

# Legislative Analysis



## REVISE ZONING ENABLING ACT

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**House Bill 5032 (Substitute H-2)**

**Sponsor: Rep. Barb Byrum**

**Committee: Intergovernmental, Urban, and Regional Affairs**

**First Analysis (10-25-07)**

**BRIEF SUMMARY:** The bill would make corrective and technical revisions to the Michigan Zoning Enabling Act, which went into effect on June 30, 2006.

**FISCAL IMPACT:** There is no fiscal impact on the State of Michigan or its local units of government.

### **THE APPARENT PROBLEM:**

Until June 30, 2006, there were three separate state statutes governing zoning in local units of government—one for cities and villages, a second for townships, and yet a third for counties. They contained many similar provisions. While the township and county acts were very similar, the act for cities and villages was organized differently. For example, the acts required different notice provisions, specifying differently both *to whom*, and *when* notice was to be served. For eighty years, the slightly different requirements were confusing to local officials, citizens, and businesses.

In 2006, a working group of stakeholders crafted one uniform statute, and submitted it to the Legislature for its consideration. They did so, following the recommendation of the Michigan Land Use Leadership Council, whose August 2003 final report urged unification and modernization of the three zoning enabling acts. See [Background Information](#) below. The uniform statute was enacted as Public Act 110 of 2006.

Recently, that legislative work group reconvened to suggest changes to the new law. Legislation has been introduced to that end.

### **THE CONTENT OF THE BILL:**

House Bill 5032 would amend the Michigan Zoning Enabling Act, which went into effect on June 30, 2006, to make corrective and technical revisions.

**Definitions.** The bill would modify a number of definitions. It would change the reference to the Aeronautics Code to make accurate the definition of "airport manager." It would clarify the meaning of "legislative body" to specify an elected *governing* body (not only an elected representative body). The bill would add a definition of "person" to mean an individual, partnership, corporation, association, governmental entity, or other legal entity. And, the bill would eliminate the definition for "zoning board," and clarify the meaning of the term "zoning jurisdiction."

**Notice Requirements.** The bill specifies that the notice for any public hearing published in a newspaper be published "not less than 15 days before the date of the hearing." Under the current law, notice about zoning changes is given to all structures within 300 feet of a subject property whether the property or occupant is located in the zoning jurisdiction. Under the bill, notification would not have to be given to more than one occupant of a structure, unless it contained more than one dwelling unit or leased area, in which case one occupant of each unit or area would have to be given notice. If a single structure contained more than four dwelling units or other leased areas, notice could be given to the manager or owner, who would then be required to post the notice at the primary entrance to the structure. Currently under the law, this notice must be given at least 15 days before the date on which an application is to be considered. The bill would retain this notice requirement, but specify that a notice would be "considered to be given when personally delivered or when deposited for delivery with the U. S. Post Office, or other public or private delivery service, during normal business hours."

Currently under the law, the zoning commission must give notice, meeting the requirements noted above, when they consider rezoning an individual property or 10 or fewer adjacent properties. In contrast, for any rezoning of 11 or more adjacent properties, notice need not be given to occupants of every structure within 300 feet. House Bill 5032 retains this exemption, and clarifies that the requirement "that street addresses be listed does not apply to that group of adjacent properties."

**Zoning Authority.** The law requires that each local unit of government that exercises zoning authority create a zoning commission, unless the local governmental already had one. House Bill 5032 would retain this requirement, but clarify the three ways the requirement could be met. First, the bill clarifies that zoning boards in existence before June 30, 2006 would continue to exercise their powers and perform their duties, unless abolished by the legislative body of the county, township, city, or village. Second, in some local jurisdictions, the planning commission exercises the authority of a zoning board. The bill clarifies that they, too, would continue to exercise their zoning authority unless abolished by the appropriate legislative body. Third, the bill notes that a local government would meet the requirement if it had created a planning commission after July 1, 2006, and transferred the powers and duties of the zoning commission to the planning commission, as allowed under the applicable planning enabling act.

**Zoning Authority to Planning Commission.** The bill specifies that by July 1, 2011, a local unit of government must transfer the powers and duties of a zoning commission to a planning commission, and that zoning powers or duties will only be exercised or performed by a planning commission. Currently the law says "five years after the effective date of this act."

**Public Hearings.** Currently under the law, a legislative body can hold a public hearing after receiving a zoning ordinance or amendments to a zoning ordinance. House Bill 5032 would retain this provision, but change the citations to the act.

Currently the law requires that a legislative body grant a hearing on a proposed ordinance to a property owner who requests a hearing by certified mail (addressed to the clerk of the legislative body). House Bill 5032 would modify this provision, to require that the legislative body "provide an opportunity to be heard before the legislative body to an interested" property owner.

***Local Charters.*** House Bill 5032 clarifies that a zoning ordinance takes effect seven days after its publication, or at a later date if so specified by the legislative body, "or charter." The bill also specifies that the filing and publication requirements under the state statute supersede any other statutory "or charter" requirements.

***Zoning Board of Appeals.*** Currently under the law, a legislative body must appoint a zoning board of appeals. The bill clarifies that this would be done "by majority vote of the members of the legislative body serving."

The bill clarifies that in a county or township, one of the regular members of the zoning board of appeals *must* be a member of the zoning commission (or the planning commission, if it is functioning as the zoning commission). The bill specifies that in a city or village, one of the regular members of the zoning board of appeals *may* be a member of the zoning commission (or, under certain conditions, the planning commission). However, the bill specifies that a decision made by a city or village zoning board of appeals before the effective date of this act would not be invalidated if a city or village zoning board of appeals failed to include a member of the city or village zoning commission or planning commission.

Currently, the law requires that members of a zoning board of appeals be selected from the electors of the local unit of government within the zoning jurisdiction. House Bill 5032 retains this provision, and also specifies that in the case of a county zoning board of appeals, the electors must reside within the county but outside of any city or village.

The law currently says that terms of office for members appointed to the zoning board of appeals run for three years. House Bill 5032 would retain this provision, but add "and until a successor has been appointed and qualified."

The law currently says that vacancies for unexpired terms must be filled for the remainder of the term. House Bill 5032 retains this provision, but adds that vacancies on the zoning board of appeals must be filled in the same manner as the original appointment.

The bill prohibits a member of a zoning board of appeals who is also a member of a zoning commission (or planning commission) from participating in a public hearing on, or a vote on, the same matter that the member voted on as a member of the zoning commission (or planning commission). However, the member could vote on other unrelated matters involving the same property.

Currently under the law, whenever a zoning board of appeals receives a written request for an interpretation of a zoning ordinance, or an appeal of an administrative decision, it must call a public hearing, and publish a notice of the hearing's time, date, and place. The notice must be circulated in a newspaper, and sent to the person requesting the interpretation, not less than 15 days before the public hearing. If the request for an interpretation or appeal involves a specific parcel, then written notice must be sent by first class mail or personal delivery to all the people to whom real property is assessed within 300 feet of the boundary of the property in question, and to the occupants of all structures within 300 feet of the property. (If the tenant's name is not known, the term "occupant" can be used.)

House Bill 5032 would eliminate all of these provisions. Instead, the bill would require that the zoning board of appeals conduct a public hearing on the request, and provide notice as required under Section 103—which requires at least 15-days published notice to those within 300 feet, under certain circumstances. However, if the request did not involve a specific parcel of property, notice would only have to be given under Section 103(1) and be given to the person making the request as provided in Section 103(3).

Currently under the law, an appeal from a decision of a county or township zoning board of appeals must be filed within 30 days after the decision is certified. House Bill 5032 would modify this provision to require that an appeal be filed within 30 days after the decision is issued or the board approves the minutes of its decision (whichever occurs first). The bill also specifies that the written decision be signed by the chairperson or signed by the members of the zoning board of appeals, if there is no chairperson.

The bill specifies that an appeal from a decision of a city or village zoning board of appeals must be filed within 21 days after the zoning board of appeals approved the minutes of its decision. The court could affirm, reverse, or modify the decision of a zoning board of appeals (whether a township, county, or city).

Finally, the bill specifies that a local zoning ordinance need not be readopted, but that it is subject to the requirements of the new Michigan Zoning Enabling Act, including, the amendment procedures set forth in the act.

### ***BACKGROUND INFORMATION:***

When Public Act 110 of 2006—the Zoning Enabling Act—was debated in the legislature, the Michigan Association of Planning listed the following as the benefits of creating one new act to replace the three current zoning acts:

- One act is significantly easier to amend than three should legislation become necessary in the future.
- One act means fewer pages to read, search, and duplicate and less time to process future changes or prepare training material on changes. One act also means a simplification of legal citations. The public and practitioners will no longer have to remember the many differences between the acts.

- Local units are provided with common powers and responsibilities (except in a few special cases), and the public hearing notice provisions are the same for all units for ease of compliance.
- The legislation eliminates archaic language, thus making the act easier to understand.
- The structure of the new act, with separate articles for similar topics, makes it easier to use and reference, and the structure itself makes amending the act easier.

## ***ARGUMENTS:***

### ***For:***

The Michigan Association of Planning, a chapter of the American Planning Association based in Ann Arbor, notes that the changes proposed by the stakeholders to Public Act 110 of 2006 would clarify the following: notice to occupants; the relations between zoning commissions, zoning boards, and planning commissions; the procedure for requesting an opportunity to address the legislative body on a proposed rezoning; the authority of local charters; that previous decisions by the zoning board of appeals are protected, and that planning commissioner membership on a zoning board of appeals is permissive, not mandatory in cities and villages; limitations on zoning board of appeals votes when a planning commissioner previously voted on the matter while it was before the planning commission; public hearing notice requirements when an interpretation question is before the zoning board of appeals; and that protection exists for zoning ordinances adopted under the prior act.

Finally, the bill sets the appeal period for villages and cities at 21 days, instead of the now uniform 30-day period for appeals. (Counties and townships would retain their 30-day appeal period.) This change would allow cities to return to their former appeal period, one to which they were long accustomed before the uniform zoning act was implemented in 2006.

### ***Against:***

According to the Michigan Association of Realtors, the proposed bill should be changed in two ways. First, Section 208(1) of the bill should be amended to remove the word "exact" from the phrase "that *exact* use may be continued although the use does not conform to the zoning ordinance or amendment." The spokesman for the group notes that courts, for years, ignored the word "exact" (as it once appeared in the city and village zoning act), and instead adopted an interpretation of "substantially the same" (which was more in keeping with language in the former township and county zoning acts). Since existing case law will apply to this statute, the word "exact" may well signal new legislative intent to the courts.

Second, the Realtors' spokesman argues that there should be one uniform appeal period of 30 days (instead of the 21-day appeal period that is proposed in the bill for cities and villages).

***POSITIONS:***

The Michigan Association of Planning supports the bill. (10-24-07)

The Michigan Municipal League supports the bill. (10-24-07)

The Michigan Townships Association supports the bill. (10-24-07)

The Michigan Association of Realtors opposes the bill. (10-24-07)

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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.