

As Introduced

**128th General Assembly
Regular Session
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H. B. No. 471

Representative Chandler

Cosponsors: Representatives Hagan, Foley, Stebelton, Letson, Yuko

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A B I L L

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 3
townships, counties, and municipal corporations to 4
establish transfer of 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
following: 19

(a) A variation in the height, bulk, number of stories, and size of buildings, in the density of population, or in the square footage of buildings or other structures allowed in a receiving area under applicable zoning or subdivision regulations; 20
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(b) A variation in the number of parking spaces required in a receiving area under applicable building or parking space regulations; 24
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(c) A variation in the size of lots, set-back building lines, or the size of yards and courts of buildings and other structures, in percentages of lot areas that may be occupied by buildings and other structures, or in open space requirements allowed in a receiving area under applicable zoning or subdivision regulations; 27
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(d) A variation in utility service tap-in fees or other utility fees and charges charged in a receiving area by the county; 32
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(e) A variation in open space requirements in local laws applicable to a receiving area; 35
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(f) Any other right that varies the density or intensity of development in a receiving area or that makes development in a receiving area economically beneficial. 37
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(3) "Receiving area" means an area of land in the unincorporated area of a county where development rights transferred from a sending area may be applied and used. 40
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(4) "Sending area" means an area of land in the unincorporated area of a county from which assigned development rights can be transferred for use in a receiving area. 43
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(B) A board of county commissioners may establish a transfer of development rights program whereby the owner of real property in a designated sending area in the unincorporated territory of the county may agree to have the owner's real property placed in 46
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an agricultural or conservation easement in exchange for an 50
assignment of development rights to that property that the owner 51
may transfer for application and use on real property in a 52
designated receiving area in the unincorporated territory of the 53
county. The program may be established only after the board of 54
county commissioners conducts a study and adopts a plan based upon 55
the results of that study. The study and resulting plan together 56
shall do all of the following: 57

(1) Determine the purpose for which the program should be 58
created, which shall be one or more of the following: 59

(a) Protection of the natural, scenic, agricultural, or open 60
space qualities of land, or the preservation of natural resources; 61

(b) Enhancement of sites and areas of special character or 62
historical, cultural, aesthetic, or economic interest or value; 63

(c) Encouragement of development in areas deemed appropriate 64
by the county; 65

(d) Protection and management of land, water, and other 66
natural resources. 67

(2) Determine the best location for sending areas and 68
receiving areas to accomplish the purposes of the program and to 69
manage development; 70

(3) Include a resource assessment to determine which areas 71
should be preserved or developed to further the purposes of the 72
program; 73

(4) Determine what incentives may be used in sending and 74
receiving areas to make the program more effective; 75

(5) Determine the nature and number of development rights 76
that may be severed from each sending area and then attached to a 77
parcel of real property in a receiving area; 78

(6) Estimate the population and economic growth during the 79

next ten years in the unincorporated territory of the county and 80
estimate the development potential of each proposed sending area 81
and receiving area; 82

(7) Consider the density and intensity of development allowed 83
under applicable zoning, building, and other regulations prior to 84
the implementation of the program; 85

(8) Estimate the existing and proposed infrastructure 86
capacity, including services and facilities, in each proposed 87
receiving area; 88

(9) In terms of infrastructure, services, and land 89
availability, ensure that a receiving area is able to accommodate 90
the density and intensity of development associated with the 91
number of development rights that may be applied to it; 92

(10) Ensure that the program is consistent with the 93
comprehensive land use plan that is the basis of the county's 94
zoning regulations. 95

(C) The board of county commissioners may establish a 96
transfer of development rights program by adopting a zoning 97
resolution or amending an existing zoning resolution. An amendment 98
establishing the program may be initiated only under section 99
303.12 of the Revised Code by motion of the county rural zoning 100
commission or by the passage of a resolution by the board of 101
county commissioners directing the county rural zoning commission 102
to propose an amendment. 103

The zoning resolution or amendment establishing the program 104
shall include procedures for when and how the program's provisions 105
will be applied to property and the procedures to be used by 106
property owners for the actual transfer of development rights from 107
property in a sending area to property in a receiving area. The 108
regulations imposed by the zoning resolution or amendment 109
establishing the program need not be uniform for each class or 110

type of building or other structure or for each use of property 111
throughout any sending or receiving area, but may vary in order to 112
accommodate development and provide adequate incentives to 113
encourage participation in the program. 114

The zoning resolution or amendment establishing the program 115
may designate an administrative board to administer transfers of 116
development rights, which board may be the county rural zoning 117
commission, the county board of zoning appeals, a county or 118
regional planning commission, the board of county commissioners, 119
or a newly created board appointed by the board of county 120
commissioners. If a new board is created to be the administrative 121
board, the board shall consist of an odd number of members, not to 122
exceed five, who shall serve staggered terms of office. 123

If the board of county commissioners is the administrative 124
board for a transfer of development rights program, the board's 125
actions to effectuate the actual transfer of development rights 126
are adjudicative, not legislative, actions that may be appealed 127
under Chapter 2506. of the Revised Code. 128

(D) The zoning resolution or amendment establishing a 129
transfer of development rights program may allow for the creation 130
of an overlay to the zoning map that identifies specific areas in 131
the unincorporated territory of the county that may be designated 132
as sending areas and as receiving areas. Alternatively, the zoning 133
resolution or amendment itself may designate specific sending 134
areas or receiving areas as an overlay to the zoning map. A 135
property owner who desires to have the owner's property designated 136
as a sending area or a receiving area consistent with the plan 137
required by division (B) of this section may apply to have the 138
zoning resolution amended under section 303.12 of the Revised Code 139
to include such an overlay to the zoning map. 140

A designation as either a sending area or a receiving area on 141
an overlay to the zoning map does not affect the underlying base 142

zoning, and a property owner retains all rights, privileges, and 143
obligations related to that underlying base zoning. 144

(E)(1) The zoning resolution or amendment establishing a 145
transfer of development rights program may create a transfer of 146
development rights bank, to be known as a TDR bank, managed by an 147
advisory board, known as the TDR bank advisory board. The TDR bank 148
advisory board may be configured in any manner the board of county 149
commissioners chooses. If the board of county commissioners 150
creates an administrative board to administer transfers of 151
development rights, it may designate that administrative board 152
also to act as the TDR bank advisory board. 153

(2) If the zoning resolution or amendment creates a TDR bank, 154
it also shall authorize the TDR bank, through the TDR bank 155
advisory board, to do the following: 156

(a) Oversee development and implementation of the transfer of 157
development rights program; 158

(b) Purchase development rights, and sell or convey any 159
development rights it possesses, as directed by the board of 160
county commissioners; 161

(c) Hold indefinitely any development rights it possesses; 162

(d) Receive donations of development rights; 163

(e) Facilitate transactions between property owners in 164
sending and receiving areas through technical assistance and 165
education; 166

(f) Monitor conservation or agricultural easements in the 167
sending area; 168

(g) Receive funding from the county, proceeds of sales of 169
development rights, and donations; 170

(h) Manage the TDR bank fund described in section 307.071 of 171
the Revised Code; 172

(i) If directed to do so by the board of county commissioners, establish a selling price for development rights it possesses, based on local market forces, and extinguish development rights in its possession in the absence of a buyer in the receiving area. 173
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(F) The establishment of a transfer of development rights program and the designation of specific areas as sending areas or as receiving areas are legislative acts subject to section 303.12 of the Revised Code. All actions undertaken under an established transfer of development rights program are adjudicative actions subject to appeal under Chapter 2506. of the Revised Code. 178
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(G) If any sending area or receiving area designated in a county transfer of development rights program includes unincorporated territory in which no township zoning regulations or county zoning regulations apply, the board of county commissioners shall provide written notice to the boards of township trustees in the townships in which that territory is located to inform the townships that a county transfer of development rights program has been created that will affect territory in them. 184
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If any sending area or receiving area designated in a county transfer of development rights program includes unincorporated territory in which township zoning regulations apply, the program cannot be implemented in that territory until a majority of the board of township trustees adopts a resolution approving the program in the territory, and the resolution is sent to and received by the board of county commissioners. 193
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Sec. 307.071. A board of county commissioners that creates a transfer of development rights program under section 303.024 of the Revised Code may establish, as a separate fund in the county treasury, a TDR bank fund that shall consist of all moneys 200
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received in connection with the county's transfer of development 204
rights program. If a TDR bank fund is established, the board of 205
county commissioners shall have responsibility for the expenditure 206
of all moneys in the fund in accordance with the program's 207
provisions, and the board also shall appoint a TDR bank advisory 208
board that shall make recommendations to the board of county 209
commissioners on the purchase and sale of development rights under 210
the transfer of development rights program and perform the other 211
functions enumerated in division (E) of section 303.024 of the 212
Revised Code. 213

Sec. 505.708. A board of township trustees that creates a 214
transfer of development rights program under section 519.023 of 215
the Revised Code may establish, as a separate fund in the township 216
treasury, a TDR bank fund that shall consist of all moneys 217
received in connection with the township's transfer of development 218
rights program. If a TDR bank fund is established, the board of 219
township trustees shall have responsibility for the expenditure of 220
all moneys in the fund in accordance with the program's 221
provisions, and the board also shall appoint a TDR bank advisory 222
board that shall make recommendations to the board of township 223
trustees on the purchase and sale of development rights under the 224
transfer of development rights program and perform the other 225
functions enumerated in division (E) of section 519.023 of the 226
Revised Code. 227

Sec. 519.023. (A) As used in this section: 228

(1) "Agricultural easement" and "conservation easement" have 229
the same meanings as in section 5301.67 of the Revised Code, 230
except that the easement also shall be a permanent easement 231
granted under section 5301.68 of the Revised Code and transferred 232
to an entity specified in section 5301.69 of the Revised Code. 233

(2) "Development right" means a specified right assigned to a 234
parcel of property in a sending area that may be transferred from 235
that property for application and use on property located in a 236
designated receiving area. "Development right" includes any of the 237
following: 238

(a) A variation in the height, bulk, number of stories, and 239
size of buildings, in the density of population, or in the square 240
footage of buildings or other structures allowed in a receiving 241
area under applicable zoning or subdivision regulations; 242

(b) A variation in the number of parking spaces required in a 243
receiving area under applicable building or parking space 244
regulations; 245

(c) A variation in the size of lots, set-back building lines, 246
or the size of yards and courts of buildings and other structures, 247
in percentages of lot areas that may be occupied by buildings and 248
other structures, or in open space requirements allowed in a 249
receiving area under applicable zoning or subdivision regulations; 250

(d) A variation in utility service tap-in fees or other 251
utility fees and charges charged in a receiving area by a township 252
that has adopted a limited home rule form of government under 253
Chapter 504. of the Revised Code; 254

(e) A variation in open space requirements in local laws 255
applicable to a receiving area; 256

(f) Any other right that varies the density or intensity of 257
development in a receiving area or that makes development in a 258
receiving area economically beneficial. 259

(3) "Receiving area" means an area of land in the 260
unincorporated area of a township where development rights 261
transferred from a sending area may be applied and used. 262

(4) "Sending area" means an area of land in the 263

unincorporated area of a township from which assigned development rights can be transferred for use in a receiving area. 264
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(B) A board of township trustees may establish a transfer of development rights program whereby the owner of real property in a designated sending area in the unincorporated territory of the township may agree to have the owner's 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 township. The program may be established only after the board of township trustees conducts a study and adopts a plan based upon the results of that study. The study and resulting plan together shall do all of the following: 266
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(1) Determine the purpose for which the program should be created, which shall be one or more of the following: 278
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(a) Protection of the natural, scenic, agricultural, or open space qualities of land, or the preservation of natural resources; 280
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(b) Enhancement of sites and areas of special character or historical, cultural, aesthetic, or economic interest or value; 282
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(c) Encouragement of development in areas deemed appropriate by the township; 284
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(d) Protection and management of land, water, and other natural resources. 286
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(2) Determine the best location for sending areas and receiving areas to accomplish the purposes of the program and to manage development; 288
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(3) Include a resource assessment to determine which areas should be preserved or developed to further the purposes of the program; 291
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<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 number 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 number of development rights that may be applied to it;</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 board of township trustees 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 township zoning commission to propose an amendment.</u>	316
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<u>The zoning resolution or amendment establishing the program</u>	323

shall include procedures for when and how the program's provisions 324
will be applied to property and the procedures to be used by 325
property owners for the actual transfer of development rights from 326
property in a sending area to property in a receiving area. The 327
regulations imposed by the zoning resolution or amendment 328
establishing the program need not be uniform for each class or 329
type of building or other structure or for each use of property 330
throughout any sending or receiving area, but may vary in order to 331
accommodate development and provide adequate incentives to 332
encourage participation in the program. 333

The zoning resolution or amendment establishing the program 334
may designate an administrative board to administer transfers of 335
development rights, which board may be the township zoning 336
commission, the township board of zoning appeals, a county or 337
regional planning commission, the board of township trustees, or a 338
newly created board appointed by the board of township trustees. 339
If a new board is created to be the administrative board, the 340
board shall consist of an odd number of members, not to exceed 341
five, who shall serve staggered terms of office. 342

If the board of township trustees is the administrative board 343
for a transfer of development rights program, the board's actions 344
to effectuate the actual transfer of development rights are 345
adjudicative, not legislative, actions that may be appealed under 346
Chapter 2506. of the Revised Code. 347

(D) The zoning resolution or amendment establishing a 348
transfer of development rights program may allow for the creation 349
of an overlay to the zoning map that identifies specific areas in 350
the unincorporated territory of the township that may be 351
designated as sending areas and as receiving areas. Alternatively, 352
the zoning resolution or amendment itself may designate specific 353
sending areas or receiving areas as an overlay to the zoning map. 354
A property owner who desires to have the owner's property 355

designated as a sending area or a receiving area consistent with 356
the plan required by division (B) of this section may apply to 357
have the zoning resolution amended under section 519.12 of the 358
Revised Code to include such an overlay to the zoning map. 359

A designation as either a sending area or a receiving area on 360
an overlay to the zoning map does not affect the underlying base 361
zoning, and a property owner retains all rights, privileges, and 362
obligations related to that underlying base zoning. 363

(E)(1) The zoning resolution or amendment establishing a 364
transfer of development rights program may create a transfer of 365
development rights bank, to be known as a TDR bank, managed by an 366
advisory board, known as the TDR bank advisory board. The TDR bank 367
advisory board may be configured in any manner the board of 368
township trustees chooses. If the board of township trustees 369
creates an administrative board to administer transfers of 370
development rights, it may designate that administrative board 371
also to act as the TDR bank advisory board. 372

(2) If the zoning resolution or amendment creates a TDR bank, 373
it also shall authorize the TDR bank, through the TDR bank 374
advisory board, to do the following: 375

(a) Oversee development and implementation of the transfer of 376
development rights program; 377

(b) Purchase development rights, and sell or convey any 378
development rights it possesses, as directed by the board of 379
township trustees; 380

(c) Hold indefinitely any development rights it possesses; 381

(d) Receive donations of development rights; 382

(e) Facilitate transactions between property owners in 383
sending and receiving areas through technical assistance and 384
education; 385

<u>(f) Monitor conservation or agricultural easements in the sending area;</u>	386
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<u>(g) Receive funding from the township, proceeds of sales of development rights, and donations;</u>	388
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<u>(h) Manage the TDR bank fund described in section 505.708 of the Revised Code;</u>	390
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<u>(i) If directed to do so by the board of township trustees, establish a selling price for development rights it possesses, based on local market forces, and extinguish development rights in its possession in the absence of a buyer in the receiving area.</u>	392
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<u>(F) The establishment of a transfer of development rights program and the designation of specific areas as sending areas or as receiving areas are legislative acts subject to section 519.12 of the Revised Code. All actions undertaken under an established transfer of development rights program are adjudicative actions subject to appeal under Chapter 2506. of the Revised Code.</u>	396
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<u>Sec. 713.16. (A) As used in this section:</u>	402
<u>(1) "Agricultural easement" and "conservation easement" have the same meanings as in section 5301.67 of the Revised Code, except that the easement also shall be a permanent easement granted under section 5301.68 of the Revised Code and transferred to an entity specified in section 5301.69 of the Revised Code.</u>	403
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<u>(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:</u>	408
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<u>(a) A variation in the height, bulk, number of stories, and size of buildings, in the density of population, or in the square footage of buildings or other structures allowed in a receiving</u>	413
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area under applicable zoning or subdivision regulations; 416

(b) A variation in the number of parking spaces required in a receiving area under applicable building or parking space regulations; 417
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(c) A variation in the size of lots, set-back building lines, or the size of yards and courts of buildings and other structures, in percentages of lot areas that may be occupied by buildings and other structures, or in open space requirements allowed in a receiving area under applicable zoning or subdivision regulations; 420
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(d) A variation in utility service tap-in fees or other utility fees and charges charged in a receiving area by a political subdivision; 425
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(e) A variation in open space requirements in local laws applicable to a receiving area; 428
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(f) Any other right that varies the density or intensity of development in a receiving area or that makes development in a receiving area economically beneficial. 430
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(3) "Receiving area" means an area of land that is within the territory of one or more political subdivisions participating in a joint transfer of development rights program where development rights transferred from a sending area may be applied and used. 433
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(4) "Sending area" means an area of land that is within the territory of one or more political subdivisions participating in a joint transfer of development rights program from which assigned development rights can be transferred for use in a receiving area. 437
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(B) The legislative authority of one or more municipal corporations, the board of county commissioners of one or more counties, and the board of township trustees of one or more townships may enter into a joint agreement to create a joint transfer of development rights program whereby the owner of real 441
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property in a designated sending area may agree to have the 446
owner's property placed in an agricultural or conservation 447
easement in exchange for an assignment of development rights to 448
that property that the owner may transfer for application and use 449
on real property in a designated receiving area. The joint 450
agreement shall establish the parameters of the program and the 451
responsibilities of each party to the agreement. 452

(C) If any sending area or receiving area designated in a 453
joint transfer of development rights program includes 454
unincorporated territory in a township that is not participating 455
in the program and in which no township zoning regulations or 456
county zoning regulations apply, the parties to the joint 457
agreement shall provide written notice to the boards of township 458
trustees in the townships in which that territory is located to 459
inform the townships that a joint transfer of development rights 460
program has been created that will affect territory in them. 461

If any sending area or receiving area designated in the joint 462
transfer of development rights program includes unincorporated 463
territory in which township zoning regulations apply, and that 464
township is not a political subdivision participating in the 465
program, before the program can be implemented in that territory, 466
a majority of the board of township trustees of that township must 467
adopt a resolution approving the program in that territory. 468

(D) If a joint transfer of development rights program 469
agreement cannot be implemented without changes to the laws of a 470
party to the agreement, including changes to a zoning code, that 471
party may make those changes in accordance with the laws of that 472
political subdivision if initiated by its legislative authority. 473
Nothing in the agreement, however, can compel such changes. If 474
zoning regulations are changed in order to implement the program, 475
those regulations need not be uniform for each class or type of 476
building or other structure or for each use of property throughout 477

any sending or receiving area, but may vary in order to 478
accommodate development and provide adequate incentives to 479
encourage participation in the program. 480

(E) A joint transfer of development rights program agreement 481
shall not be in derogation of the powers granted to municipal 482
corporations by Article XVIII of the Ohio Constitution or any 483
other provisions of the Ohio Constitution or of a municipal 484
charter. A joint transfer of development rights program agreement 485
entered into under this section is in addition to any other 486
agreements authorized by law between municipal corporations and 487
counties or between municipal corporations and townships. 488

Sec. 713.17. (A) One of the parties to a joint transfer of 489
development rights agreement entered into under section 713.16 of 490
the Revised Code shall establish a separate fund in its treasury 491
that is designated as a TDR bank fund. The fund shall consist of 492
all moneys received in connection with the joint transfer of 493
development rights program. Expenditures from the fund shall be 494
made only as provided in the joint agreement establishing the 495
program. 496

(B)(1) The agreement establishing a joint transfer of 497
development rights program shall provide for a transfer of 498
development rights bank, to be known as a TDR bank. The TDR bank 499
shall be managed by a TDR bank advisory board, which may be a 500
municipal, county, or regional planning commission, a zoning 501
commission, a board of zoning appeals, or a combination of those 502
entities, or it may be a newly created, appointed board configured 503
in any manner designated in the agreement. 504

(2) A TDR bank, through the TDR bank advisory board, shall 505
make recommendations to the legislative authorities of the parties 506
to the joint agreement on the purchase and sale of development 507
rights under the program, and may do any or all of the following: 508

<u>(a) Oversee development and implementation of the joint transfer of development rights program;</u>	509
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<u>(b) Purchase development rights, and sell or convey any development rights it possesses, as directed jointly by the parties to the joint agreement;</u>	511
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<u>(c) Hold indefinitely any development rights it possesses;</u>	514
<u>(d) Receive donations of development rights;</u>	515
<u>(e) Facilitate transactions between property owners in sending and receiving areas through technical assistance and education;</u>	516
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<u>(f) Monitor conservation or agricultural easements in the sending area;</u>	519
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<u>(g) Receive funding from the parties to the joint agreement, proceeds of sales of development rights, and donations;</u>	521
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<u>(h) Manage the TDR bank fund;</u>	523
<u>(i) If directed to do so by the parties to the agreement acting jointly, establish a selling price for development rights it possesses, based on local market forces, and extinguish development rights in its possession in the absence of a buyer in the receiving area.</u>	524
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