
Senate Fiscal Agency
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SFA**BILL ANALYSIS**

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House Bill 4995 (Substitute S-4 as passed by the Senate)
House Bill 5028 (Substitute S-4 as passed by the Senate)
House Bill 5029 (Substitute S-4 as passed by the Senate)
Sponsor: Representative Ruth Johnson (House Bill 4995)
Representative Randy Richardville (House Bill 5028)
Representative Chris Kolb (House Bill 5029)
House Committee: Tax Policy
Senate Committee: Farming, Agribusiness and Food Systems

Date Completed: 12-20-01

RATIONALE

The thriving economy of the 1990s triggered a housing boom in many parts of lower Michigan. Bedroom communities in the Counties of Allegan, Clinton, Eaton, Ingham, Genessee, Kent, Lapeer, Oakland, and others have seen new subdivisions and shopping complexes built on former fields, orchards, and wetlands. These counties attracted new homeowners, in part, because they offered a sense of community and scenic landscapes. This demand for beauty and space, however, has created urban sprawl, the very thing most of these residents sought to escape.

A report released by the Michigan Land Resource Project found that, at the current rate of development, Michigan will lose 17% of its farmland, 8% of its forests, 10% of its wetlands, and 25% of its fruit-growing land in the next forty years. Cities and suburbs will increase their populations by 178%. The report criticized the State and local government for not doing more to curb overdevelopment.

Furthermore, this growth presumably has put a strain on township and county officials as they struggle to balance development against community and character. Some communities with zoning ordinances have revised or rewritten their plans extensively in an attempt to achieve this balance. The result is a variety of ordinances and regulations that differ from city to township to county.

In response to buyer demand, some home

builders have planned and constructed "cluster developments". These residential neighborhoods allow houses to be built relatively close together on a specific parcel of land in order to protect its natural features. Sometimes this open space is used by the neighborhood, and includes parks, hunting areas, or nature study areas. Other times the remaining space is parceled out among the houses as wooded areas or patches of wetland between houses, preserving privacy.

In an effort to create a uniform template for zoning regulations, encourage land preservation, and meet the demand of homeowners, it has been suggested that local units with existing zoning ordinances include provisions that would permit cluster developments.

CONTENT

House Bills 4995 (S-4), 5028 (S-4), and 5029 (S-4) would amend the Township Zoning Act, the County Zoning Act, and the City and Village Zoning Act, respectively, to require that qualified local units with a zoning ordinance include certain open space provisions for residential development. (To qualify, a city, village, or county would have to have adopted a zoning ordinance, have a population of 1,800 or more, and contain undeveloped land zoned for residential development at a density described below.) These requirements would apply beginning one year after the bills' effective date.

The zoning ordinances would have to allow a land owner to develop land zoned as residential by, in effect, clustering residences on one portion of the land and leaving the remaining land perpetually in an undeveloped state. (The bills would define "undeveloped state" as a natural state preserving natural resources, natural features, or scenic or wooded conditions; agricultural use; open space; or a similar use or condition. Land in an undeveloped state would not include a golf course but could include a recreational trail, children's play area, greenway, or linear park, and could be dedicated to the use of the public.) These proposed ordinances would be known as the "Open Space Preservation" provisions.

Under House Bills 4995 (S-4) and 5028 (S-4), township and county zoning ordinances would have to state that the land owner could develop a portion of the land with the same number of dwelling units currently allowed on the whole parcel of land. The remaining percentage of land, as specified in the zoning ordinances but not less than 50%, would have to remain perpetually in an undeveloped state by means of a conservation easement, plat dedication, restrictive covenant, or other legal means running with the land. House Bill 5029 (S-4) contains identical provisions for city and village zoning ordinances, except that the amount of open space preserved would have to be at least 20%. Land developed in this way would be subject to other applicable ordinances, laws, and rules, including rules relating to suitability of soils for on-site sewage disposal for land not served by public sewers, and suitability of groundwater for on-site water supply for land not served by public water.

All three bills specify the conditions necessary for a land owner to exercise this development option. In addition to the percentage requirements above, they include requirements that the land be zoned at a density equivalent of two or fewer dwelling units per acre or, if the land were served by a public sewer system, three or fewer dwelling units per acre; that the development not depend on the extension of a public sewer or public water system, unless other development of the land also would depend on such an extension; and that the land not already have been developed in a similar way.

After a land owner exercised the open space development option, the land could be rezoned accordingly.

The bills' requirement that zoning ordinances include Open Space Preservation provisions would not apply if, by October 1, 2001, a local unit had in effect a similar zoning ordinance provision and a land owner had exercised the option provided under that ordinance.

Further, all three bills would be subject to the right to referendum. The requirements in House Bill 4995 (S-4) would be subject to Section 12 of the Township Zoning Act, which requires a referendum on a new zoning ordinance upon the submission of petitions containing signatures equal to at least 10% of the vote cast in the township for all candidates for Governor at the last general election. The bill would change that percentage to 15%. The requirements in House Bill 5028 (S-4) would be subject to Section 12 of the County Zoning Act, which provides for a referendum on a new zoning ordinance upon the submission of petitions containing sufficient signatures. House Bill 5029 (S-4) states that the ordinance requirement would be subject to the right of referendum if provided by charter.

MCL 125.282 et al. (H.B. 4995)
125.240 et al. (H.B. 5028)
125.600 et al. (H.B. 5029)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The Open Space Preservation provisions would establish a common thread uniting city, township, and county zoning practices. Currently, a patchwork of varying ordinances is stitched together without enough coordination between units. Requiring open space provisions throughout the State would protect farmland, wetlands, and forests without raising taxes or taking away landowners' profits. Furthermore, trading density for open space can save local governments money and resources and provide for more desirable communities.

This legislation attempts to accommodate the concerns of city, township, and county

officials; environmental groups and home builders; and realtors and residents. The bills would not require communities without zoning regulations to write them; they would require only those qualified units with existing plans to incorporate the Open Space Preservation provisions. Also, the bills would not require all new construction to follow the cluster development plan; they simply would allow a landowner to exercise that option if he or she chose. Perhaps most importantly, the bills would allow local government units to retain their decision-making authority over the number of units per acre and the overall number of houses within an area.

These provisions would honor similar existing ordinances. For example, under the bills, if land already were zoned residential, the landowner would not need to apply for a rezoning of the land to use the clustering option. This provision should help expedite the process of developing a clustered community. If a landowner already had built a clustered community and preserved at least 50% of the space (or 20% if the development were in a city), the land could be rezoned accordingly.

Clustered developments have proved highly desirable. They can be more aesthetically pleasing than houses built on clear-cut land, and are reported to promote a sense of community because neighbors are united by a common interest practiced on the preserved land (walking and nature-watching, for example). These developments tend to have a lower impact on the environment because they maintain natural land features, use less pavement, and reduce utility costs, which also can save local governments money and resources. According to a 1997 study done by SEMCOG (the Southeast Michigan Council of Governments), clustering can help reduce road costs by as much as 25% and utility costs by as much as 15%. This study of 18 communities in Michigan that offer clustering found that those communities managed to reduce the combined number of road lane miles by 188, saving them a total of \$44,285,000.

Response: These bills would not go far enough. Allowing cluster developments to be optional, excluding from the requirement local units with 1,800 residents or less, and permitting each unit to set its own limit on the number of units per acre (as well as the

overall number of houses in an area) could even encourage urban sprawl.

Supporting Argument

Michigan is a state rich in natural resources, and much of the State's economy depends on tourism, agriculture, forestry, and mining. According to the Michigan Chamber of Commerce, these industries generate over \$66 billion in economic activity each year. Preserving land would benefit all of these industries. More indirectly, communities with a balance of natural areas and development are more attractive to employers and to their workers, and are more likely to retain residents. In fact, a poll done by the University of Michigan's School of Natural Resources and Environment, published in the *Detroit Free Press* on October 14, 2001, found that people favor residential development with ecological benefits, even if it costs them more than typical suburban construction. In some cases, the study found, people would be willing to pay an additional \$100,000 to live in a development with more open community space arranged to preserve existing habitat, incorporate more native plants, and filter and retain storm water on site.

Opposing Argument

Requiring that Open Space Preservation provisions be written into the existing zoning ordinances of approximately half of the State's local units would overcompensate for an admitted problem, urban sprawl. Michigan is indeed a state rich in natural resources; but it is also a state diverse in its communities. A zoning ordinance that suits Independence Township in Oakland County (a once-rural area in northern Oakland County) probably would not fit a single township in Roscommon County, for example. Further, not even all high-growth townships resemble each other to the degree that their zoning practices should be identical. Each community is unique and each local unit should be allowed to craft its own (albeit careful, perhaps complicated) requirements for land use.

Response: The bills recognize that each community is unique in character and land features. The provisions would accommodate a variety of development choices for landowners who chose to use the cluster development option. For example, one existing clustered community opted to preserve fields and woodlands for hunting; another used the land for horseback riding.

Preserving land for community use should be available to all residents of Michigan, not just those who live in the suburbs. Continuing to allow each community to solve the sprawl problem for itself would be preserving the status quo: a patchwork of ordinances, dissatisfied builders and residents, and unchecked growth.

Opposing Argument

Buyer demand, not legislation, should drive the housing market. If cluster developments are truly more valuable to consumers, land developers will build them. Alternatively, if a community wants to preserve open space, it should provide incentives to builders to develop existing urban in-fill areas. The incentives could come in the form of waived license and permit fees, local tax credits, expedited permitting, and/or use of tax increment financing options.

Legislative Analyst: C. Layman

FISCAL IMPACT

It is unlikely that the bills would have any significant impact on local units or State revenues. The bills could have some minimal impact on specific local units depending on whether undeveloped areas are appraised separately from homesteads or are taxed separately from homesteads (for instance, as nonhomestead property), and whether market demographics value smaller individual properties with common areas differently from larger individual properties with no common areas.

The bills would not affect approximately half of the local units in Michigan, including Keweenaw County and 911 other local units, because the units' population would not meet the definition of "qualified".

Fiscal Analyst: D. Zin

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.