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BILL ANALYSIS



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Senate Bill 1127 (as introduced 2-19-08)
Sponsor: Senator John J. Gleason
Committee: Agriculture

Date Completed: 3-5-08

CONTENT

The bill would amend Part 361 (Farmland and Open Space Preservation) of the Natural Resources and Environmental Protection Act to do the following:

- Require the State or a local governing body to relinquish an open space development rights easement if the land would be devoted to the production of crops as biomass for the generation of energy.**
- Provide that a lien for unpaid property taxes could not be recorded if the land would be subject to a farmland development rights easement.**

Under Sections 36105 and 36106 of the Act, the owner of open space land may apply for an open space development rights easement under which the owner relinquishes to the public, in perpetuity or for a term of years, the right to develop the land. The development rights are held by the State or a local governing body, depending on the type of land, and are exempt from property taxes.

An open space development rights easement must be relinquished by the State or the local governing body when it expires unless it is renewed with the land owner's consent. A development rights easement also may be relinquished before its termination date if the State or the local governing body determines that development is in the public interest and the land owner agrees, and if the land owner applies for relinquishment and the request is approved. If an easement is relinquished upon the owner's request, the land is subject to a lien for the property taxes not paid on the development rights, plus interest. The lien becomes payable when the land is sold or converted to a use prohibited by the former easement.

Under the bill, an open space development rights easement would have to be relinquished by the State or the local governing body, as applicable, before a termination date contained in the instrument if the land would be devoted to the production of crops as biomass for the generation of energy.

If a development rights easement were to be relinquished under the bill, the Michigan Department of Agriculture (MDA) or the local governing body would have to prepare and record a lien as currently provided. A lien could not be recorded, however, and the development rights would revert to the owner without penalty or interest if the land were subject to a farmland development rights easement under Section 36104. If the land became subject to a farmland development rights easement after the lien was recorded, the lien would be released and the MDA or the local governing body would have to prepare and record a discharge of lien with the register of deeds in the county where the land was located.

(Under Section 36104, the owner of farmland may apply for a farmland development rights agreement under which the owner and the State jointly hold the right to undertake development, and that contains a covenant not to undertake development for a term of years. The jointly owned development rights are not exempt from property taxes, but the landowner may claim a credit for the amount by which the property taxes on the land subject to the agreement exceed 3.5% of the owner's household income or adjusted business income.)

MCL 324.36110 et al.

BACKGROUND

Section 36105 applies to open space land that is one of the following:

- Any undeveloped site included in a national registry of historic places or designated as a historic site pursuant to State or Federal law.
- Riverfront ownership subject to designation under Part 305 (Natural Rivers), to the extent that full legal descriptions may be declared open space, if the undeveloped parcel or government lot parcel or portion of the parcel as assessed and owned is affected by Part 305 and lies within one-quarter mile of the river.
- Undeveloped land designated as environmental areas under Part 323 (Shorelands Protection and Management), including unregulated portions of that land.

If the owner of this type of open space land applies for a development rights easement, the application must be submitted to the Michigan Department of Agriculture for approval or rejection. If the MDA approves the application, the Department must prepare an open space development rights easement that includes the following provisions:

- A structure may not be built on the land without the MDA's approval.
- Improvements to the land may not be made without the MDA's approval.
- An interest in the land may not be sold, except for a scenic, access, or utility easement that does not hinder the character of the open space land.
- Access to the land may be provided if the owner agrees and if access will not jeopardize the conditions of the land.

As agreed to by the parties, the easement also may include any other condition or restriction on the land that is considered necessary to preserve the land or appropriate portions of it as open space land.

Section 36106 applies to open space land that is any area other than that described above, approved by the local governing body, whose preservation in its present condition would conserve natural or scenic resources, including the promotion of conservation of soils, wetlands, and beaches; the enhancement of recreational opportunities; the preservation of historic sites; and idle potential farmland of at least 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 MDA.

An application for a development rights easement under Section 36106 must be filed with the local governing body, which must notify various local agencies and approve or reject the application. If the application is approved, the local governing body must prepare the easement (or the MDA must do so if it approves the application on appeal). The easement must contain the same provisions as described above, except that approval of the local governing body, rather than the MDA, is required for building a structure or making improvements.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

It is not possible to estimate the fiscal impact of this bill, but it probably would be very small. Currently, there are approximately 4,000 acres of land in open space development rights easements granted by the State, and 6,000 acres in local open space development rights easements, and much of this land is probably not suitable for farming. This is particularly true for the land in State-granted open space development rights easements, which includes much wooded land along rivers. Under current law, a property owner granted an easement under either of these programs has to pay property taxes only on the value of the land excluding the value of any potential development; however, if the land is prematurely withdrawn from either of these programs, the landowner must pay the past property taxes on the value of the property's development rights that otherwise would have been assessed during the years the property was in the easement program. Under this bill, these penalties would be waived as long as: 1) the property would be used to produce crops as biomass for the generation of energy, and 2) the land became subject to a farmland development rights easement. There is no way to know how much, if any, of this land would be withdrawn from these open space easement programs, become subject to a farmland development rights easement, and be used to produce biomass for the purpose of generating energy.

Fiscal Analyst: Jay Wortley

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