

SENATE BILL NO. 47

February 01, 2023, Introduced by Senators DALEY, MCDONALD RIVET, LAUWERS, VICTORY, BELLINO, HUIZENGA and THEIS and referred to the Committee on Natural Resources and Agriculture.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 36103, 36110, and 36111 (MCL 324.36103, 324.36110, and 324.36111), section 36103 as amended by 2003 PA 36 and sections 36110 and 36111 as amended by 2016 PA 265.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 36103. (1) The execution and acceptance of a development
2 rights agreement or easement by ~~the~~**this** state or **the** local
3 governing body and the owner dedicates to the public the

1 development rights in the land for the term specified in the
2 instrument. A development rights agreement or easement shall be for
3 an initial term of not less than 10 years. A development rights
4 agreement or easement entered into after June 5, 1996 shall not be
5 for a term of more than 90 years.

6 (2) ~~The~~**This** state or ~~the~~ local governing body shall not sell,
7 transfer, convey, relinquish, vacate, or otherwise dispose of a
8 development rights agreement or easement except with the agreement
9 of the owner as provided in sections 36111, 36111a, 36112, and
10 36113.

11 (3) An agreement or easement does not supersede any prior
12 lien, lease, or interest that is properly recorded with the county
13 register of deeds.

14 (4) A lien created under this part in favor of ~~the~~**this** state
15 or a local governing body is subordinate to a lien of a mortgage
16 that is recorded in the office of the register of deeds before the
17 recording of the lien of ~~the~~**this** state or **a** local governing body.

18 (5) ~~The~~**This** state shall subordinate its interest in a
19 recorded agreement under section 36104 or an easement under section
20 36105 or 36106 to a subsequently recorded mortgage lien, lease, or
21 interest if both of the following conditions are met:

22 (a) The parcel meets the requirements set forth under section
23 36111(2)(a) for parcels containing existing structures.

24 (b) The landowner requesting the subordination is an
25 individual essential to the operation of the farm as **that term is**
26 defined in section ~~36110(5)~~**36110(6)**.

27 Sec. 36110. (1) Land subject to a development rights agreement
28 or easement may be sold without penalty under sections 36111,
29 36112, and 36113, if the use of the land by the successor in title

1 complies with ~~the provisions contained in~~ the development rights
2 agreement or easement. The seller shall notify the governmental
3 authority having jurisdiction over the development rights of the
4 change in ownership.

5 (2) If the owner of land subject to a development rights
6 agreement or easement dies or becomes totally and permanently
7 disabled or ~~when-if~~ an individual essential to the operation of the
8 farm dies or becomes totally and permanently disabled, the land may
9 be relinquished from the program under this part and is subject to
10 a lien pursuant to sections 36111(11), 36112(7), and 36113(7). A
11 request for relinquishment under this section shall be made within
12 3 years ~~from~~**after** the date of death or disability. A request for
13 relinquishment under this subsection shall be made only by the
14 owner in case of a disability or, in case of death, the person who
15 becomes the owner through survivorship or inheritance.

16 (3) If an owner of land subject to a development rights
17 agreement becomes totally and permanently disabled or dies, land
18 containing structures that were present before the recording of the
19 development rights agreement may be relinquished from the
20 agreement, upon request of the disabled agreement holder or upon
21 request of the person who becomes an owner through survivorship or
22 inheritance, and upon approval of the local governing body and the
23 state land use agency. Not more than 2 acres may be relinquished
24 under this subsection unless additional land area is needed to
25 encompass all of the buildings located on the parcel, in which case
26 not more than 5 acres may be relinquished. If the **size of the**
27 parcel proposed to be relinquished is less ~~in area than the minimum~~
28 ~~parcel size~~**than that** required by local zoning, the parcel ~~may~~
29 **shall** not be relinquished unless a variance is obtained from the

1 local zoning board of appeals to allow for the smaller parcel size.
2 The portion of the farmland relinquished from the development
3 rights agreement under this subsection is subject to a lien
4 pursuant to section 36111(11).

5 **(4) If approved by the local governing body and the state land**
6 **use agency, not more than 1 acre of land may be relinquished from**
7 **an agricultural conservation easement if the relinquishment would**
8 **make the boundaries of the land subject to the easement more**
9 **regular. If the size of the parcel proposed to be relinquished is**
10 **less than that required by local zoning, the parcel shall not be**
11 **relinquished unless a variance is obtained from the local zoning**
12 **board of appeals to allow for the smaller parcel size.**

13 **(5) ~~(4)~~—**The land described in a development rights agreement
14 may be divided into smaller parcels of land and ~~continued under~~
15 **remain subject to** the same terms and conditions as the original
16 development rights agreement. The smaller parcels created by the
17 division must meet the minimum requirements for being enrolled
18 under this ~~act~~ **part** or be 40 acres or more in size. Farmland may be
19 divided once under this subsection without **payment of a fee by to**
20 the state land use agency. The state land use agency may charge a
21 reasonable fee not greater than the state land use agency's actual
22 cost of dividing the agreement for all subsequent divisions of that
23 farmland. When a division of a development rights agreement is made
24 under this subsection and is executed and recorded, the state land
25 use agency shall notify the applicant, the local governing body and
26 its assessing office, all reviewing agencies, and the department of
27 treasury.

28 **(6) ~~(5)~~—**As used in this section, "individual essential to the
29 operation of the farm" means a co-owner, partner, shareholder, farm

1 manager, or family member, who, to a material extent, cultivates,
 2 operates, or manages farmland under this part. An individual is
 3 considered involved to a material extent if ~~that~~**the** individual
 4 does 1 or more of the following:

5 (a) Has a financial interest equal to or greater than 1/2 the
 6 cost of producing the crops, livestock, or products and inspects
 7 and advises and consults with the owner on production activities.

8 (b) Works 1,040 hours or more annually in activities connected
 9 with production of the farming operation.

10 **(7)** ~~(6)~~The state land use agency shall not charge a fee to
 11 process a change of ownership under subsection (1). ~~or a division~~
 12 ~~under subsection (4).~~

13 Sec. 36111. (1) A development rights agreement expires at the
 14 expiration of the term of the agreement unless renewed with the
 15 consent of the owner of the land. If the owner of the land has
 16 complied with the requirements of this part regarding development
 17 rights agreements, the owner is entitled to automatic renewal of
 18 the agreement upon written request of the owner. A development
 19 rights agreement may be renewed for a term of not less than 7
 20 years. If a development rights agreement is renewed, the state land
 21 use agency shall send a copy of the renewal contract to the local
 22 governing body.

23 (2) A development rights agreement or a portion of the
 24 farmland covered by a development rights agreement may be
 25 relinquished as provided in this section and section 36111a.
 26 Farmland may be relinquished by this state before a termination
 27 date contained in the instrument under ~~either of the~~ following
 28 circumstances:

29 (a) If approved by the local governing body and the state land

1 use agency, land containing structures that were present before the
2 recording of the development rights agreement may be relinquished
3 from the agreement. Not more than 2 acres may be relinquished under
4 this subdivision unless additional land area is needed to encompass
5 all of the buildings located on the parcel, in which case not more
6 than 5 acres may be relinquished. If the size of the parcel
7 proposed to be relinquished is less than that required by local
8 zoning, the parcel shall not be relinquished unless a variance is
9 obtained from the local zoning board of appeals to allow for the
10 smaller parcel size.

11 (b) If approved by the local governing body and the state land
12 use agency, land may be relinquished from the agreement for the
13 construction of a residence by an individual essential to the
14 operation of the farm as **that term is** defined in section ~~36110(5)~~.
15 **36110(6)**. Not more than 2 acres may be relinquished under this
16 subdivision. If the size of the parcel proposed to be relinquished
17 is less than that required by local zoning, the parcel shall not be
18 relinquished unless a variance is obtained from the local zoning
19 board of appeals to allow for the smaller parcel size.

20 (c) **If approved by the local governing body and the state land**
21 **use agency, not more than 1 acre of land may be relinquished from**
22 **an agreement if the relinquishment would make the boundaries of the**
23 **land subject to the agreement more regular. If the size of the**
24 **parcel proposed to be relinquished is less than that required by**
25 **local zoning, the parcel shall not be relinquished unless a**
26 **variance is obtained from the local zoning board of appeals to**
27 **allow for the smaller parcel size.**

28 (3) Until April 1, 1997, if an owner who entered into or
29 renewed a development rights agreement before April 15, 1994 makes

1 a request, in writing, to the state land use agency, to terminate
2 ~~that~~**the** development rights agreement with respect to all or a
3 portion of the farmland covered by the agreement, the state land
4 use agency shall approve the request and relinquish ~~that~~**the**
5 farmland from the development rights agreement. If farmland is
6 relinquished under this subsection, the state land use agency shall
7 notify the local governing body of the local unit of government in
8 which the land is located of the relinquishment.

9 (4) If the request for relinquishment of the development
10 rights agreement is approved, the state land use agency shall
11 prepare an instrument, subject to subsections (5) to (8), and shall
12 forward the original relinquishment instrument to the applicant.
13 The applicant shall have the relinquishment instrument recorded by
14 the register of deeds in the county in which the property is
15 located. The applicant shall provide a copy of the recorded
16 relinquishment instrument to the department.

17 (5) If a development rights agreement or a portion of a
18 development rights agreement is to be relinquished pursuant to
19 subsection (2) or section 36111a, the state land use agency shall
20 record a lien against the property formerly subject to the
21 development rights agreement for the total amount of the allocated
22 tax credit of the last 7 years, including the year of termination,
23 received by an owner under section 36109 and attributable to the
24 property formerly subject to the development rights agreement, plus
25 interest at the rate of 6% per annum simple interest from the time
26 the credit was received until the lien is placed on the property.

27 (6) If the property being relinquished from the development
28 rights agreement is less than all of the property subject to ~~that~~
29 **the** development rights agreement, the allocated tax credit for the

1 development rights agreement shall be multiplied by the property's
2 share of the taxable value of the agreement. As used in this
3 subsection:

4 (a) "The allocated tax credit" means the amount obtained by
5 multiplying the owner's total farmland preservation credit claimed
6 in that year on all agreements by the quotient of the ad valorem
7 property tax levied in that year on property subject to the
8 development rights agreement that included the property being
9 relinquished from the agreement divided by the total property taxes
10 levied on property subject to any development rights agreement and
11 used in determining the farmland preservation credit in that year.

12 (b) "The property's share of the taxable value of the
13 agreement" means the quotient of the taxable value of the property
14 being relinquished from the agreement divided by the total taxable
15 value of property subject to the development rights agreement that
16 included the property being relinquished from the agreement. ~~For~~
17 ~~years before 1995, taxable value means assessed value.~~

18 (7) Thirty days before the recording of a lien under this
19 section, the state land use agency shall notify the owner of the
20 farmland subject to the development rights agreement of the amount
21 of the lien, including interest, if any. If the lien amount is paid
22 before 30 days after the owner is notified, the lien shall not be
23 recorded. The lien may be paid and discharged at any time and is
24 payable to ~~the~~**this** state by the owner of record when the land or
25 any portion of it is sold by the owner of record, or if the land is
26 converted to a use prohibited by the former development rights
27 agreement. The lien shall be discharged upon renewal or reentry in
28 a development rights agreement, except that a subsequent lien shall
29 not be less than the lien discharged. ~~Notwithstanding any other~~

1 ~~provision of this section, from July 1, 2011 through September 30,~~
2 ~~2011, a lien under this section recorded before January 1, 2011 may~~
3 ~~be paid at 85% of the face value of the lien. From October 1, 2011~~
4 ~~through March 31, 2012, a lien under this section recorded before~~
5 ~~January 1, 2011 may be paid at 90% of the face value of the lien.~~

6 (8) Upon the termination of all or a portion of the
7 development rights agreement under subsection (3) or, subject to
8 subsection (14), the termination of a development rights agreement
9 under subsection (1), the state land use agency shall prepare and
10 record a lien, if any, against the property formerly subject to the
11 development rights agreement for the total amount of the allocated
12 tax credit of the last 7 years, including the year of termination,
13 received by the owner under section 36109, attributable to the
14 property formerly subject to the development rights agreement. The
15 lien shall be without interest or penalty and is payable as
16 provided in subsection (7). However, if the development rights
17 agreement was approved or rejected by the local governing body
18 under section 36104 on or after July 1, 2012 and is terminated
19 under subsection (1), the amount of the lien shall include interest
20 at the current monthly interest rate of 1 percentage point above
21 the adjusted prime rate per annum from the time the lien is
22 recorded until it is paid. The adjusted prime rate shall be
23 determined as provided in section 23 of 1941 PA 122, MCL 205.23.

24 (9) The state land use agency shall notify the department of
25 treasury of the termination of a development rights agreement.

26 (10) The unappropriated proceeds from lien payments made under
27 this part shall be forwarded to the state treasurer for deposit in
28 the agricultural preservation fund created in section 36202.

29 (11) Upon the relinquishment of all of the farmland under

1 section 36110(2) or a portion of the farmland under section
 2 36110(3), the state land use agency shall prepare and record a lien
 3 against the property formerly subject to a development rights
 4 agreement in an amount calculated as follows:

5 (a) Establishing a term of years by multiplying 7 by a
 6 fraction, the numerator of which is the number of years the
 7 farmland was under the development rights agreement, including any
 8 extensions, and the denominator of which is the number representing
 9 the term of years of ~~that~~**the** agreement, including any extensions.

10 (b) The lien amount equals the total amount of the allocated
 11 tax credit claimed attributable to ~~that~~**the** development rights
 12 agreement in the immediately preceding term of years as determined
 13 in subdivision (a).

14 (12) When a lien is paid under this section, the state land
 15 use agency shall prepare and record a discharge of lien with the
 16 register of deeds in the county in which the land is located. The
 17 discharge of lien shall specifically state that the lien has been
 18 paid in full, that the lien is discharged, that the development
 19 rights agreement and accompanying contract are terminated, and that
 20 the state has no further interest in the land under ~~that~~**the**
 21 agreement.

22 (13) A farmland development rights agreement is automatically
 23 relinquished when the farmland becomes subject to an agricultural
 24 conservation easement or purchase of development rights under
 25 section 36111b or 36206.

26 (14) If, upon expiration of the term of a farmland development
 27 rights agreement, the farmland becomes subject to an agricultural
 28 conservation easement or purchase of development rights under
 29 section 36111b or 36206 or if a farmland development rights

- 1 agreement is automatically relinquished under subsection (13), the
- 2 farmland is not subject to a lien under this section.