SFA BILL ANALYSIS

Senate Fiscal Agency • Lansing, Michigan 48909 • (517) 373-5383

Senate Bill 887
Sponsor: Senator Nick Smith
Committee: Agriculture and Forestry

Date Completed: 4-5-90

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SUMMARY OF SENATE BILL 887 as introduced 3-21-90:

The bill would amend the Farmland and Open Space Preservation Act to do the following:

-- Expand the circumstances under which land can be released from a development rights agreement or easement, and require, rather than permit, the land to be released.
-- Require a land owner's request for relinquishment of an agreement to be approved in certain cases of economic hardship.
-- Require the State's lien on development rights land to be discharged seven years after the natural termination of an agreement.
-- Allow a land owner to substitute land covered by a development rights agreement upon approval of the State land use agency and repayment by the owner of income tax credit received on land removed from the agreement.

(Under the Act, the owner of farmland may enter into a farmland development rights agreement with the State. An agreement restricts the land owner's right to develop the land for at least 10 years in return for a credit against his or her income tax (or single business tax for certain taxpayers). A development rights agreement must be relinquished by the State upon its natural termination, and may be relinquished if the State determines that development is in the public interest, or if the land owner requests relinquishment. Upon natural termination, the State must record a lien against the property for the amount of tax credit received by the owner for the last seven years; the lien may be paid at any time without interest. If the agreement terminates upon the owner's request, the lien is for the full amount of credit received and bears interest. In either case, an unpaid lien becomes payable when the land is sold. The Act also provides for open space development rights easements under which the owner of open space land is exempt from paying property taxes on the development rights in the land; lien provisions for open space land are similar to those for farmland, although a lien is recorded by the State or a local unit.)

Release of Land

Under the Act, when the owner of land subject to a development rights agreement or easement dies or is totally and permanently disabled, the land may be released from the program and is subject to a proration of the State's or local unit's lien. (That is, the lien is only for the amount of tax credit received or taxes

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not paid, up to a maximum of seven years, and does not bear interest.)

The bill would require, rather than permit, the land to be released, and would extend these provisions to situations in which the spouse or a child of the land owner died or was totally and permanently disabled. In addition, a request would have to be made for a release.

Relinquishment of Agreement

Under the bill, if a farmland owner applied to the local governing body requesting that the development rights agreement be relinquished, the local body or the State land use agency (within the Department of Natural Resources) would have to approve the request if it determined that either or both of the following applied:

-- An agricultural use of the land was not economically viable. In making this determination, the local governing body or State land use agency could not consider potential nonagricultural uses of the land that could provide a higher return on investment or a larger income for the owner.
-- Because of a change in circumstances beyond the owner's control, it would be a hardship for the owner to continue a family-operated farming operation in which he or she was actively involved.

The Act provides that, at the time an agreement is to be relinquished upon the owner's request, the State land use agency must prepare and record a lien against the property for the total amount of the income tax credit received by the owner. Upon an agreement's natural termination, the State must record a lien for the amount of income tax credit received during the last seven years. Under the bill, either lien would have to be reduced by an amount paid to the State pursuant to the bill's land substitution provisions.

The Act requires a lien to be discharged upon renewal of or reentry into a development rights agreement, but a subsequent lien cannot be less than the lien discharged. Under the bill, a subsequent lien could not be less than the discharged lien only if the renewed or reentered agreement were subsequently relinquished upon the owner's request.

Lien Discharge After Seven Years

The bill would require the State land use agency to prepare and record a discharge of a lien upon the expiration of seven years after the date of the natural termination of a development rights agreement, if the lien had not become payable to the State due to the sale of the land.

Substitution of Land

Substitution. The bill would require the State land use agency to approve an amendment to a development rights agreement that would allow the land owner to remove a portion of the land from the agreement and substitute other land into the agreement as provided in the bill. Removed land would not be subject to the agreement or to the Act. Substitute land would be subject to the agreement and the Act.

Application. A land owner could apply for a substitution by filing an application with the local governing body having jurisdiction under the Act.

The application would have to contain all of the following:

-- Information reasonably necessary to classify the substitute land properly as farmland.
-- A land survey or legal description of the land the owner was seeking to remove from the agreement and of the substitute land.
-- A map showing the significant natural features and all structures and physical improvements on both parcels of land.
-- The soil classification of both parcels if known.

(Under the Act, a farmland owner's initial application for a development rights agreement also is filed with the local governing body having jurisdiction. "Local governing body" means the legislative body of a city or village, the township board of a township having a zoning ordinance in effect as provided by law, or the county board of commissioners in all other areas.)

Local Review/Approval. Upon receiving an application for a substitution, the local governing body would have to notify the county planning commission or the regional planning commission as well as the soil conservation district agency. If a county had jurisdiction, it also would have to notify the board of the township in which the land to be removed was situated and the board of the township containing the substitute land. If either parcel were within three miles of the boundary of a city, or within one mile of the boundary of a village, the county or township governing body having jurisdiction would have to notify the governing body of the city or village.

An agency or local governing body receiving notice would have 30 days to review, comment, and make recommendations to the local governing body with which the application was filed. The reviewing agencies would not have an approval or rejection power over the application.

After considering the comments and recommendations of the reviewing agencies and local governing bodies, the local governing body holding the application would have to approve or reject it within 45 days after the application was received, unless time were extended by mutual agreement of the parties involved. The local governing body's approval or rejection would have to be based upon, and consistent with, the following provision as well as rules promulgated under the Act by the State land use agency.

The local governing body holding an application could approve it if all of the following applied:

-- The substitute land was situated within the jurisdiction of the local governing body from which the land the owner sought to remove was situated.
-- The substitute land was continguous, if it consisted of two or more parcels.
-- The acreage of the substitute land was equal to or greater than the acreage of the land to be removed. If the land covered by the agreement were a farm of 40 or more acres in one ownership that had been devoted primarily to an agricultural use, the owner would have to remove and substitute at least 40 acres.
-- After land was substituted into the agreement, the agreement would remain otherwise unchanged and in conformance with the Act's definition of "farmland".

State Land Use Agency Review. If an application were approved by the local governing body having jurisdiction, a copy, along with the comments and recommendations of the reviewing bodies, would have to be forwarded to the State land use agency. The application would have to contain a statement from the assessing officer where the property was located specifying the current fair market value of the substitute land and structures, in compliance with the agricultural section of the Michigan State Tax Commission assessor manual. If the local governing body did not act within the time prescribed or agreed upon, the applicant could proceed as if the application were rejected.

If the local governing body rejected an application, or did not approve or reject an application within the time prescribed or agreed upon, it would have to return the application to the applicant with a written statement regarding the reasons for rejection, a written statement informing the applicant of the right to appeal the decision to the State land use agency, and a brief explanation of the appeals process. The applicant would have 30 days after receiving the rejected application to appeal the rejection.

The State land use agency, within 60 days after receiving an application, would have to approve or reject it. The agency would have to forward to the State Tax Commission a copy of the information received from the local assessing officer and a copy of the application, for the Commission's review. The Commission would be required to make its review, including property description and value verification, and submit its comments to the State land use agency within 60 days after receiving the application. The State land use agency could reject an application that had been approved by a local governing body only for nonconformance with the Act's definition of "farmland".

Agreement Amendment. If it approved an application, the State land use agency would have to prepare an amendment to the development rights agreement that included the following provisions regarding the substitute land:

-- A structure could not be built on the land except for use consistent with farm operations or lines for utility transmission or distribution purposes or with the approval of the local governing body and the State land use agency.
-- Land improvements could 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.
-- Any interest in the land, except a scenic, access, or utility easement that did not substantially harm farm operations, could not be sold.
-- Public access could not be permitted on the land unless agreed to by the owner.

An amendment also could include any other condition and restriction on the land as agreed to by the parties that was deemed necessary to preserve the land or appropriate portions of it as farmland.

A copy of the approved application and the amendment would have to be forwarded to the applicant for execution. If the owner executed the amendment, he or she would have to return it to the State land use agency for execution on behalf of the State. The agency would have to record the executed amendment with the register of deeds of the county in which the land was situated, and notify the applicant, the local governing body and its assessing office, all reviewing agencies, and the Department of Treasury.

An application that was approved by the local governing body by November 1 would take effect for the current tax year.

The State land use agency could not execute an amendment until the owner had paid to the State an amount equal to the total amount of the credit in the State income tax that he or she had received under the Act, multiplied by the percentage of the land that was being removed from the agreement, plus interest at the rate of 6% per annum compounded from the time the credit was received until payment was made to the State as provided in the bill. The State would have to use the proceeds from the payment for the same purpose as the proceeds from payments made to discharge a lien. (The Act requires lien payments to be used to purchase development rights on land that is deemed by the State land use agency to be a unique or critical land area that should be preserved in its natural character, but that does not necessitate direct purchase of the fee interest in land.)

Rejection. If the State land use agency rejected an application, it would have to notify the affected local governing body, all reviewing agencies concerned, and the applicant with a written statement containing the reasons for rejection. The State land use agency also would have to give the applicant a written notification of the right to appeal the agency's decision pursuant to the Administrative Procedures Act, and a brief explanation of the appeals process under that Act.

An applicant could reapply for an amendment after a one-year waiting period.

Rules. Within one year after the bill's effective date, the State land use agency would have to promulgate rules to implement the bill's land substitution provisions.

MCL 554.711 et al.

Legislative Analyst: S. Margules

FISCAL IMPACT

Senate Bill 887 would have an indeterminate fiscal impact. The bill proposes procedures for releasing farmland from a development rights agreement. To the extent farmland left development rights agreements, State income tax and local property tax revenues could be affected. The exact impact would depend on how many farms took advantage of these new release provisions.

According to the Department of Natural Resources Land and Water Management Division, the bill could require an additional FTE (approximately $48,000) to handle increased application processing, and additional administrative costs.

Fiscal Analyst: G. Olson
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.