

**SUBSTITUTE FOR
HOUSE BILL NO. 5028**

(As amended October 16, 2001)

A bill to amend 1943 PA 183, entitled
"County zoning act,"
by amending section 40 (MCL 125.240), as amended by 2000 PA 385,
and by adding section 16h.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 16H. (1) SUBJECT TO SUBSECTION (4)[AND SECTION 12],
 BEGINNING 6 MONTHS
2 AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT THAT ADDED THIS
3 SECTION, EACH COUNTY WITH A ZONING ORDINANCE SHALL PROVIDE IN THE
4 ZONING ORDINANCE THAT LAND ZONED FOR RESIDENTIAL DEVELOPMENT MAY
5 BE DEVELOPED, AT THE OPTION OF THE LAND OWNER, WITH THE SAME
6 NUMBER OF DWELLING UNITS ON A PORTION OF THE LAND SPECIFIED IN
7 THE ZONING ORDINANCE, BUT NOT MORE THAN 50%, THAT, AS DETERMINED
8 BY THE COUNTY, COULD OTHERWISE BE DEVELOPED, UNDER EXISTING
9 ORDINANCES, LAWS, AND RULES, ON THE ENTIRE LAND AREA, IF ALL OF
10 THE FOLLOWING APPLY:

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1 (A) THE LAND IS ZONED AT A DENSITY EQUIVALENT TO 2 OR FEWER
2 DWELLING UNITS PER ACRE, OR, IF THE LAND IS SERVED BY A PUBLIC
3 SEWER SYSTEM, 3 OR FEWER DWELLING UNITS PER ACRE.

4 (B) A PERCENTAGE OF THE LAND AREA SPECIFIED IN THE ZONING
5 ORDINANCE, BUT NOT LESS THAN 50%, WILL REMAIN PERPETUALLY IN AN
6 UNDEVELOPED STATE BY MEANS OF A CONSERVATION EASEMENT, PLAT DEDI-
7 CATION, RESTRICTIVE COVENANT, OR OTHER LEGAL MEANS THAT RUNS WITH
8 THE LAND, AS PRESCRIBED BY THE ZONING ORDINANCE.

9 (C) THE DEVELOPMENT DOES NOT DEPEND UPON THE EXTENSION OF A
10 PUBLIC SEWER OR PUBLIC WATER SUPPLY SYSTEM, UNLESS DEVELOPMENT OF
11 THE LAND WITHOUT THE EXERCISE OF THE OPTION PROVIDED BY THIS SUB-
12 SECTION WOULD ALSO DEPEND UPON SUCH AN EXTENSION.

13 (D) THE OPTION PROVIDED PURSUANT TO THIS SUBSECTION HAS NOT
14 PREVIOUSLY BEEN EXERCISED WITH RESPECT TO THAT LAND.

15 (2) AFTER A LAND OWNER EXERCISES THE OPTION PROVIDED PURSU-
16 ANT TO SUBSECTION (1), THE LAND MAY BE REZONED ACCORDINGLY.

17 (3) THE DEVELOPMENT OF LAND UNDER SUBSECTION (1) IS SUBJECT
18 TO OTHER APPLICABLE ORDINANCES, LAWS, AND RULES, INCLUDING RULES
19 RELATING TO SUITABILITY OF GROUNDWATER FOR ON-SITE WATER SUPPLY
20 FOR LAND NOT SERVED BY PUBLIC WATER AND RULES RELATING TO SUITA-
21 BILITY OF SOILS FOR ON-SITE SEWAGE DISPOSAL FOR LAND NOT SERVED
22 BY PUBLIC SEWERS.

23 (4) SUBSECTION (1) DOES NOT APPLY TO A COUNTY IF BOTH OF THE
24 FOLLOWING REQUIREMENTS ARE MET:

25 (A) SINCE ON OR BEFORE THE ENACTMENT DATE OF THE AMENDATORY
26 ACT THAT ADDED THIS SECTION, THE COUNTY HAS HAD IN EFFECT A
27 ZONING ORDINANCE PROVISION PROVIDING FOR BOTH OF THE FOLLOWING:

H04465'01 (H-4)

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1 (i) LAND ZONED FOR RESIDENTIAL DEVELOPMENT MAY BE DEVELOPED,
2 AT THE OPTION OF THE LAND OWNER BUT SUBJECT TO ANY APPROVALS OR
3 OTHER CONDITIONS IMPOSED BY THE COUNTY, WITH THE SAME NUMBER OF
4 DWELLING UNITS ON A PORTION OF THE LAND THAT, AS DETERMINED BY
5 THE COUNTY, COULD OTHERWISE BE DEVELOPED, UNDER EXISTING ORDI-
6 NANCES, LAWS, AND RULES, ON THE ENTIRE LAND AREA.

7 (ii) IF THE LAND OWNER EXERCISES THE OPTION PROVIDED BY
8 SUBPARAGRAPH (i), THE PORTION OF THE LAND NOT DEVELOPED WILL
9 REMAIN PERPETUALLY IN AN UNDEVELOPED STATE BY MEANS OF A CONSER-
10 VATION EASEMENT, PLAT DEDICATION, RESTRICTIVE COVENANT, OR OTHER
11 LEGAL MEANS THAT RUNS WITH THE LAND.

12 (B) ON OR BEFORE THE ENACTMENT DATE OF THE AMENDATORY ACT
13 THAT ADDED THIS SECTION, A LAND OWNER EXERCISED THE OPTION PRO-
14 VIDED UNDER THE ZONING ORDINANCE PROVISION REFERRED TO IN
15 SUBDIVISION (A) WITH AT LEAST 50% OF THE LAND AREA REMAINING PER-
16 PETUALLY IN AN UNDEVELOPED STATE.

17 (5) THE ZONING ORDINANCE PROVISIONS REQUIRED BY
18 SUBSECTION (1) SHALL BE KNOWN AND MAY BE CITED AS THE "OPEN SPACE
19 PRESERVATION" PROVISIONS OF THE ZONING ORDINANCE.

20 Sec. 40. (1) As used in this act:

21 (a) "Agricultural land" means substantially undeveloped land
22 devoted to the production of plants and animals useful to humans,
23 including forage and sod crops; grains, feed crops, and field
24 crops; ~~dairy and~~ dairy products; poultry and poultry products;
25 livestock, including breeding and grazing of cattle, swine, and
26 similar animals; berries; herbs; flowers; seeds; grasses; nursery

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1 stock; fruits; vegetables; Christmas trees; and other similar
2 uses and activities.

3 (b) "Airport" means an airport licensed by the Michigan
4 department of transportation, bureau of aeronautics under section
5 86 of the aeronautics code of the state of Michigan, 1945 PA 327,
6 MCL 259.86.

7 (c) "Airport approach plan" means a plan, or an amendment to
8 a plan, adopted under section 12 of the airport zoning act, 1950
9 (Ex Sess) PA 23, MCL 259.442, and filed with the county zoning
10 commission under section 151 of the aeronautics code of the state
11 of Michigan, 1945 PA 327, MCL 259.151.

12 (d) "Airport layout plan" means a plan, or an amendment to a
13 plan, that shows current or proposed layout of an airport, that
14 is approved by the Michigan aeronautics commission, and that is
15 filed with the county zoning commission under section 151 of the
16 aeronautics code of the state of Michigan, 1945 PA 327,
17 MCL 259.151.

18 (e) "Airport manager" means that term as defined in section
19 10 of the aeronautics code of the state of Michigan, 1945 PA 327,
20 MCL 259.10.

21 (f) "Airport zoning regulations" means airport zoning regu-
22 lations under the airport zoning act, 1950 (Ex Sess) PA 23,
23 MCL 259.431 to 259.465, for an airport hazard area that lies in
24 whole or part in the area affected by a zoning ordinance under
25 this act.

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1 (G) "CONSERVATION EASEMENT" MEANS THAT TERM AS DEFINED IN
2 SECTION 2140 OF THE NATURAL RESOURCES AND ENVIRONMENTAL
3 PROTECTION ACT, 1994 PA 451, MCL 324.2140.

4 (H) ~~(g)~~ "Development rights" means the rights to develop
5 land to the maximum intensity of development authorized by law.

6 (I) ~~(h)~~ "Development rights ordinance" means an ordinance,
7 which may comprise part of a zoning ordinance, adopted under
8 section 31.

9 (J) "GREENWAY" MEANS A CONTIGUOUS OR LINEAR OPEN SPACE,
10 INCLUDING HABITATS, WILDLIFE CORRIDORS, AND TRAILS, THAT LINK
11 PARKS, NATURE RESERVES, CULTURAL FEATURES, OR HISTORIC SITES WITH
12 EACH OTHER, FOR RECREATION AND CONSERVATION PURPOSES.

13 (K) ~~(i)~~ "Intensity of development" means the height, bulk,
14 area, density, setback, use, and other similar characteristics of
15 development.

16 (L) ~~(j)~~ "Other eligible land" means land that has a common
17 property line with agricultural land from which development
18 rights have been purchased and that is not divided from that
19 agricultural land by a state or federal limited access highway.

20 (M) ~~(k)~~ "PDR program" means a program under section 32 for
21 the purchase of development rights by a county.

22 (N) "UNDEVELOPED STATE" MEANS A NATURAL STATE PRESERVING
23 NATURAL RESOURCES, NATURAL FEATURES, OR SCENIC OR WOODED CONDI-
24 TIONS; AGRICULTURAL USE; OPEN SPACE; OR A SIMILAR USE OR
25 CONDITION. LAND IN AN UNDEVELOPED STATE DOES NOT INCLUDE A GOLF
26 COURSE BUT MAY INCLUDE A RECREATIONAL TRAIL, PICNIC AREA,
27 CHILDREN'S PLAY AREA, GREENWAY, OR LINEAR PARK. LAND IN AN

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1 UNDEVELOPED STATE MAY BE, BUT IS NOT REQUIRED TO BE, DEDICATED TO
2 THE USE OF THE PUBLIC.

3 (2) This act shall be known and may be cited as the "county
4 zoning act".