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## BILL ANALYSIS

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House Bill 5032 (Substitute H-3 as passed by the House)  
Sponsor: Representative Barb Byrum  
House Committee: Intergovernmental, Urban, and Regional Affairs  
Senate Committee: Local, Urban and State Affairs

Date Completed: 2-12-08

**CONTENT****The bill would amend the Michigan Zoning Enabling Act to do the following:**

- **Revise notice requirements that apply to local units of government and zoning boards of appeals.**
- **Provide that a zoning ordinance adopted under a repealed act would not need to be readopted but would be subject to the requirements of the Zoning Enabling Act.**
- **Provide an additional option for dealing with nuisance properties.**
- **Revise the requirements for the composition of zoning commissions and boards of appeals.**
- **Revise the process for appealing decisions of zoning boards of appeals.**

**Notice of Hearing**

Currently, if a local unit of government is required to provide notice and hearing under the Act, the local unit must publish notice of the request in a newspaper of general circulation in the local unit of government. Notice must be sent by mail or personal delivery to the owners of property for which approval is being considered. Notice also must be sent to all people to whom real property is assessed within 300 feet of the property and to the occupants of all structures within 300 feet of the property regardless of whether the property or occupant is located in the zoning jurisdiction. A notice must describe the nature of the request, indicate the property that is the subject of the request (including street addresses in the property), state

when and where the request will be considered, and indicate when and where written comments will be received concerning the request.

The bill would revise these provisions as follows. If a local unit of government conducted a public hearing required under the Act, the local unit would have to publish notice of the hearing in a manner consistent with State law at least 15 days before the date of the hearing. The notice would have to be given as described below to the owners of property that was the subject of the request, to all people to whom real property was assessed within 300 feet of the property that was the subject of the request, and to the occupants of all structures within 300 feet of the subject property regardless of whether the property or structure was located in the zoning jurisdiction. Notification would not have to be given to more than one occupant of a structure, but if a structure contained more than one dwelling unit or spatial area owned or leased by different people, one occupant of each unit or spatial area would have to be given notice. If a single structure contained more than four dwelling units or other distinct spatial areas owned or leased by different people, notice could be given to the manager or owner of the structure, who would have to be requested to post the notice at the primary entrance to the structure.

The notice would be considered to be given when personally delivered or when deposited during normal business hours for delivery with the United States Postal

Service or other public or private delivery service.

Under the Act, after receiving a zoning ordinance or an amendment, the legislative body may hold a public hearing if it considers it necessary or if otherwise required. The legislative body must grant a hearing on a proposed ordinance provision to a property owner who requests a hearing by certified mail. The bill would refer to "an interested property owner" and would require that notice of the hearing be given to the interested property owner in the manner described above. Otherwise, a hearing would not be subject to the notice requirements.

### Zoning Commissions

Creation. Currently, each local unit of government in which the legislative body exercises authority under the Act must create a zoning commission. A zoning board in existence on the effective date of the Act (July 1, 2006) may continue as a zoning commission subject to a transfer of power (described below) or until five years from the effective date of the Act, whichever is earlier. A planning commission exercising the authority of a zoning board before the effective date of the Act may continue to exercise that authority subject to the Act.

Under the bill, each local unit of government in which the legislative body exercised authority under the Act would be required to create a zoning commission unless one of the following applied:

- A county zoning commission created under the former County Zoning Act, a township zoning board created under the former Township Zoning Act, or a city or village zoning commission created under the former City and Village Zoning Act was in existence in the local unit of government as of June 30, 2006.
- A planning commission was, as of June 30, 2006, in existence in the local unit of government and pursuant to the applicable planning enabling act exercising the powers and performing the duties of a county zoning commission, a township zoning board, or a city or village zoning commission.
- The local unit of government had created a planning commission on or after July 1, 2006, and transferred to it the powers

and duties of a zoning commission pursuant to the applicable planning enabling act.

Unless abolished by a legislative body, an existing board or commission or planning commission would have to continue as and exercise the powers and perform the duties of a zoning commission under the Zoning Enabling Act. An existing board or commission described in the first provision would be subject to a transfer of power described below.

Transfer of Power. Under the Act, except as otherwise provided, if the powers of the zoning commission have been transferred to the planning commission as provided by law, the zoning commission is the planning commission of the local unit of government. The legislative body has five years from the effective date of the Act to transfer the powers of the zoning commission to the planning commission. Five years after the effective date of the Act, the zoning commission may not have any authority under the Act or an ordinance adopted under it.

Under the bill, if the powers and duties of the zoning commission had been transferred to the planning commission, the planning commission would have to function as the zoning commission of the local unit of government. By July 1, 2011, the legislative body would have to transfer the powers and duties of the zoning commission to the planning commission. Beginning July 1, 2011, a zoning commission's powers or duties under the Act or an ordinance adopted under it could be exercised or performed only by a planning commission.

Composition. The Act requires a zoning commission to be created by resolution and be composed of between five and 11 members appointed by the legislative body, subject to certain restrictions and conditions. A vacancy must be filled in the same manner as provided under the Act for the remainder of the unexpired term. Under the bill, a vacancy on a zoning commission would have to be filled for the remainder of the unexpired term in the same manner as the original appointment.

Under the Act, an elected officer of a local unit of government or an employee of the legislative body may not serve

simultaneously as a member or an employee of the zoning commission, except that one member of the zoning commission may be a member of the legislative body. The bill instead would prohibit an elected officer of a local unit of government from serving simultaneously as a member or an employee of the zoning commission of that local unit of government, except that one member of the legislative body could be a member of the zoning commission.

### Zoning Ordinance

A zoning ordinance takes effect upon the expiration of seven days after publication required under the Act or at a later date after publication as specified by the legislative body. Under the bill, a zoning ordinance could take effect at a later date as specified by the legislative body or charter.

Under the Act, following adoption of a zoning ordinance or any subsequent amendments by the legislative body, the ordinance or amendments must be filed with the clerk of the legislative body and a notice of ordinance adoption must be published in a newspaper of general circulation in the local unit of government within 15 days after adoption. Under the bill, the notice of ordinance adoption would have to be published in a manner consistent with State law by the local unit within 15 days after adoption.

The filing and publication requirements under the Act supersede any other statutory requirements relating to the filing and publication of county, township, city, or village ordinances. Under the bill, the requirements also would supersede charter requirements.

### Nuisance

Except as otherwise provided by law, a use of land or a dwelling, building, or structure, including a tent or recreational vehicle, used, erected, altered, razed, or converted in violation of a zoning ordinance or regulation adopted under the Act is a nuisance per se. The court must order the nuisance abated, and the owner or agent in charge of the dwelling, building, structure, tent, recreational vehicle, or land is liable for maintaining a nuisance per se. The legislative body, in the zoning ordinance enacted under the Act, must designate the

proper official or officials who administer and enforce the zoning ordinance and do either of the following for each violation of the zoning ordinance:

- Impose a penalty for the violation.
- Designate the violation as a municipal civil infraction and impose a civil fine for the violation.

Under the bill, the official or officials also could designate the violation as a blight violation and impose a civil fine or other sanction authorized by law. The provision would apply only to a city that established and administrative hearings bureau pursuant to the Home Rule City Act.

### Zoning Board of Appeals

Appointment. In each local unit of government in which a legislative body exercises the authority conferred by the Act, the legislative body must appoint a zoning board of appeals. Under the bill, a zoning ordinance would have to create a zoning board of appeals, and members of the board of appeals would have to be appointed by majority vote of the members of the legislative body serving.

Currently, one of the regular members of the zoning board of appeals must be a member of the zoning commission, or of the planning commission if the duties and responsibilities of the zoning commission have been transferred to the planning commission.

Under the bill, instead, in a county or township, one of the regular members of the zoning board of appeals would have to be a member of the zoning commission, or of the planning commission if the planning commission were functioning as the zoning commission. In a city or village, one of the regular members of the zoning board of appeals could be a member of the zoning commission, or of the planning commission if the planning commission were functioning as the zoning commission, unless the legislative body acted as the zoning board of appeals under the Act. A decision made by a city or village zoning board of appeals before the bill's effective date would not be invalidated by the failure of the zoning board of appeals to include a member of the city or village zoning commission or planning commission.

Under the Act, the remaining regular members of a zoning board of appeals, and any alternate members must be selected from the electors of the local unit of government residing within the zoning jurisdiction of that local unit. Under the bill, in the case of a county, any alternate members would have to be selected from electors of the local unit of government residing within the county but outside any city or village.

Under the Act, one regular member of a zoning board of appeals may be a member of the legislative body but may not serve as chairperson of the zoning board of appeals. The bill would refer to one regular or alternate member.

Currently, vacancies for unexpired terms must be filled for the remainder of the term. The bill would require a vacancy to be filled in the same manner as the original appointment.

Under the bill, a member of the zoning board of appeals who was also a member of the zoning commission, the planning commission, or the legislative body, could not participate in a public hearing on or vote on the same matter that the member voted on as a member of the zoning commission, the planning commission, or the legislative body. However, the member could consider and vote on other unrelated matters involving the same property.

Request for Interpretation or Appeal. Currently, upon receipt of a written request seeking an interpretation of a zoning ordinance or an appeal of an administrative decision, a notice stating the time, date, and place of the public hearing must be published in a newspaper of general circulation within the township and sent to the person requesting the interpretation at least 15 days before the public hearing. In addition, if the request or appeal involves a specific parcel, written notice stating the nature of the interpretation request and the time, date, and place of the public hearing on it must be sent by first-class mail or personal delivery to all people to whom real property is assessed within 300 feet of the boundary of the property in question and to the occupants of all structures within 300 feet of the boundary of the property in question.

The bill would delete these provisions. Under the bill, if the zoning board of appeals received a written request seeking an interpretation of the zoning ordinance or an appeal of an administrative decision, the zoning board of appeals would have to conduct a public hearing on the request. Notice would have to be given as required for a local unit of government. If the request did not involve a specific parcel of property, notice would have to be published only in a manner as consistent with State law and given to the person making the request.

Appeal to Court. Currently, any party aggrieved by a decision of a zoning board of appeals may appeal to the circuit court for the county in which the property is located. An appeal must be filed within 30 days after the zoning board of appeals certifies its decision in writing or approves the minutes of its decision.

Under the bill, an appeal from a decision of a zoning board of appeals would have to be filed within 30 days after the zoning board of appeals issued its decision in writing signed by the chairperson, if there were a chairperson, or signed by the members of the zoning board of appeals, if there were no chairperson, or within 21 days after the zoning board of appeals approved the minutes of its decision. The court could affirm, reverse, or modify the decision of the zoning board of appeals.

#### Repealed Acts

The Act repealed the City and Village Zoning Act, the County Zoning Act, and the Township Zoning Act and states that the repeal does not alter, limit, void, affect, or abate any pending litigation, administrative proceeding, or appeal that existed on the effective date of the Act (June 30, 2006) or any ordinance, order, permit or decision that was based on the Acts repealed. Under the bill, a zoning ordinance would not need to be readopted but would be subject to the requirements of the Zoning Enabling Act including the amendment procedures set forth in the Act.

Under the Act, if the use of a dwelling, building, or structure or of the land is lawful at the time of enactment of a zoning ordinance or an amendment to a zoning ordinance, then that use may be continued

although it does not conform to the provisions of the zoning ordinance or amendment. The bill states that this provision "is intended to codify the law as it existed before July 1, 2006 in section 216(1) of the former county zoning act, 1943 PA 183, section 286 (1) of the former township zoning act, 1943 PA 184, and section 583a(1) of the former city and village zoning act, 1921 PA 207, as they applied to counties, townships, and cities and villages, respectively, and shall be construed as a continuation of those laws and not as new enactments."

MCL 125.3102 et al.

Legislative Analyst: Craig Laurie

### **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

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.