

# SENATE BILL No. 306

March 19, 2003, Introduced by Senators BIRKHOLZ, BRATER, ALLEN,  
HAMMERSTROM, GARCIA, JELINEK and CASSIS and referred to the Committee on  
Natural Resources and Environmental Affairs.

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  
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  
26 PA 183, MCL 125.201 to 125.240, the township zoning act, 1943  
27 PA 184, MCL 125.271 to 125.310, or the city and village zoning

1 act, 1921 PA 207, MCL 125.581 to 125.600, the governing body may  
2 adopt 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 an estimate of the existing and proposed  
9 infrastructure, including services and facilities, of each  
10 proposed receiving 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 and  
12 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.