

# HOUSE BILL No. 4658

March 27, 1991, Introduced by Rep. Willis Bullard and referred to the Committee on Towns and Counties.

A bill to provide for development agreements; to prescribe the powers and duties of certain local units of government; and to provide remedies.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

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

3       Sec. 3. For the purposes of this act, the words and phrases  
4 defined in sections 5 to 9 have the meanings ascribed to them in  
5 those sections.

6       Sec. 5. (1) "Developer" means a person who has a legal or  
7 equitable interest in land and who undertakes a development of  
8 that land.

9       (2) "Development", subject to subsections (3) and (4), means  
10 carrying out a building activity or mining operation, making a  
11 material change in the use or appearance of real estate, or

1 subdividing land. Development includes, but is not limited to,  
2 all of the following:

3 (a) Reconstruction, alteration of the size, or material  
4 change in the external appearance of a structure on land.

5 (b) Change in the intensity of use of real estate, such as  
6 an increase in the number of dwelling units in a structure or on  
7 land or a material increase in the number of businesses, manufac-  
8 turing establishments, offices, or dwelling units in a structure  
9 or on land.

10 (c) Alteration of a shore or bank of a river, stream, lake,  
11 pond, or canal.

12 (d) Commencement of drilling, except to obtain soil samples,  
13 of mining, or of excavation.

14 (e) Demolition of a structure.

15 (f) Clearing of land as an adjunct of construction.

16 (g) Deposit of refuse, solid or liquid waste, or fill on  
17 land.

18 (3) Development does not include any of the following:

19 (a) Work by a railroad company, the department of transpor-  
20 tation, or a county road commission or other local road agency  
21 for the maintenance or improvement to a railroad track or road,  
22 if the work is carried out on land within the boundaries of the  
23 right-of-way.

24 (b) Work by a utility or other person engaged in the distri-  
25 bution or transmission of gas or water, for the purpose of  
26 inspecting, repairing, or constructing, on an established

1 right-of-way, a sewer, main, pipe, cable, utility tunnel, power  
2 line, tower, pole, track, or similar structure.

3 (c) Work for the maintenance, improvement, or alteration of  
4 a structure; if the work affects only the interior or the color  
5 of the structure or the decoration of the exterior of the  
6 structure.

7 (d) The use of real estate devoted to dwelling uses for a  
8 purpose customarily incidental to enjoyment of the dwelling.

9 (e) The use of real estate for agriculture or silviculture.

10 (f) A change in use of real estate from a use within a class  
11 specified in an ordinance or rule to another use in the same  
12 class.

13 (g) A change in the ownership or form of ownership of real  
14 estate.

15 (h) The creation or termination of rights of access, ripar-  
16 ian rights, easements, covenants concerning development of land,  
17 or other rights in land.

18 (4) Development, as designated in an ordinance or develop-  
19 ment permit, includes all other customarily associated develop-  
20 ment unless otherwise specified. If appropriate to the context,  
21 development refers to the act of developing or to the result of  
22 development.

23 (5) "Development permit" means a building permit, zoning  
24 permit, subdivision approval, rezoning, certification, special  
25 exception, variance, or any other official action of a local unit  
26 of government having the effect of permitting development.

1       Sec. 7. (1) "Development regulation" means an ordinance  
2 enacted by a legislative body for the regulation of an aspect of  
3 development and includes, but is not limited to, a zoning ordi-  
4 nance, building ordinance, subdivision ordinance, sign ordinance,  
5 or other ordinance regulating development.

6       (2) "Governing body" means the body having legislative  
7 powers in a local unit of government or, if there is no such  
8 body, then the body or official in whom the powers of that local  
9 unit of government chiefly reside.

10       (3) "Law", unless the context indicates otherwise, means an  
11 ordinance, resolution, regulation, master plan, development regu-  
12 lation, or rule adopted by a local unit of government affecting  
13 development.

14       (4) "Local unit of government" means a municipality, special  
15 district, or other local governmental entity established pursuant  
16 to law that exercises regulatory authority over, and grants  
17 development permits for, development.

18       Sec. 9. (1) "Master plan" means a plan adopted pursuant to  
19 Act No. 285 of the Public Acts of 1931, being sections 125.31 to  
20 125.45 of the Michigan Compiled Laws, Act No. 282 of the Public  
21 Acts of 1945, being sections 125.101 to 125.107 of the Michigan  
22 Compiled Laws, or Act No. 168 of the Public Acts of 1959, being  
23 sections 125.321 to 125.333 of the Michigan Compiled Laws.

24       (2) "Person" means an individual or a corporation, partner-  
25 ship, association, state or local governmental entity, or other  
26 legal entity.

1       (3) "Public facilities" means major capital improvements,  
2 including, but not limited to, systems and facilities for  
3 transportation, sanitary sewerage, solid waste, drainage, potable  
4 water, education, parks and recreation, and health.

5       (4) "Real estate" includes land, rights and interests in  
6 land, and improvements or structures on land.

7       (5) "Subdivision" means that term as defined in section 102  
8 of the subdivision control act of 1967, Act No. 288 of the Public  
9 Acts of 1967, being section 560.102 of the Michigan Compiled  
10 Laws.

11       Sec. 11. By ordinance, a local unit of government may  
12 establish procedures and requirements, as provided in this act,  
13 to consider and enter into a development agreement with a devel-  
14 oper of real estate located within the jurisdiction of the local  
15 unit of government.

16       Sec. 13. (1) Except as otherwise provided in this subsec-  
17 tion, before entering into, amending, or revoking a development  
18 agreement, a governing body shall conduct not less than 2 public  
19 hearings. At the option of the governing body, 1 of the public  
20 hearings may be held by the local planning commission.

21       (2) Notice of the hearings shall be given and the hearings  
22 shall be conducted in the manner required by the open meetings  
23 act, Act No. 267 of the Public Acts of 1976, being sections  
24 15.261 to 15.275 of the Michigan Compiled Laws. In addition,  
25 notice of intent to consider a development agreement shall be  
26 advertised not less than 7 or more than 14 days before each  
27 public hearing in a newspaper of general circulation and

1 readership in the county in which the local unit of government is  
2 located. Notice of intent to consider a development agreement  
3 shall also be mailed to each affected property owner before the  
4 first public hearing. The date, time, and place at which the  
5 second public hearing will be held shall be announced at the  
6 first public hearing.

7 (3) The notice shall state that the governing body intends  
8 to consider a development agreement and specify the location of  
9 the real estate subject to the proposed agreement, the develop-  
10 ment uses proposed for the real estate, the proposed population  
11 densities, the proposed building intensities and height, and a  
12 place where a copy of the proposed agreement can be obtained.

13 Sec. 15. (1) A development agreement shall include all of  
14 the following:

15 (a) The names of the parties to the development agreement.

16 (b) A legal description of the land subject to the develop-  
17 ment agreement.

18 (c) The duration of the development agreement.

19 (d) The development uses permitted for the real estate,  
20 including population densities and building intensities and  
21 height.

22 (e) A description of public facilities that will service the  
23 development, including who shall provide the public facilities;  
24 the date by which any new public facilities, if needed, will be  
25 constructed; and a schedule to assure public facilities are  
26 available as the development creates the need for them.

1 (f) A description of any reservation or dedication of real  
2 estate for public purposes.

3 (g) A description of all local development permits approved  
4 or needed to be approved for the development.

5 (h) A finding that the development permitted or proposed is  
6 consistent with the local unit of government's master plan and  
7 development regulations.

8 (i) A description of any conditions, terms, restrictions, or  
9 other requirements determined to be necessary by the local unit  
10 of government for the public health, safety, or welfare.

11 (j) A statement indicating that the failure of the develop-  
12 ment agreement to address a particular permit, condition, term,  
13 or restriction does not relieve the developer of the necessity of  
14 complying with the law governing that permit, condition, term, or  
15 restriction.

16 (2) A development agreement may provide that the entire  
17 development or any phase of the development be commenced or com-  
18 pleted within a specific period of time.

19 Sec. 17. A development agreement expires 5 years after the  
20 date of its execution. If a public hearing as described in  
21 section 19(2) is held within 1 year before the expiration date of  
22 the development agreement, the development agreement may be  
23 extended by mutual consent of the governing body and the  
24 developer.

25 Sec. 19. (1) The law and policies of the local unit of gov-  
26 ernment that govern the development at the time of the execution

1 of the development agreement shall continue to govern the  
2 development for the duration of the development agreement.

3       (2) A governing body may apply to a development that is  
4 subject to a development agreement a law or policy adopted after  
5 the date of execution of the development agreement upon satisfy-  
6 ing the requirements of this subsection. The governing body  
7 shall hold a hearing on the question of applying the subsequently  
8 adopted law or policy. Notice of the hearing shall be given, and  
9 the hearing shall be conducted, in the manner required by the  
10 open meetings act, Act No. 267 of the Public Acts of 1976, being  
11 sections 15.261 to 15.275 of the Michigan Compiled Laws. In  
12 addition, the governing body shall make 1 or more of the follow-  
13 ing determinations:

14       (a) The subsequently adopted law or policy is not in con-  
15 flict with the law and policies governing the development agree-  
16 ment and does not prevent development of the real estate uses,  
17 intensities, or densities set forth in the development  
18 agreement.

19       (b) The subsequently adopted law or policy is essential to  
20 the public health, safety, or welfare, and expressly states that  
21 it shall apply to a development that is subject to a development  
22 agreement.

23       (c) The subsequently adopted law or policy is specifically  
24 anticipated and provided for in the development agreement.

25       (d) Substantial changes have occurred in pertinent condi-  
26 tions existing at the time of approval of the development  
27 agreement.



1 (e) The development agreement is based on substantially  
2 inaccurate information supplied by the developer.

3 (3) This section does not abrogate rights that may vest pur-  
4 suant to common law.

5 Sec. 21. The governing body of a local unit of government  
6 that is a party to a development agreement shall review the real  
7 estate subject to the development agreement at least once every  
8 12 months to determine if there has been good faith compliance  
9 with the terms of the development agreement. If the governing  
10 body finds, on the basis of substantial competent evidence, that  
11 there has been a failure to comply in good faith with the terms  
12 of the development agreement, the development agreement may be  
13 revoked or modified by the governing body.

14 Sec. 23. A development agreement may be amended or canceled  
15 by mutual consent of the parties to the development agreement or  
16 of their successors in interest.

17 Sec. 25. Within 14 days after the governing body of a local  
18 unit of government enters into a development agreement, the gov-  
19 erning body shall record the development agreement with the  
20 county register of deeds in the county where the local unit of  
21 government is located. The burdens of the development agreement  
22 are binding upon, and the benefits of the agreement inure to, all  
23 successors in interest to the parties to the development  
24 agreement.

25 Sec. 27. If state or federal laws that apply to and pre-  
26 clude a party's compliance with the terms of a development  
27 agreement are enacted after the execution of the development

1 agreement, the development agreement shall be modified or revoked  
2 as is necessary to comply with state or federal laws.

3       Sec. 29. A person that has standing may file an action for  
4 injunctive relief in the circuit court for the county where the  
5 local unit of government is located to enforce the terms of a  
6 development agreement or to challenge compliance of the agreement  
7 with this act.