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BILL ANALYSIS

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Senate Bill 46 (as introduced 1-20-11)
Sponsor: Senator Arlan Meekhof
Committee: Agriculture

Date Completed: 3-9-11

CONTENT

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

- **Specify that a biofuel production facility would be a permitted use of property in an agricultural zoning district, and would not be subject to special use or site plan approval if certain requirements were met.**
- **Subject a biofuel production facility in an agricultural district to special land use approval, if those requirements were not met.**
- **Prescribe application requirements for special land use approval.**
- **Establish requirements for the maintenance and operation of a biofuel production facility.**
- **Allow a local unit to inspect a biofuel production facility at any reasonable time.**
- **Specify that an amendment to a zoning ordinance adopted under the bill would not be subject to a protest petition.**

"Biofuel" would mean any renewable fuel product, whether solid, liquid, or gas, that is derived from recently living organisms or their metabolic by-products and meets applicable quality standards, including ethanol and biodiesel.

Biofuel Production Facility: Permitted Use

Under the bill, a biofuel production facility would be a permitted use of property in any agricultural zoning district and would not be subject to special use or site plan approval if both of the following requirements were met:

- None of the land adjacent to the land on which the biofuel production facility was to be located was zoned residential.
- Not more than 500,000 proof gallons of biofuel would be produced at the facility annually.

Special Land Use Approval

A biofuel production facility that did not meet the requirements listed above would be a permitted use of property in any agricultural district, subject to special land use approval. An application for special land use approval would have to include all of the following:

- A site plan, as required under the Act, including a map of the property and existing and proposed buildings and other facilities.

- A description of the process to be used to produce biofuel.
- The number of proof gallons of biofuel anticipated to be produced annually.
- An emergency access and fire protection plan that had been reviewed and approved by the appropriate responding police and fire departments.
- Information demonstrating that the biofuel production facility would comply with the bill's requirements regarding conditions for special land use approval.
- Any additional relevant information as required by the body or official responsible for granting special land use approval.

For an ethanol production facility that would produce more than 10,000 proof gallons annually, an application for special land use approval also would have to include completed Federal forms regarding environmental information and supplemental information on water quality considerations, or their successor forms, required to implement regulations under the National Environmental Policy Act and the Federal Water Pollution Control Act.

("Proof gallon" would mean that term as defined in the Code of Federal Regulations. Under 27 CFR 19.907, "proof gallon" means a gallon of liquid at 60 degrees Fahrenheit that contains 50% by volume of ethyl alcohol having a specific gravity of 0.7939 at 60 degrees Fahrenheit referred to water at 60 degrees Fahrenheit as unity, or the alcoholic equivalent.)

Special land use approval of a biofuel production facility would have to be made expressly conditional on the facility's meeting the following requirements before the facility began operations.

Buildings, facilities, and equipment used in the production or storage of biofuel would have to comply with local, State, and Federal laws. The biofuel production facility would have to include sufficient storage for raw materials and fuel. The facility also would have to include sufficient storage for additional products resulting from biofuel production or the capacity to dispose of additional products through land application, livestock consumption, sale, or other legal use.

In addition, the owner or operator of the biofuel production facility would have to provide the local unit of government with proof that all necessary approvals had been obtained from the Department of Natural Resources and Environment and other State and Federal agencies involved in permitting any of the following aspects of biofuel production:

- Air pollution emissions.
- Transportation of biofuel or additional products resulting from biofuel production.
- Use or reuse of additional products resulting from biofuel production.
- Storage of raw materials, fuel, and additional products used in, or resulting from, biofuel production.

Maintenance & Operation/Inspection

The bill would require the owner or operator of a biofuel production facility to maintain the facility in an orderly and clean condition; minimize noise, odors, and light pollution from the operation of the facility; and not create a nuisance.

A local unit where a biofuel production facility was located could inspect the facility at any reasonable time to determine compliance with the bill.

Protest Petition

An amendment to a zoning ordinance adopted under the bill would not be subject to a protest petition under Section 403 of the Act. (Under Section 403, an amendment to a zoning ordinance by a city or village is subject to a protest petition. A protest petition must

be presented to the legislative body of the city or village before final legislative action on the amendment and must be signed by a prescribed percentage of landowners. If a protest petition is filed, approval of the amendment to the zoning ordinance requires a two-thirds vote of the legislative body, unless a larger vote is required by ordinance or charter.)

Proposed MCL 125.3513

Legislative Analyst: Patrick Affholter

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.