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## BILL ANALYSIS

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House Bill 4398 (Substitute S-1)

Sponsor: Representative Kevin Elsenheimer

House Committee: Local Government and Urban Policy

Senate Committee: Natural Resources and Environmental Affairs

Date Completed: 2-14-06

**CONTENT**

The bill would create the "Michigan Zoning Enabling Act" to do the following:

- Repeal the City and Village Zoning Act, the County Zoning Act, and the Township Zoning Act.
- Allow a local unit of government to provide by zoning ordinance for the regulation of land development.
- Allow the legislative body of a local unit to provide in a zoning ordinance for the completion, resumption, restoration, reconstruction, extension, or substitution of nonconforming uses or structures.
- Require each local unit to create a zoning commission.
- Establish procedures for the adoption of a zoning ordinance or amendments.
- Provide for a coordinated zoning committee to coordinate a township zoning ordinance with the zoning ordinances of a local unit having a common boundary with the township.
- Allow a registered elector to file a petition in protest of a zoning ordinance.
- Require a legislative body to appoint a zoning board of appeals to hear and decide questions pertaining to the zoning ordinance.
- Allow a legislative body to adopt an interim zoning ordinance.
- Allow a legislative body to require the payment of reasonable fees for zoning permits.

- Allow a legislative body to adopt a development rights ordinance limited to the establishment, financing, and administration of a purchase of development rights program for the protection of agricultural and other eligible land.

The bill is described below in further detail.

Zoning Authorization & Initiation

The bill would allow a local unit of government (i.e., a county, township, city, or village) to provide by zoning ordinance for the regulation of land development and the establishment of one or more districts within its zoning jurisdiction that regulated the use of land and structures to meet the needs of the State's citizens; ensure that the use of land was situated in appropriate locations and relationships; limit the inappropriate crowding of land and congestion of population, transportation systems, and other public facilities; facilitate adequate and efficient provision for infrastructure; and promote public health, safety, and welfare.

Except as otherwise provided in the proposed Act, the regulations would have to be uniform for each class of land or buildings, dwellings, and structures within a district.

The legislative body of a local government could provide by ordinance for the manner in which the regulations and boundaries of districts or zones would be determined and enforced or amended, supplemented, or changed.

A zoning ordinance would have to be based upon a plan designed to promote the public health, safety, and general welfare; encourage the use of land in accordance with its character and adaptability; limit improper land use; conserve natural resources and energy; meet the needs of the State's residents; ensure that land uses would be situated in appropriate locations and relationships; avoid the crowding of population; provide adequate light and air; lessen congestion on public roads and streets; reduce hazards to life and property; facilitate adequate provision for infrastructure; and conserve funds for public improvements and services to conform with the most advantageous uses of land, resources, and property.

Subject to specified exceptions, a State-licensed residential facility would have to be considered a residential use of property for the purposes of zoning and a permitted use in all residential zones, and would not be subject to a special use or conditional use permit or procedure different from those required for other dwellings of similar density in the same zone. For a county or township, similar provisions would apply in regard to a family day-care home. Also, for a county or township, a group day-care home would have to be issued a special use, conditional use, or other similar permit if the home met specific standards.

A zoning ordinance or decision could not have the effect of totally prohibiting the establishment of a land use within a local unit in the presence of a demonstrated need for that land use within either the local unit or the surrounding area within the State, unless a location within the local unit did not exist where the use appropriately could be located or the use was unlawful.

After receiving a zoning ordinance or amendment, a legislative body could hold a public hearing as it considered necessary or as otherwise required. After the hearing, the legislative body would have to consider and vote upon the adoption of the ordinance. An ordinance and any amendments would have to be approved by a majority vote of the members of the legislative body.

A zoning ordinance would take effect after seven days following publication as required

under the bill or as specified by the legislative body.

#### Nonconforming Uses

If the use of a dwelling, building, or structure, or of the land were lawful at the time of enactment of a zoning ordinance or a zoning ordinance amendment, the use could be continued although it did not conform to the provisions of the ordinance or amendment.

A legislative body could provide in a zoning ordinance for the completion, resumption, restoration, reconstruction, extension, or substitution of nonconforming uses or structures upon terms and conditions provided in the ordinance. In establishing terms, different classes of nonconforming uses could be established in the ordinance with different requirements applicable to each class.

A legislative body could acquire by purchase, condemnation, or otherwise, private property or an interest in private property for the removal of nonconforming uses and structures.

The elimination of the nonconforming uses and structures in a zoning district would be declared to be for a public purpose and for a public use. The legislative body could institute condemnation proceedings under Public Act 149 of 1911 (which governs the acquisition of property by State agencies and public corporations).

#### Zoning Commission

A legislative body could proceed with the adoption of a zoning ordinance containing land development regulations and establishing zoning districts under the proposed Act upon the appointment of a zoning commission. The legislative body could appoint a zoning commission for purposes of formulating a zoning ordinance on its own initiative or upon receiving petitions signed the requisite number of voters residing in the zoning jurisdiction.

Each local unit in which the legislative body exercised authority under the proposed Act would have to create a zoning commission, according to procedures and requirements established in the bill. A zoning board in existence on the bill's effective date could

continue as a zoning commission subject to a transfer of power under the bill, or until five years from the bill's effective date, whichever was earlier. A planning commission exercising the authority of a zoning board before bill's effective date could continue to exercise that authority subject to the proposed Act.

A zoning commission created after the bill's effective date would have to be created by resolution and be composed of at least five but not more than 11 members appointed by the legislative body.

Subject to specified notice and hearing requirements, a zoning commission would have to adopt and file with the legislative body the following recommendations:

- A zoning plan for the areas subject to zoning of the local unit of government.
- The establishment of zoning districts, including their boundaries.
- The text of a zoning ordinance with the necessary maps and zoning regulations to be adopted for a zoning district or the zoning jurisdiction as a whole.
- The manner of administering and enforcing the zoning ordinance.

Following a public hearing, a township would have to submit for review and recommendation the proposed zoning ordinance to the county zoning commission, if a county zoning commission were appointed as provided in the proposed Act. If not, the proposed ordinance would have to be submitted to a coordinated zoning committee composed of either three or five members appointed by the county legislative body for the purpose of coordinating proposed zoning ordinances with the zoning ordinances of a township, city, or village having a common boundary with the township.

A zoning commission also would have to transmit a summary of comments received at a public hearing and its proposed ordinance to the legislative body of the local unit.

Following the enactment of a zoning ordinance, the zoning commission would have to prepare for the legislative body a report at least once per year on the administration and enforcement of the

zoning ordinance and recommendations for amendments or supplements.

#### Protest Petition

Home Business. A zoning ordinance would have to provide for the use of a single-family residence by an occupant of the residence for a home occupation to give instruction in a craft or fine art within the home. This provision would not prohibit the regulation of noise, advertising, traffic hours of operation, or other conditions that could accompany such a use.

Within seven days after the publication of such a zoning ordinance, a registered elector in the zoning jurisdiction of the county or township could file with the clerk of the legislative body a notice of intent to file a petition. If a notice of intent were filed, the petitioner would have 30 days after the ordinance was published to file a petition signed by a requisite number of registered electors residing in the zoning jurisdiction.

If the clerk determined the petition to be adequate, the zoning ordinance or part of the ordinance adopted by the legislative body could not take effect until it was approved by a majority of the registered electors residing in the zoning jurisdiction voting on the petition at the next regular election or at any special election called for that purpose.

Amendment. An amendment to a zoning ordinance by a city or village would be subject to a protest petition. If a petition were filed, approval of the amendment to the ordinance would require a two-thirds vote of the legislative body, unless a larger vote were required by ordinance or charter. The protest petition would have to be presented to the legislative body of the city or village before final legislative action on the amendment and would have to be signed by the owners of at least 20% of the land area included in the proposed change; or by the owners of at least 20% of the land area included within an area extending outward 100 feet from any point on the boundary of the land included in the proposed change.

#### Interim Zoning Ordinance

To protect the public health, safety, and general welfare of the inhabitants and the

land and resources of a local unit of government during the period required for the preparation and enactment of an initial zoning ordinance under the proposed Act, the legislative body could direct the zoning commission to submit recommendations as to the provisions of an interim zoning ordinance.

Before presenting its recommendations, the zoning commission of a township would have to submit the interim zoning ordinance, or an amendment to it, to the county zoning commission or the coordinating zoning committee, for the purpose of coordinating the interim ordinance with the zoning ordinances of a township, city, or village having a common boundary with the township. The ordinance would have to be considered approved 15 days after it was submitted to the legislative body.

The interim ordinance would be limited to one year from its effective date and to not more than two years of renewal by resolution of the local unit of government.

#### Contract Zoning

A landowner voluntarily could offer in writing, and the local unit of government could approve, certain use and development of the land as a condition to a rezoning of the land or an amendment to a zoning map. A local unit could not require a landowner to offer conditions as a requirement for rezoning. The lack of an offer by the landowner could not otherwise affect the landowner's rights under the proposed Act, the ordinances of a local unit of government, or any other State laws.

#### Zoning Permit Fees

A legislative body could require the payment of reasonable fees for zoning permits as a condition to the granting of authority to use, erect, alter, or locate dwellings, buildings, and structures, including tents and recreational vehicles (RVs), within a zoning district established under the proposed Act.

#### Nuisance Violations

Except as otherwise provided by law, a use of land or a dwelling, building, or structure, including a tent or RV, used, erected, altered, razed, or converted in violation of a zoning ordinance or regulation adopted

under the proposed Act would be a nuisance per se. The court would have to order the nuisance abated, and the owner or agent in charge of the structure or land would be liable for maintaining a nuisance per se. The legislative body would have to designate in the zoning ordinance the proper official or officials to administer and enforce the ordinance and either impose a penalty for the violation, or designate the violation as a municipal civil infraction and impose a civil fine.

(The term "nuisance" generally refers to an object or conduct that endangers or inconveniences the public, or interferes with the property or personal rights of individuals. A nuisance per se is something that is a nuisance regardless of the place or circumstances.)

#### Site Plan

A local unit of government could require the submission and approval of a site plan before authorizing a land use or activity regulated by a zoning ordinance. If an ordinance required site plan approval, the site plan, as approved, would have to become part of the record of approval, and subsequent actions related to the authorized activity would have to be consistent with the approved site plan.

A site plan would have to be approved if it contained the information required by the zoning ordinance and were in compliance with the conditions imposed under the ordinance, other local unit of government planning documents, other applicable ordinances, and State and Federal statutes.

#### Special Land Use & Planned Unit Development

Subject to notice and hearing requirements, a legislative body could provide in a zoning ordinance for special land uses in a zoning district. A special land use would be subject to the review and approval of the zoning commission, the planning commission, an official charged with administering the zoning ordinance, or the legislative body as required by the zoning ordinance.

A legislative body could establish planned unit development requirements in a zoning ordinance that permitted flexibility in the regulation of land development; encouraged

innovation in land use and variety in design, layout, and type of structure; achieved economy and efficiency in the use of land, natural resources, energy, and the provision of public services and utilities; encouraged useful open space; and provided better housing, employment, and shopping opportunities particularly suited to the needs of the State's residents. As specified in the zoning ordinance, the zoning commission, an individual charged with administration of the zoning ordinance, or the legislative body would have to review and approve planned unit developments.

"Planned unit development" would include cluster zoning, planned development, community unit plan, and planned residential development and other terminology denoting zoning requirements designed to accomplish the objectives of the zoning ordinance through a land development project review process based on the application of site planning criteria to achieve the integration of the proposed land development project with the characteristics of the project area.

Subject to specified notice and hearing requirements, a body or official responsible for approving planned unit developments would have to meet for final consideration of a request and deny or approve the request, or approve it with conditions.

In establishing planned unit development requirements, a local unit of government could incorporate by reference other ordinances or statutes that regulated land development. The planned unit development regulations contained in zoning ordinances would have to encourage complementary relationships between zoning regulations and other regulations affecting the development of land.

If a zoning ordinance authorized the consideration and approval of special land uses or planned unit developments or otherwise provided for discretionary decisions, the regulations and standards upon which those decisions were made would have to be specified in the zoning ordinance.

A request for approval of a land use or activity would have to be approved if it were in compliance with the standards stated in the zoning ordinance, the conditions

imposed under the ordinance, other applicable ordinances, and State and Federal statutes.

Reasonable conditions could be required with the approval of a special land use, planned unit development, or other land uses or activities permitted by discretionary decision.

#### Performance Guarantee

To ensure compliance with a zoning ordinance and any conditions imposed under it, a local unit could require that a cash deposit, certified check, irrevocable letter of credit, or surety bond covering the estimated cost of improvements be deposited with the clerk of the legislative body to ensure faithful completion of the improvements.

#### Cluster Development

Under certain circumstances, a qualified local unit of government would have to provide in its zoning ordinance that land zoned for residential development could be developed, at the landowner's option, with the same number of dwelling units on a smaller portion of the land than specified in the ordinance, but not more than 50% for a county or township or 80% for a city or village, that could otherwise be developed on the entire land area, as determined by the local unit under existing ordinances, laws, and rules, if certain criteria were met. After a landowner exercised this option, the land could be rezoned accordingly.

For purposes of these provisions, "qualified local unit of government" would mean a county, township, city, or village that has adopted a zoning ordinance; has a population of at least 1,800; and has land that is not developed and that is zoned for residential development at a density equivalent to two or fewer dwelling units per acre, or, if the land is served by a public sewer system, three or fewer dwelling units per acre.

#### PDR Program

A legislative body could adopt a development rights ordinance limited to the establishment, financing, and administration of a purchase of development rights (PDR) program. The program could be used only

to protect agricultural land and other eligible land.

A PDR program could not acquire development rights by condemnation. A legislative body could not establish, finance, or administer a PDR program unless it adopted a development rights ordinance. A local unit could adopt a development rights ordinance in the same manner as required for a zoning ordinance.

A legislative body could promote and enter into agreements with other local units for the purchase of development rights, including cross-jurisdictional purchases, subject to applicable development rights ordinances.

A development rights ordinance would have to provide for a PDR program. Under a program, the local unit could purchase development rights, but only from a willing landowner.

If the local unit had a zoning ordinance, the purchase of development rights would have to be consistent with the plan upon which the zoning ordinance was based.

The bill sets forth the methods by which a PDR program could be financed, including special assessments and the issuance of bonds by the legislative body.

#### Zoning Board of Appeals; Circuit Court

In each local unit in which the legislative body exercised the authority conferred by the proposed Act, the legislative body would have to appoint a zoning board of appeals. A zoning board of appeals in existence on the bill's effective date could continue to act as the zoning board of appeals under the proposed Act. The legislative body of a city or village could act as a zoning board of appeals.

The appeals board would have to hear and decide questions arising in the administration of the zoning ordinance. The board also would have to hear and decide on matters referred to it or upon which it was required to pass under a zoning ordinance adopted under the proposed Act. It would have to hear and decide appeals from and review any administrative order, requirement, decision, or determination made by an administrative official or body

charged with enforcement of a zoning ordinance. For special land use and planned unit development decisions, an appeal could be taken to the board of appeals only if provided for in the zoning ordinance.

An appeal to the zoning board of appeals could be taken by a person aggrieved or by an officer, department, board, or bureau of the State or local unit of government. Additionally, a variance in the zoning ordinance could be applied for and granted under Section 4 of the Uniform Condemnation Procedures Act and as provided under the proposed Act. (Under Section 4 of the Uniform Condemnation Procedures Act, if the acquisition of a portion of a parcel needed by an agency would leave the remainder of the parcel in nonconformity with a zoning ordinance, the agency may apply for a zoning variance for the remainder of the parcel.)

An appeal to the zoning board of appeals would stay all proceedings in furtherance of the action appealed from unless the body or officer from whom the appeal was taken certified to the board after the notice of appeal was filed that, by reason of facts stated in the certificate, a stay would, in the body's or officer's opinion, cause imminent peril to life or property. In that case, proceedings could be stayed by a restraining order issued by the zoning board of appeals or a circuit court.

A decision of the zoning board of appeals would be final. A party aggrieved by the decision could appeal to the circuit court for the county in which the property was located.

The circuit court would have to review the record and decision of the zoning board of appeals to ensure that the decision met certain standards. If the court found the record inadequate to make the review, or found that there was additional material evidence that with good reason was not presented, the court would have to order further proceedings on conditions it considered proper. The zoning board of appeals could modify its findings and decision as a result of the new proceedings, or could affirm its original decision. The court could affirm, reverse, or modify the decision. An appeal could be had from the decision of any circuit court to the Court of Appeals.

Any party aggrieved by any order, determination, or decision of any officer, agency, board, commission, zoning board of appeals, or legislative body of any local unit could obtain a review in the circuit court for the county in which the property was located.

#### Statutory Compliance

All meetings subject to the proposed Act would have to be conducted in compliance with the Open Meetings Act. A writing prepared, owned, used, possessed, or retained as required by the proposed Act would be subject to the Freedom of Information Act.

Legislative Analyst: Julie Koval

#### **FISCAL IMPACT**

The bill would have a negligible effect on State and local revenue and expenditures.

This analysis is preliminary and will be revised as new information becomes available.

Fiscal Analyst: David 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.