



**House
Legislative
Analysis
Section**

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RURAL ZONING REFERENDUM

**House Bills 4576 and 4577
(Substitutes H-2)
First Analysis (2-22-96)**

**Sponsor: Rep. Walter DeLange
Committee: Local Government**

THE APPARENT PROBLEM:

Both the Township Rural Zoning Act and the County Rural Zoning Enabling Act contain provisions that allow residents to force a referendum on a zoning ordinance or a change to a zoning ordinance by filing petitions. The two acts differ as to certain details, but both require that petitions be filed with the appropriate clerk within 30 days after the effective date of the zoning ordinance or amendment. The ordinance or amendment is not invalidated unless rejected by the voters, and therein lies the problem, say critics of the process. In some cases, by the time a change in zoning is put before the voters, a building project may have begun, and it is too late as a practical matter to do anything about it. In other cases, the overturning by voters of a change in zoning may lead to a lawsuit against the community by developers or others who would have benefitted from the change. A new process has been proposed that would not allow a zoning ordinance or an amendment to a zoning ordinance to take effect if local residents were seeking a referendum on the change.

THE CONTENT OF THE BILL:

House Bill 4576 would amend the County Rural Zoning Enabling Act (MCL 125.211 and 125.212) and House Bill 4577 would amend the Township Rural Zoning Act (MCL 125.281 and 125.282) to create a new procedure for petitioning for a referendum on zoning ordinances or changes to zoning ordinances.

Under each bill, a zoning ordinance (or change to an ordinance) would take effect 7 days after the required publication of the newly adopted ordinance or amendment, or at a later date as specified by the county commissioners or township board. (Publication in a newspaper of general circulation is required within 15 days after adoption of the new ordinance, for townships, or within 15 days after state approval of the ordinance, for counties.) However, within 7 days after the required publication, a registered elector could file with the appropriate clerk a notice of intent to file a petition seeking a referendum on the ordinance. If a

notice of intent was filed, the ordinance would not go into effect until either:

-- the 30-day period (after publication) for filing a petition passed without a petition being filed;

-- a petition was filed but was determined by the clerk to be inadequate; or

-- a petition was filed, an election was held, and the voters approved the ordinance.

Under the bills, a person could file a petition for a referendum on a zoning ordinance or amendment only if the notice of intent had been filed within 7 days. Currently, the petition must be filed within 30 days after the effective date of the ordinance or amendment. Under the bills, a petition would have to be filed within 30 days after the date of the required publication of a newly adopted ordinance or amendment.

Under current law, forcing a referendum on a zoning ordinance or amendment requires petitions bearing 8 percent, for townships, or 15 percent, for counties, of the total votes cast for all candidates for governor within the jurisdiction in the most recent election. House Bill 4577 would increase the signature requirement to 10 percent for townships. The acts refer to residents of the portion of a county or township outside the limits of cities and villages.

Also, House Bill 4576 would update a reference in the County Rural Zoning Enabling Act so that zoning ordinances would be submitted to the Department of Commerce (rather than Department of Natural Resources) for approval, as is current practice under a 1980 executive order. (An ordinance or amendment is presumed approved if no action is taken within 30 days of receipt. Disapproval must be based on noncompliance or conflict with either state or federal law or administrative rule or regulation, or a decision of a state or federal court.)

House Bills 4576 and 4577 (2-22-96)

FISCAL IMPLICATIONS:

According to a preliminary estimate by the House Fiscal Agency, the bills have no fiscal implications. (2-21-96)

ARGUMENTS:***For:***

The bills would make it more likely that township or county voters could use the referendum process to overturn a decision on a zoning ordinance issue. As it stands now, an ordinance or amendment to an ordinance is in effect from its adoption to the date of any referendum on the matter. In some cases this renders the results of the referendum moot because building has already occurred in the meantime. In other cases, a local community in which a zoning amendment is overturned by voters can face a lawsuit for damages from those who would have benefitted from the zoning. These bills would require residents opposed to a zoning amendment to file a notice of intent to circulate petitions to force a referendum. If such a notice was filed, the zoning amendment would not take effect until either the petition deadline passed without a valid petition being filed or the voters approved the amendment. This is a more reasonable approach.

Against:

The bills would permit a single disgruntled county or township resident hold up a zoning change, and any planned building or development, for 30 days, even if there was little likelihood that sufficient signatures could be collected to force a referendum on the matter. They would also shorten the time frame for action when there was substantial legitimate opposition to 7 days. If a notice of intent to circulate petitions was not filed in that time, it appears petitions could not be circulated to force a referendum.

Response:

While both these complaints are valid, the bills also would make sure that the desires of the public will be heard and will have some effect, which is not always the case now. The bills attempt to balance various interests. They would prevent cases where a project goes forward before a referendum can be held while at the same time allow zoning changes to take effect unless there was timely public opposition.

POSITIONS:

The Michigan Townships Association supports the bills. (2-20-96)

The Michigan Association of Counties supports the bills. (2-20-96)

■ 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.