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Senate Bill 277 (as introduced 4-19-23)
Sponsor: Senator Kristen McDonald Rivet
Committee: Energy and Environment

(Senate-passed version)

Date Completed: 9-14-23

INTRODUCTION

Generally, the bill would codify current Michigan Department of Agriculture and Rural Development (MDARD) policy that allows a solar facility to be a permitted use for the purpose of a developmental rights agreement (see **BACKGROUND**). Making a solar facility a permitted use would exempt it from certain special assessments in exchange for keeping that land in agricultural production for the term of the agreement. Among other criteria to qualify as a permitted use, the solar facility would have to be designed, planted, and maintained with specified habitat standards and the land would have to be maintained in a way that ensured that it could be returned to agricultural use at the end of the deferment period. The bill would prohibit a landowner from claiming a tax credit under a development rights agreement during the deferment period, which would be the period from a facility's construction to the end of its operation.

FISCAL IMPACT

This bill would have no fiscal impact on State or local government.

MCL 324.36101 et al.

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CONTENT

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

- Allow a solar facility to be a permitted use for a development rights agreement if specified conditions were met.**
- Prohibit a landowner from claiming the tax credit during a deferment period.**
- Specify that once the deferment period had ended the solar facility would no longer be a permitted use.**

Generally, Part 361 of NREPA allows the State and a landowner to enter into a farmland development rights agreement that entitles the landowner to a tax credit in exchange for keeping the land in agricultural production for the term of the agreement. Part 361 also authorizes the State to purchase the development rights of farmland. The credit is equal to the amount of property taxes paid on the property minus 3.5% of the landowner's income. Additionally, the land is not subject to special assessments for sanitary sewers, water lights, or non-farm draining unless the assessments were imposed by the agreements. In the case of a purchase, the landowner permanently relinquishes the right to develop the land for nonagricultural purposes.

Generally, the State Land Use Agency (i.e MDARD) considers certain criteria to determine whether a use is permitted within the development rights agreement. Under the bill, the criteria would not apply to the bill's provisions described below.

Under Part 361, "owner" 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 and rural development. The bill would specify that owner would not apply to rural development or to the bill's provisions described below.

"Amended development rights agreement" would mean a development rights agreement that includes the conditions required to allow a solar facility to be installed and operated on all or a portion of the land subject to the agreement.

"Deferment period" would mean the period of time beginning when construction of a solar facility to be installed and operated on all or portion of the land subject to the agreement.

"Landowner" would mean a person that meets the following requirements:

- Has a freehold estate in land coupled with possession and enjoyment or, if the land is subject to a land contract, is the vendee.
- Has a signed development rights agreement with the State Land Use Agency, and, if the land is subject to a land contract, the vendor.

"NRCS" would mean the United States Department of Agricultural Natural Resource Conservation Service.

"Solar agreement" would mean an agreement entered into by the landowner and the solar facility owner or operator to authorize the installment and operation of a solar facility on all or a portion of the land that contains all conditions specifically identified as the responsibility of the solar facility owner and operator.

"Solar facility" would mean a facility owned by an electric provider, for the generation of electricity using sola photovoltaic cells.

"Solar facility site" would mean the land subject to a solar agreement.

A solar facility would be a permitted use under development rights if the following were met:

- Before the solar facility became a permitted use, the land was subject to a development rights agreement.
- The amended development rights agreement applicable to the proposed solar facility site extended the existing development rights agreement beyond the original termination date for an amount of time equal to the length of the deferment period.
- At least 60 days had elapsed since the development rights agreement was recorded.
- The solar facility site was designed, planted, and maintained with groundcover that achieved a score of at least 76 on the Michigan Pollinator Habitat Scorecard for Solar Sites developed by the Michigan State University Department of Entomology.
- Any portion of the solar facility site not included in pollinator plantings would have to be designed, planted, and maintained in compliance with NRCS Cover Standard 327.
- The solar facility was designed, established, and maintained in a manner that ensured that the land could be returned to agricultural use at the end of the deferment period.
- The land was returned to normal agricultural operations and use by the first growing season following the end of the deferment period.

(The Michigan Pollinator Habitat Planning Scorecard for Solar Sites is a scale developed to guide vegetation management at solar installations in measuring the support to native pollinators. Each site is scored on factors such as habitat preparation and flowering plant scores, among other things. A score below 75 points does not meet standards, a score of 76 to 89 meets pollinator standards, and a score of 90 or more provides an exceptional habitat.¹ The NRCS Cover Standard 327 is a conservation practice standard to establish and maintain permanent vegetative cover to protect soil and water resources on land that will not be used for forage production. The conservation cover is meant to reduce soil erosion and water degradation, improve soil health, and enhance beneficial organism habitats.²)

Additionally, for a solar facility to be a permitted use under development rights, if only a portion of the land were to be subject to a solar agreement, the land subject to the development rights agreement would have to be divided under Section 36110(4) of NREPA. If a split was required, MDARD, would have to amend the resulting development rights agreement applicable to the solar facility site. (Section 36110(4) allows the land described in a development rights agreement to be divided into smaller parcels of land and continued under the same terms and conditions as the original development rights agreement. The smaller parcels created by the division must meet certain requirements.)

For a solar facility to be a permitted use, a deferment period could not exceed 90 years minus the remaining term of a developmental rights agreement. A landowner could enter into a subsequent amended development rights agreement to provide for an additional deferment period. A bond or irrevocable letter of credit payable to the State would have to be maintained during the deferment period as financial assurance for the decommissioning of the solar facility and the return to agricultural use. The amount of the financial surety would have to be calculated by a licensed professional engineer. Every three

¹ "Michigan Pollinator Habitat Planning Scorecard for Solar Sites", Michigan State University. Retrieved 6-21-23

² "Conservation Cover (A.c)(327) Conservation Practice Standard" Natural Resource Conservation Service. Retrieved 6-21-23.

years, or as MDARD considered necessary, the amount of the bond or irrevocable letter of credit would have to be adjusted as necessary to ensure that the financial assurance was sufficient.

Under the solar agreement, the electric provider could assume responsibility for compliance with the Michigan Pollinator Habitat Planting Score card, the NRCS Cover Standard 327, or the financial assurance for decommissioning the facility. Under the agreement, the electric provider would have to assume responsibility for the maintenance of any agricultural drain, as defined in Section 30103 or 30305, that was privately owned Part 301 (Inland Lakes and Streams) and Part 303 (Wetlands Protection).

(Under Sections 30103 and 30305 "agricultural drain" means a human-made conveyance of water that: 1) has continuous flow; 2) flows primarily as a result of precipitation-induced surface runoff or groundwater draining through subsurface drainage systems; 3) serves agricultural production; and 4) was constructed before January 1, 1973 or complied prior to former Public Act 203 of 1979.)

Under the bill, when the deferment period was over, the solar facility would no longer be a permitted use.

The landowner could not claim a tax credit described above during the deferment period. If a landowner relinquished the developmental rights agreement under Sections 36111 and 36111a at any time during the deferment period, the past seven years of tax credits would be payable. The past seven years of tax payments would have to be calculated from the time of the amended developmental rights agreement was recorded and would have to be held until the land was returned to the agricultural production at the end of the deferment period.

(Section 36111 and 36111a specify that development rights agreements expire at the end of a term unless the agreement is renewed with the consent of the owner of the land and prescribes the renewal and relinquishment of such agreements).

BACKGROUND

On June 3, 2019, Governor Gretchen Whitmer and then MDARD Director Gary McDowell issued a policy statement to allow land currently enrolled in the Farmland and Open Space Preservation Program to be used for commercial solar array purposes. The Program preserves farmland and open space through agreements that restrict non-agricultural development for 10 years and provide tax incentives for program participation.

Since 2019, MDARD has allowed the placement of structures for commercial solar energy generation on enrolled property if several conditions are met. Firstly, the Landowner for the land where the solar facility is to be located must enter into an Amended Agreement for the portion of the land that will be in a Commercial Solar Agreement. The Amended Agreement extends the existing Farmland Development Rights Agreement for a period that is equivalent to the amount of time the land is used to generate solar power combined with the remaining term of the Farmland Development Rights Agreement. Secondly, tax credits must not be claimed during the deferment period, which begins at the time of solar facility's construction and extends until all commercial solar panels and associated structures are removed. Thirdly, within the fenced area and where it is suitable, the site must be designed and planted to achieve a score of at least 76 on the Michigan Pollinator Habitat Planning Scorecard for Solar Sites. Fourthly, a bond or irrevocable letter of credit as a surety tool must be obtained and maintained in an amount sufficient to decommission the solar array and return the property to agricultural purposes. Lastly, both the establishment and maintenance of the site must assure the land can be returned to agricultural uses at the end of the deferment period, after

which it will continue to be subject to the requirements of the Farmland Development Rights Agreement.³

SASIS2324/s277sa

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.

³ For more information, see "Special uses on P.A. 116 Properties", Michigan Department of Agriculture and Rural Development.