

HOUSE BILL No. 6121

August 4, 2004, Introduced by Reps. Kolb, Jamnick, Tobocman, Gillard, Vagnozzi, Accavitti and Farrah and referred to the Committee on Land Use and Environment.

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. 3. As used in this act:

4 (a) "Developer" means a person undertaking development.

5 (b) "Development", subject to subdivision (c), means the
6 carrying out of a building activity, including, but not limited
7 to, new construction or improvement of existing structures, that
8 does either or both of the following:

9 (i) Constitutes a change in land use.

10 (ii) Necessitates the construction or improvement of a public
11 facility by a local unit where the development is located.

1 (c) "Development" does not include authorized work performed
2 by a governmental entity or work for the maintenance, renewal,
3 improvement, or alteration of a structure if the work affects
4 only the interior or the color of the structure or the decoration
5 of the exterior of the structure. Development does not include
6 the use of land for agricultural or mining activity.

7 (d) "Development agreement ordinance" means an ordinance
8 adopted under section 7.

9 (e) "Development permit" means a building permit, zoning
10 permit, rezoning, subdivision or condominium approval,
11 certification, special use approval, variance, or any other
12 official action of a local unit of government having the effect
13 of authorizing development.

14 (f) "Development regulation" means a master plan, resolution,
15 regulation, or ordinance, including, but not limited to, a
16 zoning, rezoning, subdivision, condominium, building
17 construction, or sign ordinance, that is adopted by a local unit
18 of government and that affects development.

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

21 Sec. 5. As used in this act:

22 (a) "Local unit of government" means a city, village,
23 township, or county.

24 (b) "Master plan" means a plan adopted pursuant to 1931 PA
25 285, MCL 125.31 to 125.45; 1945 PA 282, MCL 125.101 to 125.115;
26 1959 PA 168, MCL 125.321 to 125.333; or the joint municipal
27 planning act, 2003 PA 226, MCL 125.131 to 125.141.

1 (c) "Person" means an individual, partnership, corporation,
2 association, or other legal entity.

3 (d) "Planning commission" means a commission created
4 pursuant to 1931 PA 285, MCL 125.31 to 125.45; 1945 PA 282, MCL
5 125.101 to 125.115; 1959 PA 168, MCL 125.321 to 125.333; or the
6 joint municipal planning act, 2003 PA 226, MCL 125.131 to
7 125.141.

8 (e) "Public facility" means an on-site or off-site capital
9 improvement, including, but not limited to, a transportation,
10 sanitary sewer, solid waste, drainage, potable water,
11 educational, park and recreational, or health system or
12 facility.

13 (f) "Real estate" includes land, rights and interest in
14 land, and improvements or structures on land.

15 Sec. 7. (1) A governing body may, by ordinance, establish
16 procedures, requirements, and standards for considering and
17 entering into a development agreement with a person having a
18 vested interest in privately owned real estate if 1 or both of
19 the following apply:

20 (a) The real estate is located within the local unit of
21 government.

22 (b) The impacts of the development of the real estate will
23 extend to that local unit of government.

24 (2) Two or more developers may enter into a development
25 agreement with a local unit of government if each developer's
26 rights and responsibilities are clearly and separately stated in
27 the development agreement.

1 Sec. 9. A development agreement shall include all of the
2 following:

3 (a) A legal description of the real estate subject to the
4 development agreement.

5 (b) The names of the legal and equitable owners of the real
6 estate.

7 (c) The duration of the development agreement.

8 Sec. 11. A development agreement may include 1 or more of
9 the following:

10 (a) Provisions concerning public facilities that will service
11 the development.

12 (b) A description of each development permit approved or
13 needed to be approved for the development as contemplated under
14 the development agreement.

15 (c) A finding that the development is, at the time of the
16 agreement, consistent with the local unit of government's master
17 plan and permissible under any applicable development
18 regulations.

19 (d) A provision that the failure of the agreement to address
20 a particular permit, condition, term, or restriction does not
21 relieve the developer of the obligation to comply with the law
22 governing that permit, condition, term, or restriction.

23 (e) A provision making the agreement binding upon and
24 beneficial to the successors, heirs, assigns, and transferees of
25 the parties.

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

1 specified period of time.

2 (g) Other lawful terms agreed upon by the parties.

3 Sec. 13. (1) Before entering into a development agreement,
4 a local unit of government shall conduct not less than 2 public
5 hearings. The hearings shall be held by the governing body of
6 the local unit of government, except that, at the option of the
7 governing body, 1 of the public hearings may be held by the
8 planning commission or by an administrative official designated
9 in the development agreement ordinance.

10 (2) The date, time, and place at which the second public
11 hearing will be held shall be announced at the first public
12 hearing. A development agreement may be amended or revoked by
13 agreement of the parties, subject to the same procedures that
14 govern the adoption of a development agreement.

15 Sec. 17. (1) Subject to subsection (2), the development
16 regulations governing development at the time of the execution of
17 the development agreement shall govern the development for the
18 duration of the development agreement.

19 (2) A local unit of government may apply a subsequently
20 adopted development regulation to a development that is subject
21 to a development agreement if expressly provided in the
22 development agreement or if the local unit of government holds a
23 public hearing and determines that substantial unanticipated
24 changes have occurred in pertinent conditions existing at the
25 time of approval of the development agreement.

26 Sec. 19. A development agreement ordinance shall specify
27 the manner in which real estate subject to a development

1 agreement shall be inspected. The development agreement
2 ordinance shall require an inspection not less than once every 12
3 months. The purpose of an inspection is to ensure good faith
4 compliance with the terms of the development agreement.

5 Sec. 25. A development agreement shall be prepared and
6 executed in recordable form, and shall be recorded with the
7 register of deeds for each county in which all or part of the
8 real estate to which it applies is situated.