

HOUSE BILL No. 5268

October 17, 2001, Introduced by Reps. Birkholz, Hager, Gilbert, Vear, Richardville and Allen and referred to the Committee on Local Government and Urban Policy.

A bill to provide for a pilot project for the sale and purchase of certain rights to develop land; to provide for the financing of the purchase of such rights by certain local units of government in certain circumstances; and to provide for the powers and duties of certain local governmental officers and entities.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "development rights market act".

3 Sec. 3. As used in this act:

4 (a) "Agricultural land" means substantially undeveloped land
5 devoted in whole or in part to the production of plants and ani-
6 mals useful to humans, including forage and sod crops; grains,
7 feed crops, and field crops; dairy animals and dairy products;
8 poultry and poultry products; livestock, including breeding and

1 grazing of cattle, swine, and similar animals; berries; herbs;
2 flowers; seeds; grasses; nursery stock; fruits; vegetables;
3 Christmas trees; and other similar uses and activities.

4 Agricultural land includes land enrolled in a federal acreage
5 set-aside program or a federal conservation reserve program.

6 (b) "Commission" means the commission of agriculture.

7 (c) "Department" means the department of agriculture.

8 (d) "Development rights" means the rights to develop land to
9 the maximum intensity of development authorized by law.

10 (e) "DRM ordinance" means a development rights market ordi-
11 nance adopted under section 5.

12 (f) "DRM program" means a development rights market program
13 provided for by a DRM ordinance.

14 (g) "Intensity of development" means the height, bulk, area,
15 density, setback, use, and other similar characteristics of
16 development.

17 (h) "Pilot project" means the development rights market
18 pilot project provided for in section 5.

19 (i) "Receiving zone" means an area of land identified by a
20 DRM ordinance to which development rights can be attached to
21 increase the intensity of development without adversely affecting
22 public health, safety, or welfare.

23 (j) "Sending zone" means an area of land identified by a DRM
24 ordinance where development should be less intense than permitted
25 by the development rights attached to that land to achieve a
26 public benefit set forth in the DRM ordinance and from which
27 development rights can be severed and sold.

1 Sec. 5. (1) Within 6 months after the effective date of
2 this act, the commission of agriculture shall select not more
3 than 5 townships for participation in a development rights market
4 pilot project. The townships shall be located in different
5 counties. The township board of a township selected to partici-
6 pate in the pilot project may adopt a development rights market
7 ordinance providing for the establishment, financing, and admin-
8 istration of a development rights market program.

9 (2) To be eligible for selection for participation in the
10 pilot project, a township shall meet all of the following
11 requirements:

12 (a) The township must have adopted a zoning ordinance under
13 the township zoning act, 1943 PA 184, MCL 125.271 to 125.310.

14 (b) The township board shall submit an application to the
15 department on a form prescribed by the department.

16 (3) The department shall select the townships to participate
17 in the pilot project based on the following factors:

18 (a) The market for residential and commercial development
19 threatening agricultural land in the township.

20 (b) The amount and quality of agricultural land threatened
21 by development in the township.

22 (c) The ability of a proposed receiving zone to accommodate,
23 in terms of both land availability and infrastructure capacity,
24 the intensity of development associated with development rights
25 that may be purchased from a sending zone. In determining infra-
26 structure capacity, the commission shall consider current

1 infrastructure and the township's ability to provide any
2 necessary additional infrastructure.

3 (d) Other factors that the commission considers relevant.

4 (4) If requested, the department shall provide advice to a
5 township selected to participate in the pilot project on the
6 drafting of a DRM ordinance and the implementation of a DRM
7 program.

8 (5) A DRM program shall allow a landowner to increase the
9 intensity of development on land, beyond that otherwise autho-
10 rized by law, by utilizing additional development rights pur-
11 chased from other landowners. A DRM program shall provide for
12 the severance of development rights from land in a sending zone
13 and the attachment of those development rights to land in a
14 receiving zone.

15 (6) The purchase and sale of development rights under a DRM
16 program, including, but not limited to, the purchase and sale of
17 development rights under section 9(2), shall be voluntary.
18 Subject to section 9(2), the purchase and sale of development
19 rights under a DRM program shall be at a price negotiated and
20 agreed upon by the parties. A DRM program shall not acquire
21 development rights by condemnation.

22 (7) A landowner may develop land within a receiving zone at
23 the intensity of development allowed under applicable zoning,
24 building, and other ordinances apart from the DRM ordinance or,
25 if additional development rights have been purchased and attached
26 to the land, may develop the land at a higher intensity of
27 development as allowed under the DRM ordinance.

1 (8) If development rights have not been severed from land in
2 a sending zone and sold, the landowner may develop the land at
3 the intensity of development allowed under applicable zoning,
4 building, and other ordinances apart from the DRM ordinance.

5 Sec. 7. (1) A DRM ordinance shall specify all of the
6 following:

7 (a) The public benefits that the township may seek through
8 the DRM program, which shall be 1 or more of the following:

9 (i) The voluntary protection of natural, scenic, agricultur-
10 al, and open space qualities.

11 (ii) The voluntary enhancement of sites and areas of special
12 character or special historical, cultural, aesthetic, or economic
13 interest or value.

14 (iii) The voluntary protection and management of land,
15 water, and other natural resources.

16 (iv) The management of a community's overall intensity of
17 development while allowing landowners to voluntarily purchase
18 additional development rights to increase the intensity of devel-
19 opment in designated areas.

20 (v) The encouragement of development in enterprise zones
21 under the enterprise zone act, 1985 PA 224, MCL 125.2101 to
22 125.2123, in brownfields, and in other redevelopment areas.

23 (b) The precise location of each sending zone and receiving
24 zone and the nature and quantity of development rights that may
25 be severed from land in each sending zone and attached to land in
26 each receiving zone. To determine this information, the township
27 board shall do at least all of the following:

1 (i) Consider an estimate of population and economic growth
2 during the next 10 years in the township and an estimate of the
3 development potential of each proposed sending zone and receiving
4 zone.

5 (ii) Consider the intensity of development otherwise allowed
6 under applicable zoning, building, and other ordinances before
7 the adoption of a DRM ordinance.

8 (iii) Consider an estimate of the existing and proposed
9 infrastructure, including services and facilities, of each pro-
10 posed receiving zone.

11 (iv) Ensure that a receiving zone is able to accommodate, in
12 terms of both land availability and infrastructure capacity, the
13 intensity of development associated with development rights that
14 may be purchased from a sending zone.

15 (v) Ensure consistency with the plan upon which the
16 township's zoning ordinance is based.

17 (c) The procedure for the severance, sale, purchase, and
18 attachment of development rights, including the procedure by
19 which 1 or more property owners may by application initiate such
20 a transaction. An application shall include, but need not be
21 limited to, all of the following:

22 (i) The identity of the land within a sending zone from
23 which the development rights are proposed to be severed.

24 (ii) Except as provided in section 9(2), the identity of the
25 land within a receiving zone to which the development rights are
26 proposed to be attached.

1 (iii) The quantity and nature of the development rights
2 proposed to be transferred.

3 (d) The procedure for ensuring that the severance of devel-
4 opment rights from land in a sending zone and the attachment of
5 those development rights to land in a receiving zone are both of
6 the following:

7 (i) Simultaneous, except for the period during which devel-
8 opment rights may be temporarily held by a township under
9 section 9(2).

10 (ii) Fixed by a legal instrument so as to run with the land
11 from which the development rights have been severed and to which
12 the development rights have attached, respectively. The develop-
13 ment rights ordinance shall require that the legal instrument be
14 promptly recorded in the office of the register of deeds.

15 (2) The township shall designate sending zones and receiving
16 zones on its zoning map.

17 (3) The adoption of a DRM ordinance or an amendment to a DRM
18 ordinance in a township shall be governed by the same procedures
19 as apply to the adoption of an amendment to a zoning ordinance
20 under the township zoning act, 1943 PA 184, MCL 125.271 to
21 125.310, including, but not limited to, procedures governing
22 petitions and the role of the zoning commission or zoning board.
23 For the purposes of this subsection, properties in a sending zone
24 or receiving zone shall be considered to be properties proposed
25 for rezoning, except in the case of an amendment to a DRM ordi-
26 nance that only affects other sending zones or receiving zones.

1 Sec. 9. (1) The township board shall approve an application
2 under section 7(1)(c) if all of the following apply:

3 (a) The application complies with the DRM ordinance.

4 (b) The development rights proposed to be sold are unused
5 and consequently available for severance from land in the sending
6 zone.

7 (c) Under the DRM ordinance, the development rights proposed
8 to be sold can be used on the land in the receiving zone to which
9 they are to be attached.

10 (2) A township with a DRM program may purchase development
11 rights from a landowner in a sending zone at fair market value,
12 based upon a bona fide appraisal, temporarily hold the develop-
13 ment rights, and resell the development rights to a landowner for
14 attachment to land in a receiving zone. The price at which
15 development rights are resold by the township shall not exceed
16 the price at which those development rights were purchased by the
17 township.

18 (3) Except as provided pursuant to subsection (2), develop-
19 ment rights shall not be severed under this act unless the town-
20 ship has approved the attachment of those development rights to
21 land in a receiving zone.

22 (4) A DRM program may be financed by any legal means.

23 Sec. 11. (1) Each township selected to participate in the
24 pilot project shall submit to the department a series of 5 annual
25 reports on that township's DRM program. The reports shall con-
26 tain information requested by the department and shall be
27 submitted on a schedule determined by the department.

1 (2) By 4 months after the deadline for townships to submit
2 the last of the series of reports required under subsection (1),
3 the commission shall review the DRM programs of townships
4 selected to participate in the pilot project and shall submit a
5 report to the legislature on the programs.

6 Sec. 13. The department may promulgate rules to implement
7 this act pursuant to the administrative procedures act of 1969,
8 1969 PA 306, MCL 24.201 to 24.328.