

SENATE BILL No. 932

November 29, 2007, Introduced by Senator BIRKHOLZ and referred to the Committee on Finance.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 8716, 14501, 36109, and 73301 (MCL 324.8716, 324.14501, 324.36109, and 324.73301), section 8716 as amended by 2003 PA 163, section 14501 as amended by 2006 PA 254, section 36109 as amended by 2002 PA 75, and section 73301 as added by 1995 PA 58.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 8716. (1) The freshwater protection fund is created
2 within the state treasury.

3 (2) The state treasurer may receive money or other assets from
4 any source for deposit into the fund, including general fund
5 general purpose appropriations, gifts, grants, **AND** bequests. ~~, and,~~
6 ~~if provided by law, revenue from the sale of Michigan freshwater~~

1 ~~protection bonds or the Michigan freshwater protection checkoff on~~
2 ~~state income and single business tax returns.~~ The director shall
3 annually seek matching general fund general purpose appropriations
4 in amounts equal to the groundwater protection fees **COLLECTED UNDER**
5 **SECTION 8715 THAT ARE** deposited into the fund pursuant to this
6 part. The state treasurer shall direct the investment of the fund.
7 The state treasurer shall credit to the fund interest and earnings
8 from fund investments.

9 (3) Money in the fund at the close of the fiscal year shall
10 remain in the fund and shall not lapse to the general fund.

11 (4) **THE DEPARTMENT SHALL BE THE ADMINISTRATOR OF THE FUND FOR**
12 **AUDITING PURPOSES.**

13 (5) ~~(4)~~—The department shall expend money from the fund, upon
14 appropriation, only for 1 or more of the following purposes:

15 (a) Direct assistance.

16 (b) Indirect assistance.

17 (c) Emergency response and removal of potential sources of
18 groundwater contamination. Expenditures pursuant to this
19 subdivision shall not exceed \$15,000.00 per location.

20 (d) Groundwater protection and groundwater regulatory program.

21 (e) Administrative costs. Expenditures pursuant to this
22 subdivision shall not exceed 20% of the annual appropriations from
23 the fund.

24 (6) ~~(5)~~—The department shall establish criteria and procedures
25 for approving proposed expenditures from the fund.

26 (7) ~~(6)~~—Notwithstanding section 8715, if at the close of any
27 fiscal year the amount of money in the fund exceeds \$3,500,000.00,

1 the department shall not collect a groundwater protection fee for
2 the following year. After the groundwater protection fees have been
3 suspended under this subsection, the fees shall only be reinstated
4 if, at the close of any succeeding fiscal year, the amount of money
5 in the fund is less than \$1,000,000.00.

6 (8) ~~(7)~~—The department of treasury shall, before November 1 of
7 each year, notify the department of the balance in the fund at the
8 close of the preceding fiscal year.

9 (9) ~~(8)~~—As used in this section:

10 (a) "Administrative costs" includes, but is not limited to,
11 costs incurred during any of the following:

12 (i) Groundwater monitoring for pesticides and fertilizers.

13 (ii) Development and enforcement of groundwater protection
14 rules.

15 (iii) Coordination of programs under this part with the United
16 States environmental protection agency and other state programs
17 with groundwater and pesticide management responsibilities.

18 (iv) Management of pesticide sales information.

19 (b) "Direct assistance" includes, but is not limited to,
20 programs that will provide for any of the following:

21 (i) Provision of alternate noncommunity water supplies.

22 (ii) Closure of wells that may impact groundwater, such as
23 abandoned, improperly constructed, or drainage wells.

24 (iii) The environmentally sound disposal or recycling of
25 specialty pesticide containers.

26 (iv) The environmentally sound disposal or recycling of
27 nonspecialty pesticide containers.

1 (v) Specialty and nonspecialty pesticide pickup programs for
2 pesticides not currently registered for use.

3 (vi) Programs devoted to integrated pest and crop management
4 that strive to encourage the judicious use of pesticides and
5 fertilizers through targeted applications as part of a systems
6 approach to pest control and related crop management decisions.

7 (vii) Incentive and cost share programs for persons in the
8 groundwater stewardship program for implementation of groundwater
9 stewardship practices or groundwater protection rules.

10 (viii) Incentive and cost share programs for persons who notify
11 the director of potential sources of groundwater contamination on
12 their property.

13 (ix) Monitoring of private well water for pesticides and
14 fertilizers.

15 (x) Removal of soils and waters contaminated by pesticides and
16 fertilizers and the land application of those materials at
17 agronomic rates.

18 (xi) Groundwater stewardship program grants pursuant to section
19 8710.

20 (xii) Other programs established pursuant to this part.

21 (c) "Indirect assistance" includes, but is not limited to,
22 programs that will provide for any of the following:

23 (i) Public education and demonstration programs on specialty
24 pesticide container recycling and environmentally sound disposal
25 methods.

26 (ii) Educational programs for pesticide and fertilizer end
27 users.

1 (iii) Technical assistance programs for pesticide and fertilizer
2 end users.

3 (iv) The promotion and implementation of on-site evaluation
4 systems and groundwater stewardship practices.

5 (v) Research programs for determination of the impacts of
6 alternate pesticide and fertilizer management practices.

7 (vi) Research program for determination of aquifer sensitivity
8 and vulnerability to contamination by pesticides and fertilizers.

9 Sec. 14501. As used in this part:

10 (a) "Agricultural biomass" means residue and waste generated
11 on a farm or by farm co-operative members from the production and
12 processing of agricultural products, animal wastes, food processing
13 wastes, or other materials as approved by the director.

14 (b) "Department" means the department of environmental
15 quality.

16 (c) "Director" means the director of the department of
17 environmental quality.

18 (d) "Eligible farmer or agricultural processor" means a person
19 who processes agricultural products or a person who is engaged as
20 an owner-operator of a farm in the production of agricultural goods
21 as defined by section ~~35(1)(h) of the single business tax act, 1975~~
22 **PA 228, MCL 208.35-207(1)(D) OF THE MICHIGAN BUSINESS TAX ACT, 2007**
23 **PA 36, MCL 208.1207.**

24 (e) "Environmental wastes" means all environmental pollutants,
25 wastes, discharges, and emissions, regardless of how they are
26 regulated and regardless of whether they are released to the
27 general environment or the workplace environment.

1 (f) "Pollution prevention" means all of the following:

2 (i) "Source reduction" as defined in 42 USC 13102.

3 (ii) "Pollution prevention" as described in the United States
4 environmental protection agency's pollution prevention statement
5 dated June 15, 1993.

6 (iii) Environmentally sound on-site or off-site reuse or
7 recycling including, but not limited to, the use of agricultural
8 biomass by qualified agricultural energy production systems.

9 (g) "Qualified agricultural energy production system" means
10 the structures, equipment, and apparatus to be used to produce a
11 gaseous fuel from the noncombustive decomposition of agricultural
12 biomass and the apparatus and equipment used to generate
13 electricity or heat from the gaseous fuel or store the gaseous fuel
14 for future generation of electricity or heat. Qualified
15 agricultural energy production system may include, but is not
16 limited to, a methane digester, biomass gasification technology, or
17 thermal depolymerization technology.

18 (h) "RETAP" means the retired engineers technical assistance
19 program created in section 14511.

20 (i) "Retap fund" means the retired engineers technical
21 assistance program fund created in section 14512.

22 (j) "Small business" means a business that is not dominant in
23 its field as described in 13 CFR part 121 and meets both of the
24 following requirements:

25 (i) Is independently owned or operated, by a person that
26 employs 500 or fewer individuals.

27 (ii) Is a small business concern as defined in 15 USC 632.

1 Sec. 36109. (1) An owner of farmland and related buildings
2 subject to 1 or more development rights agreements under section
3 36104 or agricultural conservation easements or purchases of
4 development rights under section 36111b or 36206 who is required or
5 eligible to file a return as an individual or a claimant under the
6 state income tax act may claim a credit against the state income
7 tax liability for the amount by which the property taxes on the
8 land and structures used in the farming operation, including the
9 homestead, restricted by the development rights agreements,
10 agricultural conservation easements, or purchases of development
11 rights exceed 3.5% of the household income as defined in section
12 508 of the income tax act of 1967, 1967 PA 281, MCL 206.508,
13 excluding a deduction if taken under section 613 of the internal
14 revenue code of 1986, **26 USC 613**. For the purposes of this section,
15 all of the following apply:

16 (a) A partner in a partnership is considered an owner of
17 farmland and related buildings owned by the partnership and covered
18 by a development rights agreement, agricultural conservation
19 easement, or purchase of development rights. A partner is
20 considered to pay a proportion of the property taxes on that
21 property equal to the partner's share of ownership of capital or
22 distributive share of ordinary income as reported by the
23 partnership to the internal revenue service or, if the partnership
24 is not required to report that information to the internal revenue
25 service, as provided in the partnership agreement or, if there is
26 no written partnership agreement, a statement signed by all the
27 partners. A partner claiming a credit under this section based upon

1 the partnership agreement or a statement shall file a copy of the
2 agreement or statement with his or her income tax return. If the
3 agreement or statement is not filed, the department of treasury
4 shall deny the credit. All partners in a partnership claiming the
5 credit allowed under this section shall compute the credit using
6 the same basis for the apportionment of the property taxes.

7 (b) A shareholder of a corporation that has filed a proper
8 election under subchapter S of chapter 1 of subtitle A of the
9 internal revenue code of 1986, 26 ~~U.S.C.~~ **USC** 1361 to 1379, is
10 considered an owner of farmland and related buildings covered by a
11 development rights agreement that are owned by the corporation. A
12 shareholder is considered to pay a proportion of the property taxes
13 on that property equal to the shareholder's percentage of stock
14 ownership for the tax year as reported by the corporation to the
15 internal revenue service. Except as provided in subsection (8),
16 this subdivision applies to tax years beginning after 1987.

17 (c) Except as otherwise provided in this subdivision, an
18 individual in possession of property for life under a life estate
19 with remainder to another person or holding property under a life
20 lease is considered the owner of that property if it is farmland
21 and related buildings covered by a development rights agreement.
22 Beginning January 1, 1986, if an individual in possession of
23 property for life under a life estate with remainder to another
24 person or holding property under a life lease enters into a written
25 agreement with the person holding the remainder interest in that
26 land and the written agreement apportions the property taxes in the
27 same manner as revenue and expenses, the life lease or life estate

1 holder and the person holding the remainder interest may claim the
2 credit under this act as it is apportioned to them under the
3 written agreement upon filing a copy of the written agreement with
4 the return.

5 (d) If a trust holds farmland and related buildings covered by
6 a development rights agreement and an individual is treated under
7 subpart E of subchapter J of subchapter A of chapter 1 of the
8 internal revenue code of 1986, 26 ~~U.S.C.~~ **USC** 671 to 679, as the
9 owner of that portion of the trust that includes the farmland and
10 related buildings, that individual is considered the owner of that
11 property.

12 (e) An individual who is the sole beneficiary of a trust that
13 is the result of the death of that individual's spouse is
14 considered the owner of farmland and related buildings covered by a
15 development rights agreement and held by the trust if the trust
16 conforms to all of the following:

17 (i) One hundred percent of the trust income is distributed to
18 the beneficiary in the tax year in which the trust receives the
19 income.

20 (ii) The trust terms do not provide that any portion of the
21 trust is to be paid, set aside, or otherwise used in a manner that
22 would qualify for the deduction allowed by section 642(c) of the
23 internal revenue code of 1986, **26 USC 642**.

24 (f) A member in a limited liability company is considered an
25 owner of farmland and related buildings covered by a development
26 rights agreement that are owned by the limited liability company. A
27 member is considered to pay a proportion of the property taxes on

1 that property equal to the member's share of ownership or
2 distributive share of ordinary income as reported by the limited
3 liability company to the internal revenue service.

4 (2) An owner of farmland and related buildings subject to 1 or
5 more development rights agreements under section 36104 or
6 agricultural conservation easements or purchases of development
7 rights under section 36111b or 36206 to whom subsection (1) does
8 not apply may claim a credit under the ~~single~~ **MICHIGAN** business tax
9 act, ~~1975 PA 228, MCL 208.1 to 208.145~~ **2007 PA 36, MCL 208.1101 TO**
10 **208.1601**, for the amount by which the property taxes on the land
11 and structures used in farming operations restricted by the
12 development rights agreements, agricultural conservation easements,
13 or purchases of development rights exceed 3.5% of the ~~adjusted~~
14 business income **TAX BASE** of the owner as defined in section ~~36~~ **of**
15 ~~the single business tax act, 1975 PA 228, MCL 208.36~~ **201 OF THE**
16 **MICHIGAN BUSINESS TAX ACT, 2007 PA 36, MCL 208.1201**, plus
17 compensation to shareholders not included in ~~adjusted~~ **THE** business
18 income **TAX BASE**, excluding any deductions if taken under section
19 613 of the internal revenue code of 1986, **26 USC 613**. When
20 calculating adjusted business income for tax years beginning before
21 1987, federal taxable income shall not be less than zero for the
22 purposes of this subsection only. A participant is not eligible to
23 claim a credit and refund against the ~~state single~~ **MICHIGAN**
24 business tax **ACT, 2007 PA 36, MCL 208.1101 TO 208.1601**, unless the
25 participant demonstrates that the participant's agricultural gross
26 receipts of the farming operation exceed 5 times the property taxes
27 on the land for each of 3 out of the 5 tax years immediately

1 preceding the year in which the credit is claimed. This eligibility
2 requirement does not apply to those participants who executed
3 farmland development rights agreements under this part before
4 January 1, 1978. A participant may compare, during the contract
5 period, the average of the most recent 3 years of agricultural
6 gross receipts to property taxes in the first year that the
7 participant entered the program under the present contract in
8 calculating the gross receipts qualification. Once an election is
9 made by the participant to compute the benefit in this manner, all
10 future calculations shall be made in the same manner.

11 (3) If the farmland and related buildings covered by a
12 development rights agreement under section 36104 or an agricultural
13 conservation easement or purchase of development rights under
14 section 36111b or 36206 are owned by more than 1 owner, each owner
15 is allowed to claim a credit under this section based upon that
16 owner's share of the property tax payable on the farmland and
17 related buildings. The department of treasury shall consider the
18 property tax equally apportioned among the owners unless a written
19 agreement signed by all the owners is filed with the return, which
20 agreement apportions the property taxes in the same manner as all
21 other items of revenue and expense. If the property taxes are
22 considered equally apportioned, a husband and wife shall be
23 considered 1 owner, and a person with respect to whom a deduction
24 under section 151 of the internal revenue code of 1986, **26 USC 151**,
25 is allowable to another owner of the property shall not be
26 considered an owner.

27 (4) A beneficiary of an estate or trust to which subsection

1 (1) does not apply is entitled to the same percentage of the credit
2 provided in this section as that person's percentage of all other
3 distributions by the estate or trust.

4 (5) If the allowable amount of the credit claimed exceeds the
5 state income tax or the state ~~single-business~~ tax otherwise due for
6 the tax year or if there is no state income tax or the state ~~single~~
7 business tax due for the tax year, the amount of the claim not used
8 as an offset against the state income tax or the state ~~single~~
9 business tax, after examination and review, shall be approved for
10 payment to the claimant pursuant to 1941 PA 122, MCL 205.1 to
11 205.31. The total credit allowable under this part and chapter 9 of
12 the income tax act of 1967, 1967 PA 281, MCL 206.501 to 206.532, or
13 the ~~single business tax act, 1975 PA 228, MCL 208.1 to 208.145~~
14 **MICHIGAN BUSINESS TAX ACT, 2007 PA 36, MCL 208.1101 TO 208.1601,**
15 shall not exceed the total property tax due and payable by the
16 claimant in that year. The amount the credit exceeds the property
17 tax due and payable shall be deducted from the credit claimed under
18 this part.

19 (6) For purposes of audit, review, determination, appeals,
20 hearings, notices, assessments, and administration relating to the
21 credit program provided by this section, the state income tax act,
22 **1967 PA 281, MCL 206.1 TO 206.36,** or ~~single business tax act, 1975~~
23 ~~PA 228, MCL 208.1 to 208.145~~ **THE MICHIGAN BUSINESS TAX ACT, 2007 PA**
24 **36, MCL 208.1101 TO 208.1601,** applies according to which tax the
25 credit is claimed against. If an individual is allowed to claim a
26 credit under subsection (1) based upon property owned or held by a
27 partnership, S corporation, or trust, the department of treasury

1 may require that the individual furnish to the department a copy of
2 a tax return, or portion of a tax return, and supporting schedules
3 that the partnership, S corporation, or trust files under the
4 internal revenue code.

5 (7) The department of treasury shall account separately for
6 payments under this part and not combine them with other credit
7 programs. A payment made to a claimant for a credit claimed under
8 this part shall be issued by 1 or more warrants made out to the
9 county treasurer in each county in which the claimant's property is
10 located and the claimant, unless the claimant specifies on the
11 return that a copy of the receipt showing payment of the property
12 taxes that became a lien in the year for which the credit is
13 claimed, or that became a lien in the year before the year for
14 which the credit is claimed, is attached to the income tax or
15 ~~single-business~~ tax return filed by the claimant. If the claimant
16 specifies that a copy of the receipt is attached to the return, the
17 payment shall be made directly to the claimant. A warrant made out
18 to a claimant and a county treasurer shall be used first to pay
19 delinquent property taxes, interest, penalties, and fees on
20 property restricted by the development rights agreement. If the
21 warrant exceeds the amount of delinquent taxes, interest,
22 penalties, and fees, the county treasurer shall remit the excess to
23 the claimant. If a claimant falsely specifies that the receipt
24 showing payment of the property taxes is attached to the return and
25 if the property taxes on the land subject to that development
26 rights agreement were not paid before the return was filed, all
27 future payments to that claimant of credits claimed under this act

1 attributable to that development rights agreement may be made
2 payable to the county treasurer of the county in which the property
3 subject to the development rights agreement is located and to that
4 claimant.

5 (8) For property taxes levied after 1987, a person that was an
6 S corporation and had entered into a development rights agreement
7 before January 1, 1989, and paid property taxes on that property,
8 may claim the credit allowed by this section as an owner eligible
9 under subsection (2). A subchapter S corporation claiming a credit
10 as permitted by this subsection for taxes levied in 1988 through
11 1990 shall claim the credit by filing an amended return under the
12 single business tax act, 1975 PA 228, MCL 208.1 to 208.145. If a
13 subchapter S corporation files an amended return as permitted by
14 this subsection and if a shareholder of the subchapter S
15 corporation claimed a credit under subsection (1)(b) for the same
16 property taxes, the shareholder shall file an amended return under
17 the state income tax act. A subchapter S corporation is not
18 entitled to a credit under this subsection until all of its
19 shareholders file the amended returns required by this subsection.
20 The department of treasury shall first apply a credit due to a
21 subchapter S corporation under this subsection to repay credits
22 claimed under this section by the subchapter S corporation's
23 shareholders for property taxes levied in 1988 through 1990 and
24 shall refund any remaining credit to the S corporation. Interest or
25 penalty is not due or payable on an income tax liability resulting
26 from an amended return required by this subsection. A subchapter S
27 corporation electing to claim a credit as an owner eligible under

1 subsection (2) shall not claim a credit under subsection (1) for
2 property taxes levied after 1987.

3 Sec. 73301. (1) Except as otherwise provided in this section,
4 a cause of action shall not arise for injuries to a person who is
5 on the land of another without paying to the owner, tenant, or
6 lessee of the land a valuable consideration for the purpose of
7 fishing, hunting, trapping, camping, hiking, sightseeing,
8 motorcycling, snowmobiling, or any other outdoor recreational use
9 or trail use, with or without permission, against the owner,
10 tenant, or lessee of the land unless the injuries were caused by
11 the gross negligence or willful and wanton misconduct of the owner,
12 tenant, or lessee.

13 (2) A cause of action shall not arise for injuries to a person
14 who is on the land of another without paying to the owner, tenant,
15 or lessee of the land a valuable consideration for the purpose of
16 entering or exiting from or using a Michigan trailway as designated
17 under part 721 or other public trail, with or without permission,
18 against the owner, tenant, or lessee of the land unless the
19 injuries were caused by the gross negligence or willful and wanton
20 misconduct of the owner, tenant, or lessee. For purposes of this
21 subsection, a Michigan trailway or public trail may be located on
22 land of any size including, but not limited to, urban, suburban,
23 subdivided, and rural land.

24 (3) A cause of action shall not arise against the owner,
25 tenant, or lessee of land or premises for injuries to a person who
26 is on that land or premises for the purpose of gleaning
27 agricultural or farm products, unless that person's injuries were

1 caused by the gross negligence or willful and wanton misconduct of
2 the owner, tenant, or lessee.

3 (4) A cause of action shall not arise against the owner,
4 tenant, or lessee of a farm used in the production of agricultural
5 goods as defined by section ~~35(1)(h) of the single business tax~~
6 ~~act, Act No. 228 of the Public Acts of 1975, being section 208.35~~
7 ~~of the Michigan Compiled Laws 207(1)(D) OF THE MICHIGAN BUSINESS~~
8 **TAX ACT, 2007 PA 36, MCL 208.1207**, for injuries to a person who is
9 on that farm and has paid the owner, tenant, or lessee valuable
10 consideration for the purpose of fishing or hunting, unless that
11 person's injuries were caused by a condition which involved an
12 unreasonable risk of harm and all of the following apply:

13 (a) The owner, tenant, or lessee knew or had reason to know of
14 the condition or risk.

15 (b) The owner, tenant, or lessee failed to exercise reasonable
16 care to make the condition safe, or to warn the person of the
17 condition or risk.

18 (c) The person injured did not know or did not have reason to
19 know of the condition or risk.

20 (5) A cause of action shall not arise against the owner,
21 tenant, or lessee of land or premises for injuries to a person,
22 other than an employee or contractor of the owner, tenant, or
23 lessee, who is on the land or premises for the purpose of picking
24 and purchasing agricultural or farm products at a farm or "u-pick"
25 operation, unless the person's injuries were caused by a condition
26 that involved an unreasonable risk of harm and all of the following
27 apply:

1 (a) The owner, tenant, or lessee knew or had reason to know of
2 the condition or risk.

3 (b) The owner, tenant, or lessee failed to exercise reasonable
4 care to make the condition safe, or to warn the person of the
5 condition or risk.

6 (c) The person injured did not know or did not have reason to
7 know of the condition or risk.

8 (6) As used in this section, "agricultural or farm products"
9 means the natural products of the farm, nursery, grove, orchard,
10 vineyard, garden, and apiary, including, but not limited to, trees
11 and firewood.