

# HOUSE BILL No. 4352

February 17, 2005, Introduced by Reps. Hildenbrand, Lemmons, III, Schuitmaker, Lemmons, Jr., Stahl, Espinoza, Taub, Kathleen Law, Sheen, Pearce, Nitz and Drolet and referred to the Committee on Agriculture.

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.

**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  
5 development rights and makes a covenant running with the land not  
6 to undertake development.

7           (b) "Agricultural use" means the production of plants and

1 animals useful to humans, including forages and sod crops; grains,  
2 feed crops, and field crops; dairy and dairy products; poultry and  
3 poultry products; livestock, including **BOARDING**, breeding, and  
4 grazing of cattle, swine, captive cervidae, **EQUINE**, and similar  
5 animals; berries; herbs; flowers; seeds; grasses; nursery stock;  
6 fruits; vegetables; Christmas trees; and other similar uses and  
7 activities. Agricultural use includes use in a federal acreage set-  
8 aside program or a federal conservation reserve program.  
9 Agricultural use does not include the management and harvesting of  
10 a woodlot.

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

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

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

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

26 (g) "Development rights easement" means a grant, by an  
27 instrument, in which the owner relinquishes to the public in

1 perpetuity or for a term of years the right to undertake  
2 development of the land, and that contains a covenant running with  
3 the land, not to undertake development, subject to permitted uses.

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

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

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

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

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

26 (i) "Local governing body" means 1 of the following:

27 (i) With respect to farmland or open space land that is located

1 in a city or village, the legislative body of the city or village.

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

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

9 (j) "Open space land" means 1 of the following:

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

11 (A) Any undeveloped site included in a national registry of  
12 historic places or designated as a historic site pursuant to state  
13 or federal law.

14 (B) Riverfront ownership subject to designation under part  
15 305, to the extent that full legal descriptions may be declared  
16 open space under the meaning of this part, if the undeveloped  
17 parcel or government lot parcel or portions of the undeveloped  
18 parcel or government lot parcel as assessed and owned is affected  
19 by that part and lies within 1/4 mile of the river.

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

22 (ii) Any other area approved by the local governing body, the  
23 preservation of which area in its present condition would conserve  
24 natural or scenic resources, including the promotion of the  
25 conservation of soils, wetlands, and beaches; the enhancement of  
26 recreation opportunities; the preservation of historic sites; and  
27 idle potential farmland of not less than 40 acres that is

1 substantially undeveloped and because of its soil, terrain, and  
2 location is capable of being devoted to agricultural uses as  
3 identified by the department of agriculture.

4 (k) "Owner" means a person having a freehold estate in land  
5 coupled with possession and enjoyment. If land is subject to a land  
6 contract, owner means the vendee in agreement with the vendor.

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

17 (m) "Person" includes an individual, corporation, limited  
18 liability company, business trust, estate, trust, partnership, or  
19 association, or 2 or more persons having a joint or common interest  
20 in land.

21 (n) "Planning commission" means a planning commission created  
22 by the local governing body under 1945 PA 282, MCL 125.101 to  
23 ~~125.107~~ **125.115**, 1959 PA 168, MCL 125.321 to 125.333, or 1931 PA  
24 285, MCL 125.31 to 125.45, as applicable.

25 (o) "Prohibited use" means a use that is not consistent with  
26 an agricultural use for farmland subject to a development rights  
27 agreement or is not consistent with the open space character of the

1 land for lands subject to a development rights easement.

2 (p) "Property taxes" means general ad valorem taxes levied  
3 after January 1, 1974, on lands and structures in this state,  
4 including collection fees, but not including special assessments,  
5 penalties, or interest.

6 (q) "Regional planning commission" means a regional planning  
7 commission created pursuant to 1945 PA 281, MCL 125.11 to 125.25.

8 (r) "Regional planning district" means the planning and  
9 development regions as established by executive directive 1968-1,  
10 as amended, whose organizational structure is approved by the  
11 regional council.

12 (s) "State income tax act" means the income tax act of 1967,  
13 1967 PA 281, MCL 206.1 to 206.532, and in effect during the  
14 particular year of the reference to the act.

15 (t) "State land use agency" means the department of  
16 agriculture.

17 (u) "Substantially undeveloped" means any parcel or area of  
18 land essentially unimproved except for a dwelling, building,  
19 structure, road, or other improvement that is incidental to  
20 agricultural and open space uses.

21 (v) "Unique or critical land area" means agricultural or open  
22 space lands identified by the land use agency as an area that  
23 should be preserved.