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BILL



ANALYSIS

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Senate Bill 430 (as reported by the Committee of the Whole)
Sponsor: Senator Gerald Van Woerkom
Committee: Local, Urban and State Affairs

(as enrolled)

Date Completed: 5-4-09

RATIONALE

In Michigan, when a person wishes to build a tall structure, 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 (FAA), 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 (MDOT) 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 MDOT under the Tall Structure Act, received any necessary FAA approvals, and not been denied by a local airport zoning board.

CONTENT

The bill would amend the Airport Zoning Act to provide for the automatic granting of a permit or variance for the construction, establishment, alteration, or repair of a structure, or the growth of a tree, under certain circumstances.

Specifically, an application for a permit under Section 23 or a variance under Section 24 to construct, establish, rebuild, or substantially change, alter, or repair a structure or to replant a tree or allow a tree to grow tall would have to be considered granted if all of the following applied:

- The applicant had been granted a permit for the activity under the Tall Structure Act.
- Ninety days had elapsed since the application was filed pursuant to the procedures specified in the applicable zoning regulations and the administrative agency authorized to enforce the airport zoning regulations had neither granted nor denied the application.
- The applicant had been granted any necessary permits or other approvals for the activity from the FAA.

(Under Section 23, any 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, if a person wants to erect 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 adopted under the Act, the person may apply for a variance from the zoning regulations in question.)

Proposed MCL 259.454a

BACKGROUND

Airport Zoning Act

Under the Airport Zoning Act, a political subdivision that is entirely or partly within an airport hazard area may adopt and enforce zoning regulations. "Airport hazard area" means any area of land or water, or both, on which an airport hazard might be established if not prevented as provided by the Act, including an area declared to be an airport hazard area by the Michigan Aeronautics Commission. "Airport hazard" means any structure or tree or use of land or appurtenances that obstructs the air space required for the safe flight of aircraft in landing or taking off at an airport or is otherwise hazardous or creates hazards to safe landing or take off of aircraft.

The Act requires the creation of a joint airport zoning board if 1) an airport is owned, operated, controlled, or leased by, or leased to, a political subdivision and an airport hazard area related to the airport is located entirely or partly outside the limits or jurisdiction of the political subdivision, or 2) an airport hazard area is located entirely or partly within the limits or jurisdiction of two or more political subdivisions, regardless of whether the airport in question is owned, operated, controlled, or leased by, or leased to, any of the political subdivisions. In these cases, all of the political subdivisions involved must form a joint airport zoning board with the same power to adopt airport zoning regulations as vested in the political subdivision or subdivisions where the airport hazard area is located.

In addition, if an airport hazard area exists in connection with a publicly owned airport and suitable zoning regulations have not been adopted and enforced, as determined by the Commission, the Commission must certify a determination of the airport hazard area to the board of supervisors of the county or county where the hazard is located and to the political subdivision authorized by law to maintain, operate, and regulate the airport. The county board or

boards, the political subdivision, and the Commission then must appoint members to a joint airport zoning board, which has the same powers as other joint airport zoning boards.

Any airport zoning regulations adopted under the Act must require a permit to be obtained before any new structure or use may be constructed or established and before any existing use or structure may be substantially changed or repaired.

All airport zoning regulations also must provide for a board of appeals. A person wishing to erect a structure or increase the height of a structure, permit the growth of a tree, or otherwise use property in violation of the airport zoning regulations may apply to the board of appeals for a variance from the regulations.

Tall Structure Act

The Act prohibits a person from constructing certain structures without a permit from the Michigan Aeronautics Commission (which has delegated this authority to MDOT).

First, a permit is required for a structure that is, or that increases the height of an existing structure, higher than 200 feet above the ground elevation at the structure's site or higher than an imaginary plane extending outward and upward at specified slopes, based on the length of and distance from runways, or landing and take-off areas of a heliport.

Also, unless an airspace study by the Commission has resulted in a finding of noninterference to air navigation, the Commission may not issue a permit for the construction of any of the following:

- A structure that is over 500 feet above ground elevation at its site and that is within two miles of a well defined natural landmark such as a shoreline or river; a manmade landmark such as a railroad, canal, or road; or a low altitude airway.
- A structure of a height that would increase the minimum obstruction clearance altitude, the minimum safe altitude prescribed by the FAA, or the minimum altitude required for a safe instrument approach.
- A structure that would encroach into a runway's primary surface.

- A structure of a height that would penetrate a runway's approach surface, transitional surface, horizontal surface, or conical surface.
- A structure that would encroach into a heliport primary surface.
- A structure of a height that would penetrate a heliport approach surface.
- A structure that violates a zoning ordinance adopted under the Airport Zoning Act, except to the extent permitted by the ordinance.

In addition, unless the Commission conducts an airspace study and finds noninterference to air navigation, the Commission may not issue a permit to erect, add to, or replace a structure that will extend more than 1,000 feet above ground elevation at its site.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bill would allow projects in the State that had been approved by MDOT, and received any necessary permit or approval from the FAA, to go forward without the approval of local zoning boards. The bill, however, would not remove active boards from the process and any airport zoning board in the State could convene to deny the request for a permit or variance within the 90 days allowed under the bill. The bill 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.

Response: After the FAA conducts an airspace study, it will issue a determination of presumed hazard or no hazard, but it does not grant or deny permits or approvals for the construction of structures.

Legislative Analyst: Suzanne Lowe

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.