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BILL ANALYSIS

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

Date Completed: 6-21-23

INTRODUCTION

Generally, the bill would allow a solar facility to be a permitted use land for the purpose of a developmental rights agreement that entitled a landowner to a tax credit. Making a solar facility a permitted use also 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.

MCL 324.36101 et al.

BRIEF FISCAL IMPACT

This bill would have an indeterminate negative fiscal impact on the department associated with administrative costs and forfeited tax revenue, the extent of which would be dependent upon the number of development rights easements and solar facilities established.

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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., the Michigan Department of Agriculture and Rural Development (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 solar facility would be a permitted use under development rights, 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).

FISCAL IMPACT

The bill proposes amendments and definitions related to development rights easements, farmland, permitted uses, and other terms. While the bill would provide guidelines and criteria for determining permitted uses and the conditions for solar facilities on farmland, it would not directly impose any new taxes, fees, or expenditures.

However, there could be indirect fiscal impacts associated with the bill. The implementation and administration of the development rights easements and solar facility agreements could require resources and staffing by the State Land Use Agency, local governing bodies, and other relevant entities. These administrative costs could vary depending on the number of easements and agreements processed, the complexity of the applications, and the level of oversight required.

Additionally, the bill includes provisions for financial assurance, such as bonds or letters of credit, to ensure the decommissioning of solar facilities and the return of the land to agricultural use. The specific costs associated with these financial assurances would depend on factors such as the size and nature of the solar facilities and the length of the deferment period.

Overall, the fiscal impact of the bill would depend on the extent of its implementation, the number of development rights easements and solar facilities established, and the resources allocated for administration and enforcement.

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