

Legislative Analysis



REZONING: CONTRACTS WITH DEVELOPERS

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House Bill 6164 (Substitute H-2)
Sponsor: Rep. Chris Ward

House Bill 6166 (Substitute H-2)
Sponsor: Rep. Ruth Johnson

House Bill 6206 (Substitute H-2)
Sponsor: Rep. Philip LaJoy
Committee: Land Use and Environment

First Analysis (9-29-04)

BRIEF SUMMARY: These bills would amend various zoning acts to give local units of government the authority to enter into contracts with private developers in order to specify certain land uses as conditions to rezoning, a practice customarily known as contract zoning.

FISCAL IMPACT: The bills would have no significant impact on state revenues.

THE APPARENT PROBLEM:

Currently, elected officials in local units of government can appoint citizens to planning and zoning boards. Those board members adopt land use maps to specify zones where particular kinds of land uses are allowed. For example, the zones within a community customarily designate areas for residential, industrial, recreational, or farmland uses, among other things. Historically, this use-specific area-wide approach to zoning has not allowed for 'spot-' or 'contract-' zoning in which a single lot's use would violate the character set for the entire zone. 'Spot' zoning was prohibited in order to enhance continuity and order within a region, and also to discourage property owners and developers from pressuring government officials for preferential treatment, insisting they amend zoning laws to allow incongruent profitable uses within a zone—say, manufacturing within a neighborhood—without regard for its negative impact on neighbors.

During the last decade, local officials have sought more flexible zoning standards to promote wiser land use, land re-use, and land preservation. Throughout this transition a form of what many planning officials think of as acceptable 'contract' zoning has evolved, a zone that allows for a 'planned unit development', or PUD. Through what is often a complicated three-way negotiation between the owner, the government, and the neighbors, a mini-zoning ordinance applicable only to the subject property is designed and written in an ordinance or contract.

Throughout the decade other flexible approaches have been tried by local planners. For example, yet another innovative approach to ‘contract’ zoning is known as ‘conditional’ zoning. In this form of a mixed land use zone, a property owner can enter into a written agreement with the local government to rezone certain areas of land, on the condition that the limitations or restrictions set by the town for those parcels are accepted by the owner. The ‘conditions’ the property owner and government officials agree to are unique to the particular area of land, and are not necessarily applied to other similarly zoned parcels. Legislation has been introduced to make ‘conditional’ zoning legal in Michigan.

THE CONTENT OF THE BILLS:

Each of these bills would amend a different zoning act to give local units of government the authority to enter into contracts with private landowners in order to specify certain land uses as conditions to rezoning.

Under the bills, an owner of land could voluntarily offer in writing, and the local unit of government could then approve, certain use and development of the land as a condition to a rezoning of the land, or an amendment to a zoning map. In approving such conditions, the local unit of government could establish a time period during which the conditions applied to the land, and if the conditions were not satisfied within that time, then the land would revert to its former zoning classification. Under the bills, the local units of government could not add to or alter the conditions during the time period specified; however, the time period could be extended if the landowner applied for an extension and local officials approved it. Finally, the bills prohibit a local unit of government from requiring a landowner to offer conditions as a requirement of rezoning, and they specify that the lack of an offer could not otherwise affect a landowner’s right under the act, the ordinances of the local unit, or any other laws of the state.

House Bill 6164 would amend the City and Village Zoning Act (MCL 125.584g), House Bill 6166 would amend the County Zoning Act (MCL 125.216i), and House Bill 6206 would amend the Township Zoning Act (MCL 125.286i).

FISCAL INFORMATION:

The bills would have no significant impact on state revenues.

ARGUMENTS:

For:

Land use planners in counties, towns, and townships need many tools to ensure that land is re-developed and preserved in sensible, cost-effective, and aesthetically appropriate ways. Conditional zoning would enable local planners and property owners to rezone a parcel—say an obsolete gas station or abandoned warehouse—subject to explicit conditions that are specified in order to maintain high quality standards during the redevelopment. Conditional zoning would be part of a local unit of government’s land

planning process, and any changes in the zone that were proposed would be subject to the same kinds of public notice and public hearings,

Against:

Some have argued that conditional zoning is unenforceable. In a situation where a zoning ordinance is passed upon condition that a landowner perform a certain act prior to, simultaneously with, or after the passage of the zoning ordinance, the effectiveness of the legislation is conditioned upon the landowner's act—with no enforceable contract. The principal objection to conditional zoning is that it constitutes illegal spot zoning, and a 'bargaining away' of a local unit of government's police power.

POSITIONS:

The Michigan Townships Association supports the bills. (9-22-04)

The Michigan Realtors Association supports the bills. (9-22-04)

The Michigan Environmental Council supports the bills in concept. (9-22-04)

The Michigan Association of Home Builders is neutral on the bills. (9-22-04)

The Michigan Municipal League is neutral on the bills. (9-22-04)

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■ 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.