

FARMLAND TAX CREDITS

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House Bill 5189 as enacted
Public Act 265 of 2016

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House Bill 5191 as enacted
Public Act 267 of 2016
Sponsor: Rep. Dan Lauwers

House Bill 5190 as enacted
Public Act 266 of 2016
Sponsor: Rep. Brett Roberts

House Committee: Agriculture
Senate Committee: Agriculture

Complete to 2-5-18

BRIEF SUMMARY: The bills amend three separate acts to address the Farmland and Open Space Preservation Program. Under the Farmland and Open Space Preservation Program, farm owners enter into agreements with the state to keep land in agricultural use for ten or more years and can receive an income tax credit (and be exempt from certain special assessments). In 2014, \$44.0 million in tax credits were issued.

FISCAL IMPACT: The bills would reduce general fund revenue by diverting a portion of income tax collections to the Agricultural Preservation Fund, as described below. Based on estimates for FY 2015-16, roughly \$1.6 million of income tax revenue would be diverted. The bills also would increase costs to the state to the extent that interest would be added to credit refunds to participants in the agriculture preservation tax credit program.

THE APPARENT PROBLEM:

According to testimony, a reduction in Michigan Department of Agriculture and Rural Development (MDARD) staff administering the farmland preservation program, due to reduced revenue to the Agricultural Preservation Fund, has caused processing delays for the required enrollment or amending paperwork, resulting in a backlog. Additional funding has been proposed from an income tax earmark.

Also, according to testimony, the Department of Treasury has been slow to issue refunds from credits under the program. The committee heard testimony from individuals who own farms and have land enrolled in the program but have waited more than a year in some instances to receive their refund. It has been proposed that these refunds should be treated like other income tax refunds, with interest added when they are late.

THE CONTENT OF THE BILLS:

House Bill 5190 amends the Income Tax Act to direct an amount equal to 3.5% of the total value of farmland tax credits claimed in the preceding 3 fiscal years to the Agricultural Preservation Fund. This diversion of income tax revenue would begin October 1, 2016.

The Fund, created by Section 36202 of Natural Resources and Environmental Protection Act (NREPA), is used for (1) administrative costs of MDARD (up to \$1.4 million); (2) grants to local units of government for the purchase of agricultural conservation easements; and (3) if

the money in the Fund exceeds \$5.0 million after the first two kinds of expenditure, the purchase of development rights to farmland or the acquisition of agricultural conservation easements by the state.

The bill also allows a taxpayer, regardless of the number of development rights agreements entered into, to electronically file a farmland preservation tax credit claim with the taxpayer's annual return.

MCL 206.51 and proposed MCL 206.312

House Bill 5191 amends Public Act 122 of 1941, the revenue act, to specify that, beginning on January 1, 2017, the interest calculations for income tax refunds also apply to interest on farmland tax credit refunds.

The bill also requires that, if the state does not pay or refund a credit within 45 days from the date the return was received by the Department of Treasury, the department must notify the taxpayer of the status of the return and whether the taxpayer has filed a complete return.

MCL 205.30

House Bill 5189 amends NREPA, primarily Part 361 (Farmland and Open Space Preservation), to do the following regarding development rights agreements:

- Eliminate a provision that required a county or township board with jurisdiction over farmland for which an agreement application was made to notify the governing body of any city within 3 miles of that farmland, or any village within 1 mile, about the application.
- Require that, upon approval of an application, MDARD must execute the agreement on behalf of the state and forward it to the applicant, who, after executing the agreement, must have it recorded by the register of deeds and provide a copy of the recorded agreement to MDARD. (Previously, MDARD was the party who recorded the agreement with the register of deeds.)
- Require that, upon approval of a request for relinquishment of an agreement, MDARD must prepare a relinquishment instrument and forward it to the applicant, who must have it recorded by the register of deeds and provide a copy of the recorded instrument to MDARD. (Previously, MDARD was the party who recorded the relinquishment instrument with the register of deeds.)
- Require MDARD to provide an annual listing of current farmland development rights agreements to the equalization office of the county where the land is located and to the approving local governing body.
- Allow land covered by an agreement that is subdivided to continue under the original agreement, rather than requiring a separate agreement for each parcel.
- Prohibit MDARD from charging a fee to process a change of ownership of land covered by a development agreement if the new owner continues to comply with the agreement's provisions regarding that land. (Previously, MDARD could charge a fee of \$25 for processing these changes.)

The bill also makes several technical and editorial changes to Part 361, as well as to Section 36202, which creates the Agricultural Preservation Fund. These changes include repealing Section 36117, which required a report to be made no later than January 30, 1976, and making

“fund” a defined term, meaning “the Agricultural Preservation Fund,” for ease of reference in Part 361.

MCL 324.36101 et seq. and repealed MCL 324.36117

BACKGROUND INFORMATION:

Under the program, landowners apply to enroll their farmland in an agreement with the state that restricts the use of the land to farming. These agreements last anywhere from 1 year to 90 years. As a benefit in exchange for restricting land use, the land is then exempt from certain special assessments. In addition, participating landowners receive a tax credit on their state income taxes. Presently, there are more than 42,900 development rights in the state, covering 3.2 million acres of farmland that are held by approximately 20,000 landowners.

Under the act, the landowner is required to pay back the previous seven years of tax credits they received under the program when the agreement expires. However, landowners may avoid this penalty if they forgo claiming the credit during those last seven years. In 1996, statutory changes were made requiring the department to notify landowners that they may avoid the repayment if they forgo claiming those tax credits. This has resulted in declining repayments into the Agricultural Preservation Fund and a reduction in staffing.

Staffing for the program was reduced in FY 2014 from 7.0 FTEs to 3.5. This reduction in staff has caused processing delays for the required enrollment or amending paperwork, resulting in a backlog of 9 to 16 months, depending on the type of agreement. MDARD has utilized part-time/temporary students to assist with the staffing issues. In 2014, \$44.0 million in tax credits were issued.

ARGUMENTS:

For:

Proponents of the bill say the delay in processing and receiving credits has led to financial hardships for those enrolling land in the agreements. To increase funding for the administration of the program, the intent of the bill is to take a portion of income tax revenue that would have otherwise gone to the general fund and dedicate it to the Agricultural Preservation Fund. Also, interest payments would be added to delayed payments of refunded credits.

Against:

Critics of the bill have suggested that if improved administration of this program is a priority then funding should be sought through the regular appropriation process, for both state departments involved.

Legislative Analysts: Josh Roesner
Rick Yuille

Fiscal Analysts: Jim Stansell
William E. Hamilton

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