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BILL



ANALYSIS

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Senate Bill 264 (as introduced 2-14-95)
 Sponsor: Senator Dave Honigman
 Committee: Local, Urban and State Affairs

Date Completed: 2-20-96

CONTENT

The bill would amend the Township Rural Zoning Act, which the bill would rename "The Township Zoning Act", to do the following:

- **Provide that a township could be divided into urban services districts, partial urban services districts, and general services districts.**
- **Permit a township to adopt an ordinance authorizing the transfer of development rights.**
- **Permit a township to establish an authority for the purpose of purchasing and temporarily holding development rights.**
- **Permit a township, by ordinance, to authorize the purchase of development rights.**
- **Permit a township zoning ordinance to require detailed plans, feasibility analyses, and the posting of security to assure concurrency as a condition to the issuance of a building permit or a certificate of use and occupancy.**
- **Require a township to adopt a land management plan before adopting an ordinance described above.**

Land Management Plan

A township would have to adopt a land management plan before adopting an ordinance described in the bill. The land management plan would have to be prepared and adopted pursuant to the procedure provided in the Act for the preparation and adoption of a zoning ordinance. If a township had adopted a basic plan or master plan to serve as the basis for land use decisions under the Act, the land management plan could not be materially incompatible with the basic plan

or master plan. At the discretion of the township board, the land management plan could be integrated with a basic plan or master plan. If it were, the elements of the land management plan set forth below would remain discrete and the plan would have to be adopted pursuant to the requirements of the bill and of Public Act 168 of 1959 (which provides for township planning commissions).

Based upon the study undertaken for the preparation of the land management plan, the plan would have to describe the future growth and development potential and limitations of the township, as related to the elements of the plan. The description would have to include present carrying capacities and level of service standards with regard to the services and facilities, on a township-wide basis as well as on the basis of areas of the township relevant to carrying capacities and level of service standards.

The land management plan also would have to include the following:

- A public facilities and services plans.
- A regional coordination plan.
- A recreation and open space plan.
- A community character plan.
- An air and water quality plan.
- A financial stability plan.
- A future land use plan.
- A capital improvement plan.

In preparing a public facilities and services plan, a township would have to consult with interested city, village, county, and State governmental entities. This plan would have to include a master thoroughfare plan, showing existing and proposed rights-of-way in the township anticipated to be needed for future use and development. In

preparing this plan, the township would have to consult with the county road agency and the Department of Transportation. To the extent information was available, the plan would have to specify approximate dates and means of finance for the construction or widening of roads, streets, and highways included in the plan.

A public facilities and services plan also would have to include the following: a plan for water, sanitary sewage disposal, and storm drainage capital improvements, showing the anticipated location, size, and schedule for installation of facilities consistent with current zoning and planned future development; a public safety plan, showing present and future facilities, capabilities, and limitations for police and fire service; and a public services plan, showing the present and future facilities, capabilities, and limitations for public services other than police and fire, including schools and libraries.

A regional coordination plan would have to show how the township's future growth and development would be affected by and affect regional growth and development. In preparing this plan, the township would have to consult with available city, village, county, and regional planning agencies. A recreation and open space plan would have to show the areas in the township set aside or proposed to be set aside for active and passive recreation and open space purposes. In preparing this plan, the township would have to identify areas having environmental, historical, or other special values that could be preserved, and could consult with local, county, State, and national entities.

A community character plan would have to identify and show the elements and locations of places in the township that uniquely contributed to its character, including natural features, historic sites, special amenities, and other elements and areas of importance. An air and water quality plan would have to identify locations in the township, goals and objectives, and bodies of water, that should be the focus of study, planning, regulation, or other activities.

A financial stability plan would have to identify and show the entities, activities, and land uses associated with the township's present economic stability, or that should be pursued for the purpose of achieving greater economic stability. A future land use plan would have to contain the information required under Public Act 168 of 1959 to be included in a basic plan.

A capital improvements plan would have to specify for each improvement the location, cost, anticipated means and availability of financing, and commencement and completion dates of construction. This plan would have to be kept up to date to include capital improvements whose construction was to be commenced within at least the next six years.

Services Districts

As part of the zoning ordinance and the plan referred to in Section 3 of the Act (which requires a zoning ordinance to be based on a plan designed to accomplish certain things), and on a map that could be part of, or separate from, the zoning use or district map, a township could be divided into urban services districts, partial urban services districts, and general services districts.

("Urban services district" would mean an area characterized by a predominant presence of services and facilities that provided reasonable opportunities for urban residential and nonresidential activities and development. "Partial urban services district" would mean an area that once met the definition of "general services district" but was demonstrably needed for the accommodation of long-range urban population growth requirements and was the area most adaptable to the extension of services and facilities from immediately adjacent areas. "General services district" would mean an area that was capable of providing reasonable opportunities for rural and semirural residential and nonresidential activities and development, but was characterized by a predominant lack of services and facilities, including roads and public water and sewer, providing reasonable opportunities for urban residential and nonresidential activities and development. "Services and facilities" would mean on-site and off-site capital improvements, including transportation, sanitary sewer, solid waste disposal, drainage, drinking water, and health systems and facilities.)

To the extent feasible, services and facilities would have to be provided in an urban services district consistent with the level of development and use contemplated in the zoning ordinance. A partial urban services district would have to serve as a transitional district and reflect long-range planning for services and facilities anticipated to be needed for urban development and use. For a general services district, it would have to be specified

whether various services and facilities were provided or would be provided in the foreseeable future.

In the establishment or modification of a services district, all of the following standards would have to be considered:

- Demonstrated need for the accommodation of long-range urban population growth.
- Need for housing, employment opportunities, and other things affecting the quality of life.
- Orderly and economic provision of services and facilities.
- Maximum efficiency of land uses within and near any existing urban services districts.
- Environmental, energy, economic, and social consequences of establishing and modifying the services district.
- Provision of reasonable opportunities for urban, rural, and semirural residential and nonresidential activities and development.
- For a proposed urban services district, compatibility of the proposed district with nearby general services districts and partial urban services districts.
- Encouragement of economic development and capital facility investment in areas served by urban public facilities.
- Encouragement for existing economic base nonresidential uses to remain and reinvest at their present locations.
- Support for residential neighborhoods and community facilities as essential elements in a balanced and competitive local and regional economy.
- Enhancement of long-term stability and discouragement of urban sprawl.
- Plans adopted by city, village, county, and regional planning agencies relating to the classification of land for urban, rural, and semirural use, including sewer service maps.
- Protection of valuable resource production land, including prime agricultural land, prime forest land, and land with significant mineral resources, from premature conversion.

Development Rights Transfer and Purchase

Ordinance for the Transfer of Development Rights.

A township board could adopt an ordinance to authorize the transfer of development rights to achieve a development rights benefit. ("Development rights" would mean the

development capacity of a property as a distinct interest in the land or water, or both, taking into consideration applicable laws, ordinances, and regulations. "Development rights benefit" would mean the protection of natural, scenic, agricultural and open space qualities, the enhancement of sites and areas of special character or special historical, cultural, aesthetic, or economic interest or value, the protection of natural resources, or the promotion of flexibility of design of and careful management of land and water.)

As part of the determination to transfer development rights, the ordinance would have to require the specification of the development rights that would remain on the property from which the rights would be transferred, and the means by which the limitation of use of the property would be legally fixed and run with the land. The ordinance also would have to specify all of the following:

- The development rights benefit that the township sought.
- The procedures by which a transfer of development rights could be initiated by the township or by a property owner, including the procedure and documentation to be used for the transfer.
- The type of development rights that could be transferred.
- The standards to be used by the township board in determining whether to grant a transfer of development rights.
- Whether the transfer of development rights to other local units of government would be permitted and, if so, the contents of an agreement to be executed by the legislative bodies of the local units providing for the transfer.
- The location of sending zones.
- The location of receiving zones. The capacity of the receiving zones would have to be sufficient to receive all development rights from the sending zones.

Further, the ordinance would have to include the standards and procedures for evaluating and specifying all of the following: the development rights to be transferred, including a formula for measuring development rights; the use of development rights that would remain on the property from which the transfer was made; the identity of the property to which the transfer was made; and the development permitted, after the transfer, on the property to which the transfer was made.

The ordinance could not take effect until the township prepared a report that included all of the following:

- The precise location of each proposed sending and receiving zone.
- An estimate of population and economic growth during the next 10 years in the township and each proposed receiving zone.
- An estimate of the development potential of each proposed sending and receiving zone.
- An estimate of the existing and proposed infrastructure of each proposed receiving zone.
- For each proposed receiving zone, an analysis of the transfer's impact upon and consistency with the township basic plan.

The report also would have to state the limitations upon the development rights that could be transferred to each receiving zone, taking into consideration all of the following objectives: ensuring consistency with the township's basic plan; ensuring adequate services and facilities consistent with the services and facilities plan for the receiving zone, in terms of both capacity and availability; avoiding undue burden upon the people and land within the receiving zone; and ensuring consistency with the purposes of the Act.

Except as provided below, the transfer of development rights from property in a sending zone would have to coincide with the receipt of those rights by property in a receiving zone.

Creation of Authority to Purchase and Hold Rights.

To achieve a development rights benefit, a township that had adopted an ordinance described above could establish an authority for the purpose of purchasing and temporarily holding development rights. A township board that wished to establish an authority would have to establish a resolution of intent, setting a date for a public hearing on whether such an ordinance should be adopted. Notice of the public hearing would have to be published in a newspaper of general circulation in the township, not less than 20 or more than 40 days before the date of the hearing. The notice would have to state the time, date, and place of the hearing, and describe the purpose of the authority. After the hearing, the township board could adopt an ordinance establishing the authority.

The authority would consist of five members, who would include the chief administrative officer of the township, the township treasurer, and three members appointed at large by the township supervisor, subject to the approval of the township board. One of the members at large would have to represent development interests. A member at large would have to be a resident of the township and would serve at the pleasure of the township board. The members of the authority would have to elect a chairperson.

The ordinance creating the authority could provide that the township board would serve as the authority board. If the township had entered an intergovernmental agreement for the creation of a joint authority, the agreement would have to specify the membership and, if applicable, the manner of appointing members. An authority member would have to serve without compensation but be compensated for actual and reasonable expenses. Authority activities would have to be financed by one or more of the following sources: money provided by the township; proceeds from the sale of development rights; grants; donations; and/or other sources approved by the township board.

The authority could acquire by purchase or condemnation pursuant to the Uniform Condemnation Procedures Act development rights on property located in a sending zone in the township. Title to the development rights would have to be taken and held in the township's name. At its discretion, the authority could hold or sell development rights that it had acquired. Rights could be sold only to a purchaser who would do one of the following:

- Use the development rights in a receiving zone in accordance with the township's ordinance for the transfer of rights.
- Permanently terminate the development rights by open space easement to the township, deed restriction, or other lawful means, in a manner and form approved by the authority.

The purchase and sale of development rights by the authority would have to be at fair market value, based upon a bona fide appraisal. Unless the township board served as the authority, the purchase and sale would be subject to approval by the board.

Purchase of Development Rights.

By ordinance, a township board could authorize the purchase of development rights by the township to achieve a public purpose or benefit permitted in the exercise of authority under the Act. The township could purchase the rights by voluntary sale or by condemnation. As part of the determination to purchase development rights, the ordinance would have to require the specification of development rights that would remain on the property from which the rights would be transferred, and the means by which the limitation of use of the property would be legally fixed and run with the land. The ordinance also would have to specify all of the following:

- The public purposes or benefits that the township sought.
- The procedures by which the township or a property owner could initiate a purchase of development rights.
- The type of development rights that could be purchased.
- The standards to be used by the township board in determining whether to purchase development rights, and in evaluating and specifying the development rights that would remain on the property after purchase.
- The standards to be used in establishing the price in a purchase in which an exercise of the power of eminent domain was not contemplated.

If a township adopted an ordinance, a person could petition the township board for the purchase of development rights and for the establishment of a special assessment district to pay for all or a portion of the rights. The petition would have to contain a description of the development rights to be purchased, including a legal description of the real property from which the purchase was to be made; a description of the proposed special assessment district; and the signatures of the owners of at least 51% of the land in the proposed district.

The township board could purchase development rights petitioned for if the board determined that the purchase would accomplish a public purpose or benefit set forth in the ordinance and would be in the best interest of the township. If the township board purchased the development rights petitioned for, it would have to proceed with respect to the special assessments in the manner provided by law or charter for financing the acquisition of park lands by special assessments.

Other Laws and Ordinances. An ordinance adopted under the bill would apply in addition to other laws and ordinances adopted to achieve similar purposes. The bill would not invalidate a law or ordinance that did “not contemplate consideration being given for the achievement of the purposes” of the bill.

Conditions of Building Permit Issuance

A zoning ordinance could require detailed plans, feasibility analysis, and the posting of security to assure “concurrency” as a condition to the issuance of a building permit under the State Construction Code Act. The security could consist of cash, a letter of credit, or a corporate surety bond in the form approved by the township. A zoning ordinance also could require concurrency as a condition to the issuance of a certificate of use and occupancy.

“Concurrency” would mean availability to property of services and facilities specified in the zoning ordinance at the level of services required by standards established in the zoning ordinance or established by law, ordinance, rule, or resolution of a governmental entity and incorporated by reference in the zoning ordinance.

MCL 125.301 et al.

Legislative Analyst: S. Margules

FISCAL IMPACT

Townships that adopted a land management plan and an ordinance authorizing the transfer or purchase of development rights would experience an indeterminate fiscal impact. The transfer of development rights would involve an authority that could purchase, hold, or sell development rights. The authority or townships would incur the costs of publishing public hearing notices and compensating authority members for actual and reasonable expenses. Townships also could purchase development rights, which could be paid for with special assessments approved by the signatures of the owners of at least 51% of the land in the proposed district.

This bill would have no State fiscal impact.

Fiscal Analyst: R. Ross

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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.