PA 233,  
and section 36109 as amended by 2007 PA 174; and to repeal acts and  
parts of acts.

**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

1 animals useful to humans, including forages and sod crops; grains,  
2 feed crops, and field crops; dairy and dairy products; poultry and  
3 poultry products; livestock, including breeding and grazing of  
4 cattle, swine, captive cervidae, and similar animals; berries;  
5 herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables;  
6 maple syrup production; Christmas trees; and other similar uses and  
7 activities. Agricultural use includes use in a federal acreage set-  
8 aside program or a federal conservation reserve program.  
9 Agricultural use does not include the management and harvesting of  
10 a woodlot.

11 (c) "Conservation district board" means that term as defined  
12 in section 9301.

13 (d) "Development" means an activity that materially alters or  
14 affects the existing conditions or use of any land.

15 (e) "Development rights" means an interest in land that  
16 includes the right to construct a building or structure, to improve  
17 land for development, to divide a parcel for development, or to  
18 extract minerals incidental to a permitted use or as set forth in  
19 an instrument recorded under this part.

20 (f) "Development rights agreement" **OR "AGREEMENT"** means a  
21 restrictive covenant, evidenced by an instrument in which the owner  
22 and the state, for a term of years, agree to jointly hold the right  
23 to undertake development of the land, and that contains a covenant  
24 running with the land, for a term of years, not to undertake  
25 development, subject to permitted uses.

26 (g) "Development rights easement" **OR "EASEMENT"** means a grant,  
27 by an instrument, in which the owner relinquishes to the public in

1 perpetuity or for a term of years the right to undertake  
2 development of the land, and that contains a covenant running with  
3 the land, not to undertake development, subject to permitted uses.

4 (h) "Farmland" means 1 or more of the following:

5 (i) A farm of 40 or more acres in 1 ownership, with 51% or  
6 more of the land area devoted to an agricultural use.

7 (ii) A farm of 5 acres or more in 1 ownership, but less than  
8 40 acres, with 51% or more of the land area devoted to an  
9 agricultural use, that has produced a gross annual income from  
10 agriculture of \$200.00 per year or more per acre of cleared and  
11 tillable land. A farm described in this subparagraph enrolled in a  
12 federal acreage set aside program or a federal conservation reserve  
13 program is considered to have produced a gross annual income from  
14 agriculture of \$200.00 per year or more per acre of cleared and  
15 tillable land.

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

24 (iv) Parcels of land in 1 ownership that are not contiguous  
25 but that constitute an integral part of a farming operation being  
26 conducted on land otherwise qualifying as farmland may be included  
27 in an application under this part.

1           (I) "FUND" MEANS THE AGRICULTURAL PRESERVATION FUND CREATED IN  
2 SECTION 36202.

3           (J) ~~(i)~~—"Local governing body" means 1 of the following:

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

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

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

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 **AND RURAL DEVELOPMENT**.

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

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

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

27 (O) ~~(n)~~—"Planning commission" means a planning commission

1 created by the local governing body under 1945 PA 282, MCL 125.101  
 2 to 125.115, 1959 PA 168, MCL 125.321 to 125.333, or 1931 PA 285,  
 3 MCL 125.31 to 125.45, as applicable. **UNDER THE MICHIGAN PLANNING**  
 4 **ENABLING ACT, 2008 PA 33, MCL 125.3801 TO 125.3885.**

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

9 (Q) ~~(p)~~ "Property taxes" means general ad valorem taxes levied  
 10 after January 1, 1974, on lands and structures in this state,  
 11 including collection fees, but not including special assessments,  
 12 penalties, or interest.

13 (R) ~~(q)~~ "Regional planning commission" means a regional  
 14 planning commission created pursuant to 1945 PA 281, MCL 125.11 to  
 15 125.25.

16 (S) ~~(r)~~ "Regional planning district" means the planning and  
 17 development regions as established by executive directive 1968-1,  
 18 as amended, whose organizational structure is approved by the  
 19 regional council.

20 (T) ~~(s)~~ "State income tax act" means the income tax act of  
 21 1967, 1967 PA 281, MCL 206.1 to ~~206.532~~, **206.713**, and in effect  
 22 during the particular year of the reference to the act.

23 (U) ~~(t)~~ "State land use agency" means the department of  
 24 agriculture **AND RURAL DEVELOPMENT**.

25 (V) ~~(u)~~ "Substantially undeveloped" means any parcel or area  
 26 of land essentially unimproved except for a dwelling, building,  
 27 structure, road, or other improvement that is incidental to

1 agricultural and open space uses.

2 (W) ~~(v)~~—"Unique or critical land area" means agricultural or  
3 open space lands identified by the land use agency as an area that  
4 should be preserved.

5 Sec. 36104. (1) An owner of land desiring a farmland  
6 development rights agreement may apply by filing an application  
7 with the local governing body having jurisdiction under this part.  
8 The owner shall apply on a form prescribed by the state land use  
9 agency. The application shall contain information reasonably  
10 necessary to properly classify the land as farmland. This  
11 information shall include a land survey or a legal description of  
12 the land and a map showing the significant natural features and all  
13 structures and physical improvements located on the land.

14 (2) Upon receipt of the application, the local governing body  
15 shall notify the county planning commission or the regional  
16 planning commission and the soil conservation district agency. If  
17 the county has jurisdiction, it shall also notify the township  
18 board of the township in which the land is situated. ~~If the land is~~  
19 ~~within 3 miles of the boundary of a city or within 1 mile of the~~  
20 ~~boundary of a village, the county or township governing body having~~  
21 ~~jurisdiction shall notify the governing body of the city or~~  
22 ~~village.~~

23 (3) An agency or local governing body receiving notice has 30  
24 days to review, comment, and make recommendations to the local  
25 governing body with which the application is filed. These reviewing  
26 agencies do not have an approval or rejection power over the  
27 application.

1           (4) After considering the comments and recommendations of the  
2 reviewing agencies and local governing bodies, the local governing  
3 body holding the application shall approve or reject the  
4 application within 45 days after the application is received,  
5 unless that period is extended by agreement of the parties  
6 involved. The local governing body's approval or rejection of the  
7 application shall be based upon, and consistent with, rules  
8 promulgated ~~by the state land use agency~~ under section 36116.

9           (5) If an application for a farmland development rights  
10 agreement is approved by the local governing body having  
11 jurisdiction, the local governing body shall forward a copy, along  
12 with the comments and recommendations of the reviewing bodies, to  
13 the state land use agency. The application shall contain a  
14 statement from the assessing officer where the property is located  
15 specifying the current fair market value of the land and structures  
16 in compliance with the agricultural section of the Michigan state  
17 tax commission assessor manual. If action is not taken by the local  
18 governing body within the time prescribed or agreed upon, the  
19 applicant may proceed as provided in subsection (6) as if the  
20 application was rejected.

21           (6) If the application for a farmland development rights  
22 agreement is rejected by the local governing body, the local  
23 governing body shall return the application to the applicant with a  
24 written statement regarding the reasons for rejection. Within 30  
25 days after receipt of the rejected application, the applicant may  
26 appeal the rejection by submitting the application to the state  
27 land use agency.



1           (7) The state land use agency, within 60 days after a farmland  
2 development rights agreement application is received under  
3 subsection (5) or (6), shall approve or reject the application. A  
4 ~~rejection of~~ **THE STATE LAND USE AGENCY MAY REJECT** an application  
5 for a farmland development rights agreement that has been approved  
6 by a local governing body ~~by the state land use agency shall be for~~  
7 ~~nonconformance~~ **ONLY IF THE PROPOSED AGREEMENT WOULD BE INCONSISTENT**  
8 with section 36101(f). ~~only.~~ If the application is approved by the  
9 state land use agency, the state land use agency shall prepare a  
10 farmland development rights agreement that includes all of the  
11 following provisions:

12           (a) A structure shall not be built on the land except for use  
13 consistent with farm operations, which includes a residence for an  
14 individual essential to the operation of the farm under section  
15 36111(2)(b), or lines for utility transmission or distribution  
16 purposes or with the approval of the local governing body and the  
17 state land use agency.

18           (b) Land improvements shall not be made except for use  
19 consistent with farm operations or with the approval of the local  
20 governing body and the state land use agency.

21           (c) Any interest in the land shall not be sold except a  
22 scenic, access, or utility easement that does not substantially  
23 hinder farm operations.

24           (d) Public access is not permitted on the land unless agreed  
25 to by the owner.

26           (e) Any other condition and restriction on the land as agreed  
27 to by the parties that is considered necessary to preserve the land

1 or appropriate portions of it as farmland.

2 (8) A copy of the approved application and the farmland  
3 development rights agreement shall be forwarded to the applicant  
4 for execution. An application that is approved by the local  
5 governing body by November 1 shall take effect for the current tax  
6 year.

7 (9) If the owner executes the farmland development rights  
8 agreement, the owner shall return it to the state land use agency  
9 for execution on behalf of the state. The state land use agency  
10 shall record the executed development rights agreement with the  
11 register of deeds of the county in which the land is situated and  
12 shall notify the applicant, the local governing body and its  
13 assessing office, all reviewing agencies, and the department of  
14 treasury.

15 (10) If an application for a farmland development rights  
16 agreement is rejected by the state land use agency, the state land  
17 use agency shall notify the affected local governing body, all  
18 reviewing agencies concerned, and the applicant with a written  
19 statement containing the reasons for rejection. An applicant  
20 receiving a rejection from the state land use agency may appeal the  
21 rejection pursuant to the administrative procedures act of 1969,  
22 ~~Act No. 306 of the Public Acts of 1969, being sections 24.201 to~~  
23 ~~24.328 of the Michigan Compiled Laws. 1969 PA 306, MCL 24.201 TO~~  
24 **24.328.**

25 (11) An applicant may reapply for a farmland development  
26 rights agreement following a 1-year waiting period.

27 (12) The value of the jointly owned development rights as

1 expressed in a farmland development rights agreement is not exempt  
2 from ad valorem taxation and shall be assessed to the owner of the  
3 land as part of the value of that land.

4       Sec. 36109. (1) An owner of farmland and related buildings  
5 subject to 1 or more development rights agreements under section  
6 36104 or agricultural conservation easements or purchases of  
7 development rights under section 36111b or 36206 who is required or  
8 eligible to file a return as an individual or a claimant under the  
9 state income tax act may claim a credit against ~~the~~ state income  
10 tax liability for the amount by which the property taxes on the  
11 land and structures used in the farming operation, including the  
12 homestead, restricted by the development rights agreements,  
13 agricultural conservation easements, or purchases of development  
14 rights exceed 3.5% of the household income as defined in section  
15 508 of the income tax act of 1967, 1967 PA 281, MCL 206.508,  
16 excluding a deduction if taken under section 613 of the internal  
17 revenue code of 1986, 26 USC 613. For the purposes of this section,  
18 all of the following apply:

19       (a) A partner in a partnership is considered an owner of  
20 farmland and related buildings owned by the partnership and covered  
21 by a development rights agreement, agricultural conservation  
22 easement, or purchase of development rights. A partner is  
23 considered to pay a proportion of the property taxes on that  
24 property equal to the partner's share of ownership of capital or  
25 distributive share of ordinary income as reported by the  
26 partnership to the ~~internal revenue service~~ **INTERNAL REVENUE**  
27 **SERVICE** or, if the partnership is not required to report that

1 information to the ~~internal revenue service~~, **INTERNAL REVENUE**  
2 **SERVICE**, as provided in the partnership agreement or, if there is  
3 no written partnership agreement, a statement signed by all the  
4 partners. A partner claiming a credit under this section based upon  
5 the partnership agreement or a statement shall file a copy of the  
6 agreement or statement with his or her income tax return. If the  
7 agreement or statement is not filed, the department of treasury  
8 shall deny the credit. All partners in a partnership claiming the  
9 credit allowed under this section shall compute the credit using  
10 the same basis for the apportionment of the property taxes.

11 (b) A shareholder of a corporation that has filed a proper  
12 election under subchapter S of chapter 1 of subtitle A of the  
13 internal revenue code of 1986, 26 USC 1361 to 1379, is considered  
14 an owner of farmland and related buildings covered by a development  
15 rights agreement that are owned by the corporation. A shareholder  
16 is considered to pay a proportion of the property taxes on that  
17 property equal to the shareholder's percentage of stock ownership  
18 for the tax year as reported by the corporation to the internal  
19 revenue service. Except as provided in subsection (8), this  
20 subdivision applies to tax years beginning after 1987.

21 (c) Except as otherwise provided in this subdivision, an  
22 individual in possession of property for life under a life estate  
23 with remainder to another person or holding property under a life  
24 lease is considered the owner of that property if it is farmland  
25 and related buildings covered by a development rights agreement.  
26 Beginning January 1, 1986, if an individual in possession of  
27 property for life under a life estate with remainder to another

1 person or holding property under a life lease enters into a written  
2 agreement with the person holding the remainder interest in that  
3 land and the written agreement apportions the property taxes in the  
4 same manner as revenue and expenses, the life lease or life estate  
5 holder and the person holding the remainder interest may claim the  
6 credit under this act as it is apportioned to them under the  
7 written agreement upon filing a copy of the written agreement with  
8 the return.

9 (d) If a trust holds farmland and related buildings covered by  
10 a development rights agreement and an individual is treated under  
11 subpart E of subchapter J of subchapter A of chapter 1 of the  
12 internal revenue code of 1986, 26 USC 671 to 679, as the owner of  
13 that portion of the trust that includes the farmland and related  
14 buildings, that individual is considered the owner of that  
15 property.

16 (e) An individual who is the sole beneficiary of a trust that  
17 is the result of the death of that individual's spouse is  
18 considered the owner of farmland and related buildings covered by a  
19 development rights agreement and held by the trust if the trust  
20 conforms to all of the following:

21 (i) One hundred percent of the trust income is distributed to  
22 the beneficiary in the tax year in which the trust receives the  
23 income.

24 (ii) The trust terms do not provide that any portion of the  
25 trust is to be paid, set aside, or otherwise used in a manner that  
26 would qualify for the deduction allowed by section 642(c) of the  
27 internal revenue code of 1986, 26 USC 642.

1 (f) A member in a limited liability company is considered an  
2 owner of farmland and related buildings covered by a development  
3 rights agreement that are owned by the limited liability company. A  
4 member is considered to pay a proportion of the property taxes on  
5 that property equal to the member's share of ownership or  
6 distributive share of ordinary income as reported by the limited  
7 liability company to the ~~internal revenue service~~. **INTERNAL REVENUE**  
8 **SERVICE.**

9 (2) An owner of farmland and related buildings subject to 1 or  
10 more development rights agreements under section 36104 or  
11 agricultural conservation easements or purchases of development  
12 rights under section 36111b or 36206 to whom subsection (1) does  
13 not apply may claim a credit under the former single business tax  
14 act, 1975 PA 228, or the Michigan business tax act, 2007 PA 36, MCL  
15 208.1101 to 208.1601, for the amount by which the property taxes on  
16 the land and structures used in farming operations restricted by  
17 the development rights agreements, agricultural conservation  
18 easements, or purchases of development rights exceed 3.5% of the  
19 adjusted business income of the owner as defined in section 36 of  
20 the former single business tax act, 1975 PA 228, or the business  
21 income tax base of the owner as defined in section 201 of the  
22 Michigan business tax act, 2007 PA 36, MCL 208.1201, plus  
23 compensation to shareholders not included in adjusted business  
24 income or the business income tax base, excluding any deductions if  
25 taken under section 613 of the internal revenue code of 1986, 26  
26 USC 613. When calculating adjusted business income for tax years  
27 beginning before 1987, federal taxable income shall not be less

1 than zero for the purposes of this subsection only. A participant  
2 is not eligible to claim a credit and refund against the former  
3 single business tax act, 1975 PA 228, or the Michigan business tax  
4 act, 2007 PA 36, MCL 208.1101 to 208.1601, unless the participant  
5 demonstrates that the participant's agricultural gross receipts of  
6 the farming operation exceed 5 times the property taxes on the land  
7 for each of 3 out of the 5 tax years immediately preceding the year  
8 in which the credit is claimed. This eligibility requirement does  
9 not apply to those participants who executed farmland development  
10 rights agreements under this part before January 1, 1978. A  
11 participant may compare, during the contract period, the average of  
12 the most recent 3 years of agricultural gross receipts to property  
13 taxes in the first year that the participant entered the program  
14 under the present contract in calculating the gross receipts  
15 qualification. Once an election is made by the participant to  
16 compute the benefit in this manner, all future calculations shall  
17 be made in the same manner.

18 (3) If the farmland and related buildings covered by a  
19 development rights agreement under section 36104 or an agricultural  
20 conservation easement or purchase of development rights under  
21 section 36111b or 36206 are owned by more than 1 owner, each owner  
22 is allowed to claim a credit under this section based upon that  
23 owner's share of the property tax payable on the farmland and  
24 related buildings. The department of treasury shall consider the  
25 property tax equally apportioned among the owners unless a written  
26 agreement signed by all the owners is filed with the return, which  
27 agreement apportions the property taxes in the same manner as all

1 other items of revenue and expense. If the property taxes are  
2 considered equally apportioned, a husband and wife shall be  
3 considered 1 owner, and a person with respect to whom a deduction  
4 under section 151 of the internal revenue code of 1986, 26 USC 151,  
5 is allowable to another owner of the property shall not be  
6 considered an owner.

7 (4) A beneficiary of an estate or trust to which subsection  
8 (1) does not apply is entitled to the same percentage of the credit  
9 provided in this section as that person's percentage of all other  
10 distributions by the estate or trust.

11 (5) If the allowable amount of the credit claimed exceeds the  
12 state income tax or the state business tax otherwise due for the  
13 tax year or if there is no state income tax or the state business  
14 tax due for the tax year, the amount of the claim not used as an  
15 offset against the state income tax or the state business tax,  
16 after examination and review, shall be approved for payment to the  
17 claimant pursuant to 1941 PA 122, MCL 205.1 to 205.31. The total  
18 credit allowable under this part and chapter 9 of the income tax  
19 act of 1967, 1967 PA 281, MCL 206.501 to 206.532, or the former  
20 single business tax act, 1975 PA 228, or the Michigan business tax  
21 act, 2007 PA 36, MCL 208.1101 to 208.1601, shall not exceed the  
22 total property tax due and payable by the claimant in that year.  
23 The amount the credit exceeds the property tax due and payable  
24 shall be deducted from the credit claimed under this part.

25 (6) For purposes of audit, review, determination, appeals,  
26 hearings, notices, assessments, and administration relating to the  
27 credit program provided by this section, the state income tax act,



1 1967 PA 281, MCL 206.1 to ~~206.36~~, **206.532**, the former single  
2 business tax act, 1975 PA 228, or the Michigan business tax act,  
3 2007 PA 36, MCL 208.1101 to 208.1601, applies according to which  
4 tax the credit is claimed against. If an individual is allowed to  
5 claim a credit under subsection (1) based upon property owned or  
6 held by a partnership, S corporation, or trust, the department of  
7 treasury may require that the individual furnish ~~to the department~~  
8 **IT WITH** a copy of a tax return, or portion of a tax return, and  
9 supporting schedules that the partnership, S corporation, or trust  
10 files under the internal revenue code.

11 (7) The department of treasury shall account separately for  
12 payments under this part and not combine them with other credit  
13 programs. A payment made to a claimant for a credit claimed under  
14 this part shall be issued by 1 or more warrants made out to the  
15 county treasurer in each county in which the claimant's property is  
16 located and the claimant, unless the claimant specifies on the  
17 return that a copy of the receipt showing payment of the property  
18 taxes that became a lien in the year for which the credit is  
19 claimed, or that became a lien in the year before the year for  
20 which the credit is claimed, is attached to the income tax or  
21 business tax return filed by the claimant. If the claimant  
22 specifies that a copy of the receipt is attached to the return, the  
23 payment shall be made directly to the claimant. A warrant made out  
24 to a claimant and a county treasurer shall be used first to pay  
25 delinquent property taxes, interest, penalties, and fees on  
26 property restricted by the development rights agreement. If the  
27 warrant exceeds the amount of delinquent taxes, interest,

1 penalties, and fees, the county treasurer shall remit the excess to  
2 the claimant. If a claimant falsely specifies that the receipt  
3 showing payment of the property taxes is attached to the return and  
4 if the property taxes on the land subject to that development  
5 rights agreement were not paid before the return was filed, all  
6 future payments to that claimant of credits claimed under this act  
7 attributable to that development rights agreement may be made  
8 payable to the county treasurer of the county in which the property  
9 subject to the development rights agreement is located and to that  
10 claimant.

11 (8) For property taxes levied after 1987, a person that was an  
12 S corporation and had entered into a development rights agreement  
13 before January 1, 1989, and paid property taxes on that property,  
14 may claim the credit allowed by this section as an owner eligible  
15 under subsection (2). A subchapter S corporation claiming a credit  
16 as permitted by this subsection for taxes levied in 1988 through  
17 1990 shall claim the credit by filing an amended return under the  
18 **FORMER** single business tax act, 1975 PA 228. ~~, MCL 208.1 to~~  
19 ~~208.145.~~ If a subchapter S corporation files an amended return as  
20 permitted by this subsection and if a shareholder of the subchapter  
21 S corporation claimed a credit under subsection (1)(b) for the same  
22 property taxes, the shareholder shall file an amended return under  
23 the state income tax act. A subchapter S corporation is not  
24 entitled to a credit under this subsection until all of its  
25 shareholders file the amended returns required by this subsection.  
26 The department of treasury shall first apply a credit due to a  
27 subchapter S corporation under this subsection to repay credits

1 claimed under this section by the subchapter S corporation's  
2 shareholders for property taxes levied in 1988 through 1990 and  
3 shall refund any remaining credit to the S corporation. Interest or  
4 penalty is not due or payable on an income tax liability resulting  
5 from an amended return required by this subsection. A subchapter S  
6 corporation electing to claim a credit as an owner eligible under  
7 subsection (2) shall not claim a credit under subsection (1) for  
8 property taxes levied after 1987.

9       Sec. 36110. (1) Land subject to a development rights agreement  
10 or easement may be sold without penalty under sections 36111,  
11 36112, and 36113, if the use of the land by the successor in title  
12 complies with the provisions contained in the development rights  
13 agreement or easement. The seller shall notify the governmental  
14 authority having jurisdiction over the development rights of the  
15 change in ownership.

16       (2) If the owner of land subject to a development rights  
17 agreement or easement dies or becomes totally and permanently  
18 disabled or when an individual essential to the operation of the  
19 farm dies or becomes totally and permanently disabled, the land may  
20 be relinquished from the program under this part and is subject to  
21 a lien pursuant to sections 36111(11), 36112(7), and 36113(7). A  
22 request for relinquishment under this section shall be made within  
23 3 years from the date of death or disability. A request for  
24 relinquishment under this subsection shall be made only by the  
25 owner in case of a disability or, in case of death, the person who  
26 becomes the owner through survivorship or inheritance.

27       (3) If an owner of land subject to a development rights

1 agreement becomes totally and permanently disabled or dies, land  
2 containing structures that were present before the recording of the  
3 development rights agreement may be relinquished from the  
4 agreement, upon request of the disabled agreement holder or upon  
5 request of the person who becomes an owner through survivorship or  
6 inheritance, and upon approval of the local governing body and the  
7 state land use agency. Not more than 2 acres may be relinquished  
8 under this subsection unless additional land area is needed to  
9 encompass all of the buildings located on the parcel, in which case  
10 not more than 5 acres may be relinquished. If the parcel proposed  
11 to be relinquished is less in area than the minimum parcel size  
12 required by local zoning, the parcel may not be relinquished unless  
13 a variance is obtained from the local zoning board of appeals to  
14 allow for the smaller parcel size. The portion of the farmland  
15 relinquished from the development rights agreement under this  
16 subsection is subject to a lien pursuant to section 36111(11).

17 (4) The land described in a development rights agreement may  
18 be divided into smaller parcels of land ~~, each of which shall be~~  
19 ~~covered by a separate development rights agreement and each of~~  
20 ~~which shall be eligible for subsequent renewal. The separate~~  
21 ~~development rights agreements shall contain~~ **AND CONTINUED UNDER** the  
22 same terms and conditions as the original development rights  
23 agreement. The smaller parcels created by the division must meet  
24 the minimum requirements for being enrolled under this act or be 40  
25 acres or more in size. Farmland may be divided once under this  
26 subsection without fee by the state land use agency. The state land  
27 use agency may charge a reasonable fee not greater than the state

1 land use agency's actual cost of dividing the agreement for all  
2 subsequent divisions of that farmland. When a division of a  
3 development rights agreement is made under this subsection and is  
4 executed and recorded, the state land use agency shall notify the  
5 applicant, the local governing body and its assessing office, all  
6 reviewing agencies, and the department of treasury.

7 (5) As used in this section, "individual essential to the  
8 operation of the farm" means a co-owner, partner, shareholder, farm  
9 manager, or family member, who, to a material extent, cultivates,  
10 operates, or manages farmland under this act.—**PART.** An individual  
11 is considered involved to a material extent if that individual does  
12 1 or more of the following:

13 (a) Has a financial interest equal to or greater than 1/2 the  
14 cost of producing the crops, livestock, or products and inspects  
15 and advises and consults with the owner on production activities.

16 (b) Works 1,040 hours or more annually in activities connected  
17 with production of the farming operation.

18 (6) The state land use agency may charge and collect a fee of  
19 ~~\$25.00~~ **\$50.00** to process each change of ownership under subsection  
20 (1) or each division under subsection (4). The fee collected under  
21 this subsection shall be ~~used by the state land use agency to~~  
22 ~~administer this act.~~ **FORWARDED TO THE STATE TREASURER FOR DEPOSIT**  
23 **INTO THE FUND.**

24 Enacting section 1. Section 36117 of the natural resources and  
25 environmental protection act, 1994 PA 451, MCL 324.36117, is  
26 repealed.

27 Enacting section 2. This amendatory act takes effect 90 days

1 after the date it is enacted into law.

2 Enacting section 3. This amendatory act does not take effect  
3 unless Senate Bill No.\_\_\_\_ or House Bill No.\_\_\_\_ (request no.  
4 03889'15) of the 98th Legislature is enacted into law.