

Legislative Analysis



MICHIGAN PLANNING ENABLING ACT

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Senate Bill 206 (Substitute H-2)

Sponsor: Sen. Patricia Birkholz

House Committee: Intergovernmental, Urban, and Regional Affairs

Senate Committee: Natural Resources and Environmental Affairs

First Analysis (2-14-08)

BRIEF SUMMARY: The bill would create the "Michigan Planning Enabling Act" to repeal and replace statutes that govern municipal, county, and township planning. Among other things, the bill would allow a local unit of government to adopt, amend, and implement a master plan; allow a local unit to adopt an ordinance creating a planning commission; require a planning commission to make and approve a master plan as a guide for development within the planning jurisdiction; allow a county planning commission to be designated as the metropolitan county planning commission to perform metropolitan and regional planning; require a planning commission to review the master plan at least every five years; require a planning commission annually to prepare a capital improvements program; and provide that an existing master plan or charter provision or ordinance creating a planning commission would continue in effect under the proposed act, unless rescinded or repealed, subject to certain conditions. The bill would take effect September 1, 2008.

FISCAL IMPACT: As written, the bill would have no effect on state revenue or expenditures. The bill could possibly have a fiscal impact on local units of government, although that impact would most likely be insignificant.

THE APPARENT PROBLEM:

In 2003, the 26 bipartisan members of the Land Use Leadership Council appointed by Governor Granholm published their final 100-page report entitled "Michigan's Land, Michigan's Future" (<http://www.michiganlanduse.org/finalreport.htm>). Among the report's more than 200 recommendations, the council noted that the planning and zoning laws across Michigan are neither uniform nor integrated. As a result, land use practices are fragmented and ad hoc, and large-scale preserves or projects that cross the jurisdictional lines of local governments are extraordinarily difficult to coordinate. Among the council's highest priorities was a recommendation for the legislature both to consolidate and to make coherent these many planning and zoning laws.

A bipartisan workgroup of stakeholders—homebuilders, realtors, environmental advocates, land use planners, and officials from state and local units of government—began work two years ago to make the bodies of law intelligible, and more user-friendly. The members of the workgroup first undertook to coordinate the state's zoning laws, and in 2006, the legislature enacted Public Act 110 to do so.

Legislation has now been introduced to consolidate the state's land use planning laws.

THE CONTENT OF THE BILL:

The bill would create the "Michigan Planning Enabling Act" to repeal and replace statutes that govern municipal, county, and township planning, beginning September 1, 2008. The bill would do the following:

- Allow a local unit of government to adopt, amend, and implement a master plan.
- Prescribe the general purpose of a master plan.
- Allow a local unit to adopt an ordinance creating a planning commission.
- Require a planning commission to make and approve a master plan as a guide for development within the planning jurisdiction.
- Allow a planning commission to adopt a sub-plan for a geographic area less than the planning jurisdiction if that area needed more intensive planning.
- Allow a county planning commission to be designated as the metropolitan county planning commission to perform metropolitan and regional planning.
- Prescribe procedures for adopting and amending a master plan.
- Require a planning commission to review the master plan at least every five years.
- Require a planning commission's approval for the construction of particular structures and facilities, and allow the legislative body of the local unit to overrule a planning commission's disapproval under certain circumstances.
- Require a planning commission annually to prepare a capital improvements program.
- Allow a planning commission to recommend to the local unit's legislative body provisions of an ordinance or rules governing the subdivision of land.
- Require a planning commission to review and make recommendations on plats, under certain circumstances.
- Provide that an existing master plan or charter provision or ordinance creating a planning commission would continue in effect under the proposed act, unless rescinded or repealed, subject to certain conditions.

The statutes to be repealed are Public Act 285 of 1931, which governs planning by cities, villages, townships, and other incorporated political subdivisions; Public Act 282 of 1945, which governs county planning; and Public Act 168 of 1959, which governs township planning.

DETAILED SUMMARY:

Purpose of Master Plan

A local unit of government (i.e., a county, city, village, or township) could adopt, amend, and implement a master plan as provided in the bill. The general purpose of a master plan would be to guide and accomplish, in the planning jurisdiction and its environs, development that satisfied all of the following criteria:

- Was coordinated, adjusted, harmonious, efficient, and economical.
- Considered the character of the planning jurisdiction and its suitability for particular uses, judged in terms of such factors as trends in land and population development.
- In accordance with present and future needs, would best promote public health, safety, morals, order, convenience, prosperity, and general welfare.

Additionally, the purpose of a master plan would be to guide and accomplish development that included, among other things, promotion of or adequate provision for one or more of the following:

- A system of transportation to lessen congestion on streets.
- Safety from fire and other dangers.
- Light and air.
- Healthful and convenient distribution of population.
- Good civic design and arrangement and wise and efficient expenditure of public funds.
- Public utilities such as sewage disposal and water supply and other public improvements.
- Recreation.
- The use of resources in accordance with their character and adaptability.

Creation of Planning Commission

A local unit of government could adopt an ordinance creating a planning commission with powers and duties provided in the bill. The planning commission of a local unit officially would have to be called "the planning commission," even if a charter, ordinance, or resolution used a different name, such as "plan board" or "planning board."

Within 14 days after a local unit adopted an ordinance creating a planning commission, the clerk of the local unit would have to transmit notice of the adoption to the planning commission of the county where the local unit was located. If there were no county planning commission, however, or if the local unit adopting the ordinance were a county, notice would have to be transmitted to the regional planning commission engaged in planning for the region within which the local unit was located. Notice would not be required when a planning commission created before the bill's effective date continued in existence under the proposed act, but would be required when an ordinance governing or creating the planning commission was amended or superseded as provided in the bill.

If, after the bill's effective date, a city or home rule village adopted a charter provision providing for a planning commission, the charter provision would have to be implemented by an ordinance that conformed to the proposed act. Specific sections provide for the continuation of a planning commission created by a charter provision adopted before the bill's effective date; the continuation of a planning commission created under a planning act repealed by the bill; and the continued exercise by a planning commission, or the transfer to a planning commission, of the powers and duties of a zoning board or zoning commission (as described below under "Transitional Provisions").

A township ordinance creating a planning commission would have to take effect 63 days after the ordinance was published by the township board in a newspaper having general circulation in the township.

An ordinance creating a planning commission could impose additional requirements relevant to the subject matter of, but not inconsistent with, the bill's provisions.

Township Petition

Before a township ordinance creating a planning commission took effect, a petition could be filed with the township clerk requesting the submission of the ordinance to the electors residing in the unincorporated portion of the township for their approval or rejection. The petition would have to be signed by a number of qualified and registered electors residing in the unincorporated portion equal to at least eight percent of the total vote cast for all candidates for governor, at the last preceding general election at which a governor was elected. If such a petition were filed, the ordinance could not take effect until approved by a majority of the electors residing in the unincorporated portion of the township voting on it at the next regular or special election that allowed reasonable time for proper notices and printing of ballots, or at any special election called for that purpose, as determined by the township board. The township board would have to specify the language of the ballot question.

These provisions would not apply if the planning commission created by the ordinance were the successor to an existing zoning commission or zoning board as provided for under the Michigan Zoning Enabling Act.

If a township board did not on its own initiative adopt an ordinance creating a planning commission under the bill, a petition requesting the township board to adopt one could be filed with the township clerk. The petition would have to be signed by a number of qualified and registered electors as provided above. If such a petition were filed, the township board, at its first meeting following the filing, would have to submit the question to the electors of the township in the same manner as provided above.

A petition, including its circulation and signing, would be subject to the Michigan Election Law. A person who violated a provision of the law applicable to a petition would be subject to the penalties prescribed for that violation.

Planning Commission Membership

In a municipality, the chief elected official would have to appoint members of the planning commission, subject to approval by a majority vote of the members of the legislative body elected and serving. In a county, the county board of commissioners would determine the method of appointment on members of the planning commission by resolution of a majority of the full membership of the county board.

A city, village, or township planning commission would have to consist of five, seven, or nine members. A county planning commission would have to consist of five, seven, nine, or 11 members. Members of a planning commission other than ex officio members (described below) would have to be appointed for three-year terms. Of the members first appointed, other than ex officio members, however, a number would have to be appointed to one- or two-year terms so that, as nearly as possible, the terms of one-third of all the planning commission members would expire each year. If a vacancy occurred, it would have to be filled for the unexpired term in the same manner as provided for an original appointment. A member would have to hold office until his or her successor was appointed.

A commission's membership would have to be representative of important segments of the community, such as the economic, governmental, educational, and social development of the local unit, in accordance with the major interests existing in the local unit, such as agriculture, natural resources, recreation, education, public health, government, transportation, industry, and commerce. The membership also would have to be representative of the entire geography of the local unit to the extent practicable.

Generally, commission members would have to be qualified electors of the local unit, with some exceptions for small cities.

In a township that on the bill's effective date had a planning commission created under Public Act 285 of 1931 (which regulates municipal planning and would be repealed by the bill), one member of the legislative body or the chief elected official, or both, could be appointed to the commission as *ex officio* members. In any other township, one member of the legislative body would have to be appointed to the planning commission as an *ex officio* member. In a city, village, or county, the chief administrative official, or a person designated by the chief administrative official, if any, the chief elected official, one or more members of the legislative body, or any combination of those people could be appointed to the planning commission as *ex officio* members, unless prohibited by charter. In a city, village, or county, however, not more than one-third of the members could be *ex officio* members.

The term of an *ex officio* member of a planning commission would be as follows: a) a chief elected official's term would correspond to his or her term as chief elected official; b) the term of a chief administrative official would expire with the term of the chief elected official who made the appointment; and c) the term of a member of the legislative body would expire with that member's term of office.

["Chief administrative official" would mean the city or village manager or other highest non-elected administrative official of a city or village. "Chief elected official" would mean the mayor of a city, the president of a village, the supervisor of a township, or, when applicable, the chairperson of a county board of commissioners. "County board of commissioners" would mean the elected county board of commissioners, except that, with regard to the bill's procedures for the preparation and adoption of a master plan, it would mean either a committee of the county board of commissioners, if the board delegated its powers and duties under the bill to the committee, or the regional planning commission for the region in which the county was located, if the board delegated its powers and duties to the regional planning commission.]

Generally, an elected officer or employee of the local unit would not be eligible to be a member of the planning commission.

For a county planning commission, the county would have to make every reasonable effort to ensure that the membership included a member of a public school board or an administrative employee of a school district contained, in whole or in part, within the county's boundaries. This requirement would apply whenever an appointment was to be made to the planning commission, unless an incumbent were being reappointed or an *ex officio* member were being appointed.

City or Village under 5,000 Population

A city or village that had a population of less than 5,000, and that had not created a planning commission by charter, could by an ordinance provide that its economic development corporation, downtown development authority, or a tax increment finance authority serve as its planning commission. The bill's provisions related to the appointment of board members, the eligibility criteria for board members, and the *ex officio* members would not apply to a planning commission established under this provision. All other provisions of the bill would apply.

Member Removal; Conflict of Interest

The legislative body could remove a planning commission member for misfeasance, malfeasance, or nonfeasance in office upon written charges and after a public hearing.

Before casting a vote on a matter on which a member reasonably could be considered to have a conflict of interest, the member would have to disclose the potential conflict of interest to the commission. The member would be disqualified from voting on the matter if so provided by the bylaws or by a majority vote of the remaining members. A member's failure to disclose a potential conflict of interest would constitute malfeasance in office. Unless the legislative body, by ordinance, defined conflict of interest for the purposes of these provisions, the planning commission would have to do so in its bylaws.

Commission Officers; Advisory Committee

A planning commission would have to elect a chairperson and secretary from its members and create and fill other offices as it considered advisable. An *ex officio* member of the commission would not be eligible to serve as chairperson. The term of each officer would be one year, with the opportunity for reelection as specified in bylaws.

A planning commission could appoint advisory committees whose members were not members of the planning commission.

Bylaws; Annual Report; Budget

A planning commission would have to adopt bylaws for the transaction of business, and would have to keep a public record of its resolutions, transactions, findings, and determinations.

A commission also would have to make an annual report to the legislative body concerning its operations and the status of planning activities, including recommendations regarding actions by the legislative body related to planning and development.

After preparing the annual report, a planning commission could prepare a detailed budget and submit it to the legislative body for approval or disapproval. The legislative body annually could appropriate funds for carrying out the purposes and functions permitted

under the proposed act, and could match local government funds with federal, state, county, or other local government or private grants, contributions, or endowments.

A planning commission's expenditures, exclusive of gifts and grants, would have to be within the amount appropriated by the legislative body.

Meetings; Compensation; Gifts

A planning commission would have to hold at least four regular meetings each year, and by resolution would have to determine their place and time. Unless the bylaws provided otherwise, a special meeting of the commission could be called by the chairperson or by two other members, upon written request to the secretary. Unless the bylaws provided otherwise, the secretary would have to send written notice of a special meeting to the planning commission members at least 48 hours before the meeting.

A planning commission would be subject to the Open Meetings Act and the Freedom of Information Act.

Commission members could be compensated for their services as provided by the legislative body. A planning commission could adopt bylaws relative to compensation and expenses of its members and employees for travel when engaged in the performance of activities authorized by the legislative body, including attendance at conferences, workshops, educational and training programs, and meetings.

A planning commission could accept gifts for the exercise of its functions. In a township other than a township that had an existing planning commission on the bill's effective date, however, only the township board could accept such gifts, on behalf of the planning commission. A gift of money accepted in either case would have to be deposited with the treasurer of the local unit in a special non-reverting planning commission fund for expenditure by the commission for the purpose designated by the donor. The treasurer could draw a warrant against the special fund only upon receiving a voucher signed by the planning commission chairperson and secretary and an order drawn by the clerk of the local unit.

Hiring & Contracting; Public Information

A local unit could employ a planning director and other personnel as it considered necessary, contract for the services of planning and other technicians, and incur other expenses, within a budget authorized by the legislative body. This authority would have to be exercised by the legislative body, unless a charter provision or ordinance delegated it to the planning commission or another body or official. The appointment of employees would be subject to the same provisions of law as those governing other corresponding civil employees of the local unit.

For the purposes of the proposed act, a planning commission could use maps, data, and other information and expert advice provided by appropriate federal, state, regional, county, and municipal officials, departments, and agencies. All public officials, departments, and agencies would have to make public information available for the use of

planning commissions and furnish such other technical assistance and advice as they had for planning purposes.

Metropolitan County Planning Commission

A county board of commissioners could designate the county planning commission as the metropolitan county planning commission. A designated county planning commission would have to perform metropolitan and regional planning whenever necessary or desirable. The metropolitan county planning commission could engage in comprehensive planning, including the following:

- Preparation, as a guide for long-range development, of general physical plans with respect to the pattern and intensity of land use and the provision of public facilities, together with long-range fiscal plans for the development.
- Programming of capital improvements based on relative urgency, together with definitive financing plans for the improvements to be constructed in the earlier years of the program.
- Coordination of all related plans of local governmental agencies within the metropolitan area or region.
- Intergovernmental coordination of all related planning activities among the state and local governmental agencies within the metropolitan area or region.

In addition to the powers conferred by other provisions of the bill, a metropolitan county planning commission could apply for, receive, and accept grants from any local, regional, state, or federal governmental agency and agree to and comply with the terms and conditions of the grants. A metropolitan county planning commission could do any and all things necessary or desirable to secure the financial aid or cooperation of a regional, state, or federal governmental agency in carrying out its functions, when approved by a two-thirds vote of the county board of commissioners.

Preparation of Master Plan

A planning commission would have to make and approve a master plan as a guide for development within the planning jurisdiction, subject to the bill's provisions regarding existing plans and planning commissions and the following:

- For a county, the master plan could include planning in cooperation with the constituted authorities for incorporated areas in whole or to the extent to which, in the planning commission's judgment, they were related to the planning of the unincorporated territory or of the county as a whole.
- For a township that had an existing planning commission on the bill's effective date, or for a city or village, the planning jurisdiction could include any areas outside of the municipal boundaries that, in the planning commission's judgment, were related to the planning of the municipality.

In preparing the master plan, the planning commission could meet with other governmental planning commissions or agency staff to deliberate.

In general, a planning commission would have such lawful powers as necessary to enable it to promote local planning and otherwise carry out the purposes of the proposed act.

A master plan would have to address land use and infrastructure issues and could project 20 years or more into the future. A master plan would have to include maps, plats, charts, and descriptive, explanatory, and other related matter, and would have to show the planning commission's recommendations for the physical development of the planning jurisdiction.

A master plan also would have to include those of the following subjects that reasonably could be considered pertinent to the future development of the planning jurisdiction:

- A land use plan that consisted in part of a classification and allocation of land for agriculture, residences, commerce, industry, recreation, ways and grounds, public buildings, schools, soil conservation, forests, woodlots, open space, wildlife refuges, and other uses and purposes.
- The general location, character, and extent of streets, railroads, airports, bicycle paths, pedestrian ways, bridges, waterways, and waterfront developments; sanitary sewers and water supply systems; facilities for flood prevention, drainage, pollution prevention, and maintenance of water levels; and public utilities and structures.
- Recommendations as to the general character, extent, and layout of redevelopment or rehabilitation of blighted areas; and the removal, relocation, widening, narrowing, vacating, abandonment, change of use, or extension of streets, grounds, open spaces, buildings, utilities, or other facilities.
- Recommendations for implementing any of the master plan's proposals.
- For a local unit of government that had adopted a zoning ordinance, a zoning plan for various zoning districts controlling the height, area, bulk, location, and use of buildings and premises.

The zoning plan would have to include an explanation of how the land use categories on the future land use map related to the districts on the zoning map.

If a county had not adopted a zoning ordinance, a land use plan and program for the county could be a general plan with a generalized future land use map.

If a master plan were or included a master street plan, the means for implementing the master street plan in cooperation with the county road commission and the Michigan Department of Transportation (MDOT) would have to be specified in the master street plan in a manner consistent with the respective powers and duties of and any written agreements between these entities and the municipality.

These provisions would be subject to a provision under which an existing plan would continue in effect under the proposed act and would not need to be readopted.

By a majority vote of the members, a planning commission could adopt a sub-plan for a geographic area less than the entire planning jurisdiction if, because of the unique physical characteristics of that area, more intensive planning were necessary for the purposes set forth in the bill.

Adoption of Master Plan

A master plan would have to be adopted under the procedures (described below) set forth in the bill. A master plan could be adopted as a whole or by successive parts corresponding with major geographical areas of the planning jurisdiction or with functional subject matter areas of the master plan.

Before preparing a master plan, a planning commission would have to send to all of the following, by first-class mail or personal delivery, a notice explaining that the planning commission intended to prepare a master plan and requesting the recipient's cooperation and comment:

- For any local unit of government undertaking a master plan, the planning commission, or if there were no planning commission, the legislative body, of each municipality located within or contiguous to the local unit.
- For a county undertaking a master plan, the regional planning commission for the region in which the county was located, if any.
- For a county undertaking a master plan, the county planning commission, or if there were none, the county board of commissioners, for each county located contiguous to the county.
- For a municipality (a city, village, or township) undertaking a master plan, the regional planning commission for the region in which the municipality was located, if there were no county planning commission for the county in which that municipality was located.
- For a municipality undertaking a master plan, the county planning commission, or if there were none, the county board of commissioners, for the county in which that municipality was located.
- For any local unit undertaking a master plan, each public utility company and railroad company owning or operating a public utility or railroad within the local unit, and any government entity that registered its name and mailing address for this purpose with the planning commission.
- If the master plan would be or included a master street plan, the county road commission and MDOT.

If there were no county planning commission, a municipal planning commission could consult with the regional planning commission but would not be required to do so.

A submittal of a notice or copy of a proposed or final master plan by or to an entity (as described below) could be made by personal or first-class mail delivery of a hard copy, or by electronic mail. The planning commission preparing the plan, however, could not make such submittals by electronic mail unless it stated in the notice that it intended to do so and the entity receiving the notice did not respond by objecting to the use of electronic mail. Electronic mail could contain a link to a website on which the submittal was posted if the site were accessible to the public free of charge.

Review & Comment on Proposed Master Plan

After preparing a proposed master plan, a planning commission would have to submit it to the legislative body for review and comment. The process of adopting a master plan could not proceed further unless the legislative body approved the proposed plan's distribution.

If the legislative body approved the proposed plan's distribution, it would have to notify the planning commission's secretary in the manner provided by the bill. The secretary would have to submit a copy of the proposed plan, for review and comment, to all of the following:

- For any local unit of government proposing a master plan, the planning commission, or if there were none, the legislative body, of each municipality located within or contiguous to the local unit.
- For a county proposing a master plan, the regional planning commission for the region in which the county was located, if any.
- For a county proposing a master plan, the county planning commission, or if there were none, the county board of commissioners, for each contiguous county.
- If the proposed master plan were or included a proposed major street plan, the county road commission and MDOT.

For a municipality proposing a master plan, the secretary would have to submit a copy to the regional planning commission for the region in which the municipality was located, if there were no county planning commission for the county in which that local unit was located. If there were a county planning commission, the secretary could submit a copy to the regional planning commission but would not have to do so.

For a municipality proposing a master plan, the secretary would have to submit a copy to the county planning commission, or if there were none, the county board of commissioners, for the county in which that municipality was located. The secretary concurrently would have to submit to the county planning commission a statement that the requirements pertaining to any local unit had been met or, if there were no county planning commission, would have to submit to the county board of commissioners a statement that requirements pertaining to any local unit and, in the case of a municipality, the notice to the regional planning commission, had been met. The statement would have to be submitted in the manner provided in the bill, be signed by the secretary, and include the name and address of each planning commission or legislative body to which a copy of the proposed master plan was submitted, as applicable, and the date of submittal.

For any local unit proposing a master plan, the secretary would have to submit a copy to each public utility company and railroad company owning or operating a public utility or railroad within the local unit, and any government entity that registered its name and address for this purpose with the secretary. An entity that received a copy of a proposed master plan, or of a final master plan, would have to reimburse the local unit for any copying and postage costs it incurred.

An entity could submit comments on the proposed master plan to the planning commission as provided in the bill within 63 days after the plan was submitted to the entity. If the county planning commission or county board of commissioners that received a copy of a proposed master plan submitted comments, the comments would have to address, in written statements, the ways in which the proposed plan was inconsistent with existing plan. These statements would be advisory only.

Before approving a proposed master plan, a planning commission would have to hold at least one public hearing on it. The hearing would have to be held after the expiration of the 63-day deadline for comment. The planning commission would have to give at least 15 days' advance notice of the time and place of the public hearing by publication in a newspaper of general circulation within the local unit. The planning commission also would have to submit notice of the hearing as provided in the bill to each entity described above. This notice could accompany the proposed master plan.

Approval of Master Plan

The approval of a master plan would have to be by resolution of the planning commission carried by the affirmative votes of at least two-thirds of the members of a city or village planning commission or at least a majority of the members of a township or county planning commission. The resolution would have to refer expressly to the maps and descriptive and other matter intended by the planning commission to form the master plan. A statement recording the planning commission's approval, signed by the chairperson or secretary of the planning commission, would have to be included on the inside of the front or back cover of the master plan and on the future land use map, if it were a separate document from the text of the master plan. After the planning commission approved the proposed master plan, the secretary would have to submit a copy of it to the legislative body.

Approval by the planning commission would be the final step for adoption of the master plan, unless the legislative body by resolution had asserted the right to approve or reject it. In that case, after approval by the planning commission, the legislative body would have to approve or reject the proposed master plan. A statement recording the legislative body's approval, signed by the clerk of the legislative body, would have to be included on the inside of the front or back cover of the master plan and on the future land use map, if it were a separate document from the text of the master plan.

If the legislative body rejected the proposed plan, it would have to submit to the planning commission a statement of its objections. The planning commission would have to consider the objections and revise the proposed master plan so as to address them. The procedures regarding the public hearing, the planning commission resolution, and submission to the legislative body for approval or rejection would have to be repeated until the legislative body approved the proposed master plan.

Upon final adoption of the plan, the planning commission secretary would have to submit, in the manner provided in the bill, copies of it to the same entities to which copies of the proposed master plan were required to be submitted.

Amendment to Master Plan

An extension, addition, revision, or other amendment to a master plan would have to be adopted according to the procedures under the bill for adoption of a master plan. Compliance with the procedures would not be required, however, for grammatical, typographical, or similar editorial changes, a title change, or changes to conform to an adopted plat.

Also, when a planning commission sent notice to an entity that it intended to prepare a sub-plan, the notice could indicate that the local unit intended not to provide the entity with further notices of or copies of proposed or final sub-plans otherwise required to be submitted to that entity. Unless the entity responded that it chose to receive notice of sub-plans, the local unit would not be required to provide further notice of sub-plans to that entity.

At least every five years after adoption of a master plan, a planning commission would have to review it and determine whether to commence the procedure to amend the master plan or adopt a new one. The review and its findings would have to be recorded in the minutes of the relevant meeting or meetings of the planning commission.

Capital Improvements Program

After adopting a master plan, a planning commission would annually prepare a capital improvements program of public structures and improvements (unless its charter prohibited this requirement). The capital improvements program would show the public structures and improvements, in the general order of their priority, that in the commission's judgment would be needed or desirable, and could be undertaken within the ensuing six-year period. Each agency or department of the local unit of government with authority for public structures or improvements would, upon request, furnish the planning commission with lists, plans, and estimates of time to complete the improvements. Under the bill, any township could prepare and adopt a capital improvement program. However, a plan is mandatory only for a township, if that township, alone or jointly with one or more other local units of government, owns or operates a water supply or sewage disposal system.

Municipal Zoning Ordinance

If a municipal planning commission had zoning duties under the bill and the municipality had adopted a zoning ordinance, the county planning commission, if any, could, by first-class mail or personal delivery, request the municipal planning commission to submit to the county planning commission a copy of the zoning ordinance and any amendments. The municipal planning commission would have to submit the requested documents to the county planning commission within 63 days after receiving the request and would have to submit any future amendments within 63 days after adopting them. The municipal planning commission could submit a zoning ordinance or amendment electronically.

Subdivision Ordinance Recommendations

A planning commission could recommend to the legislative body provisions of an ordinance or rules governing the subdivision of land authorized under the Land Division Act. If a township were subject to county zoning consistent with the Michigan Zoning Enabling Act, or if a city or village were subject to county zoning pursuant to that act and a contract under the Urban Cooperation Act, the county planning commission could recommend to the legislative body of the municipality provisions of an ordinance or rules governing the subdivision of land. A planning commission could proceed under these provisions on its own initiative or upon request of the appropriate legislative body.

Recommendations for a subdivision ordinance or rule could address plat design, including the proper arrangement of streets in relation to other existing or planned streets and to the master plan; adequate and convenient open spaces for traffic, utilities, access of firefighting apparatus, recreation, light, and air; and the avoidance of congestion of population, including minimum width and area of lots. The recommendations also could address the extent to which streets would have to be graded and improved and to which water and sewer and other utility mains, piping, or other facilities would have to be installed as a condition precedent to the approval of the plat.

Before recommending an ordinance or rule, the planning commission would have to hold a public hearing on the proposed ordinance or rule. The commission would have to give at least 15 days' notice of the time and place of the hearing by publication in a newspaper of general circulation within the local unit.

Plat Recommendations

If a municipality had adopted a master plan or master street plan, the planning commission of that municipality would have to review and make recommendations on plats before the legislative body took action on them under Section 112 of the Land Division Act (which prescribes procedures for the tentative approval of a preliminary plat). If a township were subject to county zoning consistent with the Michigan Zoning Enabling Act, or if a city or village were subject to county zoning under that act and a contract under the Urban Cooperation Act, and the municipality had adopted a master plan or master street plan, the county planning commission also would have to review and make recommendations on plats before the legislative body of the municipality took action on them.

A planning commission could not take action on a proposed plat without affording an opportunity for a public hearing on it. A plat submitted to the planning commission would have to contain the name and address of the proprietor or other person who needed to be notified. At least 15 days before the hearing, notice of the date, time, and place of the hearing would have to be mailed to that person at that address, and would have to be published in a newspaper of general circulation in the municipality. Similar notice would have to be mailed to the owners of land immediately adjoining the proposed platted land.

County Officer or Body

The assignment of a power or duty under the bill to a county officer or body would be subject to Public Act 293 of 1966 (which governs charter counties) or Public Act 139 of

1973 (which provides for an optional unified form of county government in a county that has not adopted a charter) in a county organized under one of those acts.

Transitional Provisions

Unless rescinded by the local unit, any plan adopted or amended under a planning act repealed by the bill would not have to be readopted under the proposed act, but would continue in effect as a master plan, regardless of whether it were entitled a master plan, basic plan, county plan, development plan, guide plan, land use plan, municipal plan, township plan, plan, or any other term. This would include a plan prepared by a planning commission and adopted before the bill took effect to satisfy the requirements of Section 203(1) of the Michigan Zoning Enabling Act, or similar provisions of the former City and Village Zoning Act, the former Township Zoning Act, and the former County Zoning Act. The master plan would be subject to the requirements of the bill, including the requirement for periodic review and the prescribed amendment procedures. The master plan, however, would not be subject to the requirements regarding the specified contents until it was first amended under the bill. This provision would apply to any plan adopted or amended under an act repealed by the bill.

Unless repealed, a city or home rule village charter provision creating a planning commission before the bill's effective date and any ordinance adopted before that date implementing that charter provision would continue in effect under the proposed act. The planning commission would not need to be newly created by an ordinance adopted under the act. The legislative body, however, could by ordinance increase the powers and duties of the planning commission to correspond with the powers and duties of a planning commission created under the proposed act. The bill's provisions regarding planning commission powers and duties would not otherwise apply to a planning commission created by charter before the bill's effective date. Provisions of the bill regarding planning commission membership, appointment, and organization would not apply to such a planning commission. All other provisions of the bill would apply.

Additionally, the legislative body would have to amend any ordinance adopted before the bill's effective date to implement the charter provision, or repeal the ordinance and adopt a new ordinance, to conform fully to the requirements of the bill made applicable by the provision described above by the earlier of July 1, 2011, or the date when an amendatory act or new ordinance was first adopted under the proposed act for any purpose.

Unless repealed, an ordinance creating a planning commission under the planning acts that the bill would repeal would continue in effect under the proposed act. The planning commission would not need to be newly created by an ordinance adopted under the act. Beginning on the bill's effective date, however, the planning commission's duties would be subject to the requirements of the bill. The legislative body would have to amend the ordinance, or repeal the ordinance or resolution and adopt a new ordinance, to conform fully to the bill's requirements by the earlier of July 1, 2011, or the date when an amendatory or new ordinance was first adopted under the proposed act for any purpose. This ordinance would not be subject to referendum.

Unless repealed or rescinded by the legislative body, an ordinance or published rules governing the subdivision of land authorized under the Land Division Act would not need to be readopted under the proposed act or amended to comply with it, but would continue in effect under the proposed act. If amended, however, the ordinance or rules would have to be amended under the bill's procedures.

If, on the bill's effective date, a planning commission had the powers and duties of a zoning board or zoning commission under the former City and Village Zoning Act, the former County Zoning Act, or the former Township Zoning Act, and under the Michigan Zoning Enabling Act, the planning commission could continue to exercise those powers and duties without amendment of the ordinance, resolution, or charter provision that created it.

If, on the bill's effective date, a local unit had a planning commission without zoning authority created under one of the planning acts that the bill would repeal, the legislative body could by amendment to the ordinance creating the planning commission, or, if the planning commission were created by resolution, could by resolution, transfer to the planning commission all the powers and duties provided to a zoning board or zoning commission created under the Michigan Zoning Enabling Act. If an existing zoning board or zoning commission in the local unit were nearing the completion of its draft zoning ordinance, the legislative body would have to postpone the transfer of the zoning board's or zoning commission's powers, duties, and records until the completion of the draft zoning ordinance, but would not be required to postpone the transfer more than one year.

If, on or after the bill's effective date, a planning commission were created in a local unit that had a zoning board or zoning commission since before that date, the legislative body would have to transfer all the powers, duties, and records of the zoning board or zoning commission to the planning commission before July 1, 2011. If the existing zoning board or commission were nearing the completion of its draft zoning ordinance, the legislative body could, by resolution, postpone the transfer of the zoning board's or zoning commission's powers, duties, and records until the completion of the draft zoning ordinance, but not later than until one year after creation of the planning commission or July 1, 2011, whichever came first.

HOUSE COMMITTEE ACTION:

The House Committee on Intergovernmental, Urban, and Regional Affairs adopted Substitute H-1 of Senate Bill 206. That substitute version of the bill differs from the Senate-passed version in seven ways:

(1) In a municipality the chief elected official would appoint planning commission members, subject to approval by a majority vote of the legislative body; in a county, the county board of commissioners would determined the method of appointment by majority resolution, and township officers have been deleted from this provision;

(2) The terms of both the elected and appointed *ex-officio* members of the planning commission are limited to the elected officials' terms of office;

(3) A legislative body appropriating funds for a planning commission may match local government funds with federal, state, county, or other local government or private grants, "contributions, or endowments."

(4) In general, a planning commission would have such lawful powers as may be necessary to promote local planning and otherwise carry out the purposes of the act.

(5) A planning commission could, by majority vote, adopt a sub-plan for a geographic area less than the entire planning jurisdiction, because of unique physical characteristics of that area ("demographic characteristics" were eliminated).

(6) Any township could prepare and adopt a capital improvements program. However, a detailed capital improvements program would be mandatory only for a township if that township, alone or jointly, owned or operated a water supply or sewage disposal system.

Finally, (7) the committee amended the H-1 version to delay the effective date, in order to allow local units of government to prepare for implementation of the new statute. Instead of having immediate effect, the bill would go into effect September 1, 2008.

ARGUMENTS:

For:

The purpose of this bill is to unify the state's three planning enabling acts (statutes that guide land use development in townships, municipalities, and counties) into a single statute, as recommended by the Governor's Land Use Leadership Council's Report of 2003. The support for the unification of the planning acts is broad, as stakeholders view consolidation of the processes (and repeal of the old acts) favorably following a two-year workgroup. Local governments will benefit a great deal since a single act provides consistency across jurisdictional boundaries, creating a single set of notice provisions, establishing a logical sequence of activities within the act, and making easier future land use reform efforts. The Michigan Association of Planning notes that "planning is the foundation for how Michigan communities grow and evolve, and clear and consistent enabling legislation paves the way for local government to do a better job handling this critical responsibility." The Association continues: "If Michigan hopes to stay competitive in the global and national economies, planning a future that includes a healthy balance of commerce, housing alternatives, transportation systems, open spaces, and farmland is necessary. The unification of the state's three planning acts achieves this goal."

Against:

Overall, Senate Bill 206 enjoys broad-based support. However, during the two-year long negotiations to consolidate the county, township, and municipal planning laws, provisions of one statute were necessarily jettisoned, while similar provisions from another statute were adopted. For example, a provision allowing city employees to serve on local planning commissions found in the Municipal Planning Act was set aside by the work group, in favor of a provision from the Township Planning Act that prohibits local government officials from serving. Some local government officials continue to raise

objections to changes, or compromises, such as this one. In addition, some elected officials have argued the consolidation law does not adequately encourage up-to-date methods to achieve region-wide land use plans, such as metropolitan planning, or tax-base sharing.

POSITIONS:

The Michigan Environmental Council supports the bill. (2-13-08)

The Michigan Townships Association supports the bill. (2-13-08)

The Michigan Association of Realtors supports the bill. (2-13-08)

The Michigan Association of Counties supports the bill. (2-13-08)

The Michigan Municipal League supports the bill. (2-13-08)

The Michigan Association of Planning supports the bill. (2-13-08)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.