

SENATE BILL NO. 277

April 19, 2023, Introduced by Senators MCDONALD RIVET, SINGH, MCMORROW, CAVANAGH, IRWIN, SHINK, SANTANA, CHANG, CAMILLERI, HERTEL, GEISS, MOSS, BAYER, BRINKS and ANTHONY and referred to the Committee on Energy and Environment.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," 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:

- 1 Sec. 36101. As used in this part:
- 2 (a) "Agricultural conservation easement" means a conveyance,

1 by a written instrument, in which, subject to permitted uses, the
2 owner relinquishes to the public in perpetuity his or her
3 development rights and makes a covenant running with the land not
4 to undertake development.

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

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

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

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

25 (f) "Development rights agreement" or "agreement" means a
26 restrictive covenant, evidenced by an instrument in which the owner
27 and ~~the~~**this** state, for a term of years, agree to jointly hold the
28 right to undertake development of the land, and that contains a
29 covenant running with the land, for a term of years, not to

1 undertake development, subject to permitted uses.

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

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

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

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

19 (iii) A farm designated by the department of agriculture and
20 rural development as a specialty farm in 1 ownership that has
21 produced a gross annual income from an agricultural use of
22 \$2,000.00 or more. Specialty ~~farms include, but are~~ **farm includes,**
23 **but is** not limited to, ~~greenhouses;~~ **the following:**

24 (A) **A greenhouse.**

25 (B) **A farm used for** equine breeding and grazing; the breeding
26 and grazing of cervidae, pheasants, and other game animals; bees
27 and bee products; mushrooms; aquaculture; ~~and or~~ other similar uses
28 and activities.

29 (iv) Parcels of land in 1 ownership that are not contiguous but

1 that constitute an integral part of a farming operation being
 2 conducted on land otherwise qualifying as farmland. ~~may be included~~
 3 ~~in an application under this part.~~

4 (i) "Fund" means the agricultural preservation fund created in
 5 section 36202.

6 (j) "Local governing body" means 1 of the following:

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

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

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

16 (k) "Open space land" means 1 of the following:

17 (i) ~~Lands defined as~~ **Land that is** 1 or more of the following:

18 (A) ~~Any~~ **An** undeveloped site included in a national registry of
 19 historic places or designated as a historic site pursuant to state
 20 or federal law.

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

28 (C) Undeveloped ~~lands~~ **land** designated as **an** environmental
 29 ~~areas~~ **area** under part 323, including unregulated portions of ~~these~~

1 ~~lands that land.~~

2 (ii) Any other area **that is** approved by the local governing
3 body ~~, and is 1 of the following:~~

4 (A) **An area** the preservation of which ~~area~~ in its present
5 condition would conserve natural or scenic resources, ~~including the~~
6 ~~promotion of the conservation of~~ **such as** soils, wetlands, and
7 beaches; ~~the enhancement of~~ **enhance** recreation opportunities; ~~the~~
8 ~~preservation of~~ **or preserve a historic site.** ~~sites; and idle~~

9 (B) **Idle** potential farmland of not less than 40 acres that is
10 substantially undeveloped and because of its soil, terrain, and
11 location is capable of being devoted to agricultural uses as
12 identified by the department of agriculture and rural development.

13 (l) "Owner" means a person having a freehold estate in land
14 coupled with possession and enjoyment. If land is subject to a land
15 contract, owner means the vendee in agreement with the vendor. ~~and~~
16 ~~rural development.~~ **This subdivision does not apply to section**
17 **36104e.**

18 (m) "Permitted use" means any use expressly authorized within
19 a development rights agreement, development rights easement, or
20 agriculture conservation easement that is consistent with the
21 farming operation or that does not alter the open space character
22 of the land, **as applicable.** ~~Storage, retail or wholesale marketing,~~
23 ~~or processing of agricultural products is a permitted use in a~~
24 ~~farming operation if more than 50% of the stored, processed, or~~
25 ~~merchandised products are produced by the farm operator for at~~
26 ~~least 3 of the immediately preceding 5 years.~~ The state land use
27 agency shall determine whether a use, **other than a use under**
28 **section 36104c or 36104e,** is a permitted use pursuant to section
29 36104a.

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

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

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

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

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

18 (s) "Regional planning district" means ~~the a~~ planning and
19 development ~~regions~~ **region** as established by ~~executive directive~~
20 **Executive Directive No. 1968-1**, as amended, whose organizational
21 structure is approved by the regional council.

22 (t) "State income tax act" means the income tax act of 1967,
23 1967 PA 281, MCL 206.1 to ~~206.713,~~ **206.847**, and in effect during
24 the particular year of the reference to the act.

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

27 (v) "Substantially undeveloped" means any parcel or area of
28 land essentially unimproved except for a dwelling, building,
29 structure, road, or other improvement that is incidental to

1 agricultural and open space uses.

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

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

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

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

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

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

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

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

22 **Sec. 36104c. Storage, retail or wholesale marketing, or**
23 **processing of agricultural products is a permitted use in a farming**
24 **operation if more than 50% of the stored, processed, or**
25 **merchandised products are produced by the farm operator for at**
26 **least 3 of the immediately preceding 5 years.**

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

28 (a) "Amended development rights agreement" means a development
29 rights agreement that includes the conditions required to allow a

1 solar facility to be installed and operated on all or a portion of
2 the land subject to the agreement.

3 (b) "Deferment period" means the period of time beginning when
4 construction of the solar facility commences and ending when the
5 solar facility is completely removed.

6 (c) "Electric provider" means either of the following:

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

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

12 (d) "Landowner" means a person that meets both of the
13 following requirements:

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

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

19 (e) "NRCS" means the United States Department of Agricultural
20 Natural Resource Conservation Service.

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

27 (g) "Solar facility" means a facility, owned by an electric
28 provider, for the generation of electricity using solar
29 photovoltaic cells.

1 (h) "Solar facility site" means the land subject to a solar
2 agreement.

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

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

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

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

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

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

23 (f) The solar facility site is designed, planted, and
24 maintained with groundcover that achieves a score of at least 76 on
25 the Michigan Pollinator Habitat Planting Scorecard for Solar Sites
26 developed by the Michigan State University Department of
27 Entomology.

28 (g) Any portion of the solar facility site not included in
29 pollinator plantings must be designed, planted, and maintained in

1 compliance with NRCS Cover Standard 327.

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

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

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

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

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

26 (5) The landowner shall not claim a tax credit under section
27 36109 during the deferment period. If a landowner relinquishes the
28 development rights agreement under sections 36111 and 36111a at any
29 time during the deferment period, the past 7 years of tax credits

1 are payable. The past 7 years of tax credits are calculated from
2 the time the amended development rights agreement is recorded and
3 shall be held until the land is returned to agricultural production
4 at the end of the deferment period.