

HOUSE BILL No. 5981

September 11, 1990, 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 relative to development agreements; and to provide for certain remedies relative to development agreements.

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

1 material change in the use or appearance of real estate, or
2 subdividing land. Development includes, but is not limited to,
3 all of the following:

4 (a) A reconstruction, alteration of the size, or material
5 change in the external appearance of a structure on land.

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

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

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

15 (e) Demolition of a structure.

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

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

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

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

25 (b) Work by a utility or other person engaged in the distri-
26 bution or transmission of gas or water, for the purpose of
27 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. When appropriate to the con-
21 text, development refers to the act of developing or to the
22 result of 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 controlling 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 any individual, corporation, partnership,
25 association, state or local governmental entity, or any other
26 legal entity.

1 (3) "Public facilities" means major capital improvements,
2 including, but not limited to, transportation, sanitary sewer,
3 solid waste, drainage, potable water, educational, parks and rec-
4 reational, and health systems and facilities.

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. A local unit of government may, by ordinance,
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 where 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 day, 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 agreement.

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

18 (c) The duration of the 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 facilities; the date
24 by which any new facilities, if needed, will be constructed; and
25 a schedule to assure public facilities are available as the
26 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 government's master plan and develop-
7 ment 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 agreement
12 to address a particular permit, condition, term, or restriction
13 does not relieve the developer of the necessity of complying with
14 the law governing that permit, condition, term, or restriction.

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

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

24 Sec. 19. (1) The law and policies of the local unit of gov-
25 ernment that govern the development at the time of the execution
26 of the development agreement shall continue to govern the
27 development for the duration of the development agreement.

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

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

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

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

22 (d) Substantial changes have occurred in pertinent condi-
23 tions existing at the time of approval of the development
24 agreement.

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

1 (3) This section does not abrogate rights that may vest
2 pursuant to common law.

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

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

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

22 Sec. 27. If state or federal laws that apply to and pre-
23 clude a party's compliance with the terms of a development agree-
24 ment are enacted after the execution of the development agree-
25 ment, the agreement shall be modified or revoked as is necessary
26 to comply with state or federal laws.

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