

MICHIGAN ZONING ENABLING ACT (EXCERPT)
Act 110 of 2006

125.3513 Biofuel production facility as permitted use of property; requirements; special land use approval; application; hearing; conditions; applicability of subsections (2) to (5); authority of local unit of government; definitions.

Sec. 513.

(1) A biofuel production facility with an annual production capacity of not more than 100,000 gallons of biofuel is a permitted use of property and is not subject to special land use approval if all of the following requirements are met:

(a) The biofuel production facility is located on a farm.

(b) The biofuel production facility is located not less than 100 feet from the boundary of any contiguous property under different ownership than the property on which the biofuel production facility is located and meets all applicable setback requirements of the zoning ordinance.

(c) On an annual basis, not less than 75% of the feedstock for the biofuel production facility is produced on the farm where the biofuel production facility is located, and not less than 75% of the biofuel or another product or by-product produced by the biofuel production facility is used on that farm.

(2) Subject to subsections (6) and (7), each of the following is a permitted use of property if it receives special land use approval under subsections (3) to (5):

(a) A biofuel production facility with an annual production capacity of not more than 100,000 gallons of biofuel that meets the requirements of subsection (1)(a) and (b) but that does not meet the requirements of subsection (1) (c).

(b) A biofuel production facility with an annual production capacity of more than 100,000 gallons but not more than 500,000 gallons of biofuel that meets the requirements of subsection (1)(a) and (b).

(3) An application for special land use approval for a biofuel production facility described in subsection (2) shall include all of the following:

(a) A site plan as required under section 501, including a map of the property and existing and proposed buildings and other facilities.

(b) A description of the process to be used to produce biofuel.

(c) The number of gallons of biofuel anticipated to be produced annually.

(d) An emergency access and fire protection plan that has been reviewed and approved by the appropriate responding police and fire departments.

(e) For an ethanol production facility that will produce more than 10,000 proof gallons annually, completed United States department of the treasury, alcohol and tobacco tax and trade bureau, forms 5000.29 (environmental information) and 5000.30 (supplemental information on water quality considerations under 33 USC 1341(a)), or successor forms, required to implement regulations under the national environmental policy act of 1969, 42 USC 4321 to 4347, and the federal water pollution control act, 33 USC 1251 to 1387.

(f) Information that demonstrates that the biofuel production facility will comply with the requirements of subsections (2) and (5).

(g) Any additional information requested by the body or official responsible for granting special land use approval and relevant to compliance with a zoning ordinance provision described in section 502(1) or 504.

(4) A local unit of government shall hold a hearing on an application for special land use approval under subsection (2) not more than 60 days after the application is filed. For the purposes of this section, the notice required under section 502(2) shall provide notice of the hearing, rather than notice of a right to request a hearing.

(5) Special land use approval of a biofuel production facility described in subsection (2) shall be made expressly conditional on the facility's meeting all of the following requirements before the facility begins operation and no additional requirements:

(a) Buildings, facilities, and equipment used in the production or storage of biofuel comply with local, state, and federal laws.

(b) The owner or operator of the biofuel production facility provides the local unit of government with proof that all necessary approvals have been obtained from the department of environmental quality and other state and federal agencies that are involved in permitting any of the following aspects of biofuel production:

(i) Air pollution emissions.

(ii) Transportation of biofuel or additional products resulting from biofuel production.

(iii) Use or reuse of additional products resulting from biofuel production.

(iv) Storage of raw materials, fuel, or additional products used in, or resulting from, biofuel production.

(c) The biofuel production facility includes sufficient storage for both of the following:

(i) Raw materials and fuel.

(ii) Additional products resulting from biofuel production or the capacity to dispose of additional products through land application, livestock consumption, sale, or other legal use.

(6) Subsections (2) to (5) do not apply to a biofuel production facility if the zoning ordinance provides different criteria for special land use approval of a biofuel production facility located on a farm. An amendment to a zoning ordinance adopted only to provide such criteria is not subject to a protest petition under section 403.

(7) A local unit of government may authorize a biofuel production facility described in subsection (2) as a permitted use of property not subject to a special land use approval.

(8) This section does not affect the authority of a local unit of government to prohibit or authorize biofuel production facilities that are not located on farms.

(9) As used in this section:

(a) "Biofuel" means any renewable fuel product, whether solid, liquid, or gas, that is derived from recently living organisms or their metabolic by-products and meets applicable quality standards, including, but not limited to, ethanol and biodiesel. Biofuel does not include methane or any other fuel product from an anaerobic digester.

(b) "Ethanol" means a substance that meets the ASTM international standard in effect on the effective date of this section as the D-4806 specification for denatured fuel grade ethanol for blending with gasoline.

(c) "Farm" means that term as defined in section 2 of the Michigan right to farm act, 1981 PA 93, MCL 286.472.

(d) "Proof gallon" means that term as defined in 27 CFR 19.907.

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