

Act No. 230
Public Acts of 2023
Approved by the Governor
November 28, 2023
Filed with the Secretary of State
November 29, 2023
EFFECTIVE DATE: February 13, 2024

**STATE OF MICHIGAN
102ND LEGISLATURE
REGULAR SESSION OF 2023**

**Introduced by Senators McDonald Rivet, Singh, McMorrow, Cavanagh, Irwin, Shink, Santana,
Chang, Camilleri, Hertel, Geiss, Moss, Bayer, Brinks, Anthony and Polehanki**

ENROLLED SENATE BILL No. 277

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 and 36104a (MCL 324.36101 and 324.36104a), section 36101 as amended by 2016 PA 265 and section 36104a as added by 1996 PA 233, and by adding sections 36104c and 36104e.

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 this 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 but less than 40 acres, in 1 ownership, with 51% or more of the land area devoted to an agricultural use, and 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 farm includes, but is not limited to, the following:

(A) A greenhouse.

(B) A farm used for equine breeding and grazing; the breeding and grazing of cervidae, pheasants, and other game animals; bees and bee products; mushrooms; aquaculture; or 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.

(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) Land that is 1 or more of the following:

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

(B) Riverfront property 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 are affected by part 305 and lie within 1/4 mile of the river.

(C) Undeveloped land designated as an environmental area under part 323, including unregulated portions of that land.

(ii) Any other area that is approved by the local governing body and is 1 of the following:

(A) An area the preservation of which in its present condition would conserve natural or scenic resources, such as soils, wetlands, and beaches; enhance recreation opportunities; or preserve a historic site.

(B) 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. This subdivision does not apply to section 36104e.

(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, as applicable. The state land use agency shall determine whether a use, other than a use under section 36104c or 36104e, 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 a planning and development region as established by Executive Directive No. 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 206.847, 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 land identified by the land use agency as an area that should be preserved.

Sec. 36104a. (1) In determining whether a use is a permitted use, the state land use agency shall consider the following criteria:

(a) Whether the use adversely affects the productivity of farmland or adversely affects the character of open space land.

(b) Whether the use materially alters or negatively affects the existing conditions or use of the land.

(c) Whether the use substantially alters the agricultural use of farmland subject to a development rights agreement or substantially alters the natural character of open space land subject to an open space easement.

(d) Whether the use results in a material alteration of an existing structure to a nonagricultural use.

(e) Whether the use conforms with all applicable federal, state, and local laws and ordinances.

(2) Subsection (1) does not apply to a use authorized under section 36104c or 36104e.

Sec. 36104c. 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.

Sec. 36104e. (1) As used in this section:

(a) “Amended development rights agreement” means a development rights agreement that includes the conditions required to allow a solar facility to be installed and operated on all or a portion of the land subject to the agreement.

(b) “Deferment period” means the period of time beginning when construction of the solar facility commences and ending when the solar facility is completely removed.

(c) “Electric provider” means either of the following:

(i) An electric provider as defined in section 5 of the clean and renewable energy and energy waste reduction act, 2008 PA 295, MCL 460.1005.

(ii) A merchant plant as defined in section 10g of 1939 PA 3, MCL 460.10g.

(d) “Landowner” means a person that meets both of the following requirements:

(i) Has a freehold estate in land coupled with possession and enjoyment or, if land is subject to a land contract, is the vendee.

(ii) Has signed a development rights agreement with the state land use agency, and, if the land is subject to a land contract, the vendor.

(e) “NRCS” means the United States Department of Agricultural Natural Resource Conservation Service.

(f) “Solar agreement” means an agreement entered into by the landowner and the solar facility owner or operator to authorize the installation and operation of a solar facility on all or a portion of the land and that contains all conditions specifically identified in this section as the responsibility of the solar facility owner or operator.

(g) “Solar facility” means a facility, owned by an electric provider, for the generation of electricity using solar photovoltaic cells.

(h) “Solar facility site” means the land subject to a solar agreement.

(2) A solar facility is a permitted use under a development rights agreement if all of the following conditions are met:

(a) Before the solar facility became a permitted use, the land was subject to a development rights agreement.

(b) The land subject to the development rights agreement was divided under section 36110(4), if only a portion of the land was to be subject to a solar agreement.

(c) After any split required by subdivision (b), the landowner and state land use agency amend the resulting development rights agreement applicable to the solar facility site.

(d) The amended development rights agreement applicable to the proposed solar facility site extends the existing development rights agreement beyond the original termination date for an amount of time equal to the length of the deferment period. However, the deferment period shall not exceed 90 years minus the remaining term of the development rights agreement. A landowner may enter into a subsequent amended development rights agreement to provide for an additional deferment period.

(e) At least 60 days have elapsed since the development rights agreement was recorded.

(f) The solar facility site is designed, planted, and maintained with groundcover that achieves a score of at least 76 on the Michigan Pollinator Habitat Planning Scorecard for Solar Sites developed by the Michigan State University Department of Entomology or is designed, planted, and maintained in compliance with NRCS Cover Standard 327.

(g) A bond or irrevocable letter of credit payable to this state is maintained during the deferment period as financial assurance for the decommissioning of the solar facility and the return of the land to agricultural use. The amount of the financial surety shall be calculated by a licensed professional engineer. Every 3 years, or as the department considers necessary, the amount of the bond or irrevocable letter of credit shall be adjusted as necessary to ensure that the financial assurance is sufficient for the purposes of this subdivision.

(h) The solar facility site is designed, established, and maintained in a manner that ensures the land can be returned to agricultural use at the end of the deferment period.

(i) The land is returned to normal agricultural operations and use by the first growing season following the end of the deferment period.

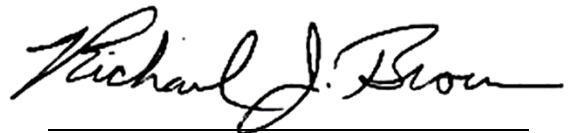
(3) Under the solar agreement, the electric provider may assume responsibility for compliance with subsection (2)(f), (g), or (h). Under the solar agreement, the electric provider shall assume responsibility for maintenance of any agricultural drain, as defined in section 30103 or 30305, that is privately owned and necessary for exemption from regulation under part 301 or 303, respectively.

(4) When the deferment period ends, the solar facility is no longer a permitted use.

(5) The landowner shall not claim a tax credit under section 36109 during the deferment period. If a landowner relinquishes the development rights agreement under sections 36111 and 36111a at any time during the deferment period, the past 7 years of tax credits are payable. The past 7 years of tax credits are calculated from the time the amended development rights agreement is recorded and shall be held until the land is returned to agricultural production at the end of the deferment period.



Secretary of the Senate



Clerk of the House of Representatives

Approved _____

Governor