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DEVELOPMENT RIGHTS MARKET PILOT PROJECT

House Bill 5268

Sponsor: Rep. Patricia Birkholz

Committee: Local Government and
Urban Policy

Complete to 10-18-01

A SUMMARY OF HOUSE BILL 5268 AS INTRODUCED 10-17-01

House Bill 5268 would create a new act to establish a development rights market (DRM) pilot project. Within six months of the bill's effective date, the Commission of Agriculture would select five or fewer townships located in different counties to participate in the DRM pilot project. The township board of a selected township could adopt a DRM ordinance providing for the establishment, financing, and administration of a DRM program. "Development rights" would refer to the rights to develop land to the maximum intensity of development authorized by law. A DRM program, however, would allow a landowner to develop land beyond the maximum intensity otherwise authorized by law.

DRM program. A DRM program would allow a landowner to increase the intensity of development on land beyond that otherwise authorized by law, by using additional development rights purchased from other landowners. More specifically, it would provide for the severance of development rights from land in a "sending zone" and the attachment of those rights to land in a "receiving zone. A "sending zone" would be an area of land identified by a DRM ordinance where development should be less intense than permitted by the development rights attached to that land to achieve a public benefit set forth in the ordinance and from which development rights could be severed and sold. A "receiving zone" would mean an area of land identified by a DRM ordinance to which development rights could be attached to increase the intensity of development without adversely affecting public health, safety, or welfare. The purchase and sale of development rights under a DRM program would be voluntary, and, in general, the price for such a transaction would have to be negotiated on and agreed upon by the parties. The bill would specify that a township that had bought and held rights for a landowner and was reselling those rights to a landowner, as described below, could not charge a price higher than the price at which it had originally purchased the rights.

In general, a landowner could develop land within a receiving zone at the intensity of development allowed under applicable zoning, building, and other ordinances apart from the DRM ordinance. However, if a landowner purchased additional development rights that were attached to the land, the landowner could develop the land at a higher intensity of development, as allowed under the DRM ordinance. If development rights had not been severed from land in a sending zone and sold, the landowner could develop the land at the intensity of development allowed under applicable zoning building and under ordinances other than the DRM ordinance.

DRM ordinance. A DRM ordinance would have to specify the public benefits that the township could seek through the DRM program, as well as the locations of each sending zone

House Bill 5268 (10-18-01)

and receiving zone and the nature and quantity of development rights that could be severed or attached. The ordinance would also have to specify the procedure for the severance, sale, purchase, and attachment of development rights, including the procedure by which one or more property owners could apply to initiate such a transaction. The public benefits would have to include one or more of the following five benefits: voluntary protection of natural, scenic, 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 a 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.

To determine the precise location of each sending zone and receiving zone and the nature and quantity of potential development rights, the township would have to take several steps. First, the township would have to consider an estimate of population and economic growth during the next ten years in the township and an estimate of the development potential of each proposed sending zone and receiving zone. Second, the township would have to consider the intensity of development otherwise allowed under applicable zoning, building, and other ordinances before the adoption of a DRM ordinance. Third, the township would have to consider an estimate of the existing and proposed infrastructure of each proposed receiving zone. Fourth, the township would have to ensure that a receiving zone could accommodate the intensity of development associated with development rights that could be purchased from a sending zone. Fifth, the township would have to ensure consistency with the plan upon which the township's zoning ordinance was based.

An application by which one or more property owners could initiate the procedure for the severance, sale, purchase, and attachment of development rights would have to specify the identity of the land within a sending zone from which the development rights would be severed; state the identity of the land within a receiving zone to which the development rights would be attached, unless the township bought the rights and held them temporarily before reselling them (as described below); and, specify the quantity and nature of the development rights that would be transferred.

Selection of participants. In order to be eligible for selection for participation in the DRM pilot project, a township would have to have adopted a zoning ordinance under the Township Zoning Act, and the township's board would have to submit an application to the Department of Agriculture. The department would select eligible townships for participation in the project based on several factors. The department would have to consider the market for residential and commercial development threatening the township's agricultural land, as well as the amount and quality of the township's agricultural land threatened by development. The department would also have to consider the ability of a proposed receiving zone to accommodate, in terms of both land availability and infrastructure capacity, the intensity of development associated with development rights that could be purchased from a sending zone. In determining infrastructure capacity, the Commission of Agriculture would have to consider current infrastructure and the township's ability to provide any necessary additional infrastructure. Finally, if the commission considered any other factors relevant, the department would have to consider them before selecting a township in the program. The department would provide advice to any township

selected to participate in the DRM pilot project on the drafting of a DRM ordinance and the implementation of a DRM program.

Simultaneity of severance and attachment; recording requirement. The severance of development rights from land in a sending zone and the attachment of those development rights to land in a receiving zone would be simultaneous, unless the township bought the rights and held them temporarily before reselling them as provided below. Moreover, the procedure for severing and attaching land would be fixed by a legal instrument so as to run with the land from which the development rights had been severed and to which the development rights had attached, respectively. The DRM ordinance would require that the legal instrument be promptly recorded with the register of deeds. The township would also have to designate sending zones and receiving zones on its map.

Procedures for adoption of, or amendment to, DRM ordinance. A township would have to designate sending zones and receiving zones on its map. The adoption of, or an amendment to, a DRM ordinance in a township would be governed by the procedures that apply to the adoption of an amendment to a zoning ordinance under the Township Zoning Act, including procedures governing petitions and the role of the zoning commission or zoning board. For these purposes, properties in a sending zone or receiving zone would be considered to be properties proposed for rezoning, except in the case of an amendment to a DRM ordinance that only affected other sending zones or receiving zones.

Approval of application for initiating severance and attachment. The township board could only approve an application initiating the procedure for the severance, sale, purchase, and attachment of development rights if three conditions were satisfied. First, the application would have to comply with the DRM ordinance. Second, the development rights proposed to be sold would have to be unused, and thus available for severance from land in the sending zone. Third, under the DRM ordinance, the development rights that would be sold could be used on the land in the receiving zone to which they would be attached.

Exception to simultaneous severance and attachment of development rights. In general, development rights could not be severed, under the act, unless the township had approved the attachment of those rights to land in a receiving zone. However, a township with a DRM program could purchase development rights from a landowner in a sending zone at fair market value, based upon a bona fide appraisal, temporarily hold the development rights, and resell the development rights to a landowner for attachment to land in a receiving zone. If it did so, the township could not resell the development rights at a higher price than it had paid when it purchased those rights.

Annual report. Each township selected to participate in the pilot project would be required to submit to the department a series of five annual reports on its DRM program. The department would determine the schedule for submitting the report and the information that the report would have to contain.

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