

HOUSE BILL No. 4181

February 11, 2003, Introduced by Reps. Kolb, Gielegem, Stallworth, McConico, Lipsey and Minore and referred to the Committee on Land Use and Environment.

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; 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
6 animals 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
9 grazing of cattle, swine, and similar animals; berries; herbs;

1 flowers; seeds; grasses; nursery stock; fruits; vegetables;
2 Christmas trees; and other similar uses and activities.

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

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

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

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

9 (e) "DRM ordinance" means a development rights market
10 ordinance adopted under section 5.

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

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

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

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

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

27 Sec. 5. (1) Within 6 months after the effective date of

1 this act, the commission shall select not more than 5 townships
2 for participation in a development rights market pilot project.
3 The townships shall be located in different counties. The
4 township board of a township selected to participate in the pilot
5 project may adopt a development rights market ordinance providing
6 for the establishment, financing, and administration of a
7 development rights market program.

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

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

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

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

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

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

21 (c) The ability of a proposed receiving zone to accommodate,
22 in terms of both land availability and infrastructure capacity,
23 the intensity of development associated with development rights
24 that may be purchased from a sending zone. In determining
25 infrastructure capacity, the commission shall consider current
26 infrastructure and the township's ability to provide any
27 necessary additional infrastructure.

(d) Other factors that the commission considers relevant.

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

(5) A DRM program shall allow a landowner to increase the intensity of development on land, beyond that otherwise authorized by law, by utilizing additional development rights purchased from other landowners. A DRM program shall provide for the severance of development rights from land in a sending zone and the attachment of those development rights to land in a receiving zone.

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

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

(8) If development rights have not been severed from land in a sending zone and sold, the landowner may develop the land at

1 the intensity of development allowed under applicable zoning,
2 building, and other ordinances apart from the DRM ordinance.

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

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

7 (i) The voluntary protection of natural, scenic,
8 agricultural, and open space qualities.

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

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

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

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

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

26 (i) Consider an estimate of population and economic growth
27 during the next 10 years in the township and an estimate of the

1 development potential of each proposed sending zone and receiving
2 zone.

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

6 (iii) Consider existing and proposed infrastructure,
7 including services and facilities, for each proposed receiving
8 zone.

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

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

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

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

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

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

27 (d) The procedure for ensuring that the severance of

1 development rights from land in a sending zone and the attachment
2 of those development rights to land in a receiving zone are both
3 of the following:

4 (i) Simultaneous, except for the period during which
5 development rights may be temporarily held by a township under
6 section 9(2).

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

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

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

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

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

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

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

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

16 (3) Except as provided pursuant to subsection (2),
17 development rights shall not be severed under this act unless the
18 township has approved the attachment of those development rights
19 to land in a receiving zone.

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

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

26 (2) By 4 months after the deadline for townships to submit
27 the last of the series of reports required under subsection (1),

1 the commission shall review the DRM programs of townships
2 selected to participate in the pilot project and shall submit a
3 report to the legislature on the programs.

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