

HOUSE BILL No. 4182

February 11, 2003, Introduced by Reps. Kolb, Gielegem, Stallworth, McConico, Lipsey and Minore 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 certain local units of government; 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
6 animals 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
8 ordinance 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 village.

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

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

24 Sec. 5. (1) If the governing body of a local unit has
25 adopted a zoning ordinance under the county zoning act, 1943 PA
26 183, MCL 125.201 to 125.240, the township zoning act, 1943 PA
27 184, MCL 125.271 to 125.310, or the city and village zoning act,

1 1921 PA 207, MCL 125.581 to 125.600, the governing body may adopt
2 a development rights market ordinance providing for the
3 establishment, financing, and administration of a development
4 rights market program. A local unit shall not establish,
5 finance, or administer a DRM program unless the governing body
6 adopts a DRM ordinance.

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

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

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

27 (5) If development rights have not been severed from land in

1 a sending zone and sold, the landowner may develop the land at
2 the intensity of development allowed under applicable zoning,
3 building, and other ordinances apart from the DRM ordinance.

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

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

8 (i) The voluntary protection of natural, scenic,
9 agricultural, and open space qualities.

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

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

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

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

22 (b) The precise location of each sending zone and receiving
23 zone and the nature and quantity of development rights that may
24 be severed from land in each sending zone and attached to land in
25 each receiving zone. To determine this information, the
26 governing body of the local unit shall do at least all of the
27 following:

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

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

8 (iii) Consider existing and proposed infrastructure,
9 including services and facilities, for each proposed receiving
10 zone.

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

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

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

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

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

27 (iii) The quantity and nature of the development rights

1 proposed to be transferred.

2 (d) The procedure for ensuring that the severance of
3 development rights from land in a sending zone and the attachment
4 of those development rights to land in a receiving zone are both
5 of the following:

6 (i) Simultaneous, except for the period during which
7 development rights may be temporarily held by a local unit under
8 section 9(2).

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

15 (2) The local unit shall designate sending zones and
16 receiving zones on its zoning map.

17 (3) The adoption of a DRM ordinance or an amendment to a DRM
18 ordinance in a county or township shall be governed by the same
19 procedures as apply to the adoption of an amendment to a zoning
20 ordinance under the township zoning act, 1943 PA 184, MCL 125.271
21 to 125.310, including, but not limited to, procedures governing
22 petitions and the role of the zoning commission or zoning board.
23 The adoption of a DRM ordinance or an amendment to a DRM
24 ordinance in a city or village shall be governed by the same
25 procedures as apply to the adoption of an amendment to a zoning
26 ordinance under the city and village zoning act, 1921 PA 207, MCL
27 125.581 to 125.600, including, but not limited to, procedures

1 governing petitions and the role of the planning commission or
2 other commission appointed to recommend zoning regulations. For
3 the purposes of this subsection, properties in a sending zone or
4 receiving zone shall be considered to be properties proposed for
5 rezoning, except in the case of an amendment to a DRM ordinance
6 that only affects other sending zones or receiving zones.

7 Sec. 9. (1) The governing body of the local unit shall
8 approve an application under section 7(1)(c) if all of the
9 following apply:

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

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

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

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

25 (3) Except as provided pursuant to subsection (2),
26 development rights shall not be severed under this act unless the
27 local unit has approved the attachment of those development

1 rights to land in a receiving zone.

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

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

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

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

24 Sec. 13. This act does not limit any authority that may
25 otherwise be provided by law for a local unit to protect natural
26 resources, preserve open space, provide for historic
27 preservation, or accomplish similar purposes.