

Act No. 265
Public Acts of 2016
Approved by the Governor
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**STATE OF MICHIGAN
98TH LEGISLATURE
REGULAR SESSION OF 2016**

Introduced by Reps. Lauwers, Brett Roberts, Glardon, Johnson, Rendon, Victory, Hughes, Jenkins, Garcia, Pagel, Cole, Leutheuser, Barrett, Brunner, Lyons, Vaupel, Kelly, Aaron Miller, Canfield, LaFontaine, Smiley, LaVoy, McBroom, Franz, Outman, Potvin, Sheppard, Price and Lucido

ENROLLED HOUSE BILL No. 5189

AN ACT to amend 1994 PA 451, entitled “An act to protect the environment and natural resources of the state; to codify, revise, consolidate, and classify laws relating to the environment and natural resources of the state; to regulate the discharge of certain substances into the environment; to regulate the use of certain lands, waters, and other natural resources of the state; to protect the people’s right to hunt and fish; to prescribe the powers and duties of certain state and local agencies and officials; to provide for certain charges, fees, assessments, and donations; to provide certain appropriations; to prescribe penalties and provide remedies; and to repeal acts and parts of acts,” by amending sections 36101, 36104, 36109, 36110, 36111, and 36202 (MCL 324.36101, 324.36104, 324.36109, 324.36110, 324.36111, and 324.36202), section 36101 as amended by 2008 PA 336, sections 36104 and 36110 as amended by 1996 PA 233, section 36109 as amended by 2007 PA 174, section 36111 as amended by 2011 PA 79, and section 36202 as amended by 2013 PA 86; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 36101. As used in this part:

(a) “Agricultural conservation easement” means a conveyance, by a written instrument, in which, subject to permitted uses, the owner relinquishes to the public in perpetuity his or her development rights and makes a covenant running with the land not to undertake development.

(b) “Agricultural use” means the production of plants and animals useful to humans, including forages and sod crops; grains, feed crops, and field crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing of cattle, swine, captive cervidae, and similar animals; berries; herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables; maple syrup production; Christmas trees; and other similar uses and activities. Agricultural use includes use in a federal acreage set-aside program or a federal conservation reserve program. Agricultural use does not include the management and harvesting of a woodlot.

(c) “Conservation district board” means that term as defined in section 9301.

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

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

(f) “Development rights agreement” or “agreement” means a restrictive covenant, evidenced by an instrument in which the owner and the state, for a term of years, agree to jointly hold the right to undertake development of the land, and that contains a covenant running with the land, for a term of years, not to undertake development, subject to permitted uses.

(g) “Development rights easement” or “easement” means a grant, by an instrument, in which the owner relinquishes to the public in perpetuity or for a term of years the right to undertake development of the land, and that contains a covenant running with the land, not to undertake development, subject to permitted uses.

(h) “Farmland” means 1 or more of the following:

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

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

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

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

(i) “Fund” means the agricultural preservation fund created in section 36202.

(j) “Local governing body” means 1 of the following:

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

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

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

(k) “Open space land” means 1 of the following:

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

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

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

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

(ii) Any other area approved by the local governing body, the preservation of which area in its present condition would conserve natural or scenic resources, including the promotion of the conservation of soils, wetlands, and beaches; the enhancement of recreation opportunities; the preservation of historic sites; and idle potential farmland of not less than 40 acres that is substantially undeveloped and because of its soil, terrain, and location is capable of being devoted to agricultural uses as identified by the department of agriculture and rural development.

(l) “Owner” means a person having a freehold estate in land coupled with possession and enjoyment. If land is subject to a land contract, owner means the vendee in agreement with the vendor and rural development.

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

(n) "Person" includes an individual, corporation, limited liability company, business trust, estate, trust, partnership, or association, or 2 or more persons having a joint or common interest in land.

(o) "Planning commission" means a planning commission created under the Michigan planning enabling act, 2008 PA 33, MCL 125.3801 to 125.3885.

(p) "Prohibited use" means a use that is not consistent with an agricultural use for farmland subject to a development rights agreement or is not consistent with the open space character of the land for lands subject to a development rights easement.

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

(r) "Regional planning commission" means a regional planning commission created pursuant to 1945 PA 281, MCL 125.11 to 125.25.

(s) "Regional planning district" means the planning and development regions as established by executive directive 1968-1, as amended, whose organizational structure is approved by the regional council.

(t) "State income tax act" means the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.713, and in effect during the particular year of the reference to the act.

(u) "State land use agency" means the department of agriculture and rural development.

(v) "Substantially undeveloped" means any parcel or area of land essentially unimproved except for a dwelling, building, structure, road, or other improvement that is incidental to agricultural and open space uses.

(w) "Unique or critical land area" means agricultural or open space lands identified by the land use agency as an area that should be preserved.

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

(2) Upon receipt of the application, the local governing body shall notify the county planning commission or the regional planning commission and the soil conservation district agency. If the county has jurisdiction, it shall also notify the township board of the township in which the land is situated.

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

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

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

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

(7) The state land use agency, within 60 days after a farmland development rights agreement application is received under subsection (5) or (6), shall approve or reject the application. The state land use agency may reject an application for a farmland development rights agreement that has been approved by a local governing body only if the proposed agreement would be inconsistent with section 36101(f). If the application is approved by the state land use agency, the state land use agency shall prepare a farmland development rights agreement that includes all of the following provisions:

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

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

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

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

(e) Any other condition and restriction on the land as agreed to by the parties that is considered necessary to preserve the land or appropriate portions of it as farmland.

(8) Upon approval of an application by the state, the state land use agency shall execute the farmland development rights agreement on behalf of the state and shall forward the agreement to the applicant for execution. After the applicant executes the farmland development rights agreement, the applicant shall have the executed farmland development rights agreement recorded by the register of deeds in the county in which the property is located. The applicant shall provide a copy of the recorded farmland development rights agreement to the state land use agency.

(9) The state land use agency shall annually provide a listing of current farmland development rights agreements to county equalization offices where the land is located and to the approving local governing body.

(10) An application that is approved by the local governing body by November 1 shall take effect for the current tax year.

(11) If an application for a farmland development rights agreement is rejected by the state land use agency, the state land use agency shall notify the affected local governing body, all reviewing agencies concerned, and the applicant with a written statement containing the reasons for rejection. An applicant receiving a rejection from the state land use agency may appeal the rejection pursuant to the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

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

(13) The value of the jointly owned development rights as expressed in a farmland development rights agreement is not exempt from ad valorem taxation and shall be assessed to the owner of the land as part of the value of that land.

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

(a) A partner in a partnership is considered an owner of farmland and related buildings owned by the partnership and covered by a development rights agreement, agricultural conservation easement, or purchase of development rights. A partner is considered to pay a proportion of the property taxes on that property equal to the partner's share of ownership of capital or distributive share of ordinary income as reported by the partnership to the Internal Revenue Service or, if the partnership is not required to report that information to the Internal Revenue Service, as provided in the partnership agreement or, if there is no written partnership agreement, a statement signed by all the partners. A partner claiming a credit under this section based upon the partnership agreement or a statement shall file a copy of the agreement or statement with his or her income tax return. If the agreement or statement is not filed, the department of treasury shall deny the credit. All partners in a partnership claiming the credit allowed under this section shall compute the credit using the same basis for the apportionment of the property taxes.

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

(c) Except as otherwise provided in this subdivision, an individual in possession of property for life under a life estate with remainder to another person or holding property under a life lease is considered the owner of that property if it is farmland and related buildings covered by a development rights agreement. Beginning January 1, 1986, if an individual in possession of property for life under a life estate with remainder to another person or holding property under a life lease enters into a written agreement with the person holding the remainder interest in that land and the written agreement apportions the property taxes in the same manner as revenue and expenses, the life lease or life estate holder and the person holding the remainder interest may claim the credit under this act as it is apportioned to them under the written agreement upon filing a copy of the written agreement with the return.

(d) If a trust holds farmland and related buildings covered by a development rights agreement and an individual is treated under subpart E of subchapter J of subchapter A of chapter 1 of the internal revenue code of 1986, 26 USC 671

to 679, as the owner of that portion of the trust that includes the farmland and related buildings, that individual is considered the owner of that property.

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

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

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

(f) A member in a limited liability company is considered an owner of farmland and related buildings covered by a development rights agreement that are owned by the limited liability company. A member is considered to pay a proportion of the property taxes on that property equal to the member's share of ownership or distributive share of ordinary income as reported by the limited liability company to the Internal Revenue Service.

(2) An owner of farmland and related buildings subject to 1 or more development rights agreements under section 36104 or agricultural conservation easements or purchases of development rights under section 36111b or 36206 to whom subsection (1) does not apply may claim a credit under the former single business tax act, 1975 PA 228, or the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, for the amount by which the property taxes on the land and structures used in farming operations restricted by the development rights agreements, agricultural conservation easements, or purchases of development rights exceed 3.5% of the adjusted business income of the owner as defined in section 36 of the former single business tax act, 1975 PA 228, or the business income tax base of the owner as defined in section 201 of the Michigan business tax act, 2007 PA 36, MCL 208.1201, plus compensation to shareholders not included in adjusted business income or the business income tax base, excluding any deductions if taken under section 613 of the internal revenue code of 1986, 26 USC 613. When calculating adjusted business income for tax years beginning before 1987, federal taxable income shall not be less than zero for the purposes of this subsection only. A participant is not eligible to claim a credit and refund against the former single business tax act, 1975 PA 228, or the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, unless the participant demonstrates that the participant's agricultural gross receipts of the farming operation exceed 5 times the property taxes on the land for each of 3 out of the 5 tax years immediately preceding the year in which the credit is claimed. This eligibility requirement does not apply to those participants who executed farmland development rights agreements under this part before January 1, 1978. A participant may compare, during the contract period, the average of the most recent 3 years of agricultural gross receipts to property taxes in the first year that the participant entered the program under the present contract in calculating the gross receipts qualification. Once an election is made by the participant to compute the benefit in this manner, all future calculations shall be made in the same manner.

(3) If the farmland and related buildings covered by a development rights agreement under section 36104 or an agricultural conservation easement or purchase of development rights under section 36111b or 36206 are owned by more than 1 owner, each owner is allowed to claim a credit under this section based upon that owner's share of the property tax payable on the farmland and related buildings. The department of treasury shall consider the property tax equally apportioned among the owners unless a written agreement signed by all the owners is filed with the return, which agreement apportions the property taxes in the same manner as all other items of revenue and expense. If the property taxes are considered equally apportioned, a husband and wife shall be considered 1 owner, and a person with respect to whom a deduction under section 151 of the internal revenue code of 1986, 26 USC 151, is allowable to another owner of the property shall not be considered an owner.

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

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

(6) For purposes of audit, review, determination, appeals, hearings, notices, assessments, and administration relating to the credit program provided by this section, the state income tax act, the former single business tax act, 1975 PA 228, or the Michigan business tax act, 2007 PA 36, MCL 208.1101 to 208.1601, applies according to which tax the credit is claimed against. If an individual is allowed to claim a credit under subsection (1) based upon property owned or held by a partnership, S corporation, or trust, the department of treasury may require that the individual furnish it with a copy of a tax return, or portion of a tax return, and supporting schedules that the partnership, S corporation, or trust files under the internal revenue code.

(7) The department of treasury shall account separately for payments under this part and not combine them with other credit programs. A payment made to a claimant for a credit claimed under this part shall be issued by 1 or more warrants made out to the county treasurer in each county in which the claimant's property is located and the claimant, unless the claimant specifies on the return that a copy of the receipt showing payment of the property taxes that became a lien in the year for which the credit is claimed, or that became a lien in the year before the year for which the credit is claimed, is attached to the income tax or business tax return filed by the claimant. If the claimant specifies that a copy of the receipt is attached to the return, the payment shall be made directly to the claimant. A warrant made out to a claimant and a county treasurer shall be used first to pay delinquent property taxes, interest, penalties, and fees on property restricted by the development rights agreement. If the warrant exceeds the amount of delinquent taxes, interest, penalties, and fees, the county treasurer shall remit the excess to the claimant. If a claimant falsely specifies that the receipt showing payment of the property taxes is attached to the return and if the property taxes on the land subject to that development rights agreement were not paid before the return was filed, all future payments to that claimant of credits claimed under this act attributable to that development rights agreement may be made payable to the county treasurer of the county in which the property subject to the development rights agreement is located and to that claimant.

(8) For property taxes levied after 1987, a person that was an S corporation and had entered into a development rights agreement before January 1, 1989, and paid property taxes on that property, may claim the credit allowed by this section as an owner eligible under subsection (2). A subchapter S corporation claiming a credit as permitted by this subsection for taxes levied in 1988 through 1990 shall claim the credit by filing an amended return under the former single business tax act, 1975 PA 228. If a subchapter S corporation files an amended return as permitted by this subsection and if a shareholder of the subchapter S corporation claimed a credit under subsection (1)(b) for the same property taxes, the shareholder shall file an amended return under the state income tax act. A subchapter S corporation is not entitled to a credit under this subsection until all of its shareholders file the amended returns required by this subsection. The department of treasury shall first apply a credit due to a subchapter S corporation under this subsection to repay credits claimed under this section by the subchapter S corporation's shareholders for property taxes levied in 1988 through 1990 and shall refund any remaining credit to the S corporation. Interest or penalty is not due or payable on an income tax liability resulting from an amended return required by this subsection. A subchapter S corporation electing to claim a credit as an owner eligible under subsection (2) shall not claim a credit under subsection (1) for property taxes levied after 1987.

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

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

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

(4) The land described in a development rights agreement may be divided into smaller parcels of land and continued under the same terms and conditions as the original development rights agreement. The smaller parcels created by the division must meet the minimum requirements for being enrolled under this act or be 40 acres or more in size. Farmland may be divided once under this subsection without fee by the state land use agency. The state land use agency may charge a reasonable fee not greater than the state land use agency's actual cost of dividing the agreement for all subsequent divisions of that farmland. When a division of a development rights agreement is made under this subsection and is executed and recorded, the state land use agency shall notify the applicant, the local governing body and its assessing office, all reviewing agencies, and the department of treasury.

(5) As used in this section, “individual essential to the operation of the farm” means a co-owner, partner, shareholder, farm manager, or family member, who, to a material extent, cultivates, operates, or manages farmland under this part. An individual is considered involved to a material extent if that individual does 1 or more of the following:

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

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

(6) The state land use agency shall not charge a fee to process a change of ownership under subsection (1) or a division under subsection (4).

Sec. 36111. (1) A development rights agreement expires at the expiration of the term of the agreement unless renewed with the consent of the owner of the land. If the owner of the land has complied with the requirements of this part regarding development rights agreements, the owner is entitled to automatic renewal of the agreement upon written request of the owner. A development rights agreement may be renewed for a term of not less than 7 years. If a development rights agreement is renewed, the state land use agency shall send a copy of the renewal contract to the local governing body.

(2) A development rights agreement or a portion of the farmland covered by a development rights agreement may be relinquished as provided in this section and section 36111a. Farmland may be relinquished by this state before a termination date contained in the instrument under either of the following circumstances:

(a) If approved by the local governing body and the state land use agency, land containing structures that were present before the recording of the development rights agreement may be relinquished from the agreement. Not more than 2 acres may be relinquished under this subdivision unless additional land area is needed to encompass all of the buildings located on the parcel, in which case not more than 5 acres may be relinquished. If the size of the parcel proposed to be relinquished is less than that required by local zoning, the parcel shall not be relinquished unless a variance is obtained from the local zoning board of appeals to allow for the smaller parcel size.

(b) If approved by the local governing body and the state land use agency, land may be relinquished from the agreement for the construction of a residence by an individual essential to the operation of the farm as defined in section 36110(5). Not more than 2 acres may be relinquished under this subdivision. If the size of the parcel proposed to be relinquished is less than that required by local zoning, the parcel shall not be relinquished unless a variance is obtained from the local zoning board of appeals to allow for the smaller parcel size.

(3) Until April 1, 1997, if an owner who entered into or renewed a development rights agreement before April 15, 1994 makes a request, in writing, to the state land use agency, to terminate that development rights agreement with respect to all or a portion of the farmland covered by the agreement, the state land use agency shall approve the request and relinquish that farmland from the development rights agreement. If farmland is relinquished under this subsection, the state land use agency shall notify the local governing body of the local unit of government in which the land is located of the relinquishment.

(4) If the request for relinquishment of the development rights agreement is approved, the state land use agency shall prepare an instrument, subject to subsections (5) to (8), and shall forward the original relinquishment instrument to the applicant. The applicant shall have the relinquishment instrument recorded by the register of deeds in the county in which the property is located. The applicant shall provide a copy of the recorded relinquishment instrument to the department.

(5) If a development rights agreement or a portion of a development rights agreement is to be relinquished pursuant to subsection (2) or section 36111a, the state land use agency shall record a lien against the property formerly subject to the development rights agreement for the total amount of the allocated tax credit of the last 7 years, including the year of termination, received by an owner under section 36109 and attributable to the property formerly subject to the development rights agreement, plus interest at the rate of 6% per annum simple interest from the time the credit was received until the lien is placed on the property.

(6) If the property being relinquished from the development rights agreement is less than all of the property subject to that development rights agreement, the allocated tax credit for the development rights agreement shall be multiplied by the property's share of the taxable value of the agreement. As used in this subsection:

(a) “The allocated tax credit” means the amount obtained by multiplying the owner's total farmland preservation credit claimed in that year on all agreements by the quotient of the ad valorem property tax levied in that year on property subject to the development rights agreement that included the property being relinquished from the agreement divided by the total property taxes levied on property subject to any development rights agreement and used in determining the farmland preservation credit in that year.

(b) “The property's share of the taxable value of the agreement” means the quotient of the taxable value of the property being relinquished from the agreement divided by the total taxable value of property subject to the development rights agreement that included the property being relinquished from the agreement. For years before 1995, taxable value means assessed value.

(7) Thirty days before the recording of a lien under this section, the state land use agency shall notify the owner of the farmland subject to the development rights agreement of the amount of the lien, including interest, if any. If the lien amount is paid before 30 days after the owner is notified, the lien shall not be recorded. The lien may be paid and discharged at any time and is payable to the state by the owner of record when the land or any portion of it is sold by the owner of record, or if the land is converted to a use prohibited by the former development rights agreement. The lien shall be discharged upon renewal or reentry in a development rights agreement, except that a subsequent lien shall not be less than the lien discharged. Notwithstanding any other provision of this section, from July 1, 2011 through September 30, 2011, a lien under this section recorded before January 1, 2011 may be paid at 85% of the face value of the lien. From October 1, 2011 through March 31, 2012, a lien under this section recorded before January 1, 2011 may be paid at 90% of the face value of the lien.

(8) Upon the termination of all or a portion of the development rights agreement under subsection (3) or, subject to subsection (14), the termination of a development rights agreement under subsection (1), the state land use agency shall prepare and record a lien, if any, against the property formerly subject to the development rights agreement for the total amount of the allocated tax credit of the last 7 years, including the year of termination, received by the owner under section 36109, attributable to the property formerly subject to the development rights agreement. The lien shall be without interest or penalty and is payable as provided in subsection (7). However, if the development rights agreement was approved or rejected by the local governing body under section 36104 on or after July 1, 2012 and is terminated under subsection (1), the amount of the lien shall include interest at the current monthly interest rate of 1 percentage point above the adjusted prime rate per annum from the time the lien is recorded until it is paid. The adjusted prime rate shall be determined as provided in section 23 of 1941 PA 122, MCL 205.23.

(9) The state land use agency shall notify the department of treasury of the termination of a development rights agreement.

(10) The unappropriated proceeds from lien payments made under this part shall be forwarded to the state treasurer for deposit in the agricultural preservation fund created in section 36202.

(11) Upon the relinquishment of all of the farmland under section 36110(2) or a portion of the farmland under section 36110(3), the state land use agency shall prepare and record a lien against the property formerly subject to a development rights agreement in an amount calculated as follows:

(a) Establishing a term of years by multiplying 7 by a fraction, the numerator of which is the number of years the farmland was under the development rights agreement, including any extensions, and the denominator of which is the number representing the term of years of that agreement, including any extensions.

(b) The lien amount equals the total amount of the allocated tax credit claimed attributable to that development rights agreement in the immediately preceding term of years as determined in subdivision (a).

(12) When a lien is paid under this section, the state land use agency shall prepare and record a discharge of lien with the register of deeds in the county in which the land is located. The discharge of lien shall specifically state that the lien has been paid in full, that the lien is discharged, that the development rights agreement and accompanying contract are terminated, and that the state has no further interest in the land under that agreement.

(13) A farmland development rights agreement is automatically relinquished when the farmland becomes subject to an agricultural conservation easement or purchase of development rights under section 36111b or 36206.

(14) If, upon expiration of the term of a farmland development rights agreement, the farmland becomes subject to an agricultural conservation easement or purchase of development rights under section 36111b or 36206 or if a farmland development rights agreement is automatically relinquished under subsection (13), the farmland is not subject to a lien under this section.

Sec. 36202. (1) The agricultural preservation fund is created within the state treasury.

(2) The state treasurer may receive money or other assets from any source for deposit into the fund, including federal funds, other state revenues, gifts, bequests, and other donations. The state treasurer shall direct the investment of the fund and shall credit to the fund interest and earnings from fund investments.

(3) Money in the fund at the close of the fiscal year shall remain in the fund and shall not lapse to the general fund.

(4) The department shall be the administrator of the fund for auditing purposes.

(5) Money in the fund may be expended, upon appropriation, as follows:

(a) Not more than \$1,400,000.00 annually for the administrative costs of the department and the board in implementing this part and part 361.

(b) After expenditures for the administrative costs under subdivision (a), money in the fund may be used, upon approval of the board, to provide grants to local units of government pursuant to section 36203.

(c) After expenditures under subdivisions (a) and (b) have been made, if the amount of money remaining in the fund exceeds \$5,000,000.00, money in the fund may be used, upon approval of the board, pursuant to part 361 for the purchase of development rights to farmland or the acquisition of agricultural conservation easements.

(6) Expenditures of money in the fund as provided in this part are consistent with the state's interest in preserving farmland and are for an important public purpose.

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

Enacting section 2. This amendatory act takes effect 90 days after the date it is enacted into law.

Enacting section 3. This amendatory act does not take effect unless House Bill No. 5190 of the 98th Legislature is enacted into law.

This act is ordered to take immediate effect.



Clerk of the House of Representatives



Secretary of the Senate

Approved

Governor