

AIRPORT ZONING: TALL STRUCTURES PERMIT

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Senate Bill 430 as passed by the Senate

Sponsor: Sen. Gerald Van Woerkom

House Committee: Intergovernmental and Regional Affairs

Senate Committee: Local, Urban, and State Affairs

First Analysis (6-24-09)

BRIEF SUMMARY: The bill specifies that in circumstances when a tall structure has the approval of the Federal Aviation Administration and the Michigan Department of Transportation, then a permit or variance for the construction, establishment, alteration, or repair of a tall structure near an airport would not require the approval of an Airport Zoning Board (many of which have disbanded since their creation in the 1950's).

FISCAL IMPACT: The bill does not appear to have any significant fiscal impact.

THE APPARENT PROBLEM:

In Michigan, when a person wishes to build a tall structure near an airport, such as a windmill, cell phone tower, electric transmission line, or smokestack, the project must undergo three levels of government scrutiny. First, the person must notify the Federal Aviation Administration, which will conduct an air space study and issue a determination of presumed hazard or no hazard. Second, the person must obtain a permit from the Michigan Department of Transportation under the Tall Structure Act. Third, the person must obtain a permit or variance under the Airport Zoning Act, which requires certain counties, cities, villages, and townships to create airport zoning boards to issue permits and hear appeals regarding the construction or substantial alteration of structures.

Evidently, requests to airport zoning boards have been infrequent and many boards have stopped meeting or have been officially dissolved. As interest in alternative energy, including energy generated by wind turbines, has increased, however, so have requests to build tall structures. Because many boards are no longer functioning, permit and variance requests remain unapproved.

To address this situation, it has been suggested that a request for a permit or variance under the Airport Zoning Act should be considered granted if it has been approved by the Michigan Department of Transportation under the Tall Structure Act, received any necessary Federal Aviation Administration approvals, and not been denied by a local airport zoning board.

THE CONTENT OF THE BILL:

The bill would amend the Airport Zoning Act (MCL 259.454a) so that in certain circumstances a permit or variance for the construction, establishment, alteration, or repair of a structure, or for the growth of a tree, would be granted automatically.

Specifically, the bill would apply to an application for a permit under Section 23 or a variance under Section 24. Applications would be considered granted if all of the following applied:

- The applicant had been granted a permit for the activity under the Tall Structure Act.
- The applicant had been granted any necessary permits or other approvals from the Federal Aviation Administration.
- The administrative agency authorized to enforce the airport zoning regulations had neither granted nor denied the application after 90 days had elapsed since the application was filed in compliance with applicable zoning regulations.

[Under Section 23, airport zoning regulations adopted under the Airport Zoning Act by a joint airport zoning board must require that a permit be obtained before any new structure or use may be constructed or established and before any existing use or structure may be substantially changed, altered, or repaired. Under Section 24, a person may apply for a variance from the zoning regulations in order to put up a structure, increase the height of a structure, permit the growth of a tree, or otherwise use property in violation of the airport zoning regulations.]

HOUSE COMMITTEE ACTION:

The House Committee on Intergovernmental and Regional Affairs reported out the Senate-passed version of Senate Bill 430 without amendments.

ARGUMENTS:

For:

This legislation would remove an impediment to the construction of alternative energy sources, particularly wind turbines, needed to spur economic growth and energy independence in the state, while still ensuring safety near airports.

Specifically, the bill would allow tall structure projects near airports to proceed without the approval of a local airport zoning board, if the projects had been approved by the Michigan Department of Transportation, and they had received any necessary permit or approval from the Federal Aviation Administration.

The bill, however, would not remove active boards from the tall structure approval process, and any airport zoning board in the state could convene to deny the request for a permit or variance within the 90 day-period allowed under the bill.

POSITIONS:

- The Michigan Wholesale Power Association supports the bill. (6-23-09)
- The Michigan Townships Association supports the bill. (6-23-09)
- The Michigan Department of Transportation is neutral on the bill. (6-23-09)

Legislative Analyst: J. Hunault

■ 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.