

HOUSE BILL No. 4346

February 27, 2001, Introduced by Reps. Birkholz, Meyer, Julian, Hager, Kooiman, Raczkowski, Ehardt, Lipsey, Bovin, Mortimer, Allen, Minore, Newell, Vear, Richardville, Tabor and Lockwood and referred to the Committee on Land Use and Environment.

A bill to provide for the sale and purchase of certain rights to develop land; to provide for the financing of the purchase of such rights by local units of government in certain circumstances; and to provide for the powers and duties of certain local governmental officers and entities.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "development rights market act".

3 Sec. 3. As used in this act:

4 (a) "Agricultural land" means substantially undeveloped land
5 devoted in whole or in part to the production of plants and ani-
6 mals useful to humans, including forage and sod crops; grains,
7 feed crops, and field crops; dairy animals and dairy products;
8 poultry and poultry products; livestock, including breeding and
9 grazing of cattle, swine, and similar animals; berries; herbs;

1 flowers; seeds; grasses; nursery stock; fruits; vegetables;
2 Christmas trees; and other similar uses and activities.

3 Agricultural land includes land enrolled in a federal acreage
4 set-aside program or a federal conservation reserve program.

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

7 (c) "DRM ordinance" means a development rights market ordi-
8 nance adopted under section 5.

9 (d) "DRM program" means a development rights market program
10 provided for by a DRM ordinance.

11 (e) "Intensity of development" means the height, bulk, area,
12 density, setback, use, and other similar characteristics of
13 development.

14 (f) "Local unit" means a county, township, city, or
15 village.

16 (g) "Receiving zone" means an area of land identified by a
17 DRM ordinance to which development rights can be attached to
18 increase the intensity of development without adversely affecting
19 public health, safety, or welfare.

20 (h) "Sending zone" means an area of land identified by a DRM
21 ordinance where development should be less intense than permitted
22 by the development rights attached to that land to achieve a
23 public benefit set forth in the DRM ordinance and from which
24 development rights can be severed and sold.

25 Sec. 5. (1) If the governing body of a local unit has
26 adopted a zoning ordinance under the county zoning act, 1943 PA
27 183, MCL 125.201 to 125.240, the township zoning act, 1943 PA

1 184, MCL 125.271 to 125.310, or the city and village zoning act,
2 1921 PA 207, MCL 125.581 to 125.600, the governing body may adopt
3 a development rights market ordinance providing for the estab-
4 lishment, financing, and administration of a development rights
5 market program. A local unit shall not establish, finance, or
6 administer a DRM program unless the governing body adopts a DRM
7 ordinance.

8 (2) A DRM program shall allow a landowner to increase the
9 intensity of development on land, beyond that otherwise autho-
10 rized by law, by utilizing additional development rights pur-
11 chased from other landowners. A DRM program shall provide for
12 the severance of development rights from land in a sending zone
13 and the attachment of those development rights to land in a
14 receiving zone.

15 (3) The purchase and sale of development rights under a DRM
16 program, including, but not limited to, the purchase and sale of
17 development rights under section 9(2), shall be voluntary.
18 Subject to section 9(2), the purchase and sale of development
19 rights under a DRM program shall be at a price negotiated and
20 agreed upon by the parties. A DRM program shall not acquire
21 development rights by condemnation.

22 (4) A landowner may develop land within a receiving zone at
23 the intensity of development allowed under applicable zoning,
24 building, and other ordinances apart from the DRM ordinance or,
25 if additional development rights have been purchased and attached
26 to the land, may develop the land at a higher intensity of
27 development as allowed under the DRM ordinance.

1 (5) If development rights have not been severed from land in
2 a sending zone and sold, the landowner may develop the land at
3 the intensity of development allowed under applicable zoning,
4 building, and other ordinances apart from the DRM ordinance.

5 Sec. 7. (1) A DRM ordinance shall specify all of the
6 following:

7 (a) The public benefits that the local unit may seek through
8 the DRM program, which shall be 1 or more of the following:

9 (i) The voluntary protection of natural, scenic, agricultur-
10 al, and open space qualities.

11 (ii) The voluntary enhancement of sites and areas of special
12 character or special historical, cultural, aesthetic, or economic
13 interest or value.

14 (iii) The voluntary protection and management of land,
15 water, and other natural resources.

16 (iv) The management of a community's overall intensity of
17 development while allowing landowners to voluntarily purchase
18 additional development rights to increase the intensity of devel-
19 opment in designated areas.

20 (v) The encouragement of development in enterprise zones
21 under the enterprise zone act, 1985 PA 224, MCL 125.2101 to
22 125.2123, in brownfields, and in other redevelopment areas.

23 (b) The precise location of each sending zone and receiving
24 zone and the nature and quantity of development rights that may
25 be severed from land in each sending zone and attached to land in
26 each receiving zone. To determine this information, the

1 governing body of the local unit shall do at least all of the
2 following:

3 (i) Consider an estimate of population and economic growth
4 during the next 10 years in the local unit and an estimate of the
5 development potential of each proposed sending zone and receiving
6 zone.

7 (ii) Consider the intensity of development otherwise allowed
8 under applicable zoning, building, and other ordinances before
9 the adoption of a DRM ordinance.

10 (iii) Consider an estimate of the existing and proposed
11 infrastructure, including services and facilities, of each pro-
12 posed receiving zone.

13 (iv) Ensure that a receiving zone is able to accommodate, in
14 terms of both infrastructure capacity and land availability, the
15 intensity of development associated with development rights that
16 may be purchased from a sending zone.

17 (v) Ensure consistency with the plan upon which the local
18 unit's zoning ordinance is based.

19 (c) The procedure for the severance, sale, purchase, and
20 attachment of development rights, including the procedure by
21 which 1 or more property owners may by application initiate such
22 a transaction. An application shall include, but need not be
23 limited to, all of the following:

24 (i) The identity of the land within a sending zone from
25 which the development rights are proposed to be severed.

1 (ii) Except as provided in section 9(2), the identity of the
2 land within a receiving zone to which the development rights are
3 proposed to be attached.

4 (iii) The quantity and nature of the development rights pro-
5 posed to be transferred.

6 (d) The procedure for ensuring that the severance of devel-
7 opment rights from land in a sending zone and the attachment of
8 those development rights to land in a receiving zone are both of
9 the following:

10 (i) Simultaneous, except for the period during which devel-
11 opment rights may be temporarily held by a local unit under sec-
12 tion 9(2).

13 (ii) Fixed by a legal instrument so as to run with the land
14 from which the development rights have been severed and to which
15 the development rights have attached, respectively. The develop-
16 ment rights ordinance shall require that the legal instrument be
17 promptly recorded in the office of the register of deeds.

18 (2) The local unit shall designate sending zones and receiv-
19 ing zones on its zoning map.

20 (3) The adoption of a DRM ordinance or an amendment to a DRM
21 ordinance in a county or township shall be governed by the same
22 procedures as apply to the adoption of an amendment to a zoning
23 ordinance under the township zoning act, 1943 PA 184, MCL 125.271
24 to 125.310, including, but not limited to, procedures governing
25 petitions and the role of the zoning commission or zoning board.
26 The adoption of a DRM ordinance or an amendment to a DRM
27 ordinance in a city or village shall be governed by the same

1 procedures as apply to the adoption of an amendment to a zoning
2 ordinance under the city and village zoning act, 1921 PA 207, MCL
3 125.581 to 125.600, including, but not limited to, procedures
4 governing petitions and the role of the planning commission or
5 other commission appointed to recommend zoning regulations. For
6 the purposes of this subsection, properties in a sending zone or
7 receiving zone shall be considered to be properties proposed for
8 rezoning, except in the case of an amendment to a DRM ordinance
9 that only affects other sending zones or receiving zones.

10 Sec. 9. (1) The governing body of the local unit shall
11 approve an application under section 7(1)(c) if all of the fol-
12 lowing apply:

13 (a) The application complies with the DRM ordinance.

14 (b) The development rights proposed to be sold are unused
15 and consequently available for severance from land in the sending
16 zone.

17 (c) Under the DRM ordinance, the development rights proposed
18 to be sold can be used on the land in the receiving zone to which
19 they are to be attached.

20 (2) A local unit with a DRM program may purchase development
21 rights from landowners in a sending zone at fair market value,
22 based upon a bona fide appraisal, temporarily hold the develop-
23 ment rights, and resell the development rights to a landowner for
24 attachment to land in a receiving zone. The price at which
25 development rights are resold by the local unit shall not exceed
26 the price at which those development rights were purchased by the
27 local unit.

1 (3) Except as provided pursuant to subsection (2),
2 development rights shall not be severed under this act unless the
3 local unit has approved the attachment of those development
4 rights to land in a receiving zone.

5 (4) A DRM program may be financed by any legal means.

6 Sec. 11. (1) The governing body of a local unit may promote
7 and enter into agreements with the governing body of 1 or more
8 other local units for the severance, sale, purchase, and attach-
9 ment of development rights, including cross-jurisdictional
10 transactions. An agreement under this subsection is subject to
11 the DRM ordinances of the local units. This subsection does not
12 authorize an agreement between local units unless the local units
13 have adopted DRM ordinances. However, any county may assist
14 other local units in the design and administration of
15 cross-jurisdictional transactions.

16 (2) A local unit shall not approve the purchase of develop-
17 ment rights from or the sale of development rights to land
18 located outside of that local unit unless the local unit has
19 entered into an agreement under subsection (1) with the local
20 unit in which that land is located.

21 (3) A county shall not approve the purchase of development
22 rights from or the sale of development rights to land that is
23 located in that county and that is subject to a city, village, or
24 township zoning ordinance unless the county and the city, vil-
25 lage, or township, respectively, have entered into an agreement
26 under subsection (1).

1 Sec. 13. This act does not limit any authority that may
2 otherwise be provided by law for a local unit to protect natural
3 resources, preserve open space, provide for historic preserva-
4 tion, or accomplish similar purposes.