

NATURAL RESOURCES AND ENVIRONMENTAL PROTECTION ACT (EXCERPT)
Act 451 of 1994

***** 324.36104e.added THIS ADDED SECTION IS EFFECTIVE FEBRUARY 13, 2024 *****

324.36104e.added Solar facility; permitted use; development rights agreement; tax credit; definitions.

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.

History: Add. 2023, Act 230, Eff. Feb. 13, 2024.

Popular name: Act 451

Popular name: Farmland and Open Space

Popular name: NREPA