

# HOUSE BILL No. 5868

May 19, 1998, Introduced by Reps. Bobier and Wetters and referred to the Committee on Agriculture.

A bill to amend 1921 PA 207, entitled "City and village zoning act," by amending the title and sections 13, 14, 15, and 20 (MCL 125.593, 125.594, 125.595, and 125.600), the title as amended and sections 13, 14, 15, and 20 as added by 1996 PA 571, and by adding section 14a.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1

### TITLE

2

An act to provide for the establishment in cities and vil-

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lages of districts or zones within which the use of land and

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structures and the height, area, size, ~~and~~ location, LIGHT, AND

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VENTILATION of buildings AND THE DENSITY OF POPULATION may be

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regulated by ordinance; ~~—, and for which districts regulations~~

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~~shall be established for the light and ventilation of those~~

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~~buildings, and for which districts or zones the density of~~

1 ~~population may be regulated by ordinance;~~ to designate the use  
2 of certain state licensed residential facilities; to provide by  
3 ordinance for the acquisition by purchase, condemnation, or oth-  
4 erwise of private property that does not conform to the regula-  
5 tions ~~and restrictions~~ of the various zones or districts;  
6 ~~provided;~~ to provide for the administering of this act; to pro-  
7 vide for amendments, supplements, or changes in zoning ordi-  
8 nances, zones, or districts; to provide for conflict with the  
9 state housing code or other acts, ordinances, or regulations; to  
10 provide sanctions for the violation of this act; to authorize the  
11 purchase AND TRANSFER of development rights; to authorize the  
12 issuance of bonds and notes; and to provide for special  
13 assessments.

14       Sec. 13. (1) The legislative body of a city or village may  
15 adopt a development rights ordinance limited to the establish-  
16 ment, financing, and administration of a PDR program OR TDR PRO-  
17 GRAM, OR BOTH, as provided under this section and sections 14  
18 ~~and~~ TO 15. ~~The~~ A PDR program OR TDR PROGRAM may be used only  
19 to protect agricultural land and other eligible land. This sec-  
20 tion and sections 14 ~~and~~ TO 15 do not expand the condemnation  
21 authority of a city or village as otherwise provided for in this  
22 act. A PDR program shall not acquire development rights by  
23 condemnation. This section and sections 14 ~~and~~ TO 15 do not  
24 limit any authority that may otherwise be provided by law for a  
25 city or village to protect natural resources, preserve open  
26 space, provide for historic preservation, or accomplish similar  
27 purposes.

1           (2) A city or village shall not establish, finance, or  
2 administer a PDR program OR TDR PROGRAM unless the legislative  
3 body of the city or village adopts a development rights  
4 ordinance. If the city or village has a zoning ordinance, the  
5 development rights ordinance may be adopted as part of the zoning  
6 ordinance pursuant to the procedures governing adoption of a  
7 zoning ordinance set forth in this act. Whether or not the city  
8 or village has a zoning ordinance, the development rights ordi-  
9 nance may be adopted as a separate ordinance pursuant to the pro-  
10 cedures governing ordinance adoption in general.

11           (3) The legislative body of a city or village may promote  
12 and enter into agreements between counties, cities, villages, and  
13 townships for the purchase AND TRANSFER of development rights,  
14 including cross-jurisdictional purchase AND TRANSFER, subject to  
15 applicable development rights ordinances of cities and villages  
16 and similar ordinances of counties and townships.

17           Sec. 14. (1) A development rights ordinance ~~shall~~ MAY  
18 provide for a PDR program. Under a PDR program, the city or vil-  
19 lage ~~purchases~~ MAY PURCHASE development rights, but only from a  
20 ~~willing~~ landowner WHO IS A WILLING SELLER. A development  
21 rights ordinance providing for a PDR program shall specify all of  
22 the following:

23           (a) The public benefits that the city or village may seek  
24 through the purchase of development rights.

25           (b) The procedure by which the city or village or a land-  
26 owner may by application initiate a purchase of development  
27 rights.

1 (c) The development rights authorized to be purchased  
2 subject to a determination under standards and procedures  
3 required by subdivision (d).

4 (d) The standards and procedure to be followed by the legis-  
5 lative body of the city or village for approving, modifying, or  
6 rejecting an application to purchase development rights including  
7 the determination of all of the following:

8 (i) Whether to purchase development rights.

9 (ii) Which development rights to purchase.

10 (iii) The intensity of development permitted after the pur-  
11 chase on the land from which the development rights are  
12 purchased.

13 (iv) The price at which development rights will be purchased  
14 and the method of payment.

15 (v) The procedure for ensuring that the purchase or sale of  
16 development rights is legally fixed so as to run with the land.

17 (e) The circumstances under which an owner of land from  
18 which development rights have been purchased under a PDR program  
19 may repurchase those development rights and how the proceeds of  
20 the purchase are to be used by the city or village.

21 (2) If the city or village has a zoning ordinance, the pur-  
22 chase of development rights shall be consistent with the plan  
23 referred to in section 1 upon which the zoning ordinance is  
24 based.

25 (3) Development rights acquired under a PDR program may be  
26 conveyed only as provided pursuant to subsection (1)(e).

1           SEC. 14A. (1) A DEVELOPMENT RIGHTS ORDINANCE MAY PROVIDE  
2 FOR A TDR PROGRAM. UNDER A TDR PROGRAM, ONLY A WILLING  
3 LANDOWNER'S DEVELOPMENT RIGHTS MAY BE TRANSFERRED. A DEVELOPMENT  
4 RIGHTS ORDINANCE PROVIDING FOR A TDR PROGRAM SHALL SPECIFY ALL OF  
5 THE FOLLOWING:

6           (A) THE PUBLIC BENEFITS THAT THE CITY OR VILLAGE MAY SEEK  
7 THROUGH THE TRANSFER OF DEVELOPMENT RIGHTS, AND THE DEVELOPMENT  
8 RIGHTS AUTHORIZED TO BE TRANSFERRED.

9           (B) THE PROCEDURES TO BE FOLLOWED BY THE LEGISLATIVE BODY OF  
10 THE CITY OR VILLAGE FOR ESTABLISHING THE PRECISE LOCATION OF EACH  
11 SENDING ZONE AND RECEIVING ZONE AND LIMITING THE DEVELOPMENT  
12 RIGHTS THAT MAY BE TRANSFERRED TO EACH RECEIVING ZONE. THOSE  
13 PROCEDURES SHALL ENSURE, BUT NEED NOT BE LIMITED TO, ALL OF THE  
14 FOLLOWING:

15           (i) CONSIDERATION OF AN ESTIMATE OF POPULATION AND ECONOMIC  
16 GROWTH DURING THE NEXT 10 YEARS IN THE CITY OR VILLAGE AND AN  
17 ESTIMATE OF THE DEVELOPMENT POTENTIAL OF EACH PROPOSED SENDING  
18 ZONE AND RECEIVING ZONE.

19           (ii) IF THE CITY OR VILLAGE HAS A ZONING ORDINANCE, CONSIS-  
20 TENCY WITH THE PLAN REFERRED TO IN SECTION 1 UPON WHICH THE  
21 ZONING ORDINANCE IS BASED.

22           (iii) CONSIDERATION OF AN ESTIMATE OF THE EXISTING AND PRO-  
23 POSED INFRASTRUCTURE, INCLUDING SERVICES AND FACILITIES, OF EACH  
24 PROPOSED RECEIVING ZONE.

25           (iv) THAT A RECEIVING ZONE BE ABLE TO ACCOMMODATE, IN TERMS  
26 OF BOTH CAPACITY AND AVAILABILITY, THE INTENSITY OF DEVELOPMENT

1 ASSOCIATED WITH DEVELOPMENT RIGHTS THAT MAY BE TRANSFERRED FROM A  
2 SENDING ZONE.

3 (v) AVOIDANCE OF UNDUE BURDEN UPON THE PEOPLE AND LAND  
4 WITHIN THE RECEIVING ZONE.

5 (vi) CONSISTENCY WITH THE PURPOSES OF THIS SECTION AND WITH  
6 THIS ACT.

7 (vii) CONSIDERATION OF THE INTENSITY OF DEVELOPMENT OTHER-  
8 WISE ALLOWED UNDER APPLICABLE ZONING, BUILDING, AND OTHER ORDI-  
9 NANCES BEFORE THE ADOPTION OF TDR PROGRAM PROVISIONS IN A DEVEL-  
10 OPMENT RIGHTS ORDINANCE.

11 (C) THE PROCEDURE FOR A TRANSFER OF DEVELOPMENT RIGHTS,  
12 INCLUDING THE PROCEDURE BY WHICH THE CITY OR VILLAGE OR A PROP-  
13 ERTY OWNER MAY BY APPLICATION INITIATE A TRANSFER OF DEVELOPMENT  
14 RIGHTS. EXCEPT AS PROVIDED IN SUBDIVISION (E) AND  
15 SUBSECTION (3)(B), AN APPLICATION TO TRANSFER DEVELOPMENT RIGHTS  
16 SHALL INCLUDE, BUT NEED NOT BE LIMITED TO, THE IDENTITY OF THE  
17 LAND WITHIN A SENDING ZONE FROM WHICH THE DEVELOPMENT RIGHTS ARE  
18 PROPOSED TO BE SEVERED AND THE IDENTITY OF LAND WITHIN A RECEIV-  
19 ING ZONE TO WHICH THE DEVELOPMENT RIGHTS ARE PROPOSED TO BE  
20 ATTACHED.

21 (D) THE STANDARDS AND PROCEDURE TO BE FOLLOWED BY THE LEGIS-  
22 LATIVE BODY OF THE CITY OR VILLAGE FOR APPROVING, MODIFYING, OR  
23 REJECTING AN APPLICATION TO TRANSFER DEVELOPMENT RIGHTS, INCLUD-  
24 ING THE DETERMINATION OF ALL OF THE FOLLOWING:

25 (i) WHETHER TO TRANSFER DEVELOPMENT RIGHTS.

26 (ii) WHICH DEVELOPMENT RIGHTS TO TRANSFER.

1           (iii) THE INTENSITY OF DEVELOPMENT PERMITTED AFTER THE  
2 TRANSFER ON THE LAND FROM WHICH THE DEVELOPMENT RIGHTS ARE  
3 SEVERED AND THE INTENSITY OF DEVELOPMENT PERMITTED AFTER THE  
4 TRANSFER ON THE LAND TO WHICH THE DEVELOPMENT RIGHTS ARE  
5 ATTACHED.

6           (iv) 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 LEGALLY  
9 FIXED SO AS TO RUN WITH THE LAND FROM WHICH THE DEVELOPMENT  
10 RIGHTS HAVE BEEN SEVERED AND TO WHICH THE DEVELOPMENT RIGHTS HAVE  
11 ATTACHED.

12           (e) THE CIRCUMSTANCES UNDER WHICH A LANDOWNER FROM WHOM  
13 DEVELOPMENT RIGHTS HAVE BEEN ACQUIRED UNDER A TDR PROGRAM MAY  
14 REPURCHASE THOSE DEVELOPMENT RIGHTS.

15           (2) THE INTENSITY OF DEVELOPMENT ALLOWED IN A RECEIVING ZONE  
16 IF DEVELOPMENT RIGHTS ARE TRANSFERRED SHALL BE GREATER THAN THE  
17 INTENSITY OF DEVELOPMENT THAT WAS ALLOWED IN THAT AREA OF LAND  
18 UNDER ANY APPLICABLE ZONING ORDINANCE 1 YEAR BEFORE THE DEVELOP-  
19 MENT RIGHTS ORDINANCE'S TDR PROGRAM PROVISIONS WERE ADOPTED. THE  
20 INTENSITY OF DEVELOPMENT ALLOWED IN A RECEIVING ZONE IF DEVELOP-  
21 MENT RIGHTS ARE NOT TRANSFERRED SHALL NOT BE LESS THAN THE INTEN-  
22 SITY OF DEVELOPMENT THAT WAS ALLOWED IN THAT AREA OF LAND UNDER  
23 THE APPLICABLE ZONING ORDINANCE 1 YEAR BEFORE THE DEVELOPMENT  
24 RIGHTS ORDINANCE'S TDR PROGRAM PROVISIONS WERE ADOPTED.

25           (3) A CITY OR VILLAGE WITH A TDR PROGRAM MAY DO 1 OR BOTH OF  
26 THE FOLLOWING:

1 (A) FACILITATE TRANSFERS OF DEVELOPMENT RIGHTS DIRECTLY  
2 BETWEEN WILLING LANDOWNERS AT THE PRICE AGREED UPON BY THE  
3 WILLING LANDOWNERS.

4 (B) PURCHASE DEVELOPMENT RIGHTS IN A SENDING ZONE FROM A  
5 LANDOWNER WHO IS A WILLING SELLER, TEMPORARILY HOLD THE DEVELOP-  
6 MENT RIGHTS, AND SELL THE DEVELOPMENT RIGHTS TO A PURCHASER FOR  
7 ATTACHMENT TO LAND IN A RECEIVING ZONE. THE PURCHASE AND SALE OF  
8 DEVELOPMENT RIGHTS SHALL BE AT FAIR MARKET VALUE, BASED UPON A  
9 BONA FIDE APPRAISAL.

10 (4) EXCEPT AS PROVIDED PURSUANT TO SUBSECTION (1)(E), DEVEL-  
11 OPMENT RIGHTS ACQUIRED UNDER A TDR PROGRAM MAY BE SOLD ONLY TO A  
12 LANDOWNER IN A RECEIVING ZONE FOR ATTACHMENT TO LAND IN A RECEIV-  
13 ING ZONE.

14 (5) EXCEPT AS PROVIDED PURSUANT TO SUBSECTION (1)(E) OR  
15 UNDER SUBSECTION (3)(B), DEVELOPMENT RIGHTS SHALL NOT BE SEVERED  
16 UNLESS THE CITY OR VILLAGE HAS APPROVED THE ATTACHMENT OF THOSE  
17 DEVELOPMENT RIGHTS TO LAND IN A RECEIVING ZONE. EXCEPT FOR THE  
18 PERIOD DURING WHICH DEVELOPMENT RIGHTS MAY BE TEMPORARILY HELD BY  
19 A CITY OR VILLAGE UNDER SUBSECTION (3)(B), THE SEVERANCE OF  
20 DEVELOPMENT RIGHTS FROM LAND IN A SENDING ZONE SHALL BE SIMULTA-  
21 NEOUS WITH THE ATTACHMENT OF THOSE DEVELOPMENT RIGHTS TO LAND IN  
22 A RECEIVING ZONE.

23 (6) A CITY OR VILLAGE SHALL NOT APPROVE THE TRANSFER OF  
24 DEVELOPMENT RIGHTS FROM OR TO LAND THAT IS SUBJECT TO THE ZONING  
25 ORDINANCE OF A COUNTY, A TOWNSHIP, OR ANOTHER CITY OR VILLAGE  
26 UNLESS THE CITY OR VILLAGE AND THE COUNTY, THE TOWNSHIP, OR THE



1 OTHER CITY OR VILLAGE, RESPECTIVELY, HAVE ENTERED INTO AN  
2 AGREEMENT UNDER SECTION 13(3).

3 (7) A LANDOWNER MAY DEVELOP LAND WITHIN A RECEIVING ZONE AT  
4 THE INTENSITY OF DEVELOPMENT ALLOWED UNDER APPLICABLE ZONING,  
5 BUILDING, AND OTHER ORDINANCES APART FROM THE DEVELOPMENT RIGHTS  
6 ORDINANCE OR, IF DEVELOPMENT RIGHTS ARE TRANSFERRED FROM THE  
7 LAND, MAY DEVELOP THE LAND AT A HIGHER INTENSITY OF DEVELOPMENT  
8 AS ALLOWED UNDER THE DEVELOPMENT RIGHTS ORDINANCE. IF DEVELOP-  
9 MENT RIGHTS HAVE NOT BEEN TRANSFERRED FROM LAND IN A SENDING  
10 ZONE, THE LANDOWNER MAY DEVELOP LAND AT THE INTENSITY OF DEVELOP-  
11 MENT ALLOWED UNDER APPLICABLE ZONING, BUILDING, AND OTHER ORDI-  
12 NANCES APART FROM THE DEVELOPMENT RIGHTS ORDINANCE.

13 Sec. 15. (1) A PDR program OR, EXCEPT AS PROVIDED IN SUBDI-  
14 VISION (G), A TDR PROGRAM may be financed through 1 or more of  
15 the following sources:

16 (a) General appropriations by the city or village.

17 (b) Proceeds from the sale of development rights by the city  
18 or village subject to ~~section~~ SECTIONS 14(3) AND 14A(4).

19 (c) Grants.

20 (d) Donations.

21 (e) Bonds or notes issued under subsections (2) to (6).

22 (f) General fund revenue.

23 (g) ~~Special~~ FOR A PDR PROGRAM ONLY, SPECIAL assessments  
24 under subsection (7).

25 (h) Other sources approved by the city or village and per-  
26 mitted by law.

1           (2) The city or village may borrow money and issue bonds or  
2 notes under the municipal finance act, ~~Act No. 202 of the Public~~  
3 ~~Acts of 1943, being sections 131.1 to 139.3 of the Michigan~~  
4 ~~Compiled Laws~~ 1943 PA 202, MCL 131.1 TO 139.3, subject to the  
5 general debt limit applicable to the city or village. The bonds  
6 or notes may be revenue bonds or notes; general obligation  
7 limited tax bonds or notes; subject to section 6 of article IX of  
8 the state constitution of 1963, general obligation unlimited tax  
9 bonds or notes; or bonds or notes to refund in advance bonds or  
10 notes issued under this section.

11           (3) The legislative body of the city or village may secure  
12 bonds or notes issued under this section by mortgage, assignment,  
13 or pledge of property including, but not limited to, anticipated  
14 tax collections, revenue sharing payments, or special assessment  
15 revenues. A pledge made by the legislative body of the city or  
16 village is valid and binding from the time the pledge is made.  
17 The pledge IS immediately ~~shall be~~ subject to the lien of the  
18 pledge without a filing or further act. The lien of the pledge  
19 ~~shall be~~ IS valid and binding as against parties having claims  
20 in tort, contract, or otherwise against the city or village,  
21 irrespective of whether the parties have notice of the lien.  
22 Filing of the resolution, the trust agreement, or another instru-  
23 ment by which a pledge is created is not required.

24           (4) Bonds or notes issued under this section are exempt from  
25 all taxation in this state except inheritance and transfer taxes,  
26 and the interest on the bonds or notes is exempt from all

1 taxation in this state, notwithstanding that the interest may be  
2 subject to federal income tax.

3       (5) The bonds and notes issued under this section may be  
4 invested in by the state treasurer and all other public officers,  
5 state agencies and political subdivisions, insurance companies,  
6 banks, savings and loan associations, investment companies, and  
7 fiduciaries and trustees, and may be deposited with and received  
8 by the state treasurer and all other public officers and the  
9 agencies and political subdivisions of this state for all pur-  
10 poses for which the deposit of bonds or notes is authorized. The  
11 authority granted by this section is in addition to all other  
12 authority granted by law.

13       (6) The legislative body of the city or village may borrow  
14 money and issue bonds or notes for refunding all or part of  
15 existing bond or note indebtedness only if the net present value  
16 of the principal and interest to be paid on the refunding bonds  
17 or notes, excluding the cost of issuance, will be less than the  
18 net present value of the principal and interest to be paid on the  
19 bonds or notes being refunded, as calculated using a method  
20 approved by the department of treasury.

21       (7) A development rights ordinance may authorize the legis-  
22 lative body of the city or village to finance a PDR program by  
23 special assessments. In addition to meeting the requirements of  
24 section 14, the development rights ordinance shall include in the  
25 procedure to approve and establish a special assessment district  
26 both of the following:

1 (a) The requirement that there be filed with the legislative  
2 body a petition containing all of the following:

3 (i) A description of the development rights to be purchased,  
4 including a legal description of the land from which the purchase  
5 is to be made.

6 (ii) A description of the proposed special assessment  
7 district.

8 (iii) The signatures of the owners of at least 66% of the  
9 land area in the proposed special assessment district.

10 (iv) The amount and duration of the proposed special  
11 assessments.

12 (b) The requirement that the legislative body specify how  
13 the proposed purchase of development rights will specially bene-  
14 fit the land in the proposed special assessment district.

15 Sec. 20. (1) As used in this act:

16 (a) "Agricultural land" means substantially undeveloped land  
17 devoted to the production of plants and animals useful to humans,  
18 including forage and sod crops; grains, feed crops, and field  
19 crops; dairy and dairy products; poultry and poultry products;  
20 livestock, including breeding and grazing of cattle, swine, and  
21 similar animals; berries; herbs; flowers; seeds; grasses; nursery  
22 stock; fruits; vegetables; Christmas trees; and other similar  
23 uses and activities.

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

1 (c) "Development rights ordinance" means an ordinance, which  
2 may comprise part of a zoning ordinance, adopted under  
3 section 13.

4 (d) "Intensity of development" means the height, bulk, area,  
5 density, setback, use, and other similar characteristics of  
6 development.

7 (e) "Other eligible land" means land that has a common prop-  
8 erty line with agricultural land from which development rights  
9 have been purchased OR TRANSFERRED and that is not divided from  
10 that agricultural land by a state or federal limited access  
11 highway.

12 (f) "PDR program" means a program under section 14 for the  
13 purchase of development rights by a city or village.

14 (G) "RECEIVING ZONE" MEANS AN AREA OF LAND IDENTIFIED PURSU-  
15 ANT TO A DEVELOPMENT RIGHTS ORDINANCE WHERE DEVELOPMENT COULD BE  
16 MORE INTENSE THAN PERMITTED BY THE DEVELOPMENT RIGHTS ATTACHED TO  
17 THAT LAND WITHOUT ADVERSELY AFFECTING PUBLIC HEALTH, SAFETY, OR  
18 WELFARE, AND TO WHICH DEVELOPMENT RIGHTS CAN BE TRANSFERRED FROM  
19 A SENDING ZONE.

20 (H) "SENDING ZONE" MEANS AN AREA OF LAND IDENTIFIED PURSUANT  
21 TO A DEVELOPMENT RIGHTS ORDINANCE WHERE DEVELOPMENT SHOULD BE  
22 LESS INTENSE THAN PERMITTED BY THE DEVELOPMENT RIGHTS ATTACHED TO  
23 THAT LAND TO ACHIEVE A PUBLIC BENEFIT SET FORTH IN THE DEVELOP-  
24 MENT RIGHTS ORDINANCE AND FROM WHICH DEVELOPMENT RIGHTS CAN BE  
25 TRANSFERRED TO A RECEIVING ZONE.

26 (I) "TDR PROGRAM" MEANS A PROGRAM UNDER SECTION 14A FOR THE  
27 TRANSFER OF DEVELOPMENT RIGHTS BY SEVERING DEVELOPMENT RIGHTS

1 FROM CERTAIN LAND AND ATTACHING THOSE DEVELOPMENT RIGHTS TO OTHER  
2 LAND.

3 (2) This act shall be known and may be cited as the "city  
4 and village zoning act".