



Ohio Legislative Service Commission

Bill Analysis

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H.B. 471

128th General Assembly
(As Introduced)

Reps. Chandler, Hagan, Foley, Stebelton, Letson, Yuko

BILL SUMMARY

- Permits counties and townships, and, pursuant to a joint agreement, combinations of counties, townships, and municipal corporations, to establish transfer of development rights (TDR) programs.
 - Authorizes a county or township creating a TDR program, and requires the parties participating in a joint TDR program, to establish a TDR bank, managed by a TDR bank advisory board, to oversee the TDR program and purchase or sell development rights, among other functions.
 - Authorizes a county or township that has a TDR program, and requires one of the parties participating in a joint TDR program, to establish a TDR bank fund consisting of moneys received in connection with a TDR program.
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CONTENT AND OPERATION

In general

(R.C. 303.024(A), (B), and (C), 519.023(A), (B), and (C), and 713.16 (A) and (B))

The bill authorizes counties and townships to adopt zoning resolutions that permit the transfer of development rights (TDR) within their unincorporated territory. The bill also authorizes combinations of counties, townships, and municipal corporations to establish a joint TDR program under the terms of a joint agreement. TDR programs permit a "development right" to be assigned to real property placed in an agricultural or conservation easement that is designated as a "sending area." That development right may be transferred for application and use on real property in a

designated "receiving area." Those assignments and transfers of development rights occur only at the election of the property owner.

The political subdivisions that create a TDR program determine what development rights are included in the program. The bill provides the following list of potential development rights that, in addition to other development rights, may be included in a TDR program:

- A variation in the height, bulk, number of stories, and size of buildings, density of population, or square footage of buildings or other structures allowed under applicable zoning or subdivision regulations in a receiving area;
- A variation in the number of parking spaces required under applicable building or parking space regulations in a receiving area;
- A variation in the size of lots, set-back building lines, or size 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 a receiving area under applicable zoning or subdivision regulations;
- A variation in utility service tap-in fees or other utility fees or charges charged by the political subdivision in a receiving area;
- A variation in open space requirements in local laws applicable to a receiving area;
- 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.

Sending and receiving areas

(R.C. 303.024(A) and (B), 519.023(A) and (B), and 713.16(A) and (B))

In a TDR program, a "sending area" is an area of land identified in the program from which assigned development rights may be transferred for application and use in a "receiving area," in return for the identified area of land in the sending area being placed in an agricultural or conservation easement. In county or township TDR programs, sending and receiving areas must be located in the unincorporated territory of the county or township.

Agricultural and conservation easements generally are rights or interests in land that is held for certain public purposes (see **COMMENT**) and that imposes limitations on the use or development of the land to achieve those public purposes. But, for purposes of a TDR program, they also must be permanent easements and, regarding a conservation easement, must be transferred to the Director of Natural Resources, the board of park commissioners of a metropolitan park district or township park district, the board of directors of a conservancy district, the board of supervisors of a soil and water conservation district, a board of county commissioners, a board of township trustees, the legislative authority of a municipal corporation, or a tax-exempt charitable organization organized for the preservation of land areas for public outdoor recreation or education, or scenic enjoyment, the preservation of historically important land areas or structures, or the protection of natural environmental systems.¹

Creating a county or township TDR program

Study and plan

(R.C. 303.024(B) and 519.023(B))

Before a county or township creates an individual TDR program it must conduct a study and adopt a plan based on the study. The study and resulting plan together must (1) determine the purposes for which the program should be created (see below), (2) determine the best location for sending and receiving areas to accomplish the program's purposes and to manage development, (3) assess resources 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 parcel of real property in a receiving area, (6) estimate the population and economic growth during the next ten years in the unincorporated territory of the county or township and estimate the development potential of each proposed sending and receiving area, (7) consider the density and intensity of development allowed under applicable zoning, building, and other regulations prior to implementation of the TDR program, (8) estimate the existing and proposed infrastructure capacity, including services and facilities, in each proposed receiving area, (9) ensure that a receiving area, in terms of infrastructure, services, and land availability, is able to accommodate the density and intensity of development associated with the amount of development rights that may be applied to it, and (10) ensure that the TDR program is consistent with the

¹ The bill is uncertain regarding to whom an agricultural easement may be granted because the definition in the bill refers to two existing statutes, and the same grantees are not listed in both statutes.

comprehensive land use plan that is the basis of the county's or township's zoning regulations.

The purposes for which a county or township TDR program may be created are one or more of the following:

--Protection of the natural, scenic, agricultural, or open space qualities of land, or the preservation of natural resources;

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

--Encouragement of development in areas deemed appropriate by the county or township;

--Protection and management of land, water, and other natural resources.

TDR programs in township or county zoning resolutions

(R.C. 303.024(C), (D), (F), and (G) and 519.023(C), (D), and (F))

Under the bill, a county or township may adopt a TDR program for its unincorporated areas by enacting or amending a zoning resolution or amendment. If any sending area or receiving area designated in a county TDR program includes unincorporated territory in which no county or township zoning regulations apply, the board of county commissioners must provide written notice to the board of township trustees in the townships where that territory is located to inform the townships that a county TDR program has been created that will affect some of their territory. If any sending area or receiving area in a county TDR program includes unincorporated territory in which township zoning regulations apply, before the program can be implemented in that territory, a majority of the board of township trustees must adopt a resolution approving the TDR program in that territory and must send it to the board of county commissioners.

A zoning resolution or amendment creating a TDR program must be initiated by a motion of the county rural or township zoning commission or by the passage of a resolution by the board of county commissioners or the board of township trustees directing its zoning commission to develop a proposed amendment to the zoning resolution to create a TDR program. The zoning resolution or amendment must include procedures for when and how the TDR program's provisions will be applied to property and the procedures to be used by property owners for the transfer of development rights from property in a sending area to property in a receiving area.

The TDR program is not required to be uniform for each class or kind of building or other structure or for each use of property throughout any sending or receiving area. Rather, the TDR program may vary in order to accommodate development and to provide adequate incentives to encourage participation in the program. Establishing a TDR program and designating specific areas as sending areas or receiving areas are legislative acts subject to existing procedures for amending a zoning code. All actions undertaken under an established TDR program are adjudicative actions subject to appeal under existing law to courts of common pleas, which may review the actions.

The zoning resolution or amendment may allow for the creation of an overlay to the zoning map that establishes specific areas in the unincorporated territory that may be designated as sending areas and receiving areas. Alternatively, the resolution or amendment itself may designate specific sending areas or receiving areas as an overlay to the zoning map. Any property owner who desires to have the owner's property designated as a sending area or a receiving area may apply to include an overlay to the zoning map in the zoning resolution or amendment under existing law's procedures for amending a county or township zoning code. A designation as either a sending area or a receiving area on an overlay to a 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.

The zoning resolution or amendment may designate an administrative board to administer transfers of development rights. That board may be the county rural or township zoning commission, the county or township board of zoning appeals, a county or regional planning commission, the board of county commissioners or board of township trustees, or a newly created board appointed by the board of county commissioners or board of township trustees. If a new board is created, that board must consist of an odd number of members, not to exceed five, who must serve staggered terms of office. If the board of county commissioners or board of township trustees is the administrative board for a TDR program, that board's actions to effectuate the actual transfer of development rights are adjudicative, not legislative, actions that may be appealed and reviewed by a court of common pleas.

Creating a joint TDR program

(R.C. 713.16)

In addition to permitting individual counties or townships to create a TDR program, the bill permits counties, townships, and municipal corporations to enter into an agreement to create a joint TDR program. The joint agreement establishes the parameters of the program and the responsibilities of each party to the agreement. The

same development rights are transferrable in a joint TDR program as in a county or township TDR program.

If any sending or receiving area designated in a joint TDR program includes unincorporated territory in a township that is not participating and in which no township or county zoning regulations apply, the participating political subdivisions must provide written notice to the boards of township trustees where that territory is located to inform them that a joint TDR program has been created that will affect their territory. And, if any sending or receiving area designated in a joint TDR program includes unincorporated territory in which township zoning regulations apply and that township is not participating in the program, before the program can be implemented in that territory, a majority of the board of township trustees of that township must pass a resolution approving the program in that territory.

The bill provides that a joint TDR program agreement cannot be in derogation of the constitutional home rule powers of a municipal corporation or of any municipal charter provisions. And, a joint TDR program agreement is in addition to any other agreements authorized by law between municipal corporations and counties or townships.

If a joint TDR program agreement cannot be implemented without changes to the laws of a participating party, including changes to a zoning code, then that party may make the necessary changes if they are initiated by its legislative authority. But nothing in the agreement can compel these changes. If zoning regulations are changed in order to implement the joint TDR program, the regulations do not need to be uniform for each class or type of building or other structure, or for each use of property throughout any sending or receiving area. Rather, the regulations may vary in order to accommodate development and to provide adequate incentives to encourage participation in the joint TDR program.

TDR bank and TDR bank advisory board

(R.C. 303.024(E), 519.023(E), and 713.17(B))

The bill permits a county or township creating a TDR program to establish a TDR bank, which is to be managed by an advisory board called the TDR bank advisory board. The TDR bank advisory board may be configured in any manner the board of county commissioners or board of township trustees chooses. An administrative board that administers the TDR program may be designated also to serve as the TDR bank advisory board.

A joint TDR program agreement must establish a TDR bank, which is to be managed by a TDR bank advisory board. The advisory board may be a municipal,

county, or regional planning commission, a zoning commission, a board of zoning appeals, or a combination of those entities; alternatively, the advisory board may be a newly created, appointed board configured in any manner designated in the agreement.

A TDR bank, via its advisory board, must do the following:

- Oversee development and implementation of the TDR program;
- Purchase development rights and sell or convey any development rights it possesses, as directed by the board of county commissioners or the board of township trustees, or, for a joint TDR program, the participating political subdivisions;
- Hold indefinitely any development rights it possesses;
- Receive donations of development rights;
- Facilitate transactions between property owners in sending and receiving areas through technical assistance and education;
- Monitor conservation or agricultural easements in the sending area;
- Receive funding from the county, township, or participating political subdivisions, proceeds of sales of development rights, and donations;
- Manage the TDR bank fund (see below);
- If directed to do so by the board of county commissioners, board of township trustees, or the participating political subdivisions 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.

In addition, for a joint TDR program, the TDR bank advisory board must make recommendations to the participating political subdivisions' legislative authorities on the purchase and sale of development rights under the joint TDR program.

TDR bank fund

(R.C. 307.071, 505.708, and 713.17(A))

Each county or township that creates a TDR program is authorized to establish, as a separate fund in its treasury, a TDR bank fund that consists of all moneys received in connection with the TDR program. If a board of county commissioners or board of

township trustees establishes a TDR bank fund, that board has responsibility for the expenditure of all moneys in the fund, in accordance with the TDR program's provisions, and must appoint a TDR bank advisory board to make recommendations to the board of county commissioners or township trustees regarding the purchase and sale of development rights under the program and to perform the functions listed immediately above.

Each joint TDR program must have a separate fund in the treasury of one of the participating political subdivisions that is designated as a TDR bank fund. The fund must consist of all moneys received in connection with the joint TDR program and be used only as provided in the joint TDR program's agreement.

COMMENT

Under the bill, a "conservation easement" is held for the public purpose of retaining land, water, or wetland areas predominately in their natural, scenic, open, or wooded condition, including the use of land in agriculture when consistent with and in furtherance of the purpose of retaining those areas in such a condition, or retaining their use predominantly as suitable habitat for fish, plants, or wildlife. An "agricultural easement" is held for the public purpose of retaining the use of land predominantly in agriculture.

HISTORY

ACTION	DATE
Introduced	03-23-10

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