

SENATE BILL NO. 1250

September 15, 1998, Introduced by Senators SCHUETTE, NORTH,
CHERRY, BENNETT, BULLARD, BYRUM and STILLE and referred to
the Committee on Farming, Agribusiness and Food Systems.

A bill to amend 1943 PA 184, entitled
"Township zoning act,"
by amending the title and sections 31, 32, 33, and 40 (MCL
125.301, 125.302, 125.303, and 125.310), the title and section 31
as amended and sections 32, 33, and 40 as added by 1996 PA 570,
and by adding section 32a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 TITLE

2 An act to provide for the establishment in townships of
3 zoning districts within which the proper use of land and natural
4 resources may be encouraged or regulated by ordinance, and for
5 which districts provisions may also be adopted designating the
6 location of, the size of, the uses that may be made of, the
7 minimum open spaces, sanitary, safety, and protective measures
8 that ~~shall be~~ ARE required for, and the maximum number of

1 families that may be housed in dwellings, buildings, and
 2 structures, including tents and trailer coaches, that are erected
 3 or altered; to designate the use of certain state licensed resi-
 4 dential facilities; to provide for a method for the adoption of
 5 ordinances and amendments to ordinances; to provide for emergency
 6 interim ordinances; to provide for the acquisition by purchase,
 7 condemnation, or otherwise of nonconforming property; to provide
 8 for the administering of ordinances adopted; to provide for con-
 9 flicts with other acts, ordinances, or regulations; to provide
 10 sanctions for violations; to provide for the assessment, levy,
 11 and collection of taxes; to provide for the collection of fees
 12 for building permits; to provide for petitions, public hearings,
 13 and referenda; to provide for appeals; to authorize the purchase
 14 AND TRANSFER of development rights; to authorize the issuance of
 15 bonds and notes; and to provide for special assessments.

16 Sec. 31. (1) The township board of a township may adopt a
 17 development rights ordinance limited to the establishment,
 18 financing, and administration of a PDR program OR TDR PROGRAM, as
 19 provided under this section and sections 32 ~~and~~ TO 33. ~~The~~ A
 20 PDR program OR TDR PROGRAM may be used only to protect agricul-
 21 tural land and other eligible land. This section and sections 32
 22 ~~and~~ TO 33 do not expand the condemnation authority of a town-
 23 ship as otherwise provided for in this act. A PDR program shall
 24 not acquire development rights by condemnation. This section and
 25 sections 32 ~~and~~ TO 33 do not limit any authority that may oth-
 26 erwise be provided by law for a township to protect natural

1 resources, preserve open space, provide for historic
2 preservation, or accomplish similar purposes.

3 (2) A township shall not establish, finance, or administer a
4 PDR program OR TDR PROGRAM unless the township board adopts a
5 development rights ordinance. If the township has a zoning ordi-
6 nance, the development rights ordinance may be adopted as part of
7 the zoning ordinance pursuant to the procedures governing adop-
8 tion of a zoning ordinance set forth in this act. Whether or not
9 the township has a zoning ordinance, the development rights ordi-
10 nance may be adopted as a separate ordinance pursuant to the pro-
11 cedures governing ordinance adoption in general.

12 (3) A township board may promote and enter into agreements
13 between counties, cities, villages, and townships for the pur-
14 chase AND TRANSFER of development rights, including
15 cross-jurisdictional purchase AND TRANSFER, subject to applicable
16 development rights ordinances of townships and similar ordinances
17 of counties, cities, and villages.

18 Sec. 32. (1) A development rights ordinance ~~shall~~ MAY
19 provide for a PDR program. Under a PDR program, the township
20 ~~purchases~~ MAY PURCHASE development rights, but only from a
21 ~~willing~~ landowner WHO IS A WILLING SELLER. A development
22 rights ordinance providing for a PDR program shall specify all of
23 the following:

24 (a) The public benefits that the township may seek through
25 the purchase of development rights.

26 (b) The procedure by which the township or a landowner may
27 by application initiate a purchase of development rights.

1 (c) The development rights authorized to be purchased
2 subject to a determination under standards and procedures
3 required by subdivision (d).

4 (d) The standards and procedure to be followed by the town-
5 ship board for approving, modifying, or rejecting an application
6 to purchase development rights including the determination of all
7 of the following:

8 (i) Whether to purchase development rights.

9 (ii) Which development rights to purchase.

10 (iii) The intensity of development permitted after the pur-
11 chase on the land from which the development rights are
12 purchased.

13 (iv) The price at which development rights will be purchased
14 and the method of payment.

15 (v) The procedure for ensuring that the purchase or sale of
16 development rights is legally fixed so as to run with the land.

17 (e) The circumstances under which an owner of land from
18 which development rights have been purchased under a PDR program
19 may repurchase those development rights and how the proceeds of
20 the purchase are to be used by the township.

21 (2) If the township has a zoning ordinance, the purchase of
22 development rights shall be consistent with the plan referred to
23 in section 3 upon which the zoning ordinance is based.

24 (3) Development rights acquired under a PDR program may be
25 conveyed only as provided pursuant to subsection (1)(e).

26 (4) The township shall notify each village in which is
27 located land from which development rights are proposed to be

1 purchased of the receipt of an application for the purchase of
2 development rights and shall notify each such village of the dis-
3 position of that application.

4 SEC. 32A. (1) A DEVELOPMENT RIGHTS ORDINANCE MAY PROVIDE
5 FOR A TDR PROGRAM. UNDER A TDR PROGRAM, ONLY A WILLING
6 LANDOWNER'S DEVELOPMENT RIGHTS MAY BE TRANSFERRED. A DEVELOPMENT
7 RIGHTS ORDINANCE PROVIDING FOR A TDR PROGRAM SHALL SPECIFY ALL OF
8 THE FOLLOWING:

9 (A) THE PUBLIC BENEFITS THAT THE TOWNSHIP MAY SEEK THROUGH
10 THE TRANSFER OF DEVELOPMENT RIGHTS, AND THE DEVELOPMENT RIGHTS
11 AUTHORIZED TO BE TRANSFERRED.

12 (B) THE PROCEDURES TO BE FOLLOWED BY THE TOWNSHIP BOARD FOR
13 ESTABLISHING THE PRECISE LOCATION OF EACH SENDING ZONE AND
14 RECEIVING ZONE AND LIMITING THE DEVELOPMENT RIGHTS THAT MAY BE
15 TRANSFERRED TO EACH RECEIVING ZONE. THOSE PROCEDURES SHALL
16 ENSURE, BUT NEED NOT BE LIMITED TO, ALL OF THE FOLLOWING:

17 (i) CONSIDERATION OF AN ESTIMATE OF POPULATION AND ECONOMIC
18 GROWTH DURING THE NEXT 10 YEARS IN THE TOWNSHIP AND AN ESTIMATE
19 OF THE DEVELOPMENT POTENTIAL OF EACH PROPOSED SENDING ZONE AND
20 RECEIVING ZONE.

21 (ii) IF THE TOWNSHIP HAS A ZONING ORDINANCE, CONSISTENCY
22 WITH THE PLAN REFERRED TO IN SECTION 3 UPON WHICH THE ZONING
23 ORDINANCE IS BASED.

24 (iii) CONSIDERATION OF AN ESTIMATE OF THE EXISTING AND PRO-
25 POSED INFRASTRUCTURE, INCLUDING SERVICES AND FACILITIES, OF EACH
26 PROPOSED RECEIVING ZONE.

1 (iv) THAT A RECEIVING ZONE BE ABLE TO ACCOMMODATE, IN TERMS
2 OF BOTH CAPACITY AND AVAILABILITY, THE INTENSITY OF DEVELOPMENT
3 ASSOCIATED WITH DEVELOPMENT RIGHTS THAT MAY BE TRANSFERRED FROM A
4 SENDING ZONE.

5 (v) AVOIDANCE OF UNDUE BURDEN UPON THE PEOPLE AND LAND
6 WITHIN THE RECEIVING ZONE.

7 (vi) CONSISTENCY WITH THE PURPOSES OF THIS SECTION AND WITH
8 THIS ACT.

9 (vii) CONSIDERATION OF THE INTENSITY OF DEVELOPMENT OTHER-
10 WISE ALLOWED UNDER APPLICABLE ZONING, BUILDING, AND OTHER ORDI-
11 NANCES BEFORE THE ADOPTION OF TDR PROGRAM PROVISIONS IN A DEVEL-
12 OPMENT RIGHTS ORDINANCE.

13 (C) THE PROCEDURE FOR A TRANSFER OF DEVELOPMENT RIGHTS,
14 INCLUDING THE PROCEDURE BY WHICH THE TOWNSHIP OR A PROPERTY OWNER
15 MAY BY APPLICATION INITIATE A TRANSFER OF DEVELOPMENT RIGHTS.
16 EXCEPT AS PROVIDED IN SUBDIVISION (E) AND SUBSECTION (3)(B), AN
17 APPLICATION TO TRANSFER DEVELOPMENT RIGHTS SHALL INCLUDE, BUT
18 NEED NOT BE LIMITED TO, THE IDENTITY OF THE LAND WITHIN A SENDING
19 ZONE FROM WHICH THE DEVELOPMENT RIGHTS ARE PROPOSED TO BE SEVERED
20 AND THE IDENTITY OF LAND WITHIN A RECEIVING ZONE TO WHICH THE
21 DEVELOPMENT RIGHTS ARE PROPOSED TO BE ATTACHED.

22 (D) THE STANDARDS AND PROCEDURE TO BE FOLLOWED BY THE TOWN-
23 SHIP BOARD FOR APPROVING, MODIFYING, OR REJECTING AN APPLICATION
24 TO TRANSFER DEVELOPMENT RIGHTS, INCLUDING THE DETERMINATION OF
25 ALL OF THE FOLLOWING:

26 (i) WHETHER TO TRANSFER DEVELOPMENT RIGHTS.

1 (ii) WHICH DEVELOPMENT RIGHTS TO TRANSFER.

2 (iii) THE INTENSITY OF DEVELOPMENT PERMITTED AFTER THE
3 TRANSFER ON THE LAND FROM WHICH THE DEVELOPMENT RIGHTS ARE
4 SEVERED AND THE INTENSITY OF DEVELOPMENT PERMITTED AFTER THE
5 TRANSFER ON THE LAND TO WHICH THE DEVELOPMENT RIGHTS ARE
6 ATTACHED.

7 (iv) THE PROCEDURE FOR ENSURING THAT THE SEVERANCE OF DEVEL-
8 OPMENT RIGHTS FROM LAND IN A SENDING ZONE AND THE ATTACHMENT OF
9 THOSE DEVELOPMENT RIGHTS TO LAND IN A RECEIVING ZONE ARE LEGALLY
10 FIXED SO AS TO RUN WITH THE LAND FROM WHICH THE DEVELOPMENT
11 RIGHTS HAVE BEEN SEVERED AND TO WHICH THE DEVELOPMENT RIGHTS HAVE
12 ATTACHED.

13 (E) THE CIRCUMSTANCES UNDER WHICH A LANDOWNER FROM WHOM
14 DEVELOPMENT RIGHTS HAVE BEEN ACQUIRED UNDER A TDR PROGRAM MAY
15 REPURCHASE THOSE DEVELOPMENT RIGHTS.

16 (2) THE INTENSITY OF DEVELOPMENT ALLOWED IN A RECEIVING ZONE
17 IF DEVELOPMENT RIGHTS ARE TRANSFERRED SHALL BE GREATER THAN THE
18 INTENSITY OF DEVELOPMENT THAT WAS ALLOWED IN THAT AREA OF LAND
19 UNDER ANY APPLICABLE ZONING ORDINANCE 1 YEAR BEFORE THE DEVELOP-
20 MENT RIGHTS ORDINANCE'S TDR PROGRAM PROVISIONS WERE ADOPTED. THE
21 INTENSITY OF DEVELOPMENT ALLOWED IN A RECEIVING ZONE IF DEVELOP-
22 MENT RIGHTS ARE NOT TRANSFERRED SHALL NOT BE LESS THAN THE INTEN-
23 SITY OF DEVELOPMENT THAT WAS ALLOWED IN THAT AREA OF LAND UNDER
24 THE APPLICABLE ZONING ORDINANCE 1 YEAR BEFORE THE DEVELOPMENT
25 RIGHTS ORDINANCE'S TDR PROGRAM PROVISIONS WERE ADOPTED.

26 (3) A TOWNSHIP WITH A TDR PROGRAM MAY DO 1 OR BOTH OF THE
27 FOLLOWING:

1 (A) FACILITATE TRANSFERS OF DEVELOPMENT RIGHTS DIRECTLY
2 BETWEEN WILLING LANDOWNERS AT THE PRICE AGREED UPON BY THE WILL-
3 ING LANDOWNERS.

4 (B) PURCHASE DEVELOPMENT RIGHTS IN A SENDING ZONE FROM A
5 LANDOWNER WHO IS A WILLING SELLER, TEMPORARILY HOLD THE DEVELOP-
6 MENT RIGHTS, AND SELL THE DEVELOPMENT RIGHTS TO A PURCHASER FOR
7 ATTACHMENT TO LAND IN A RECEIVING ZONE. THE PURCHASE AND SALE OF
8 DEVELOPMENT RIGHTS SHALL BE AT FAIR MARKET VALUE, BASED UPON A
9 BONA FIDE APPRAISAL.

10 (4) EXCEPT AS PROVIDED PURSUANT TO SUBSECTION (1)(E), DEVEL-
11 OPMENT RIGHTS ACQUIRED UNDER A TDR PROGRAM MAY BE SOLD ONLY TO A
12 LANDOWNER IN A RECEIVING ZONE FOR ATTACHMENT TO LAND IN A RECEIV-
13 ING ZONE.

14 (5) EXCEPT AS PROVIDED PURSUANT TO SUBSECTION (1)(E) OR
15 UNDER SUBSECTION (3)(B), DEVELOPMENT RIGHTS SHALL NOT BE SEVERED
16 UNLESS THE COUNTY HAS APPROVED THE ATTACHMENT OF THOSE DEVELOP-
17 MENT RIGHTS TO LAND IN A RECEIVING ZONE. EXCEPT FOR THE PERIOD
18 DURING WHICH DEVELOPMENT RIGHTS MAY BE TEMPORARILY HELD BY A
19 TOWNSHIP UNDER SUBSECTION (3)(B), THE SEVERANCE OF DEVELOPMENT
20 RIGHTS FROM LAND IN A SENDING ZONE SHALL BE SIMULTANEOUS WITH THE
21 ATTACHMENT OF THOSE DEVELOPMENT RIGHTS TO LAND IN A RECEIVING
22 ZONE.

23 (6) THE TOWNSHIP SHALL NOTIFY EACH VILLAGE IN WHICH IS
24 LOCATED LAND FROM WHICH DEVELOPMENT RIGHTS ARE PROPOSED TO BE
25 SEVERED OR TO WHICH DEVELOPMENT RIGHTS ARE PROPOSED TO BE
26 ATTACHED OF THE RECEIPT OF AN APPLICATION FOR THE TRANSFER OF

1 DEVELOPMENT RIGHTS AND SHALL NOTIFY EACH VILLAGE OF THE
2 DISPOSITION OF THAT APPLICATION.

3 (7) A TOWNSHIP SHALL NOT APPROVE THE TRANSFER OF DEVELOPMENT
4 RIGHTS FROM OR TO LAND THAT IS SUBJECT TO THE ZONING ORDINANCE OF
5 A CITY, A VILLAGE, A COUNTY, OR ANOTHER TOWNSHIP UNLESS THE TOWN-
6 SHIP AND THE CITY, THE VILLAGE, THE COUNTY, OR THE OTHER TOWN-
7 SHIP, RESPECTIVELY, HAVE ENTERED INTO AN AGREEMENT UNDER
8 SECTION 31(3).

9 (8) A LANDOWNER MAY DEVELOP LAND WITHIN A RECEIVING ZONE AT
10 THE INTENSITY OF DEVELOPMENT ALLOWED UNDER APPLICABLE ZONING,
11 BUILDING, AND OTHER ORDINANCES APART FROM THE DEVELOPMENT RIGHTS
12 ORDINANCE OR, IF DEVELOPMENT RIGHTS ARE TRANSFERRED FROM THE
13 LAND, MAY DEVELOP THE LAND AT A HIGHER INTENSITY OF DEVELOPMENT
14 AS ALLOWED UNDER THE DEVELOPMENT RIGHTS ORDINANCE. IF DEVELOP-
15 MENT RIGHTS HAVE NOT BEEN TRANSFERRED FROM LAND IN A SENDING
16 ZONE, THE LANDOWNER MAY DEVELOP THE LAND AT THE INTENSITY OF
17 DEVELOPMENT ALLOWED UNDER APPLICABLE ZONING, BUILDING, AND OTHER
18 ORDINANCES APART FROM THE DEVELOPMENT RIGHTS ORDINANCE.

19 Sec. 33. (1) A PDR program OR, EXCEPT AS PROVIDED IN SUBDI-
20 VISION (G), A TDR PROGRAM may be financed through 1 or more of
21 the following sources:

22 (a) General appropriations by the township.

23 (b) Proceeds from the sale of development rights by the
24 township subject to ~~section~~ SECTIONS 32(3) AND 32A(4).

25 (c) Grants.

26 (d) Donations.

1 (e) Bonds or notes issued under subsections (2) to (6).

2 (f) General fund revenue.

3 (g) ~~Special~~ FOR A PDR PROGRAM ONLY, SPECIAL assessments
4 under subsection (7).

5 (h) Other sources approved by the township board and permit-
6 ted by law.

7 (2) The township board may borrow money and issue bonds or
8 notes under the municipal finance act, ~~Act No. 202 of the Public~~
9 ~~Acts of 1943, being sections 131.1 to 139.3 of the Michigan~~
10 ~~Compiled Laws~~ 1943 PA 202, MCL 131.1 TO 139.3, subject to the
11 general debt limit applicable to the township. The bonds or
12 notes may be revenue bonds or notes; general obligation limited
13 tax bonds or notes; subject to section 6 of article IX of the
14 state constitution of 1963, general obligation unlimited tax
15 bonds or notes; or bonds or notes to refund in advance bonds or
16 notes issued under this section.

17 (3) The township board may secure bonds or notes issued
18 under this section by mortgage, assignment, or pledge of property
19 including, but not limited to, anticipated tax collections, reve-
20 nue sharing payments, or special assessment revenues. A pledge
21 made by the township board is valid and binding from the time the
22 pledge is made. The pledge IS immediately ~~shall be~~ subject to
23 the lien of the pledge without a filing or further act. The lien
24 of the pledge ~~shall be~~ IS valid and binding as against parties
25 having claims in tort, contract, or otherwise against the town-
26 ship, irrespective of whether the parties have notice of the

1 lien. Filing of the resolution, the trust agreement, or another
2 instrument by which a pledge is created is not required.

3 (4) Bonds or notes issued under this section are exempt from
4 all taxation in this state except inheritance and transfer taxes,
5 and the interest on the bonds or notes is exempt from all taxa-
6 tion in this state, notwithstanding that the interest may be
7 subject to federal income tax.

8 (5) The bonds and notes issued under this section may be
9 invested in by the state treasurer and all other public officers,
10 state agencies and political subdivisions, insurance companies,
11 banks, savings and loan associations, investment companies, and
12 fiduciaries and trustees, and may be deposited with and received
13 by the state treasurer and all other public officers and the
14 agencies and political subdivisions of this state for all pur-
15 poses for which the deposit of bonds or notes is authorized. The
16 authority granted by this section is in addition to all other
17 authority granted by law.

18 (6) The township board may borrow money and issue bonds or
19 notes for refunding all or part of existing bond or note indebt-
20 edness only if the net present value of the principal and inter-
21 est to be paid on the refunding bonds or notes, excluding the
22 cost of issuance, will be less than the net present value of the
23 principal and interest to be paid on the bonds or notes being
24 refunded, as calculated using a method approved by the department
25 of treasury.

26 (7) A development rights ordinance may authorize the
27 township board to finance a PDR program by special assessments.

1 In addition to meeting the requirements of section 32, the
2 development rights ordinance shall include in the procedure to
3 approve and establish a special assessment district both of the
4 following:

5 (a) The requirement that there be filed with the township
6 board a petition containing all of the following:

7 (i) A description of the development rights to be purchased,
8 including a legal description of the land from which the purchase
9 is to be made.

10 (ii) A description of the proposed special assessment
11 district.

12 (iii) The signatures of the owners of at least 66% of the
13 land area in the proposed special assessment district.

14 (iv) The amount and duration of the proposed special
15 assessments.

16 (b) The requirement that the township board specify how the
17 proposed purchase of development rights will specially benefit
18 the land in the proposed special assessment district.

19 Sec. 40. (1) As used in this act:

20 (a) "Agricultural land" means substantially undeveloped land
21 devoted to the production of plants and animals useful to humans,
22 including forage and sod crops; grains, feed crops, and field
23 crops; dairy and dairy products; poultry and poultry products;
24 livestock, including breeding and grazing of cattle, swine, and
25 similar animals; berries; herbs; flowers; seeds; grasses; nursery
26 stock; fruits; vegetables; Christmas trees; and other similar
27 uses and activities.

1 (b) "Development rights" means the rights to develop land to
2 the maximum intensity of development authorized by law.

3 (c) "Development rights ordinance" means an ordinance, which
4 may comprise part of a zoning ordinance, adopted under
5 section 31.

6 (d) "Intensity of development" means the height, bulk, area,
7 density, setback, use, and other similar characteristics of
8 development.

9 (e) "Other eligible land" means land that has a common prop-
10 erty line with agricultural land from which development rights
11 have been purchased OR TRANSFERRED and that is not divided from
12 that agricultural land by a state or federal limited access
13 highway.

14 (f) "PDR program" means a program under section 32 for the
15 purchase of development rights by a township.

16 (G) "RECEIVING ZONE" MEANS AN AREA OF LAND IDENTIFIED PURSU-
17 ANT TO A DEVELOPMENT RIGHTS ORDINANCE WHERE DEVELOPMENT COULD BE
18 MORE INTENSE THAN PERMITTED BY THE DEVELOPMENT RIGHTS ATTACHED TO
19 THAT LAND WITHOUT ADVERSELY AFFECTING PUBLIC HEALTH, SAFETY, OR
20 WELFARE, AND TO WHICH DEVELOPMENT RIGHTS CAN BE TRANSFERRED FROM
21 A SENDING ZONE.

22 (H) "SENDING ZONE" MEANS AN AREA OF LAND IDENTIFIED PURSUANT
23 TO A DEVELOPMENT RIGHTS ORDINANCE WHERE DEVELOPMENT SHOULD BE
24 LESS INTENSE THAN PERMITTED BY THE DEVELOPMENT RIGHTS ATTACHED TO
25 THAT LAND TO ACHIEVE A PUBLIC BENEFIT SET FORTH IN THE DEVELOP-
26 MENT RIGHTS ORDINANCE AND FROM WHICH DEVELOPMENT RIGHTS CAN BE
27 TRANSFERRED TO A RECEIVING ZONE.

1 (I) "TDR PROGRAM" MEANS A PROGRAM UNDER SECTION 32A FOR THE
2 TRANSFER OF DEVELOPMENT RIGHTS BY SEVERING DEVELOPMENT RIGHTS
3 FROM CERTAIN LAND AND ATTACHING THOSE DEVELOPMENT RIGHTS TO OTHER
4 LAND.

5 (2) This act shall be known and may be cited as the
6 "township zoning act".