

# HOUSE BILL No. 6180

June 5, 2002, Introduced by Reps. Gielegthem and Kolb and referred to the Committee on Land Use and Environment.

A bill to amend 1994 PA 451, entitled  
"Natural resources and environmental protection act,"  
by amending section 36101 (MCL 324.36101), as amended by 2000 PA  
262, and by adding section 36115a.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Sec. 36101. As used in this part:

2       (a) "Agricultural conservation easement" means a conveyance,  
3 by a written instrument, in which, subject to permitted uses, the  
4 owner relinquishes to the public in perpetuity his or her devel-  
5 opment rights and makes a covenant running with the land not to  
6 undertake development.

7       (b) "Agricultural use" means the production of plants and  
8 animals useful to humans, including forages and sod crops;  
9 grains, feed crops, and field crops; ~~dairy and~~ dairy products;  
10 poultry and poultry products; livestock, including breeding and

1 grazing of cattle, swine, captive cervidae, and similar animals;  
2 berries; herbs; flowers; seeds; grasses; nursery stock; fruits;  
3 vegetables; Christmas trees; and other similar uses and  
4 activities. Agricultural use includes use in a federal acreage  
5 set-aside program or a federal conservation reserve program.  
6 Agricultural use does not include the management and harvesting  
7 of a woodlot.

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

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

12 (e) "Development rights" means an interest in land that  
13 includes the right to construct a building or structure, to  
14 improve land for development, to divide a parcel for development,  
15 or to extract minerals incidental to a permitted use or as is set  
16 forth in an instrument recorded under this part.

17 (f) "Development rights agreement" means a restrictive cove-  
18 nant, evidenced by an instrument in which the owner and the  
19 state, for a term of years, agree to jointly hold the right to  
20 undertake development of the land, and that contains a covenant  
21 running with the land, for a term of years, not to undertake  
22 development, subject to permitted uses.

23 (g) "Development rights easement" means a grant, by an  
24 instrument, in which the owner relinquishes to the public in per-  
25 petuity or for a term of years the right to undertake development  
26 of the land, and that contains a covenant running with the land,  
27 not to undertake development, subject to permitted uses.

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

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

4 (ii) A farm of NOT LESS THAN 5 acres or more ~~in 1 owner-~~  
5 ~~ship, but less~~ than 40 acres, IN 1 OWNERSHIP, with 51% or more  
6 of the land area devoted to an agricultural use, that has  
7 produced a gross annual income from agriculture of \$200.00 per  
8 year or more per acre of cleared and tillable land. A farm  
9 described in this subparagraph enrolled in a federal acreage set  
10 aside program or a federal conservation reserve program is con-  
11 sidered to have produced a gross annual income from agriculture  
12 of \$200.00 per year or more per acre of cleared and tillable  
13 land.

14 (iii) A farm designated by the department of agriculture as  
15 a specialty farm in 1 ownership that has produced a gross annual  
16 income from an agricultural use of \$2,000.00 or more. Specialty  
17 farms include, but are not limited to, greenhouses; equine breed-  
18 ing and grazing; the breeding and grazing of cervidae, pheasants,  
19 and other game animals; FARMS FOR THE PRODUCTION OF bees and bee  
20 products; ~~mushrooms~~ MUSHROOM FARMS; aquaculture FACILITIES; and  
21 other similar uses and activities.

22 (iv) Parcels of land in 1 ownership that are not contiguous  
23 but which constitute an integral part of a farming operation  
24 being conducted on land otherwise qualifying as farmland may be  
25 included in an application under this part.

26 (I) "INFRASTRUCTURE PROJECT" MEANS THE CONSTRUCTION OR  
27 IMPROVEMENT OF A ROAD, STREET, SEWER, WATER MAIN, WATER OR SEWAGE

1 TREATMENT FACILITY, PARKING LOT OR PARKING STRUCTURE, OFFICE  
2 BUILDING, SCHOOL, POLICE OR FIRE STATION, JAIL OR PRISON, AIR-  
3 PORT, OR OTHER INFRASTRUCTURE IF THE CONSTRUCTION OR IMPROVEMENT  
4 IS FINANCED IN WHOLE OR PART BY A STATE OR LOCAL GOVERNMENT  
5 ENTITY.

6 (J) ~~(i)~~ "Local governing body" means 1 of the following:

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

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

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

17 (K) ~~(j)~~ "Open space land" means 1 of the following:

18 (i) Lands defined as 1 or more of the following:

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

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

(C) Undeveloped lands designated as environmental areas under part 323, including unregulated portions of those lands.

(ii) Any other area approved by the local governing body, the preservation of which area in its present condition would conserve natural or scenic resources, including ~~the promotion of the conservation of~~ soils, wetlands, and beaches, ~~the enhancement of~~ ENHANCE recreation opportunities, ~~the preservation of~~ OR PRESERVE historic sites; ~~and~~ idle potential farmland of not less than 40 acres that is substantially undeveloped and because of its soil, terrain, and location is capable of being devoted to agricultural uses as identified by the department of agriculture, AND FARMLAND.

(l) ~~(k)~~ "Owner," EXCEPT AS USED IN SECTION 36115A, means a person having a freehold estate in land coupled with possession and enjoyment. If land is subject to a land contract, owner means the vendee in agreement with the vendor.

(M) ~~(l)~~ "Permitted use" means any use expressly authorized within a development rights agreement, development rights easement, or agriculture conservation easement that is consistent with the farming operation or that does not alter the open space character of the land. Storage, retail or wholesale marketing, or processing of agricultural products is a permitted use in a farming operation if more than 50% of the stored, processed, or merchandised products are produced by the farm operator for at least 3 of the immediately preceding 5 years. The state land use agency shall determine whether a use is a permitted use pursuant to section 36104a.

1           (N) ~~-(m)-~~ "Person" includes an individual, corporation,  
2     limited liability company, business trust, estate, trust, part-  
3     nership, or association, or 2 or more persons having a joint or  
4     common interest in land.

5           (O) ~~-(n)-~~ "Planning commission" means a planning commission  
6     created by the local governing body under 1945 PA 282,  
7     MCL 125.101 to 125.107, 1959 PA 168, MCL 125.321 to 125.333, or  
8     1931 PA 285, MCL 125.31 to 125.45, as applicable.

9           (P) ~~-(o)-~~ "Prohibited use" means a use that is not consis-  
10    tent with an agricultural use for farmland subject to a develop-  
11    ment rights agreement or is not consistent with the open space  
12    character of the land for lands subject to a development rights  
13    easement.

14          (Q) ~~-(p)-~~ "Property taxes" means general ad valorem taxes  
15    levied after January 1, 1974, on lands and structures in this  
16    state, including collection fees, but not including special  
17    assessments, penalties, or interest.

18          (R) ~~-(q)-~~ "Regional planning commission" means a regional  
19    planning commission created pursuant to 1945 PA 281, MCL 125.11  
20    to 125.25.

21          (S) ~~-(r)-~~ "Regional planning district" means the planning  
22    and development regions as established by executive directive  
23    1968-1, as amended, whose organizational structure is approved by  
24    the regional council.

25          (T) ~~-(s)-~~ "State income tax act" means the income tax act of  
26    1967, 1967 PA 281, MCL 206.1 to 206.532, and in effect during the  
27    particular year of the reference to the act.

1       (U) ~~(t)~~ "State land use agency" means the department of  
2 agriculture.

3       (V) ~~(u)~~ "Substantially undeveloped" means any parcel or  
4 area of land essentially unimproved except for a dwelling, build-  
5 ing, structure, road, or other improvement that is incidental to  
6 agricultural and open space uses.

7       (W) ~~(v)~~ "Unique or critical land area" means agricultural  
8 or open space lands identified by the land use agency as an area  
9 that should be preserved.

10       SEC. 36115A. (1) IF LAND THAT IS SUITABLE FOR AGRICULTURAL  
11 USE AND HAS BEEN IN AGRICULTURAL USE AT ANY TIME DURING THE PRE-  
12 CEDING 2 YEARS IS PROPOSED AS A SITE FOR AN INFRASTRUCTURE  
13 PROJECT THAT WILL RENDER THE LAND UNSUITABLE FOR AGRICULTURAL  
14 USE, BEFORE THE LAND OR AN INTEREST IN THE LAND IS CONVEYED FOR  
15 THE INFRASTRUCTURE PROJECT, THE OWNER SHALL PREPARE AN ENVIRON-  
16 MENTAL IMPACT STATEMENT AND FILE A COPY OF THE ENVIRONMENTAL  
17 IMPACT STATEMENT WITH THE CLERK OF THE CITY, VILLAGE, OR TOWNSHIP  
18 WHERE THE INFRASTRUCTURE PROJECT IS LOCATED.

19       (2) AN ENVIRONMENTAL IMPACT STATEMENT UNDER SUBSECTION (1)  
20 SHALL CONTAIN ALL OF THE FOLLOWING INFORMATION:

21       (A) THE NAME AND ADDRESS OF THE OWNER.

22       (B) A DESCRIPTION OF THE OWNER'S PROPRIETARY INTEREST IN THE  
23 LAND.

24       (C) THE NAME, ADDRESS, AND PROFESSIONAL QUALIFICATIONS OF  
25 THE PROPOSED PROFESSIONAL DESIGN TEAM MEMBERS FOR THE INFRASTRUC-  
26 TURE PROJECT, INCLUDING THE DESIGNATION OF THE PERSON RESPONSIBLE  
27 FOR THE PREPARATION OF THE ENVIRONMENTAL IMPACT STATEMENT.

1 (D) THE DESCRIPTION AND PURPOSE OF THE PROPOSED  
2 INFRASTRUCTURE PROJECT.

3 (E) SIX COPIES AND 1 REPRODUCIBLE TRANSPARENCY OF A SCHE-  
4 MATIC USE PLAN OF THE INFRASTRUCTURE PROJECT SHOWING THE GENERAL  
5 LOCATION OF THE INFRASTRUCTURE PROJECT AND MAJOR EXISTING PHYSI-  
6 CAL AND NATURAL FEATURES ON THE SITE, INCLUDING, BUT NOT LIMITED  
7 TO, WATERCOURSES, ROCK OUTCROPPING, WETLANDS, AND WOODED AREAS.

8 (F) THE LOCATION OF THE EXISTING UTILITIES AND  
9 DRAINAGEWAYS.

10 (G) THE LOCATION AND NOTATION OF PUBLIC STREETS, PARKS, AND  
11 RAILROAD AND UTILITY RIGHTS-OF-WAY WITHIN OR ADJACENT TO THE  
12 INFRASTRUCTURE PROJECT.

13 (H) THE GENERAL LOCATION AND DIMENSIONS OF PROPOSED STREETS,  
14 DRIVEWAYS, SIDEWALKS, PEDESTRIAN WAYS, TRAILS, OFF-STREET PARK-  
15 ING, AND LOADING AREAS.

16 (I) THE GENERAL LOCATION AND APPROXIMATE DIMENSIONS OF PRO-  
17 POSED STRUCTURES.

18 (J) MAJOR PROPOSED CHANGE OF LAND FORMS SUCH AS NEW LAKES,  
19 TERRACING, OR EXCAVATING.

20 (K) APPROXIMATE EXISTING AND PROPOSED CONTOURS AND DRAINAGE  
21 PATTERNS, SHOWING AT LEAST 5-FOOT CONTOUR INTERVALS.

22 (L) SKETCHES SHOWING THE SCALE, CHARACTER, AND RELATIONSHIP  
23 OF STRUCTURES, STREETS OR DRIVEWAYS, AND OPEN SPACE.

24 (M) APPROXIMATE LOCATION AND TYPE OF PROPOSED DRAINAGE,  
25 WATER AND SEWAGE TREATMENT AND DISPOSAL FACILITIES.

26 (N) A LEGAL DESCRIPTION OF THE PROPERTY.



1           (O) AN AERIAL PHOTO AND CONTOUR MAP SHOWING THE SITE IN  
2       RELATION TO THE SURROUNDING AREA.

3           (P) A DESCRIPTION OF THE SITE, INCLUDING ITS DOMINANT CHAR-  
4       ACTERISTICS, ITS VEGETATIVE CHARACTER, ITS PRESENT AGRICULTURAL  
5       USE, AND OTHER RELEVANT INFORMATION.

6           (Q) A SOIL REVIEW GIVING A SHORT DESCRIPTIVE SUMMARY OF THE  
7       SOIL TYPES FOUND ON THE SITE AND WHETHER THE SOIL PERMITS THE USE  
8       OF SEPTIC TANKS OR REQUIRES CENTRAL SEWER. THE REVIEW MAY BE  
9       BASED ON THE "UNIFIED SOIL CLASSIFICATION SYSTEM" AS ADOPTED BY  
10      THE UNITED STATES GOVERNMENT CORPS OF ENGINEERS AND BUREAU OF  
11      RECLAMATION, DATED JANUARY 1952, OR THE NATIONAL COOPERATIVE SOIL  
12      SURVEY CLASSIFICATION SYSTEM, AND THE STANDARDS FOR THE DEVELOP-  
13      MENT PROSPECTS THAT HAVE BEEN OFFERED FOR EACH PORTION OF THE  
14      SITE.

15          (R) A NATURAL HAZARDS REVIEW CONSISTING OF A LIST OF NATURAL  
16      HAZARDS SUCH AS PERIODIC FLOODING, POOR SOIL BEARING CONDITIONS,  
17      AND ANY OTHER HAZARDS PECULIAR TO THE SITE.

18          (S) A SUBSTRATA REVIEW INCLUDING A DESCRIPTIVE SUMMARY OF  
19      THE VARIOUS GEOLOGIC BEDROCK FORMATIONS UNDERLYING THE SITE,  
20      INCLUDING THE IDENTIFICATION OF KNOWN AQUIFERS, THE APPROXIMATE  
21      DEPTHS OF THE AQUIFERS, AND, IF BEING TAPPED FOR USE, THE PRINCI-  
22      PAL USES TO BE MADE OF THESE WATERS, INCLUDING IRRIGATION, DOMES-  
23      TIC WATER SUPPLY, AND INDUSTRIAL USAGE.

24          (T) AN EROSION REVIEW SHOWING HOW EROSION CONTROL WILL BE  
25      ACHIEVED AND ILLUSTRATING PLANS OR PROGRAMS THAT MAY BE REQUIRED  
26      BY ANY EXISTING SOIL EROSION AND SEDIMENTATION ORDINANCE.

(U) AT A MINIMUM, PLANS FOR COMPLIANCE WITH ALL OF THE FOLLOWING STANDARDS REQUIRED FOR CONSTRUCTION AND POSTCONSTRUCTION PERIODS:

(i) SURFACE DRAINAGE DESIGNS AND STRUCTURES SHALL BE EROSION-PROOF THROUGH CONTROL OF THE DIRECTION, VOLUME, AND VELOCITIES OF DRAINAGE PATTERNS. THESE PATTERNS SHALL PROMOTE NATURAL VEGETATION GROWTH THAT ARE INCLUDED IN THE DESIGN SO THAT DRAINAGE WATERS MAY BE IMPEDED IN THEIR FLOW AND PERCOLATION ENCOURAGED.

(ii) THE DESIGN SHALL INCLUDE TRASH COLLECTION DEVICES WHEN HANDLING STREET AND PARKING DRAINAGE TO CONTAIN SOLID WASTE AND TRASH.

(iii) WATERCOURSE DESIGNS, CONTROL VOLUMES, AND VELOCITIES OF WATER SHALL PREVENT BOTTOM AND BANK EROSION. IN PARTICULAR, CHANGES OF DIRECTION SHALL GUARD AGAINST UNDERCUTTING OF BANKS.

(iv) IF VEGETATION HAS BEEN REMOVED OR HAS NOT BEEN ABLE TO GROW ON SURFACE AREAS SUCH AS INFILL ZONES, THE OWNER SHALL STABILIZE AND CONTROL THE IMPACTED SURFACE AREAS TO PREVENT WIND EROSION AND THE BLOWING OF SURFACE MATERIAL THROUGH THE PLANTING OF GRASSES, WINDBREAKS, AND OTHER SIMILAR BARRIERS.

(3) TO THE EXTENT CONSISTENT WITH APPLICABLE LAW, THE COST OF PREPARING AN ENVIRONMENTAL IMPACT STATEMENT UNDER THIS SECTION MAY BE RECOVERED FROM THE STATE OR LOCAL GOVERNMENT FINANCING BEING PROVIDED FOR THE INFRASTRUCTURE PROJECT.