

House Bill 4346

Sponsor: Rep. Patricia Birkholz

Committee: Land Use and Environment

Complete to 3-30-01

A SUMMARY OF HOUSE BILL 4346 AS INTRODUCED 2-27-01

The bill would create the Development Rights Market Act under which a local unit of government could adopt an ordinance governing the sale and purchase of development rights on land. The ordinance would provide for the establishment, financing, and administration of a development rights market program. Such a program would allow the severance of development rights from land in a “sending zone” and the attachment of rights to land in a “receiving zone”. The local unit would have to designate sending zones and receiving zones on its zoning map. Under the new act, a landowner could increase the intensity of development on land in a receiving zone beyond what would otherwise be authorized by law by using additional development rights purchased from landowners in a sending zone.

The purchase and sale of development rights would have to be voluntary and at a price negotiated and agreed upon by the parties. A DRM ordinance could not allow the acquisition of development rights by condemnation. A local unit could purchase development rights from landowners in a sending zone at fair market value, based on a bona fide appraisal, temporarily hold the rights, and then resell the rights to a landowner for attachment in a receiving zone. The sale price of the rights could not exceed the purchase price.

DRM Ordinance. A development rights market ordinance would have to specify the public benefits being sought; the precise location of each sending and receiving zone; and the procedure for the severance, sale, purchase, and attachment of development rights. The adoption of a DRM ordinance would be governed by the same procedures as applied to the adoption of an amendment to a zoning ordinance. A local unit could only adopt a DRM ordinance if it had adopted a zoning ordinance under the County Zoning Act, the Township Zoning Act, or the City and Village Zoning Act.

Public Benefits. The public benefits the local unit was seeking could include the voluntary protection of natural, scenic, and agricultural and open space qualities; the voluntary enhancement of sites and areas of special character or special historical, cultural, aesthetic, or economic interest or value; the voluntary protection and management of land, water, and other natural resources; the management of the community’s overall intensity of development while allowing landowners to voluntarily purchase additional development rights to increase the intensity of development in designated areas; and the encouragement of development in enterprise zones, in brownfields, and in other redevelopment areas.

Locating Zones. In determining the location of sending and receiving zones, the governing body of the local unit would have to consider an estimate of population and economic growth during the next ten years and an estimate of the development potential of each proposed sending

and receiving zone; consider the intensity of development otherwise allowed under an applicable zoning, building, and other ordinances before the adoption of a DRM ordinance; consider an estimate of the existing and proposed infrastructure, including services and facilities, of each proposed receiving zone; ensure that a receiving zone was able to accommodate, in terms of both infrastructure capacity and land availability, the intensity of development associated with development rights that could be purchased from a sending zone; and ensure consistency with the plan upon which the local unit's zoning ordinance was based.

Sending and Receiving Zones. The bill would define a sending zone as an area of land identified by the ordinance as where development should be less intense than permitted by the development rights attached to the land, and a receiving zone as an area of land to which development rights could be attached to increase the intensity of development without adversely affecting public health, safety, and welfare.

Development Rights Procedures. The ordinance would have to contain a procedure for ensuring that the severance of development rights from land in a sending zone and the attachment of those development rights to land were both simultaneous (except for brief period when rights could be held by a local unit) and fixed by a legal instrument so as to run with the land from which rights had been severed and to which rights had been attached. The legal instrument would have to be promptly recorded in the office of the register of deeds.

An application by which a landowner sought to initiate such a transaction would have to include the identity of the land within the sending zone, the identity of the land within the receiving zone, and the quantity and nature of the rights proposed to be transferred. An application would be approved by the governing body of a local unit if the application complied with the ordinance; the development rights proposed to be sold were unused and consequently available for severance; and the rights could be used on the land in the receiving zone to which they were to be attached.

Multi-jurisdictional Agreements. A local unit could promote and enter into agreements with one or more other local units for the severance, sale, purchase, and attachment of development rights, including cross-jurisdictional transactions. Such an agreement would be subject to the DRM ordinances of the local units involved. The bill would specify that this provision would not authorize an agreement between local units unless they had all adopted DRM ordinances. However, any county could assist other local units in the design and administration of cross-jurisdictional transactions.

A local unit could not approve the purchase of development rights from or the sale of development rights to land located outside the unit unless the local unit had entered into an agreement with the other local unit involved. A county could not approve the purchase of development rights from or the sale of development rights to land that was located in that county and was subject to a city, village, or township zoning ordinance unless the county and the other local unit had entered into an agreement.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.