



HOUSE BILL No. 5503

April 26 1994 Introduced by Reps Stille Gernaat Fitzgerald Bodem Hill McBryde
Bobier Dalman Brackenridge London McNutt and Lowe and referred to the Committee on
Local Government

A bill to authorize development agreements to prescribe the
powers and duties of developers and certain governmental entities
and officials 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 2 As used in this act

4 (a) Developer" means a person undertaking development

5 (b) Development means the carrying out of a building
6 activity or mining operation or the making of a material change
7 in the use or appearance of real estate and includes all other
8 customarily-associated activity, except as otherwise provided in
9 this subsection Development does not include authorized work
10 performed by a governmental entity or work for the maintenance,
11 renewal, improvement, or alteration of a structure if the work

1 affects only the interior or the color of the structure or the
2 decoration of the exterior of the structure Development does
3 not include the use of land for farming or agricultural
4 activity

5 (c) 'Development agreement ordinance' means an ordinance
6 adopted under section 5

7 (d) Development permit" means a building permit, zoning
8 permit, subdivision or condominium approval, rezoning, certifica-
9 tion special use approval, variance, or any other official
10 action of a local unit of government having the effect of permit-
11 ting development

12 (e) Development regulation means an ordinance enacted by a
13 governing body for the regulation of an aspect of development and
14 includes, but is not limited to, a zoning, rezoning, subdivision,
15 condominium building construction, or sign ordinance

16 Sec 3 As used in this act

17 (a) 'Governing body means the legislative body of a local
18 unit of government

19 (b) Law means state law and each ordinance, resolution,
20 regulation master plan real estate development regulation, and
21 rule of a local unit of government that affects development

22 (c) Local unit of government means a city village, town-
23 ship or county

24 (d) 'Master plan means a plan adopted pursuant to Act
25 No 285 of the Public Acts of 1931, being sections 125 31 to
26 125 45 of the Michigan Compiled Laws Act No 282 of the Public
27 Acts of 1945, being sections 125 101 to 125 107 of the Michigan

1 Compiled Laws or Act No 168 of the Public Acts of 1959 being
2 sections 125 321 to 125 333 of the Michigan Compiled Laws

3 Sec 4 As used in this act

4 (a) 'Person means an individual, corporation, limited
5 liability company estate trust partnership association, 2 or
6 more persons having a joint or common interest, or any legal
7 entity

8 (b) 'Planning commission means a commission created pursu-
9 ant to Act No 285 of the Public Acts of 1931, being sections
10 125 31 to 125 45 of the Michigan Compiled Laws Act No 282 of
11 the Public Acts of 1945, being sections 125 101 to 125 107 of the
12 Michigan Compiled Laws or Act No 168 of the Public Acts of
13 1959 being sections 125 321 to 125 333 of the Michigan Compiled
14 Laws

15 (c) Public facility means a public service including, but
16 not limited to police service and fire service, or an on-site or
17 off-site capital improvement including but not limited to, a
18 transportation, sanitary sewer, solid waste, drainage, potable
19 water educational park and recreational, or health system or
20 facility

21 (d) Real estate includes land rights and interest in
22 land and improvements or structures on land

23 Sec 5 (1) A governing body may, by ordinance, establish
24 procedures, requirements, and standards for considering and
25 entering into a development agreement with a person having a
26 vested interest in private real estate located within its
27 borders

1 (2) Two or more local units of government may enter into a
2 development agreement if for each local unit of government,
3 either the development is situated in or it is mutually agreed
4 that the impacts of the development extend to that local unit of
5 government

6 (3) Two or more developers may enter into a development
7 agreement if their respective rights and responsibilities are
8 clearly and separately stated in the development agreement

9 Sec 6 A development agreement shall include all of the
10 following

11 (a) A legal description of the real estate subject to the
12 development agreement

13 (b) The names of the legal and equitable owners of the real
14 estate

15 (c) The duration of the development agreement

16 (d) The development uses permitted for the real estate
17 including population densities, building intensities, and maximum
18 building heights

19 (e) For each public facility that will service the develop-
20 ment a description of the facility and if the facility is a new
21 facility, the identity of each person who will finance and con-
22 struct the public facility, the date construction will be com-
23 pleted and a schedule to assure that the public facility is
24 available concurrent with the impacts of the development If the
25 public facility is to be financed by the developer, the agreement
26 shall state the rational nexus between the public facility and
27 the development authorized in the development agreement

1 (f) A description of any reservation or dedication of real
2 estate for a public purpose to be made in connection the
3 development

4 (g) A description of each local development permit approved
5 or needed to be approved for the development as contemplated
6 under the development agreement

7 (h) A finding that the development is, at the time of the
8 agreement, consistent with the local unit of government s master
9 plan and permissible under development regulations

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

13 (j) A provision that the failure of the agreement to address
14 a particular permit condition term or restriction does not
15 relieve the developer of the obligation to comply with the law
16 governing that permit, condition, term, or restriction

17 (k) A provision making the agreement binding upon and bene-
18 ficial to the successors heirs assigns and transferees of the
19 parties

20 (l) A provision that the agreement does not authorize the
21 pollution impairment or destruction of natural resources that
22 are protected by law

23 Sec 7 A development agreement may include 1 or more of
24 the following

25 (a) A provision that the entire development or any phase of
26 the development shall be commenced or completed within a
27 specified period of time

1 (b) A provision governing the terms under which the
2 developer may assign rights under the agreement

3 (c) The consequences of a developer s violation of the
4 agreement, aside from revocation as provided for in this act

5 (d) A provision specifying the circumstances under which the
6 real estate subject to the development may be specially assessed
7 to finance improvements required, in whole or in part, as a
8 result of the development, and the terms of the special assess-
9 ment including apportionment of payment responsibility

10 (e) Other lawful terms agreed upon by the parties

11 Sec 8 (1) Before entering into, amending or revoking a
12 development agreement, a local unit of government shall conduct
13 not less than 2 public hearings The hearings shall be held by
14 the governing body of the local unit of government, except that,
15 at the option of the governing body, 1 of the public hearings may
16 be held by the planning commission or by an administrative offi-
17 cial designated in the development agreement ordinance

18 (2) Not less than 7 days before each public hearing provided
19 for in subsection (1) the clerk of the local unit of government
20 shall publish in a newspaper of general circulation and reader-
21 ship in the jurisdiction of the local unit of government notice
22 of that local unit of government s intent to consider a develop-
23 ment agreement Before the first public hearing, the clerk shall
24 also mail notice of intent to consider a development agreement to
25 each owner of record of real estate the nearest boundary of which
26 is located within 300 feet of the nearest boundary of the land on
27 which the proposed development is to be located The date, time,

1 and place at which the second public hearing will be held shall
2 be announced at the first public hearing

3 (3) Each notice provided for in subsection (2) shall specify
4 the location of the real estate that is the subject of the pro-
5 posed development agreement the development uses proposed for
6 the real estate the proposed population densities, the proposed
7 building intensities, the proposed maximum building heights, and
8 a place where a copy of the proposed development agreement can be
9 examined

10 (4) A notice provided for in subsection (2) may accompany a
11 notice given for other purposes with regard to the same
12 development

13 Sec 9 The duration of a development agreement shall not
14 exceed 5 years By mutual consent of the governing body and the
15 developer and subject to section 8 the agreement may be amended
16 to extend this period

17 Sec 10 (1) Subject to this section and section 12 and
18 unless otherwise expressly provided in the development agreement,
19 the law governing development at the time of the execution of the
20 development agreement shall govern the development for the dura-
21 tion of the development agreement

22 (2) A local unit of government shall not apply subsequently
23 adopted law to a development that is subject to a development
24 agreement unless otherwise provided in the development agreement
25 or unless the local unit of government holds a public hearing and
26 determines that 1 or more of the following apply

1 (a) The subsequently adopted law is not in conflict with the
2 law governing the development agreement and does not prevent
3 development of the real estate uses, intensities\ or densities
4 authorized in the development agreement

5 (b) The law is essential to the public health, safety, or
6 welfare

7 (c) The development agreement does not expressly state that
8 the law is inapplicable

9 (d) The local unit of government demonstrates that substan-
10 tial changes have occurred in pertinent conditions existing at
11 the time of approval of the development agreement

12 Sec 11 (1) A development agreement ordinance shall spec-
13 ify the manner in which real estate subject to a development
14 agreement shall be inspected The ordinance shall require an
15 inspection not less than once every 12 months The purpose of an
16 inspection is to ensure good faith compliance with the terms of
17 the development agreement

18 (2) A development agreement ordinance shall provide a proce-
19 dure by which a development agreement may be revoked or modified
20 if after a hearing it is found on the basis of competent evi-
21 dence that there has been a failure to comply with the develop-
22 ment agreement The ordinance shall specify the official or body
23 that shall conduct the hearing

24 Sec 12 A development agreement may be amended or canceled
25 by mutual consent of the parties to the development agreement or
26 of their successors in interest

1 Sec 13 (1) If a state or federal statute or regulation
2 that applies to and precludes a party's compliance with the
3 terms of a development agreement is enacted or promulgated after
4 execution of the development agreement the development agreement
5 shall be amended or canceled as is necessary to comply with the
6 state or federal statute or regulation

7 (2) A development agreement may be amended or canceled if it
8 is found, on the basis of competent evidence, that some or all of
9 the terms of the development agreement were accepted by the local
10 unit of government based upon inaccurate, material information
11 provided by or representations made by the developer

12 Sec 14 A development agreement shall be prepared and exe-
13 cuted in recordable form, and shall be recorded with the register
14 of deeds for each county in which all or part of the real estate
15 to which it applies is situated

16 Sec 15 An aggrieved person, including a party to a devel-
17 opment agreement, or a local unit of government affected by the
18 development, may file an action to enforce the terms of the
19 development agreement in the circuit court for the county in
20 which all or part of the development is situated