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House Bill 5966 with committee amendments
First Analysis (9-25-90)

Sponsor: Rep. Thomas L. Hickner
Committee: Taxation

## THE APPARENT PROBLEM:

Under the Farmland and Open Space Preservation Act (PA 116 of 1974), farmers are able to reduce their property taxes by entering into agreements with the state of at least ten years' duration promising to keep property in agricultural use and not develop it. Such agreements can be renewed. A farmer can enter separate agreements for separate parcels. When land leaves the PA 116 program, either prematurely or because a development rights agreement expires, the Department of Treasury calculates the value of a lien to be placed on the property to recapture some or all of a farmer's PA 116 tax credits when property is developed or sold. Liens against prematurely withdrawn property equal the credits received plus six percent interest. Liens against property when an agreement expires equal the last seven years of credits with no interest added. When some portion of a farmer's property is leaving the farmland preservation program while some remains, the amount of tax credits attributable to the property leaving the program needs to be determined to calculate the amount of the lien.

In 1989, according to tax specialists, the treasury department began using the same method to calculate lien amounts regardless of whether the agreement had expired normally or the property was prematurely withdrawn from the program. Previously, a different method had been used for the two cases. (Treasury says there was no statutory justification for this, which is why the practice was stopped. An attorney general's opinion, reportedly, supported the department's ruling.) Liens on withdrawn property were based on the difference between the credit as calculated with that property included and the credit without that property. Liens on naturally terminated property were based on the percentage of taxes due on the property leaving the PA 116 program. The practical effect of the treasury department's decision was to increase the size of liens on property leaving the PA 116 program when agreements naturally expired. This has led to a disagreement over the intent of the law between farm interests and the Department of Treasury. An agreement has been reached whereby liens for all property leaving the PA 116 program will be based on the pre-1989 method of calculating liens for property whose preservation agreements have expired.

## THE CONTENT OF THE BILL:

The bill would amend the Farmland and Open Space Preservation Act to base the calculation of liens on property leaving the farmland preservation program, in cases where the property owner has other property remaining in the program, on the percentage of the property taxes levied on the property leaving the program. (The Department of Treasury says, by way of example, "if the taxes on the property leaving the program equal 25 percent of the farm's taxes on all land in the program, then 25 percent of the credits are assigned to the land leaving the program.") The bill would be retroactive to January 1, 1989.

MCL 554.712

## BACKGROUND INFORMATION:

Following is an example of the effect of this bill on liens provided by the Department of Treasury in a memorandum dated 8-7-90.

Assumptions: Agreement A is expiring; Agreement B remains in effect. Property taxes paid on property under Agreement A: $6,000
Property taxes paid on property under Agreement B: $4,000
1989 Household Income: $30,000
1989 PA 116 Credit: $7,900 ($10,000 minus 7 percent of $30,000)

| House Bill 5966 | 1989 Treasury Ruling |
|---|---|
| Percent of taxes paid under A is 60 percent, which is thus Agreement A's share of the tax credit | PA 116 Credit without Agreement A is $1,900 ($4,000 minus seven percent of $30,000) |
| Agreement A's lien 60 percent of $7,900, or $4,740 | Agreement A's lien $6,000 ($7,900 minus $1,900) |

## FISCAL IMPLICATIONS:

The bill will result in some revenue loss to the state, but no specific fiscal information is available.

## ARGUMENTS:

### For:

The Department of Treasury and representatives of farming interests have settled a disagreement over how to calculate the liens that are placed on farmland leaving the farmland preservation program, which provides reduced property taxes to farmers who promise to keep property in agricultural use and not develop it. Under the bill, the department will return to pre-1989 methods of determining the lien amounts and will automatically recalculate past liens and refund taxes where necessary.

## POSITIONS:

The Department of Treasury supports the bill. (9-19-90)