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**SFA**



**BILL ANALYSIS**

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House Bill 5894 (Substitute H-4 as passed by the House)  
House Bill 5895 (Substitute H-3 as passed by the House)  
Sponsor: Representative Howard Wetters (H.B. 5894)  
Representative William Bobier (H.B. 5895)  
House Committee: Agriculture  
Senate Committee: Farming, Agribusiness and Food Systems

Date Completed: 9-22-98

## **CONTENT**

**House Bill 5894 (H-4)** would add Part 362 (Farmland Trust Fund) to the Natural Resources and Environmental Protection Act (NREPA) to do the following:

- Create the Michigan Farmland Trust Fund.
- Require that one-half of the Fund's interest and earnings be used for the acquisition of development rights and resource conservation easements, and one-half to provide grants to local governments.
- Require the Department of Natural Resources (DNR) to establish a grants program for eligible local governments to provide for the acquisition of agriculture conservation and resource conservation easements.
- Require, within one year after the bill's effective date, that the Michigan Farmland Trust Board, as proposed in House Bill 5895 (H-3), provide recommendations to the Governor and Legislature on a long-term funding source for the Fund.

The bill also would amend Part 361 (Farmland and Open Space Preservation) of the NREPA to require that proceeds from lien payments made under that part be deposited in the proposed Trust Fund, beginning July 1, 1999.

**House Bill 5895 (H-3)** would add language to proposed Part 362 of the NREPA to: provide for the creation of the Farmland Trust Fund Board within the DNR; require the Board to determine which local governments were eligible for grants from the proposed Michigan Farmland

Trust Fund; require the Board to submit annually to the Legislature a list of grants for the Legislature to approve by law; require a local government or other person to provide at least 25% of the cost of acquiring an easement; establish criteria for reviewing grant applications and require the DNR to develop a scoring formula for evaluating the criteria; require the DNR to condition the receipt of a grant on the Department's approval of the easement; and, specify that the conveyance of an agriculture conservation or resource conservation easement would not affect the property's assessed valuation.

House Bills 5894 (H-4) and 5895 (H-3) are tie-barred to each other. In addition, House Bill 5894 (H-4) is tie-barred to House Bills 5620, 5622, and 5719, as well as Senate Bills 902 and 904 (Public Acts 285, 284, 286, 287, and 288 of 1998, respectively). (Public Act 284 created the Clean Michigan Initiative Act to provide for the issuance of up to \$675 million in general obligation bonds for environmental and natural resources protection programs. Public Acts 285 through 288 provide for the expenditure of the bond proceeds. These measures will take effect if the voters approve Proposal C on the November 1998 ballot.)

A more detailed description of House Bills 5894 (H-4) and 5895 (H-3) follows.

### **House Bill 5894 (H-4)**

#### **Farmland Trust Fund**

The Michigan Farmland Trust Fund would be created in the State Treasury. The State Treasurer could receive money or other assets from any

source for deposit into the Trust Fund, including gifts, bequests, and other donations to the Trust Fund. The State Treasurer would have to direct the investment of the Trust Fund, and could establish restricted subaccounts within the Trust Fund as needed to administer it. The Treasurer also would be required to credit to the Trust Fund or to the appropriate subaccount interest and earnings from Trust Fund investments.

Money in the Trust Fund at the close of the fiscal year would have to remain in the Fund and could not lapse to the General Fund. Money in the Trust Fund that was transferred pursuant to the bill's provisions concerning lien payments resulting from the termination of a development rights agreement, and the accrued interest and earnings of the Trust Fund could be spent, upon appropriation, as follows:

- Not more than \$600,000 annually for the administrative costs of the DNR and the proposed Michigan Farmland Trust Fund Board, in implementing Parts 361 and 362. If interest and earnings in any State fiscal year exceeded \$7.5 million, however, up to 8% of the interest and earnings could be spent for administrative costs under this provision.
- The remainder of the accumulated interest and earnings of the Trust Fund would have to be spent as follows: at least 50% (pursuant to Part 361) by the DNR Director for the acquisition of development rights and resource conservation easements; and not more than 50% to provide grants to local units of government pursuant to the bill.

The Department or the proposed Board could accept donations of all or a portion of the development rights to one or more parcels of land as part of a transaction for the purchase of agriculture conservation easements or resource conservation easements.

("Agriculture conservation easement" would mean a conveyance, by a written instrument, in which the owner relinquished to the public in perpetuity his or her development rights as could be expressly reserved in the instrument, that contained the permitted uses of the land, and that contained a covenant running with the land, not to develop, except as this right was expressly reserved in the instrument. "Owner" would mean a person having a freehold estate in land coupled with possession and enjoyment. If land were subject to a land contract, "owner" would mean the vendee in agreement with the vendor.

"Permitted use" would mean any use contained within an agriculture conservation easement consistent with the farming operation or that did not adversely affect the productivity of the farmland. Storage, retail or wholesale marketing, or processing of agricultural products would be a permitted use in a farming operation if more than 50% of the stored, processed, or merchandised products were produced by the farm operator for at least three of the immediately preceding five years. "Permitted use" would include oil and gas exploration and extraction, but would not include other mineral development that was inconsistent with an agricultural use.

"Farmland" would mean one or more of the following:

- A farm of at least 40 acres in one ownership, with at least 51% of the land area devoted to an agricultural use.
- A farm of at least five acres in one ownership, but less than 40 acres, with at least 51% of the land area devoted to an agricultural use, that had produced a gross annual income from agriculture of \$200 per year or more per acre of cleared and tillable land. A farm enrolled in a Federal acreage set aside program or a Federal conservation reserve program would be considered to have produced a gross annual income from agriculture of at least \$200 per year per acre of cleared and tillable land.
- A farm designated by the Department of Agriculture as a specialty farm in one ownership that had produced a gross annual income of at least \$2,000 from an agricultural use. Specialty farms would include, but would not be limited to, greenhouses; equine breeding and grazing; the breeding and grazing of cervidae, pheasants, and other game animals; bees and bee products; mushrooms; aquaculture;

and other similar uses and activities.

Parcels of land in one ownership that were not contiguous but constituted an integral part of a farming operation being conducted on land otherwise qualifying as farmland could be included in an application under the bill.

“Agricultural use” would mean substantially undeveloped land devoted to 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 cattle, swine, captive cervidae, and similar animals; berries; herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables; Christmas trees; and other similar uses and activities. “Agricultural use” would not include the management and harvesting of a woodlot.

“Resource conservation easement” would mean a conveyance by a written instrument, in which the owner relinquished to the public in perpetuity his or her development rights as could be expressly reserved in the instrument, and that contained a covenant running with the land, not to develop, except as this right was expressly reserved in the instrument. A resource conservation easement would have to provide for the preservation of a permanent vegetative cover adjacent to a water body or watercourse for the purpose of doing one or more of the following: reducing nonpoint pollution, improving water quality, and/or enhancing wildlife habitat.)

#### Proceeds from Lien Payments

Currently, under Part 361, the State and a land owner may enter into a development rights agreement in which the owner agrees not to develop the land in exchange for an income tax or single business tax credit. Upon the termination of a development rights agreement, the State land use agency (within the DNR) must prepare and record a lien, if any, against the property subject to the agreement for the total amount of the allocated tax credit of the last seven years received by the owner. The State land use agency must use the proceeds from lien payments to administer Part 361; for fiscal years 1991-92 through 1999-2000, to purchase development rights of unique or critical land area that does not necessitate direct purchase of the fee interest in the land for which money was appropriated under Public Act 128 of 1995 (an appropriation for certain capital outlay projects for fiscal year 1995-96); and to purchase development

rights on farmland that does not necessitate direct purchase of the fee interest in the land. Under the bill, these provisions would apply until July 1, 1999. Beginning on that date, the proceeds from lien payments made under Part 361 would have to be forwarded to the State Treasurer for deposit in the Michigan Farmland Trust Fund. On July 1, 1999, all unspent proceeds from lien payments made under Part 361 that were held by the State would have to be transferred to the Michigan Farmland Trust Fund.

#### Grants Program

The DNR would be required to establish a grants program for the acquisition of agriculture conservation easements and resource conservation easements. The DNR would have to provide grants to eligible local units of government for the acquisition of these easements.

A local government would be eligible to submit a grant application if it had adopted a development rights ordinance providing for a purchase of a development rights program pursuant to the City and Village Zoning Act, the Township Zoning Act, or the County Zoning Act. A development rights ordinance would have to contain application procedures, a scoring system for local parcel selections, and provision for establishing market value of the development rights by subtracting the current fair market value of the property without the development rights from the current fair market value of the property with all development rights.

A local government that wanted to apply for a grant would have to submit a grant application to the DNR on a form prescribed by the Department and containing the information required by the Department. A grant application would have to include at a minimum a list of the parcels proposed for development rights acquisition by the local government, indicating the size and location of each parcel and the estimated value of the development rights of each parcel as determined by subtracting the current fair market value of the property without the development rights from the current fair market value of the property with all development rights. Upon receiving the applications, the DNR would have to forward them annually to the proposed Farmland Trust Fund Board.

Agriculture conservation easements and resource conservation easements acquired under the grants program would have to be held jointly by the State and local government. The State, however, could

delegate enforcement authority of the easements to the local government.

### **House Bill 5895 (H-3)**

#### **Trust Fund Board**

The Farmland Trust Fund Board would have to consist of the following members: the Director of the DNR or his or her designee as a nonvoting member; the Director of the Department of Agriculture or his or her designee as a nonvoting member; five persons appointed by the governor as follows: two persons representing conservation interests; two persons representing agricultural interests; and one person representing the general public.

The members first appointed to the Board would have to be appointed within 60 days after the bill's effective date. Members would have to serve for four-year terms or until a successor was appointed, whichever was later, except that the members first appointed would have to serve as follows: one person representing conservation interests and one representing agricultural interests would serve for three years; one person representing conservation interests and one representing agricultural interests would serve for two years; and, the person appointed to represent the general public would serve for one year. A vacancy would have to be filled for the unexpired term in the same manner as the original appointment. The Board could remove a member for incompetency, dereliction of duty, malfeasance, misfeasance, or nonfeasance in office, or any other good cause.

The DNR Director would have to call the Board's first meeting, at which the Board would have to elect from among its members a chairperson and other officers as it considered necessary or appropriate. After the first meeting, the Board would have to meet at least quarterly, or more frequently at the call of the chairperson or if requested by at least three members. The Board would be subject to the Open Meetings Act and the Freedom of Information Act.

Members would serve without compensation, but could be reimbursed for their actual and necessary expenses incurred in the performance of their official duties as members of the Board.

The DNR would be required to provide the Board with staff and assistance needed to carry out its responsibilities under proposed Part 362. The Department also would be permitted to promulgate

rules to implement Part 362.

#### **Determining Grants**

The Board would have to determine which local units of government were eligible for distribution of funds as provided in House Bill 5894. The Board annually would have to determine which grants should be approved and would have to submit to the Legislature a list of those grants, compiled in order of priority. The Board would have to require the local government or other person to provide at least 25% of the cost of acquiring the agriculture conservation easement or resource conservation easement that would be funded with the grant.

The Board would have to consider all of the following in reviewing grant applications for the acquisition of agriculture conservation easements in the following priority order:

- The productive capacity of the farmland suited for the production of feed, food, and fiber, including, but not limited to, prime or unique farmland or farmland of local importance, as defined by the U.S. Department of Agriculture Natural Resources Conservation Service.
- Whether the farmland met any of the following: the farmland would complement and be part of a documented, long-range effort or plan for land preservation by the governing body of the local government; the farmland was located within an agricultural security area or an area that complemented other land protection efforts by creating a block of farmland; or, the farmland was adjacent to farmland that was subject to an agriculture conservation easement or other easement that restricted development on the land in perpetuity.
- The amount of matching funds or percentage of the agriculture conservation easement that was donated from the local government or other person, in excess of the minimum match amount required.
- Whether the farmland was faced with development pressure that would permanently alter the ability for that land to be used for productive agricultural activity.
- Whether the farmland was enrolled under Part 361.
- Whether the farmland had a conservation plan approved by a soil conservation district under Part 93 (Soil Conservation Districts).

The Board would have to consider all of the

following in reviewing grant applications for the acquisition of resource conservation easements:

- Whether the acquisition was at a minimum consistent with the technical specifications established by the U.S. Department of Agriculture Natural Resources Conservation Service.
- Whether the acquisition was consistent with local conservation plans.
- Whether the acquisition would complement Federal, State, local, or private programs that reduced nonpoint source pollution, improved water quality, or enhanced wildlife habitat.
- The degree to which the resource conservation easement would result in off-site benefits.
- The percentage of the resource conservation easement donated.
- Whether public access was granted to the land subject to the resource conservation easement.
- The type of vegetative cover to be maintained.

The Board would have to develop a standardized nonappraisal based scoring formula for evaluating the criteria listed above. The Board would have to provide the formula developed for considering applications for the acquisition of resource conservation easements to the DNR for its consideration in evaluating its acquisition of resource conservation easements.

The Legislature would be required to approve by law the grants to be funded with money in the Trust Fund.

#### Grant Distribution

Upon appropriation, the DNR would be required to distribute grants to recipients. The DNR would have to condition the receipt of a grant on the Department's approval of the agriculture conservation easement or the resource conservation easement, as appropriate.

In reviewing permitted uses contained within an agriculture conservation easement, the Department would have to consider whether the use: adversely affected the productivity of farmland; materially altered or negatively affected the existing conditions or use of the land; resulted in a material alteration of an existing structure to a nonagricultural use; and conformed with all applicable Federal, State, and local laws and ordinances.

The bill specifies that the conveyance of an agriculture or resource conservation easement under Part 362 or Part 361 would not affect the assessed valuation of the property under the General Property Tax Act.

MCL 324.36111 et al. (H.B. 5894)  
Proposed MCL 324.36204-324.36208  
(H.B. 5895)

Legislative Analyst: L. Arasim

#### FISCAL IMPACT

The bills could result in additional costs for administering the local grants program component of the bill. In addition, the new Fund could generate interest earnings that would not revert to the General Fund. The current status of the existing Farmland and Open Space Preservation Act Fund indicates a balance of approximately \$17.0 million, which at 5% interest, could generate \$850,000 annually, assuming similar fund balances.

Fiscal Analyst: M. Hansen

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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.