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BILL ANALYSIS



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Senate Bills 573, 574, and 575 (as introduced 6-6-95)
Sponsor: Senator Bill Schuette
Committee: Local, Urban and State Affairs

Date Completed: 2-20-96

CONTENT

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

- Allow a local unit (a county, township, city, or village) to adopt an ordinance authorizing the transfer of development rights.
- Provide that the ordinance would not take effect until the local unit prepared a report containing specific information.
- Permit the local unit to establish an authority for the purpose of purchasing and temporarily holding development rights.
- Provide that the authority could acquire development rights by purchase or condemnation, and sell the development rights to a purchaser who would use them according to the ordinance or permanently terminate them.
- Require the purchase and sale of development rights to be at fair market value.
- Provide that a local unit, by ordinance, could authorize the purchase of development rights, and that the local unit could purchase the rights by voluntary sale or condemnation.
- Permit a person to petition the local unit's governing body for the purchase of development rights and the establishment of a special assessment district to pay for the rights; and require the petition to include the signatures of at least 51% of the property owners in the proposed district.

Senate Bill 573 would amend the County Rural Zoning Enabling Act, which the bill would rename "The County Zoning Act". Senate Bill 574 would amend the Township Rural Zoning Act, which the bill would rename "The Township Zoning Act". Senate Bill 575 would amend Public Act 207 of 1921, which the bill would entitle "The City and Village Zoning Act".

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

Ordinance for the Transfer of Development Rights

A local board or body could adopt an ordinance to authorize the transfer of development rights to achieve a development rights benefit. 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 local unit sought.
- The procedures by which a transfer of development rights could be initiated by the local unit 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 local board or body 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 local unit 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 local unit 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 local unit's plan. (Senate Bill 573 refers to a county development plan, Senate Bill 574 to a township basic plan, and Senate Bill 575 to a city or village master 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 local unit's 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 local unit that had adopted an ordinance described above could establish an authority for the purpose of purchasing and temporarily holding development rights. A local board or body 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 local unit, 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 local board or body could adopt an ordinance establishing the authority.

The authority would consist of five members. (In a county, the members would include the county treasurer, and four members at large appointed for three-year terms by the county board. In a charter county, however, the members would include the elected county executive, appointed chief administrative officer, or appointed county manager; the county treasurer; and three members at large appointed for three-year terms by the county board. In a township, city, or village, the members would include the chief administrative officer of the local unit, the local unit's treasurer, and three members appointed at large by the township supervisor, city mayor, or village president, subject to the approval of the local board or body.) One of the members at large would have to represent development interests. A member at large would have to be a resident of the local unit and would serve at the pleasure of the local board or body. The members of the authority would have to elect a chairperson.

The ordinance creating the authority could provide that the local board or body would serve as the authority board. If the local unit 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 local unit; proceeds from the sale of development rights; grants; donations; and/or other sources approved by the local board or body.

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 local unit. Title to the development rights would have to be taken and held in the local unit'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 local unit's ordinance for the transfer of rights.
- Permanently terminate the development rights by open space easement to the local unit, 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 local board or body served as the authority, the purchase and sale would be subject to approval by the board or body.

Purchase of Development Rights

By ordinance, a local board or body could authorize the purchase of development rights by the local unit to achieve a public purpose or benefit permitted in the exercise of authority under the Act. The local unit 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 local unit sought.
- The procedures by which the local unit 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 local board or body 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 local unit adopted an ordinance, a person could petition the local board or body 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 local board or body could purchase development rights petitioned for if the board or body 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 local unit. If the local board or body 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 bills would apply in addition to other laws and ordinances adopted to achieve similar purposes. The bills would not invalidate a law or ordinance that did “not contemplate consideration being given for the achievement of the purposes” of the bills.

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

Legislative Analyst: S. Margules

FISCAL IMPACT

Local units that adopted 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 local unit would incur the cost of publishing public hearing notices and compensating authority members for actual and reasonable expenses. Local units also could purchase development rights, which could be paid for with special assessments if approved by the signatures of the owners of at least 51% of the land in the proposed district.

These 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.