

## APPROVAL OF ETHANOL PRODUCTION FACILITIES IN AREAS ZONED FOR AGRICULTURE

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**House Bill 4838**

**Sponsor: Rep. Arlan Meekhof**

**Committee: Energy and Technology**

**Complete to 12-14-09**

### A SUMMARY OF HOUSE BILL 4838 AS INTRODUCED 4-28-09

The bill would add provisions to the Michigan Zoning Enabling Act regarding the approval of ethanol production facilities in areas zoned for agriculture. Some ethanol production facilities — those producing 100,000 or fewer gallons per year and not bordering a residential area — would be classified as a "use by right." Others would need approval as a "special land use," in accordance with the bill's requirements. A local unit of government with a zoning ordinance providing for an agricultural district would have to amend its ordinance to conform to the bill within 150 days of its effective date.

MCL 125.3515

### DETAILED SUMMARY:

Approval as "use by right." The bill would require local zoning ordinances to classify an ethanol production facility located in an area zoned for agriculture as a "use by right" if two conditions were met: (1) no land adjacent to the facility was zoned residential; and (2) the facility produced no more than 100,000 gallons of ethanol annually. If those conditions were not met, the ethanol production facility would need "special land use" approval.

Approval as a "special land use." An application for "special land use" approval for an ethanol production facility would have to include all of the following:

- A site plan as required under Section 501,<sup>1</sup> including a map of the property and existing and proposed buildings and other facilities.
- A description of the ethanol production process to be used.
- The anticipated number of gallons of ethanol to be produced annually.
- An emergency access and fire protection plan reviewed and approved by the appropriate police and fire departments.
- Written documentation from applicable agencies that the proposed use would comply with local, state, and federal laws, including, but not limited to, laws

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<sup>1</sup>Section 501 of the Michigan Zoning Enabling Act, MCL 125.3501, apparently leaves it up to local units of government to decide whether site plan approval is required under the local unit's zoning ordinance.

governing air quality, the transportation of fuel, the reuse and disposal of byproducts, and the storage of raw materials, fuel, and byproducts.

- A study of the facility's anticipated water usage conducted by a professional engineer or other professional familiar with hydrogeologic reports. The study would address how much water would be used and identify the effect upon waters of the state and on the water supply and wastewater infrastructure needs of the local unit of government.
- Information that demonstrated "compliance with subsection (4)" as described below.
- Any additional relevant information required by the body or official responsible for granting special land use approval.

Other requirements for approval of an ethanol facility as a "special land use." [Subsection 4] The bill also contains the following requirements for approving an ethanol production facility as a "special land use":

- All buildings and equipment used to produce or store ethanol would need to meet all applicable requirements of local, state, and federal law, including, but not limited to, setback requirements, and be located at least 100 feet from a property line.
- Ethanol could not be produced unless the owner or operator of the ethanol facility provided the local unit of government with proof that all necessary approvals had been obtained from the Department of Environmental Quality and other state and federal agencies involved in issuing permits as to specified aspects of ethanol production — (1) the storage of raw materials, fuel, and byproducts; (2) the reuse and disposal of byproducts; (3) air quality; and (4) the transportation of ethanol or its byproducts.

Storage or disposal. An ethanol production facility would need sufficient storage for raw materials and fuel. It would also need either sufficient storage for byproducts or the ability to dispose of the byproducts through land application, livestock consumption, or sale.

Maintenance and operation. A facility's owner or operator would have to maintain the facility in an orderly and clean condition, and operate it to minimize noise, odors, and light pollution and so that a nuisance was not created. The local unit of government could inspect an ethanol production facility at any reasonable time to determine compliance with the requirements of the bill.

Rendering ethanol unfit to drink. A zoning ordinance subject to the bill — presumably, any zoning ordinance that provided for an agricultural district — would have to require any ethanol sold off the premises to be rendered unfit for beverage use.

No protest petition allowed. An amendment to a zoning ordinance adopted to comply with the bill would not be subject to a protest petition under Section 403.<sup>2</sup>

Effect on existing zoning ordinances. A local unit of government with a zoning ordinance providing for an agricultural district on the date the bill took effect would need to amend it to comply with the bill within 150 days of the bill's effective date.

#### **FISCAL IMPACT:**

House Bill 4838 would have an indeterminate fiscal impact on local units of government. The bill would require local units of government with a zoning ordinance for an agricultural district to amend it to comply with the bill's requirements. The procedures for amending the local zoning ordinances may entail some administrative costs. Furthermore, reviewing and assessing "special land use" applications would have added costs on the local body or individual responsible for granting "special land use" approval. Local units of government would also realize costs associated with ensuring compliance with provisions of the bill.

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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.

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<sup>2</sup> Section 403 of the act, MCL 125.3403, provides that when a protest petition is filed, an amendment to a zoning ordinance amendment must be approved by a 2/3rds vote of the legislative body, unless a larger vote (not great than a 3/4ths vote) is required by the ordinance or charter. Section 403 also sets forth signature requirements for protest petitions.