



HOUSE BILL No. 4173

January 17, 1995, Introduced by Reps. Middleton and Bobier 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,

1 renewal, improvement, or alteration of a structure if the work
2 affects only the interior or the color of the structure or the
3 decoration of the exterior of the structure. Development does
4 not include the use of land for farming or agricultural
5 activity.

6 (c) "Development agreement ordinance" means an ordinance
7 adopted under section 5.

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

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

17 Sec. 3. As used in this act:

18 (a) "Governing body" means the legislative body of a local
19 unit of government.

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

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

25 (d) "Master plan" means a plan adopted pursuant to Act
26 No. 285 of the Public Acts of 1931, being sections 125.31 to
27 125.45 of the Michigan Compiled Laws; Act No. 282 of the Public

1 Acts of 1945, being sections 125.101 to 125.107 of the Michigan
2 Compiled Laws; or Act No. 168 of the Public Acts of 1959, being
3 sections 125.321 to 125.333 of the Michigan Compiled Laws.

4 Sec. 4. As used in this act:

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

9 (b) "Planning commission" means a commission created pursu-
10 ant to Act No. 285 of the Public Acts of 1931, being sections
11 125.31 to 125.45 of the Michigan Compiled Laws; Act No. 282 of
12 the Public Acts of 1945, being sections 125.101 to 125.107 of the
13 Michigan Compiled Laws; or Act No. 168 of the Public Acts of
14 1959, being sections 125.321 to 125.333 of the Michigan Compiled
15 Laws.

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

22 (d) "Real estate" includes land, rights and interest in
23 land, and improvements or structures on land.

24 Sec. 5. (1) A governing body may, by ordinance, establish
25 procedures, requirements, and standards for considering and
26 entering into a development agreement with a person having a

1 vested interest in private real estate located within its
2 borders.

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

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

11 Sec. 6. A development agreement shall include all of the
12 following:

13 (a) A legal description of the real estate subject to the
14 development agreement.

15 (b) The names of the legal and equitable owners of the real
16 estate.

17 (c) The duration of the development agreement.

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

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

1 shall state the rational nexus between the public facility and
2 the development authorized in the development agreement.

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

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

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

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

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

19 (k) A provision making the agreement binding upon and bene-
20 ficial to the successors, heirs, assigns, and transferees of the
21 parties.

22 (l) A provision that the agreement does not authorize the
23 pollution, impairment, or destruction of natural resources that
24 are protected by law.

25 Sec. 7. A development agreement may include 1 or more of
26 the following:

1 (a) A provision that the entire development or any phase of
2 the development shall be commenced or completed within a
3 specified period of time.

4 (b) A provision governing the terms under which the devel-
5 oper may assign rights under the agreement.

6 (c) The consequences of a developer's violation of the
7 agreement, aside from revocation as provided for in this act.

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

13 (e) Other lawful terms agreed upon by the parties.

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

21 (2) Not less than 7 days before each public hearing provided
22 for in subsection (1), the clerk of the local unit of government
23 shall publish in a newspaper of general circulation and reader-
24 ship in the jurisdiction of the local unit of government notice
25 of that local unit of government's intent to consider a develop-
26 ment agreement. Before the first public hearing, the clerk shall
27 also mail notice of intent to consider a development agreement to

1 each owner of record of real estate the nearest boundary of which
2 is located within 300 feet of the nearest boundary of the land on
3 which the proposed development is to be located. The date, time,
4 and place at which the second public hearing will be held shall
5 be announced at the first public hearing.

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

13 (4) A notice provided for in subsection (2) may accompany a
14 notice given for other purposes with regard to the same
15 development.

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

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

25 (2) A local unit of government shall not apply subsequently
26 adopted law to a development that is subject to a development
27 agreement unless otherwise provided in the development agreement

1 or unless the local unit of government holds a public hearing and
2 determines that 1 or more of the following apply:

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

7 (b) The law is essential to the public health, safety, or
8 welfare.

9 (c) The development agreement does not expressly state that
10 the law is inapplicable.

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

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

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

1 Sec. 12. A development agreement may be amended or canceled
2 by mutual consent of the parties to the development agreement or
3 of their successors in interest.

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

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

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

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