

**SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5028**

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,
2 BEGINNING 1 YEAR AFTER THE EFFECTIVE DATE OF THE AMENDATORY ACT
3 THAT ADDED THIS SECTION, EACH QUALIFIED COUNTY SHALL PROVIDE IN
4 ITS ZONING ORDINANCE THAT LAND ZONED FOR RESIDENTIAL DEVELOPMENT
5 MAY 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 QUALIFIED COUNTY IF
24 BOTH OF THE FOLLOWING REQUIREMENTS ARE MET:

25 (A) SINCE ON OR BEFORE OCTOBER 1, 2001, THE COUNTY HAS HAD
26 IN EFFECT A ZONING ORDINANCE PROVISION PROVIDING FOR BOTH OF THE
27 FOLLOWING:

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1 (i) LAND ZONED FOR RESIDENTIAL DEVELOPMENT MAY BE DEVELOPED,
2 AT THE OPTION OF THE LAND OWNER, WITH THE SAME NUMBER OF DWELLING
3 UNITS ON A PORTION OF THE LAND THAT, AS DETERMINED BY THE COUNTY,
4 COULD OTHERWISE BE DEVELOPED, UNDER EXISTING ORDINANCES, LAWS,
5 AND RULES, ON THE ENTIRE LAND AREA.

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

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

16 (5) AS USED IN THIS SECTION, "QUALIFIED COUNTY" MEANS A
17 COUNTY THAT MEETS ALL OF THE FOLLOWING REQUIREMENTS:

18 (A) HAS ADOPTED A ZONING ORDINANCE.

19 (B) HAS A POPULATION OF 1,800 OR MORE.

20 (C) HAS LAND THAT IS NOT DEVELOPED AND THAT IS ZONED FOR
21 RESIDENTIAL DEVELOPMENT AT A DENSITY DESCRIBED IN SUBSECTION
22 (1)(A).

23 (6) THE ZONING ORDINANCE PROVISIONS REQUIRED BY
24 SUBSECTION (1) SHALL BE KNOWN AND MAY BE CITED AS THE "OPEN SPACE
25 PRESERVATION" PROVISIONS OF THE ZONING ORDINANCE.

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

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1 (a) "Agricultural land" means substantially undeveloped land
2 devoted to the production of plants and animals useful to humans,
3 including forage and sod crops; grains, feed crops, and field
4 crops; ~~dairy and~~ dairy products; poultry and poultry products;
5 livestock, including breeding and grazing of cattle, swine, and
6 similar animals; berries; herbs; flowers; seeds; grasses; nursery
7 stock; fruits; vegetables; Christmas trees; and other similar
8 uses and activities.

9 (b) "Airport" means an airport licensed by the Michigan
10 department of transportation, bureau of aeronautics under section
11 86 of the aeronautics code of the state of Michigan, 1945 PA 327,
12 MCL 259.86.

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

18 (d) "Airport layout plan" means a plan, or an amendment to a
19 plan, that shows current or proposed layout of an airport, that
20 is approved by the Michigan aeronautics commission, and that is
21 filed with the county zoning commission under section 151 of the
22 aeronautics code of the state of Michigan, 1945 PA 327,
23 MCL 259.151.

24 (e) "Airport manager" means that term as defined in section
25 10 of the aeronautics code of the state of Michigan, 1945 PA 327,
26 MCL 259.10.

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1 (f) "Airport zoning regulations" means airport zoning
2 regulations under the airport zoning act, 1950 (Ex Sess) PA 23,
3 MCL 259.431 to 259.465, for an airport hazard area that lies in
4 whole or part in the area affected by a zoning ordinance under
5 this act.

6 (G) "CONSERVATION EASEMENT" MEANS THAT TERM AS DEFINED IN
7 SECTION 2140 OF THE NATURAL RESOURCES AND ENVIRONMENTAL PROTEC-
8 TION ACT, 1994 PA 451, MCL 324.2140.

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

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

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

18 (K) ~~(i)~~ "Intensity of development" means the height, bulk,
19 area, density, setback, use, and other similar characteristics of
20 development.

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

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

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1 (N) "UNDEVELOPED STATE" MEANS A NATURAL STATE PRESERVING
2 NATURAL RESOURCES, NATURAL FEATURES, OR SCENIC OR WOODED
3 CONDITIONS; AGRICULTURAL USE; OPEN SPACE; OR A SIMILAR USE OR
4 CONDITION. LAND IN AN UNDEVELOPED STATE DOES NOT INCLUDE A GOLF
5 COURSE BUT MAY INCLUDE A RECREATIONAL TRAIL, PICNIC AREA,
6 CHILDREN'S PLAY AREA, GREENWAY, OR LINEAR PARK. LAND IN AN UNDE-
7 VELOPED STATE MAY BE, BUT IS NOT REQUIRED TO BE, DEDICATED TO THE
8 USE OF THE PUBLIC.
9 (2) This act shall be known and may be cited as the "county
10 zoning act".