



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 573 (Substitute S-4 as passed)
 Senate Bill 574 (Substitute S-3 as passed)
 Senate Bill 575 (Substitute S-3 as passed)
 Sponsor: Senator Bill Schuette
 Committee: Local, Urban and State Affairs

Date Completed: 5-29-96

RATIONALE

In February 1994, Governor Engler established the Michigan Farmland and Agriculture Development Task Force to address the impact of land use trends on agriculture (Executive Order 1994-4). The Task Force issued its report, "Policy Recommendations and Options for the Future Growth of Michigan Agriculture", in December 1994. According to the report, agriculture is Michigan's second largest industry and contributes more than \$37 billion annually to the State's economy. Michigan's farmland appears to be shrinking at a rapid rate, however. From 1954 to 1992, according to the report, the State experienced a 39% decrease in farmland, including 854,000 acres of cropland and noncropland that were converted to other uses between 1982 and 1992. The loss of 300,000 acres of cropland from 1982 to 1992, the Task Force reported, represents a potential loss of \$60 million to \$120 million every year in local farm revenue; and the reduction of agricultural production has an economic impact on local ancillary agricultural businesses, as well.

According to the Task Force report, the following factors contribute to nonagricultural demands for land use in Michigan: increasing population and number of households; migration from urban to newer suburban housing; new lower density developments with larger lot sizes; the largest number of second homes in the nation; the second largest number of golf courses in the nation; increasing commercial construction in suburban areas; and increasing vehicle miles and road construction. The report also indicates that the cost to local communities of providing services to a sprawling residential population rises as greater demands are placed on infrastructure. In addition, the report notes the impact on existing farm operations: Additional nonfarm residences make

it more difficult for remaining farms to continue or expand; farmers may have to compete with other motorists for access to farmland and supplies, and the movement of farm equipment; farmers are faced with high assessments based on development value, rather than agricultural use; and farmers experience increasing pressure to sell.

Among its recommendations, the Task Force suggested granting authority to townships, cities, villages, and counties to purchase and retire development rights. According to the report, the landowner would be paid a one-time amount for the value of his or her development rights, defined as the difference between the fair market value of the land for nonfarm development and its value solely for agricultural purposes; the closer a parcel was to urban areas and development pressures, the more valuable the development rights would be. Reportedly, these programs help stabilize farmland values and strengthen the future of farming in communities where they are implemented.

CONTENT

The bills would amend various laws governing local zoning authority to do the following:

- **Provide that, in order to protect agricultural land, a local unit (a county, township, city, or village) could adopt a development rights ordinance governing the purchase of development rights (PDR) from a willing landowner.**
- **Require a development rights ordinance to specify the intensity of development permitted on the land after development**

rights were purchased, as well as the circumstances under which the landowner could repurchase development rights.

- Provide that a development rights ordinance could establish an authority to exercise some or all of the local unit's proposed powers and duties, with certain exceptions.**
- Permit a local unit to enter into agreements with other local units for the purchase of development rights and the creation of a joint authority.**
- Specify the sources through which a PDR program and authority could be financed, including the local unit's issuance of bonds and notes.**

Senate Bill 573 (S-4) would amend the County Rural Zoning Enabling Act, which the bill would rename the "County Zoning Act". Senate Bill 574 (S-3) would amend the Township Rural Zoning Act, which the bill would rename the "Township Zoning Act". Senate Bill 575 (S-3) would amend Public Act 207 of 1921, which the bill would name the "City and Village Zoning Act".

A detailed description of the bills follows. (References below to a "local unit" include a county, township, city, or village. References to a "local governing body" include a county board of commissioners, a township board, or the legislative body of a city or village.)

Development Rights Ordinance

To protect agricultural land, a local governing body could adopt a development rights ordinance limited to the establishment, financing, and administration of a "PDR program" (a program for the purchase of development rights). ("Agricultural land" would mean substantially undeveloped land devoted to the production of plants and animals useful to humans, including forage and sod crops; grains, feed crops, and field crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing of cattle, swine, and similar animals; berries; herbs; flowers; seeds; grasses; nursery stock; fruits; vegetables; Christmas trees; and other similar uses and activities. "Development rights" would mean the rights to develop land to the maximum intensity of development authorized by law.)

If the local unit had a zoning ordinance, the development rights ordinance could be adopted as part of the zoning ordinance pursuant to the statutory procedures governing adoption of a zoning ordinance. Whether or not a local unit had a zoning ordinance, the development rights

ordinance could be adopted as a separate ordinance pursuant to the procedures governing adoption in general.

A local governing body could promote and enter into agreements between counties, cities, villages, and townships for the purchase of development rights, including cross-jurisdictional purchase, subject to applicable development rights ordinances, and similar ordinances, of counties, townships, cities, and villages.

The bills specify that they would not expand the condemnation authority of a local unit as otherwise provided for in the amended Act.

PDR Program

A development rights ordinance would have to provide for a PDR program. Under a PDR program, a local unit would purchase development rights, but only from a willing landowner. A development rights ordinance would have to specify all of the following:

- The public benefits that the local unit could seek through the purchase of development rights.
- The procedure by which the local unit or a landowner could by application initiate a purchase of development rights. (In the case of a county, this would have to include city, village, or township approval, if required under Senate Bill 573 (S-4)).
- The development rights authorized to be purchased subject to a determination under standards and procedures described below.
- The circumstances under which an owner of land from which development rights had been purchased under a PDR program could repurchase those development rights and how the local unit would use the proceeds of the purchase. Development rights acquired under a PDR program could be conveyed only pursuant to these provisions.

A development rights ordinance would have to specify the standards and procedures to be followed by the local unit for approving, modifying, or rejecting an application to purchase development rights, including the determination of all of the following: whether to purchase development rights; which development rights to purchase; the intensity of development permitted after the purchase of the land from which the development rights were purchased; the price at which development rights would be purchased and the method of payment; and the procedure for ensuring that the purchase or sale of development rights was legally fixed so as to run with the land.

If a local unit had a zoning ordinance, the purchase of development rights would have to be consistent with the local unit's zoning plan required by the Act.

Under Senate Bill 573 (S-4), a county would have to notify each city, village, or township containing land from which development rights were proposed to be purchased, of the receipt of an application for the purchase of development rights, and would have to notify the city, village, or township of the disposition of that application. Senate Bill 574 (S-3) would require a township to give the same notice to a village.

Senate Bill 573 (S-4) also provides that a county could not purchase development rights under a development rights ordinance from land subject to a city, village, or township zoning ordinance unless all of the following requirements were met:

- The development rights ordinance provisions for the PDR program were consistent with the plan upon which the city, village, or township zoning was based.
- The legislative body of the city, village, or township adopted a resolution authorizing the PDR program to apply in that local unit.
- As part of the application procedure for the specific proposed purchase of development rights, the city, village, or township gave the county written approval of the purchase.

Financing

Each bill provides that a PDR program and the administration of a development rights authority could be financed through one or more of the following sources: general appropriations by the local unit; proceeds from the sale of development rights by the local unit; grants; donations; bonds or notes issued under the bill; general fund revenue; and other sources approved by the local governing body and permitted by law.

The local governing body could borrow money and issue bonds or notes under the Municipal Finance Act, subject to the local unit's general debt limit. The bonds or notes could be revenue bonds or notes; general obligation limited tax bonds or notes; subject to the tax limitations of Article 9, Section 6 of the State Constitution, general obligation unlimited tax bonds or notes; or bonds or notes to refund in advance bonds or notes issued under these provisions. The local governing body could secure bonds or notes by mortgage, assignment, or pledge of property, including anticipated tax collections or revenue sharing payments.

Bonds or notes issued under these provisions would be exempt from all taxation in this State except inheritance and transfer taxes, and the interest on the bonds or notes would be exempt from all taxation in the State, even if the interest could be subject to Federal income tax.

The local governing body could borrow money and issue bonds or notes for refunding all or part of existing bond or note indebtedness only if the net present value of the principal and interest to be paid on the refunding bonds or notes, excluding the cost of issuance, would be less than the net present value of the principal and interest to be paid on the bonds or notes being refunded.

Development Rights Authority

A development rights ordinance could establish a development rights authority to exercise some or all of the local unit's powers and duties under the bills and the development rights ordinance, except as follows:

- The purchase and sale of development rights would have to be subject to the approval of the local governing body.
- Title to any development rights held by the local unit would have to be in the name of the local unit.
- The powers of the local unit to issue bonds and notes under the bill would have to be exercised by the local governing body.
- The power to enter into intergovernmental agreements would have to be exercised by the local governing body.

A development rights authority would have to be governed by a board consisting of at least five members. The local unit's treasurer would have to be a member of the board. (In a charter county, the elected county executive, appointed by the chief administrative officer, or appointed county manager also would have to be a member.) In any local unit, the remaining members would be members at large appointed for two-year terms. (In a county, the members at large would be appointed by the county board of commissioners; in a charter county, however, the members at large would be appointed by the elected county executive or appointed chief administrative officer.) In any local unit, one of the members at large would have to be a representative of development interests. Each member at large would have to be a resident of the local unit, hold office until his or her successor was appointed, and serve at the pleasure of the county's appointing authority, the township board, or the legislative body of the city or village.

A local governing body could enter into an intergovernmental agreement for the creation of a joint development rights authority to implement an agreement for the purchase of development rights. A joint authority would be subject to the same statutory provisions applicable to a development rights authority of a single local unit. For each local unit that agreed to create a joint authority, its membership on the authority board would be subject to the bills' membership requirements.

The members of a development rights authority board would have to elect a chairperson. Members would have to serve without compensation but be reimbursed for actual and reasonable expenses.

Township Zoning Ordinances

Senate Bill 573 (S-4) would repeal and replace a section under which townships that enact a township zoning ordinance generally are not subject to an ordinance, rule, or regulation adopted under the county zoning law (MCL 125.297).

MCL 125.231 et al. (S.B. 573)
125.301 et al. (S.B. 574)
125.581 et al. (S.B. 575)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bills propose a method under which local units could protect valuable farmland. If a local unit chose to adopt a development rights ordinance, it could purchase the rights to develop specific parcels from landowners who were willing to sell the rights. Rather than being extinguished in all cases, however, the development rights would belong to the local unit, which could dictate the level of development that would be permitted. For example, a local unit could allow a few houses to be built on a parcel, which would preserve the agricultural use and character of the property while preventing rampant development. If allowed by a local unit's ordinance, landowners could buy back development rights if agriculture were no longer viable on their property. The bills also specify various ways that local units could finance development rights purchases, including the issuance of bonds and notes. The proposed programs would help stabilize farmland values and strengthen the future of farming. Because farmers could spend the proceeds from the sale of development rights close to home to make capital improvements or to acquire additional farmland,

local economies could benefit. Unlike zoning restrictions, which are subject to amendments and variances, PDR programs could permanently protect land from nonfarm development, while the property remained available for agricultural use and could be sold without the development rights. Because the sale of development rights would have to "run with the land", the sale would be binding on all future purchases of the property. According to the Michigan Environmental Council, one community already has implemented the options contemplated by the bills, and several more are seriously considering them. The bills would put statutory authority behind a movement that currently is under way.

Response: Although the bills would help preserve agricultural land, many other types of property--such as forestland, open spaces, fragile ecosystems, and recreation land--need and deserve protection from careless land practices. Moreover, the bills originally provided for the transfer, as well as the purchase, of development rights. These provisions would have allowed a local unit to transfer development rights from one parcel, where it wanted to limit development, to another parcel, where it wanted to encourage growth. Without the capacity to transfer, local units generally would have to finance or appropriate money for the purchase of development rights, which could sharply curtail the number of purchases made. The Governor's Task Force recommended not only PDR programs, but also programs for the transfer of development rights.

Legislative Analyst: S. Margules

FISCAL IMPACT

Local units that adopted an ordinance authorizing the purchase of development rights would experience an indeterminate fiscal impact. The purchase of development rights could involve an authority that could purchase, hold, or sell development rights. The authority or local unit would incur the cost of compensating authority members for actual and reasonable expenses.

The bills 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.