

As Introduced

**127th General Assembly
Regular Session
2007-2008**

H. B. No. 69

Representative Wolpert

**Cosponsors: Representatives McGregor, J., Dodd, Seitz, Combs, Stebelton,
Ujvagi, Chandler**

—

A BILL

To enact sections 303.024, 307.071, 505.708, 519.023, 1
713.16, and 713.17 of the Revised Code to permit 2
townships, counties, and combinations of certain 3
political subdivisions to establish transfer of 4
development rights programs. 5

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 303.024, 307.071, 505.708, 519.023, 6
713.16, and 713.17 of the Revised Code be enacted to read as 7
follows: 8

Sec. 303.024. (A) As used in this section: 9

(1) "Agricultural easement" and "conservation easement" have 10
the same meanings as in section 5301.67 of the Revised Code, 11
except that the easement also shall be a permanent easement 12
granted under section 5301.68 of the Revised Code and transferred 13
to an entity specified in section 5301.69 of the Revised Code. 14

(2) "Development right" means a specified right assigned to a 15
parcel of property in a sending area that may be transferred from 16
that property for application and use on property located in a 17
designated receiving area. "Development right" includes any of the 18

<u>following:</u>	19
<u>(a) A variation in the height, bulk, number of stories, and size of buildings, a variation in the density of population, or a variation in the square footage of buildings or other structures, allowed in the receiving area under applicable zoning or subdivision regulations;</u>	20 21 22 23 24
<u>(b) A variation in the number of parking spaces required in the receiving area under applicable building or parking space regulations;</u>	25 26 27
<u>(c) A variation in the size of lots, set back building lines, or sizes of yards and courts of buildings and other structures, a variation in percentages of lot areas that may be occupied by buildings and other structures, or a variation in open space requirements, allowed in the receiving area under applicable zoning or subdivision regulations;</u>	28 29 30 31 32 33
<u>(d) A variation in utility service tap-in fees or other utility fees and charges charged in the receiving area by the county;</u>	34 35 36
<u>(e) A variation in open space requirements in local laws applicable to the receiving area; or</u>	37 38
<u>(f) Any other right that varies the density or intensity of development in the receiving area or that makes development in the receiving area economically beneficial.</u>	39 40 41
<u>(3) "Receiving area" means an area of land in the unincorporated area of the county where development rights transferred from a sending area may be applied and used.</u>	42 43 44
<u>(4) "Sending area" means an area of land in the unincorporated area of the county from which assigned development rights can be transferred for use in a receiving area.</u>	45 46 47
<u>(B) A county may establish a transfer of development rights</u>	48

program whereby the owners of real property in designated sending areas in the unincorporated territory of the county may agree to have their property placed in an agricultural or conservation easement in exchange for an assignment of development rights to that property that the owner may transfer for application and use on real property in a designated receiving area in the unincorporated territory of the county. The program may be established only after the county conducts a study and adopts a plan based upon the results of that study. The study and resulting plan together shall do all the following:

(1) Determine the purpose for which the program should be created, which shall be one or more of the following:

(a) Protection of the natural, scenic, agricultural, or open space qualities of land, or the preservation of natural resources;

(b) Enhancement of sites and areas of special character or historical, cultural, aesthetic, or economic interest or value;

(c) Encouragement of development in areas deemed appropriate by the county; or

(d) Protection and management of land, water, and other natural resources.

(2) Determine the best location for sending areas and receiving areas to accomplish the purposes of the program and manage development;

(3) Include a resource assessment to determine which areas should be preserved or developed to further the purposes of the program;

(4) Determine what incentives may be used in sending and receiving areas to make the program more effective;

(5) Determine the nature and quantity of development rights that may be severed from each sending area and then attached to a

<u>parcel of real property in a receiving area;</u>	79
<u>(6) Estimate the population and economic growth during the</u>	80
<u>next ten years in the unincorporated territory of the county and</u>	81
<u>estimate the development potential of each proposed sending area</u>	82
<u>and receiving area;</u>	83
<u>(7) Consider the density and intensity of development allowed</u>	84
<u>under applicable zoning, building, and other regulations prior to</u>	85
<u>the implementation of the program;</u>	86
<u>(8) Estimate the existing and proposed infrastructure</u>	87
<u>capacity, including services and facilities, in each proposed</u>	88
<u>receiving area;</u>	89
<u>(9) In terms of infrastructure, services, and land</u>	90
<u>availability, ensure that a receiving area is able to accommodate</u>	91
<u>the density and intensity of development associated with the</u>	92
<u>amount of development rights that may be applied to it; and</u>	93
<u>(10) Ensure that the program is consistent with the</u>	94
<u>comprehensive land use plan that is the basis of the county's</u>	95
<u>zoning regulations.</u>	96
<u>(C) The county may establish a transfer of development rights</u>	97
<u>program by adopting a zoning resolution or amending an existing</u>	98
<u>zoning resolution. An amendment establishing the program may be</u>	99
<u>initiated only under section 303.12 of the Revised Code by motion</u>	100
<u>of the county rural zoning commission or by the passage of a</u>	101
<u>resolution by the board of county commissioners directing the</u>	102
<u>zoning commission to develop an amendment.</u>	103
<u>The zoning resolution or amendment establishing the program</u>	104
<u>shall establish procedures for when and how the program's</u>	105
<u>provisions can be applied to property. The zoning resolution or</u>	106
<u>amendment also shall establish procedures to be used by property</u>	107
<u>owners for the actual transfer of development rights from property</u>	108
<u>in a sending area to property in a receiving area.</u>	109

The regulations imposed by the zoning resolution or amendment 110
establishing the program need not be uniform for each class or 111
kind of building or other structure or each use of property 112
throughout any sending or receiving area, but may vary in order to 113
accommodate development and provide adequate incentives to 114
encourage participation in the program. 115

The zoning resolution or amendment establishing the program 116
may designate an administrative board to administer transfers of 117
development rights, which board may be the county rural zoning 118
commission, the county board of zoning appeals, a county or 119
regional planning commission, the board of county commissioners, 120
or a newly created board appointed by the board of county 121
commissioners. If a new board is created to be the administrative 122
board, the board shall consist of an odd-number of members, not to 123
exceed five, who shall serve staggered terms of office. 124

If the board of county commissioners is the administrative 125
board for a transfer of development rights program, the board's 126
actions to effectuate the actual transfer of development rights 127
are administrative, not legislative, actions that may be appealed 128
under Chapter 2506. of the Revised Code. 129

(D) The zoning resolution or amendment establishing a 130
transfer of development rights program may allow for the creation 131
of an overlay to the zoning map that establishes specific areas in 132
the unincorporated territory of the county that may be designated 133
as sending areas and as receiving areas. Alternatively, the zoning 134
resolution or amendment itself may designate specific sending 135
areas or receiving areas as an overlay to the zoning map. A 136
property owner who desires to have the property owned designated 137
as a sending area or a receiving area consistent with the land use 138
plan required by division (B) of this section may apply to have 139
the zoning resolution amended to include such an overlay to the 140
zoning map under section 303.12 of the Revised Code. 141

A designation as either a sending area or a receiving area on an overlay to the zoning map does not affect the underlying base zoning, and a property owner retains all rights, privileges, and obligations related to that underlying base zoning. 142
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(E)(1) The zoning resolution or amendment establishing a transfer of development rights program may create a transfer of development rights bank, to be known as a TDR bank, managed by an advisory board, known as the TDR bank advisory board. The TDR bank advisory board may be configured in any manner the board of county commissioners chooses. If the board of county commissioners creates an administrative board to administer transfers of development rights, it may designate that administrative board also to act as the TDR bank advisory board. 146
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(2) If the resolution or amendment creates a TDR bank, it also shall authorize the bank, through the TDR bank advisory board, to do the following: 155
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(a) Oversee development and implementation of the transfer of development rights program; and 158
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(b) Purchase development rights, and sell or convey any development rights it possesses, as directed by the board of county commissioners; 160
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(c) Hold indefinitely any development rights it possesses; 163

(d) Receive donations of development rights; 164

(e) Facilitate transactions between property owners in sending and receiving areas through technical assistance and education; 165
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(f) Monitor conservation or agricultural easements in the sending area; 168
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(g) Receive funding from the county, proceeds of sales of development rights, and donations; 170
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(h) Manage the TDR bank fund described in section 307.071 of 172
the Revised Code; and 173

(i) If directed to do so by the board of county 174
commissioners, establish a selling price for development rights it 175
possesses based on local market forces and extinguish development 176
rights in its possession in the absence of a buyer in the 177
receiving area. 178

(F) The establishment of a transfer of development rights 179
program and the designation of specific areas as sending areas or 180
as receiving areas are legislative acts subject to section 303.12 181
of the Revised Code. All actions undertaken under an established 182
transfer of development rights program are administrative actions 183
subject to appeal under Chapter 2506. of the Revised Code. 184

(G) If any sending area or receiving area designated in a 185
county transfer of development rights program includes 186
unincorporated territory in which no township zoning regulations 187
or county zoning regulations apply, the board of county 188
commissioners shall provide written notice to the boards of 189
township trustees in the townships where that territory is located 190
to inform the townships that a county transfer of development 191
rights program has been created that will affect territory in 192
them. 193

If any sending area or receiving area designated in a county 194
transfer of development rights program includes unincorporated 195
territory in which township zoning regulations apply, the program 196
cannot be implemented in that territory until a majority of the 197
board of township trustees adopts a resolution approving the 198
application of the program in the territory and the resolution is 199
received by the board of county commissioners. 200

Sec. 307.071. A county that creates a transfer of development 201
rights program under section 303.024 of the Revised Code may 202

establish, as a separate fund in the county treasury, a TDR bank 203
fund that shall consist of all moneys received in connection with 204
the county's transfer of development rights program. If a board of 205
county commissioners establishes a TDR bank fund, the board shall 206
have responsibility for expenditure of all moneys in the fund in 207
accordance with the program's provisions, and it also shall 208
appoint a TDR bank advisory board that shall make recommendations 209
to the board of county commissioners on the purchase and sale of 210
development rights under the transfer of development rights 211
program as well as perform the other functions enumerated in 212
division (E) of section 303.024 of the Revised Code. 213

Sec. 505.708. A township that creates a transfer of 214
development rights program under section 519.023 of the Revised 215
Code may establish, as a separate fund in the township treasury, a 216
TDR bank fund that shall consist of all moneys received in 217
connection with the township's transfer of development rights 218
program. If a board of township trustees establishes a TDR bank 219
fund, the board shall have responsibility for expenditure of all 220
moneys in the fund in accordance with the program's provisions, 221
and it also shall appoint a TDR bank advisory board that shall 222
make recommendations to the board of township trustees on the 223
purchase and sale of development rights under the transfer of 224
development rights program as well as perform the other functions 225
enumerated in division (E) of section 519.023 of the Revised Code. 226

Sec. 519.023. (A) As used in this section: 227

(1) "Agricultural easement" and "conservation easement" have 228
the same meanings as in section 5301.67 of the Revised Code, 229
except that the easement also shall be a permanent easement 230
granted under section 5301.68 of the Revised Code and transferred 231
to an entity specified in section 5301.69 of the Revised Code. 232

(2) "Development right" means a specified right assigned to a parcel of property in a sending area that may be transferred from that property for application and use on property located in a designated receiving area. "Development right" includes any of the following: 233
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(a) A variation in the height, bulk, number of stories, and size of buildings, a variation in the density of population, or a variation in the square footage of buildings or other structures, allowed in the receiving area under applicable zoning or subdivision regulations; 238
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(b) A variation in the number of parking spaces required in the receiving area under applicable building or parking space regulations; 243
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(c) A variation in the size of lots, set back building lines, or sizes of yards and courts of buildings and other structures, a variation in percentages of lot areas that may be occupied by buildings and other structures, or a variation in open space requirements, allowed in the receiving area under applicable zoning or subdivision regulations; 246
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(d) A variation in utility service tap-in fees or other utility fees and charges charged in the receiving area by a township that has adopted a limited home rule form of government under Chapter 504. of the Revised Code; 252
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(e) A variation in open space requirements in local laws applicable to the receiving area; or 256
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(f) Any other right that varies the density or intensity of development in the receiving area or that makes development in the receiving area economically beneficial. 258
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(3) "Receiving area" means an area of land in the unincorporated area of the township where development rights transferred from a sending area may be applied and used. 261
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(4) "Sending area" means an area of land in the 264
unincorporated area of the township from which assigned 265
development rights can be transferred for use in a receiving area. 266

(B) A township may establish a transfer of development rights 267
program whereby the owners of real property in designated sending 268
areas in the unincorporated territory of the township may agree to 269
have their property placed in an agricultural or conservation 270
easement in exchange for an assignment of development rights to 271
that property that the owner may transfer for application and use 272
on real property in a designated receiving area in the 273
unincorporated territory of the township. The program may be 274
established only after the township conducts a study and adopts a 275
plan based upon the results of that study. The study and resulting 276
plan together shall do all the following: 277

(1) Determine the purpose for which the program should be 278
created, which shall be one or more of the following: 279

(a) Protection of the natural, scenic, agricultural, or open 280
space qualities of land, or the preservation of natural resources; 281

(b) Enhancement of sites and areas of special character or 282
historical, cultural, aesthetic, or economic interest or value; 283

(c) Encouragement of development in areas deemed appropriate 284
by the township; or 285

(d) Protection and management of land, water, and other 286
natural resources. 287

(2) Determine the best location for sending areas and 288
receiving areas to accomplish the purposes of the program and 289
manage development; 290

(3) Include a resource assessment to determine which areas 291
should be preserved or developed to further the purposes of the 292
program; 293

<u>(4) Determine what incentives may be used in sending and receiving areas to make the program more effective;</u>	294
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<u>(5) Determine the nature and quantity of development rights that may be severed from each sending area and then attached to a parcel of real property in a receiving area;</u>	296
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<u>(6) Estimate the population and economic growth during the next ten years in the unincorporated territory of the township and estimate the development potential of each proposed sending area and receiving area;</u>	299
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<u>(7) Consider the density and intensity of development allowed under applicable zoning, building, and other regulations prior to the implementation of the program;</u>	303
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<u>(8) Estimate the existing and proposed infrastructure capacity, including services and facilities, in each proposed receiving area;</u>	306
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<u>(9) In terms of infrastructure, services, and land availability, ensure that a receiving area is able to accommodate the density and intensity of development associated with the amount of development rights that may be applied to it; and</u>	309
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<u>(10) Ensure that the program is consistent with the comprehensive land use plan that is the basis of the township's zoning regulations.</u>	313
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<u>(C) The township may establish a transfer of development rights program by adopting a zoning resolution or amending an existing zoning resolution. An amendment establishing the program may be initiated only under section 519.12 of the Revised Code by motion of the township zoning commission or by the passage of a resolution by the board of township trustees directing the zoning commission to propose an amendment.</u>	316
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<u>The zoning resolution or amendment establishing the program</u>	323

shall establish procedures for when and how the program's 324
provisions can be applied to property. The zoning resolution or 325
amendment also shall establish procedures to be used by property 326
owners for the actual transfer of development rights from property 327
in a sending area to property in a receiving area. 328

The regulations imposed by the zoning resolution or amendment 329
establishing the program need not be uniform for each class or 330
kind of building or other structure or each use of property 331
throughout any sending or receiving area, but may vary in order to 332
accommodate development and provide adequate incentives to 333
encourage participation in the program. 334

The zoning resolution or amendment establishing the program 335
may designate an administrative board to administer transfers of 336
development rights, which board may be the township zoning 337
commission, the township board of zoning appeals, a county or 338
regional planning commission, the board of township trustees, or a 339
newly created board appointed by the board of township trustees. 340
If a new board is created to be the administrative board, the 341
board shall consist of an odd-number of members, not to exceed 342
five, who shall serve staggered terms of office. 343

If the board of township trustees is the administrative board 344
for a transfer of development rights program, the board's actions 345
to effectuate the actual transfer of development rights are 346
administrative, not legislative, actions that may be appealed 347
under Chapter 2506. of the Revised Code. 348

(D) The zoning resolution or amendment establishing a 349
transfer of development rights program may allow for the creation 350
of an overlay to the zoning map that establishes specific areas in 351
the unincorporated territory of the township that may be 352
designated as sending areas and as receiving areas. Alternatively, 353
the zoning resolution or amendment itself may designate specific 354
sending areas or receiving areas as an overlay to the zoning map. 355

A property owner who desires to have the property owned designated as a sending area or a receiving area consistent with the land use plan required by division (B) of this section may apply to have the zoning resolution amended to include such an overlay to the zoning map under section 519.12 of the Revised Code. 356
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A designation as either a sending area or a receiving area on an overlay to the zoning map does not affect the underlying base zoning, and a property owner retains all rights, privileges, and obligations related to that underlying base zoning. 361
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(E)(1) The zoning resolution or amendment establishing a transfer of development rights program may create a transfer of development rights bank, to be known as a TDR bank, managed by an advisory board, known as the TDR bank advisory board. The TDR bank advisory board may be configured in any manner the board of township trustees chooses. If the board of township trustees creates an administrative board to administer transfers of development rights, it may designate that administrative board also to act as the TDR bank advisory board. 365
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(2) If the resolution or amendment creates a TDR bank, it also shall authorize the bank, through the TDR bank advisory board, to do the following: 374
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(a) Oversee development and implementation of the transfer of development rights program; 377
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(b) Purchase development rights, and sell or convey any development rights it possesses, as directed by the board of township trustees; 379
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(c) Hold indefinitely any development rights it possesses; 382

(d) Receive donations of development rights; 383

(e) Facilitate transactions between property owners in sending and receiving areas through technical assistance and 384
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<u>education;</u>	386
<u>(f) Monitor conservation or agricultural easements in the</u>	387
<u>sending area;</u>	388
<u>(g) Receive funding from the township, proceeds of sales of</u>	389
<u>development rights, and donations;</u>	390
<u>(h) Manage the TDR bank fund described in section 505.708 of</u>	391
<u>the Revised Code; and</u>	392
<u>(i) If directed to do so by the board of township trustees,</u>	393
<u>establish a selling price for development rights it possesses</u>	394
<u>based on local market forces and extinguish development rights in</u>	395
<u>its possession in the absence of a buyer in the receiving area.</u>	396
<u>(F) The establishment of a transfer of development rights</u>	397
<u>program and the designation of specific areas as sending areas or</u>	398
<u>as receiving areas are legislative acts subject to section 519.12</u>	399
<u>of the Revised Code. All actions undertaken under an established</u>	400
<u>transfer of development rights program are administrative actions</u>	401
<u>subject to appeal under Chapter 2506. of the Revised Code.</u>	402
<u>Sec. 713.16. (A) As used in this section:</u>	403
<u>(1) "Agricultural easement" and "conservation easement" have</u>	404
<u>the same meanings as in section 5301.67 of the Revised Code,</u>	405
<u>except that the easement also shall be a permanent easement</u>	406
<u>granted under section 5301.68 of the Revised Code and transferred</u>	407
<u>to an entity specified in section 5301.69 of the Revised Code.</u>	408
<u>(2) "Development right" means a specified right assigned to a</u>	409
<u>parcel of property in a sending area that may be transferred from</u>	410
<u>that property for application and use on property located in a</u>	411
<u>designated receiving area. "Development right" includes any of the</u>	412
<u>following:</u>	413
<u>(a) A variation in the height, bulk, number of stories, and</u>	414
<u>size of buildings, a variation in the density of population, or a</u>	415

variation in the square footage of buildings or other structures, 416
allowed in the receiving area under applicable zoning or 417
subdivision regulations; 418

(b) A variation in the number of parking spaces required in 419
the receiving area under applicable building or parking space 420
regulations; 421

(c) A variation in the size of lots, set back building lines, 422
or sizes of yards and courts of buildings and other structures, a 423
variation in percentages of lot areas that may be occupied by 424
buildings and other structures, or a variation in open space 425
requirements, allowed in the receiving area under applicable 426
zoning or subdivision regulations; 427

(d) A variation in utility service tap-in fees or other 428
utility fees and charges charged in the receiving area by a 429
political subdivision; 430

(e) A variation in open space requirements in local laws 431
applicable to the receiving area; or 432

(f) Any other right that varies the density or intensity of 433
development in the receiving area or that makes development in the 434
receiving area economically beneficial. 435

(3) "Receiving area" means an area of land that is within the 436
territory of one or more political subdivisions participating in a 437
joint transfer of development rights program where development 438
rights transferred from a sending area may be applied and used. 439

(4) "Sending area" means an area of land that is within the 440
territory of one or more political subdivisions participating in a 441
joint transfer of development rights program from which assigned 442
development rights can be transferred for use in a receiving area. 443

(B) The legislative authority of one or more municipal 444
corporations, the board of county commissioners of one or more 445

counties, and the board of township trustees of one or more 446
townships may enter into a joint agreement to create a joint 447
transfer of development rights program whereby the owners of real 448
property in designated sending areas may agree to have their 449
property placed in an agricultural or conservation easement in 450
exchange for an assignment of development rights to that property 451
that the owner may transfer for application and use on real 452
property in a designated receiving area. The joint agreement shall 453
establish the parameters of the program and the responsibilities 454
of each party to the agreement. 455

(C) If any sending area or receiving area designated in a 456
joint transfer of development rights program includes 457
unincorporated territory in a township that is not participating 458
in the program and in which no township zoning regulations or 459
county zoning regulations apply, the participating political 460
subdivisions shall provide written notice to the boards of 461
township trustees in the townships where that territory is located 462
to inform the townships that a joint transfer of development 463
rights program has been created that will affect territory in 464
them. 465

If any sending area or receiving area designated in the joint 466
transfer of development rights program includes unincorporated 467
territory in which township zoning regulations apply and that 468
township is not a participating political subdivision in the 469
program, before the program can be implemented in that territory, 470
a majority of the board of township trustees of that township must 471
pass a resolution approving the application of the program in that 472
territory. 473

(D) If a joint transfer of development rights program 474
agreement cannot be implemented without changes to the laws of a 475
party to the agreement, including changes to a zoning code, that 476
party may make those changes in accordance with the laws of that 477

political subdivision if initiated by its legislative authority. 478
Nothing in such an agreement, however, can compel such changes. If 479
zoning regulations are changed in order to implement the program, 480
those regulations need not be uniform for each class or kind of 481
building or other structure or each use of property throughout any 482
sending or receiving area, but may vary in order to accommodate 483
development and provide adequate incentives to encourage 484
participation in the program. 485

(E) A joint transfer of development rights program agreement 486
shall not be in derogation of the powers granted to municipal 487
corporations by Article XVIII of the Ohio Constitution or any 488
other provisions of the Ohio Constitution or of a municipal 489
charter. A joint transfer of development rights program agreement 490
entered into under this section is in addition to any other 491
agreements authorized by law between municipal corporations and 492
counties or between municipal corporations and townships. 493

Sec. 713.17. (A) A joint transfer of development rights 494
program created under section 713.16 of the Revised Code shall 495
have a separate fund in the treasury of one of the participating 496
political subdivisions that is designated as a TDR bank fund. The 497
fund shall consist of all moneys received in connection with the 498
program. Expenditures from the fund shall be made only as provided 499
in the agreement establishing the program. 500

(B)(1) The agreement establishing a joint transfer of 501
development rights program shall provide for a transfer of 502
development rights bank, to be known as a TDR bank. The TDR bank 503
shall be managed by a TDR bank advisory board which may be a 504
municipal, county, or regional planning commission, a zoning 505
commission, a board of zoning appeals, or a combination of those 506
entities, or it may be a newly created, appointed board configured 507
in any manner designated in the agreement. 508

(2) A TDR bank, through the TDR bank advisory board, shall 509
make recommendations to the legislative authorities of the 510
participating political subdivisions on the purchase and sale of 511
development rights under the program, and may do any or all of the 512
following: 513

(a) Oversee development and implementation of the joint 514
transfer of development rights program; 515

(b) Purchase development rights, and sell or convey any 516
development rights it possesses, as directed jointly by the 517
participating political subdivisions; 518

(c) Hold indefinitely any development rights it possesses; 519

(d) Receive donations of development rights; 520

(e) Facilitate transactions between property owners in 521
sending and receiving areas through technical assistance and 522
education; 523

(f) Monitor conservation or agricultural easements in the 524
sending area; 525

(g) Receive funding from participating political 526
subdivisions, proceeds of sales of development rights, and 527
donations; 528

(h) Manage the moneys in the TDR bank fund; or 529

(i) If directed to do so by the participating political 530
subdivisions acting jointly, establish a selling price for 531
development rights it possesses based on local market forces and 532
extinguish development rights in its possession in the absence of 533
a buyer in the receiving area. 534