



SENATE BILL No. 266

February 14, 1995, Introduced by Senator HONIGMAN and referred to the Committee on Local, Urban and State Affairs.

A bill to prohibit certain development unless unreasonable impacts on services and facilities arising from that development are eliminated; to prescribe the powers and duties of 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 "regional impact coordination act".

3 Sec. 2. As used in this act:

4 (a) "Approving local unit of government" means the city,
5 village, township, or county authorized to issue a building
6 permit for a regional impact development.

7 (b) "Capital improvement" means a transportation, sanitary
8 sewer, solid waste, drainage, water, or public health system or
9 facility; police or fire service; or any other service, system,
10 or facility that requires capital expenditures customarily made

1 by a local unit of government and that is likely to have a public
2 health or safety impact.

3 (c) "County road agency" means the board of county road com-
4 missioners or, in a county organized under Act No. 293 of the
5 Public Acts of 1966, being sections 45.501 to 45.521 of the
6 Michigan Compiled Laws, the body or official exercising the
7 powers and performing the duties of a board of county road
8 commissioners.

9 (d) "Developer" means the person proposing a regional impact
10 development.

11 Sec. 3. As used in this act:

12 (a) "Development agreement" means an agreement between not
13 less than 1 developer and not less than 1 governmental entity in
14 which the developer is given assurances for a fixed period of
15 time with respect to improvements authorized under existing law
16 and ordinance, in consideration for the agreement of the devel-
17 oper to finance or construct, or both, capital improvements
18 needed by and rationally related to a regional impact
19 development.

20 (b) "Governmental entity" means a local unit of government;
21 a county road agency; a county drain commissioner or the individ-
22 ual or body exercising the powers of a county drain commissioner
23 in a county; a state agency; or a regional planning body.

24 (c) "Impact analysis" means an analysis, prepared by an
25 appropriate expert, that identifies, and provides qualitative and
26 quantitative estimates of, off-site capital improvements that are
27 customarily provided or regulated, or both, by the state or local

1 government, that are reasonably anticipated to be needed by a
2 proposed development, and that are substantially related to the
3 development. An impact analysis identifies capital improvements
4 substantially related to the development; capital improvements
5 that will be needed but that are not currently provided; and the
6 capital improvement deficiencies that exist without regard to
7 proposed development.

8 (d) "Local unit of government" means a city, village, town-
9 ship, or county.

10 (e) "Objecting governmental entity" means a governmental
11 entity that files an objection to a regional impact development
12 as authorized under this act.

13 Sec. 4. As used in this act:

14 (a) "Person" means an individual, corporation, partnership,
15 limited liability company, or other legal entity, or any combina-
16 tion of these, and includes combinations of corporations, part-
17 nerships, and other legal entities that have total or partial
18 common ownership.

19 (b) "Regional impact development" means a development that,
20 taking into consideration all properties owned by the developer,
21 all phases contemplated in the development, and all developments
22 under consideration proposed by the same person within a 1-mile
23 radius, is 1 or more of the following:

24 (i) A nonresidential project with not less than 150,000
25 square feet of floor space.

26 (ii) A development located on not less than 80 acres the
27 drainage of which will not be totally retained on site.

1 (iii) A residential development that has 1 or more of the
2 following:

3 (A) If the population of the city or village or, if the
4 development is located in neither a city or village, the township
5 where the development is located is not more than 25,000, not
6 less than 250 dwelling units.

7 (B) If the population of the city or village or, if the
8 development is located in neither a city or village, the township
9 where the development is located is 25,001 to 50,000, not less
10 than 500 dwelling units.

11 (C) If the population of the city or village or, if the
12 development is located in neither a city or village, the township
13 where the development is located is 50,001 to 100,000, not less
14 than 750 dwelling units.

15 (D) Not less than 1,000 dwelling units.

16 (iv) An airport.

17 (v) A sports, entertainment, amusement, or recreational
18 facility, the construction or expansion of which provides either
19 of the following:

20 (A) If a single performance facility, more than 10,000 per-
21 manent seats or parking spaces for more than 2,500 motor
22 vehicles.

23 (B) If a serial performance facility, more than 4,000 per-
24 manent seats or parking spaces for more than 1,000 motor
25 vehicles.

26 (vi) A hospital with a design capacity of more than 300
27 beds, or whose application for a certificate of need shows that

1 it is designed to serve the citizens of more than 1 local unit of
2 government.

3 (vii) An industrial plant or park that provides parking for
4 more than 750 motor vehicles, or occupies a site of greater than
5 100 acres.

6 (viii) An office building or park on a site of not less than
7 20 acres.

8 (ix) A retail, service, and wholesale development that is
9 located on a site of not less than 20 acres or that provides
10 parking spaces for more than 750 motor vehicles.

11 (x) A hotel or motel or hotel and motel development planned
12 to include more than 200 units.

13 (xi) A solid mineral mining operation that would involve the
14 removal or disturbance of solid materials or overburden from
15 greater than 100 acres, whether or not contiguous, or whose con-
16 sumption of water would exceed 3,000,000 gallons per day.

17 (xii) A facility or combination of facilities located within
18 1,000 feet of an inland lake, stream, or other navigable body of
19 water and any facility or combination of facilities for the stor-
20 age of any petroleum product with a storage capacity of 1,000,000
21 gallons or more.

22 (xiii) A recreational vehicle development plan to create or
23 accommodate 400 or more spaces.

24 (xiv) A development on more than 160 acres of land.

25 (c) "Regional planning body" means a regional planning com-
26 mission created pursuant to Act No. 281 of the Public Acts of
27 1945, being sections 125.11 to 125.25 of the Michigan Compiled

1 Laws, or a regional council of government if the activities and
2 functions of the regional planning commission are transferred to
3 a regional council of government pursuant to section 14 of Act
4 No. 281 of the Public Acts of 1945, being section 125.24 of the
5 Michigan Compiled Laws.

6 (d) "Unreasonable impact" means the need, arising from a
7 regional impact development, for a capital improvement customar-
8 ily provided or regulated, or both, by the state or local govern-
9 ment, if there is no likely economic or other feasibility that
10 the capital improvement will be constructed before the projected
11 completion date of the regional impact development.

12 Sec. 5. A developer, before final approval of a regional
13 impact development by the approving local unit of government,
14 shall submit to the clerk of the approving local unit of govern-
15 ment and to the regional planning body, if any, both of the
16 following:

17 (a) A written estimate of the date of completion of a
18 regional impact development, assuming the approving local unit of
19 government approves the project without delay.

20 (b) An impact analysis.

21 Sec. 6. (1) The clerk of the approving local unit of gov-
22 ernment shall deliver to each of the following a copy of the
23 impact analysis submitted by a developer:

24 (a) The clerk of each local unit of government within which
25 all or part of the regional impact development is proposed to be
26 located or whose nearest boundary is not more than 10 miles from
27 the site of the regional impact development, the clerk of the

1 county road agency of each county within which all or part of the
2 regional impact development is proposed to be located, and the
3 governor, who shall transmit the impact analysis to appropriate
4 state agencies.

5 (b) The clerk of any other local unit of government or
6 county road agency that submits a request for a copy of the
7 impact analysis and includes with the request an explanation of
8 the relationship between the regional impact development and
9 anticipated impact upon the requesting local unit of government
10 or county road agency.

11 (2) If a county clerk receives a regional impact analysis
12 under this section, the county clerk shall distribute a copy of
13 the regional impact analysis to each county office involved with
14 planning and development.

15 (3) The clerk of the approving local unit of government
16 shall deliver with the impact analysis as provided in subsection
17 (1) notice of the date on or before which the regional impact
18 development may be approved if an objection to the impact analy-
19 sis is not submitted to the clerk of the approving local unit of
20 government before that date. The date shall be not less than 30
21 days after the date on which the notice is sent.

22 Sec. 7. (1) On or before the date specified by the approv-
23 ing local unit of government as the date on or before which the
24 regional impact development may be approved if an objection to
25 the impact analysis is not submitted, a governmental entity may
26 file a written objection to the regional impact development on

1 the ground that the regional impact development would result in
2 an unreasonable impact.

3 (2) The written objection shall include 1 or both of the
4 following:

5 (a) A statement of concurrence with the impact analysis sub-
6 mitted by the developer, accompanied by an explanation of why the
7 impact identified in the impact analysis constitutes an unreason-
8 able impact.

9 (b) A statement, supported by written analysis prepared by
10 an appropriate expert, that identifies 1 or more unreasonable
11 impacts of the regional impact development that were not identi-
12 fied in the impact analysis submitted by the developer. If an
13 objecting governmental entity submits a statement under this sub-
14 division, the objecting governmental entity shall be allowed an
15 additional 30 days for submission of a supporting written
16 analysis.

17 Sec. 8. (1) If an objection is filed under section 7, a
18 hearing shall be conducted by the approving local unit of
19 government.

20 (2) Notice of the time, place, and date of the hearing and a
21 copy of each objection shall be transmitted to the developer, to
22 each objecting governmental entity, and to the regional planning
23 body, not less than 14 days before the hearing date.

24 (3) On its own initiative or upon the request of a local
25 unit of government, the regional planning body may submit for
26 consideration a written or oral statement at the hearing or a
27 written statement after the hearing.

1 (4) The approving local unit of government shall, within 30
2 days following the hearing, determine whether an unreasonable
3 impact would result from the regional impact development. The
4 determination shall include findings supported by the record of
5 the hearing.

6 Sec. 9. (1) If the approving local unit of government
7 determines that an unreasonable impact would result from the
8 regional impact development, the approving local unit of govern-
9 ment shall not approve the regional impact development until the
10 unreasonable impact is eliminated.

11 (2) The developer, the approving local unit of government,
12 the objecting governmental entity, and the governmental entity
13 having jurisdiction of the capital improvement, the need for
14 which constitutes the unreasonable impact, shall make reasonable
15 good faith efforts to meet and determine when and how the unrea-
16 sonable impact may be eliminated. The regional planning body
17 shall be invited to participate in the effort. By way of exam-
18 ple, and not by way of limitation, a good faith effort under this
19 subsection requires the governmental entities having jurisdiction
20 to consider establishment of a special assessment district, to
21 attempt to negotiate a development agreement, and to consider
22 negotiating an agreement instead of annexation pursuant to Act
23 No. 425 of the Public Acts of 1984, being sections 124.21 to
24 124.30 of the Michigan Compiled Laws.

25 (3) The governmental entity having jurisdiction of the capi-
26 tal improvement the need for which constitutes the unreasonable
27 impact shall, within 180 days of a final determination of an

1 unreasonable impact, issue a statement specifying a projected
2 schedule for the provision of adequate services or facilities, or
3 both, that represent long-term and short-term means to eliminate
4 the unreasonable impact. The schedule shall take into considera-
5 tion other existing or reasonably anticipated developments in the
6 area, the revenue available to the governmental entity, its plan
7 for services and facilities, other priorities for the provision
8 of capital improvements, and other relevant factors.

9 Sec. 10. (1) Not more than 21 days after the date of
10 approval of the minutes of the hearing at which the determination
11 was made under section 8(4), a developer or an objecting govern-
12 mental entity aggrieved by the determination of the approving
13 local unit of government may appeal to the circuit court for a
14 county in which all or part of the regional impact development
15 would be located.

16 (2) Principles and law applicable to a circuit court review,
17 in the nature of superintending control, of administrative pro-
18 ceedings conducted by a local unit of government govern an appeal
19 under this section. The appeal shall be based upon the adminis-
20 trative record.

21 (3) Not more than 28 days after the record is filed with the
22 court, the appellant shall file its brief with the court and
23 serve a copy upon each respondent. The respondents shall be the
24 developer, unless the developer is the appellant; the approving
25 local unit of government; and all objecting governmental enti-
26 ties, other than the appellant if the appellant is an objecting
27 governmental entity. Not more than 28 days after the appellant's

1 brief is served, each respondent appearing in the case shall file
2 a brief with the court and serve a copy upon the appellant and
3 all other respondents who have filed an appearance in the case.
4 The approving local unit of government may, but need not,
5 actively participate in the appeal as a respondent. The appel-
6 lant may file and serve a reply brief not more than 14 days after
7 service of a brief by a respondent. A party may obtain a 28-day
8 extension of time for the filing of a brief on written stipula-
9 tion of the parties, or by order of the court. A party may
10 obtain a further extension of time for the filing of a brief by
11 order of the court upon that party's motion.

12 (4) If a party does not serve a brief within the time pre-
13 scribed in subsection (3), the court, after notice and an oppor-
14 tunity to respond, may enter an appropriate order including dis-
15 missal of the appeal, or affirmance or reversal of the adminis-
16 trative action.

17 (5) If, within the time specified in subsection (3), a party
18 files a brief with "oral argument requested" in boldfaced type on
19 the title page of the brief, that party is entitled to oral
20 argument.

21 (6) Following the time for submission of all briefs, the
22 court, on its own motion, or on motion of 1 of the parties, shall
23 fix a date for oral argument by all parties entitled to oral
24 argument. If no party has requested oral argument, or if the
25 parties stipulate to waive oral argument, the court shall deter-
26 mine the appeal without oral argument.

1 (7) The court, for good cause shown and upon its own motion,
2 the motion of a party, or stipulation of all parties, may shorten
3 the time for filing and serving of briefs or for oral argument.

4 (8) Upon completion of review by the court, the court shall
5 render a decision on the appeal. The court may affirm, reverse,
6 remand, or modify the decision of the approving local unit of
7 government. If the court sustains a determination of the exis-
8 tence of an unreasonable impact, the court may retain jurisdic-
9 tion for the purpose of ensuring that the parties are acting in
10 good faith to eliminate the unreasonable impact as required by
11 section 9.

12 Sec. 11. If the court determines that a party to an appeal
13 has acted on the basis of a frivolous position, the court may
14 award reasonable costs and attorneys fees to an adversarial party
15 who has acted in good faith. If the position of a party is based
16 upon calculations prepared by a person with special training or
17 expertise, or both, in the discipline relating to the capital
18 improvement at issue, then it is presumed that the position of
19 the party is not frivolous.