

SUBSTITUTE FOR
SENATE BILL NO. 46

A bill to amend 2006 PA 110, entitled
"Michigan zoning enabling act,"
(MCL 125.3101 to 125.3702) by adding section 513.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 513. (1) A BIOFUEL PRODUCTION FACILITY WITH AN ANNUAL
2 PRODUCTION CAPACITY OF NOT MORE THAN 100,000 GALLONS OF BIOFUEL IS
3 A PERMITTED USE OF PROPERTY AND IS NOT SUBJECT TO SPECIAL LAND USE
4 APPROVAL IF ALL OF THE FOLLOWING REQUIREMENTS ARE MET:

5 (A) THE BIOFUEL PRODUCTION FACILITY IS LOCATED ON A FARM.

6 (B) THE BIOFUEL PRODUCTION FACILITY IS LOCATED NOT LESS THAN
7 100 FEET FROM THE BOUNDARY OF ANY CONTIGUOUS PROPERTY UNDER
8 DIFFERENT OWNERSHIP THAN THE PROPERTY ON WHICH THE BIOFUEL
9 PRODUCTION FACILITY IS LOCATED AND MEETS ALL APPLICABLE SETBACK

1 REQUIREMENTS OF THE ZONING ORDINANCE.

2 (C) ON AN ANNUAL BASIS, NOT LESS THAN 75% OF THE FEEDSTOCK FOR
3 THE BIOFUEL PRODUCTION FACILITY IS PRODUCED ON THE FARM WHERE THE
4 BIOFUEL PRODUCTION FACILITY IS LOCATED, AND NOT LESS THAN 75% OF
5 THE BIOFUEL OR ANOTHER PRODUCT OR BY-PRODUCT PRODUCED BY THE
6 BIOFUEL PRODUCTION FACILITY IS USED ON THAT FARM.

7 (2) SUBJECT TO SUBSECTIONS (6) AND (7), EACH OF THE FOLLOWING
8 IS A PERMITTED USE OF PROPERTY IF IT RECEIVES SPECIAL LAND USE
9 APPROVAL UNDER SUBSECTIONS (3) TO (5):

10 (A) A BIOFUEL PRODUCTION FACILITY WITH AN ANNUAL PRODUCTION
11 CAPACITY OF NOT MORE THAN 100,000 GALLONS OF BIOFUEL THAT MEETS THE
12 REQUIREMENTS OF SUBSECTION (1) (A) AND (B) BUT THAT DOES NOT MEET
13 THE REQUIREMENTS OF SUBSECTION (1) (C).

14 (B) A BIOFUEL PRODUCTION FACILITY WITH AN ANNUAL PRODUCTION
15 CAPACITY OF MORE THAN 100,000 GALLONS BUT NOT MORE THAN 500,000
16 GALLONS OF BIOFUEL THAT MEETS THE REQUIREMENTS OF SUBSECTION (1) (A)
17 AND (B).

18 (3) AN APPLICATION FOR SPECIAL LAND USE APPROVAL FOR A BIOFUEL
19 PRODUCTION FACILITY DESCRIBED IN SUBSECTION (2) SHALL INCLUDE ALL
20 OF THE FOLLOWING:

21 (A) A SITE PLAN AS REQUIRED UNDER SECTION 501, INCLUDING A MAP
22 OF THE PROPERTY AND EXISTING AND PROPOSED BUILDINGS AND OTHER
23 FACILITIES.

24 (B) A DESCRIPTION OF THE PROCESS TO BE USED TO PRODUCE
25 BIOFUEL.

26 (C) THE NUMBER OF GALLONS OF BIOFUEL ANTICIPATED TO BE
27 PRODUCED ANNUALLY.

1 (D) AN EMERGENCY ACCESS AND FIRE PROTECTION PLAN THAT HAS BEEN
2 REVIEWED AND APPROVED BY THE APPROPRIATE RESPONDING POLICE AND FIRE
3 DEPARTMENTS.

4 (E) FOR AN ETHANOL PRODUCTION FACILITY THAT WILL PRODUCE MORE
5 THAN 10,000 PROOF GALLONS ANNUALLY, COMPLETED UNITED STATES
6 DEPARTMENT OF THE TREASURY, ALCOHOL AND TOBACCO TAX AND TRADE
7 BUREAU, FORMS 5000.29 (ENVIRONMENTAL INFORMATION) AND 5000.30
8 (SUPPLEMENTAL INFORMATION ON WATER QUALITY CONSIDERATIONS UNDER 33
9 USC 1341(A)), OR SUCCESSOR FORMS, REQUIRED TO IMPLEMENT REGULATIONS
10 UNDER THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969, 42 USC 4321 TO
11 4347, AND THE FEDERAL WATER POLLUTION CONTROL ACT, 33 USC 1251 TO
12 1387.

13 (F) INFORMATION THAT DEMONSTRATES THAT THE BIOFUEL PRODUCTION
14 FACILITY WILL COMPLY WITH THE REQUIREMENTS OF SUBSECTIONS (2) AND
15 (5).

16 (G) ANY ADDITIONAL INFORMATION REQUESTED BY THE BODY OR
17 OFFICIAL RESPONSIBLE FOR GRANTING SPECIAL LAND USE APPROVAL AND
18 RELEVANT TO COMPLIANCE WITH A ZONING ORDINANCE PROVISION DESCRIBED
19 IN SECTION 502(1) OR 504.

20 (4) A LOCAL UNIT OF GOVERNMENT SHALL HOLD A HEARING ON AN
21 APPLICATION FOR SPECIAL LAND USE APPROVAL UNDER SUBSECTION (2) NOT
22 MORE THAN 60 DAYS AFTER THE APPLICATION IS FILED. FOR THE PURPOSES
23 OF THIS SECTION, THE NOTICE REQUIRED UNDER SECTION 502(2) SHALL
24 PROVIDE NOTICE OF THE HEARING, RATHER THAN NOTICE OF A RIGHT TO
25 REQUEST A HEARING.

26 (5) SPECIAL LAND USE APPROVAL OF A BIOFUEL PRODUCTION FACILITY
27 DESCRIBED IN SUBSECTION (2) SHALL BE MADE EXPRESSLY CONDITIONAL ON

1 THE FACILITY'S MEETING ALL OF THE FOLLOWING REQUIREMENTS BEFORE THE
2 FACILITY BEGINS OPERATION AND NO ADDITIONAL REQUIREMENTS:

3 (A) BUILDINGS, FACILITIES, AND EQUIPMENT USED IN THE
4 PRODUCTION OR STORAGE OF BIOFUEL COMPLY WITH LOCAL, STATE, AND
5 FEDERAL LAWS.

6 (B) THE OWNER OR OPERATOR OF THE BIOFUEL PRODUCTION FACILITY
7 PROVIDES THE LOCAL UNIT OF GOVERNMENT WITH PROOF THAT ALL NECESSARY
8 APPROVALS HAVE BEEN OBTAINED FROM THE DEPARTMENT OF ENVIRONMENTAL
9 QUALITY AND OTHER STATE AND FEDERAL AGENCIES THAT ARE INVOLVED IN
10 PERMITTING ANY OF THE FOLLOWING ASPECTS OF BIOFUEL PRODUCTION:

11 (i) AIR POLLUTION EMISSIONS.

12 (ii) TRANSPORTATION OF BIOFUEL OR ADDITIONAL PRODUCTS RESULTING
13 FROM BIOFUEL PRODUCTION.

14 (iii) USE OR REUSE OF ADDITIONAL PRODUCTS RESULTING FROM BIOFUEL
15 PRODUCTION.

16 (iv) STORAGE OF RAW MATERIALS, FUEL, OR ADDITIONAL PRODUCTS
17 USED IN, OR RESULTING FROM, BIOFUEL PRODUCTION.

18 (C) THE BIOFUEL PRODUCTION FACILITY INCLUDES SUFFICIENT
19 STORAGE FOR BOTH OF THE FOLLOWING:

20 (i) RAW MATERIALS AND FUEL.

21 (ii) ADDITIONAL PRODUCTS RESULTING FROM BIOFUEL PRODUCTION OR
22 THE CAPACITY TO DISPOSE OF ADDITIONAL PRODUCTS THROUGH LAND
23 APPLICATION, LIVESTOCK CONSUMPTION, SALE, OR OTHER LEGAL USE.

24 (6) SUBSECTIONS (2) TO (5) DO NOT APPLY TO A BIOFUEL
25 PRODUCTION FACILITY IF THE ZONING ORDINANCE PROVIDES DIFFERENT
26 CRITERIA FOR SPECIAL LAND USE APPROVAL OF A BIOFUEL PRODUCTION
27 FACILITY LOCATED ON A FARM. AN AMENDMENT TO A ZONING ORDINANCE

1 ADOPTED ONLY TO PROVIDE SUCH CRITERIA IS NOT SUBJECT TO A PROTEST
2 PETITION UNDER SECTION 403.

3 (7) A LOCAL UNIT OF GOVERNMENT MAY AUTHORIZE A BIOFUEL
4 PRODUCTION FACILITY DESCRIBED IN SUBSECTION (2) AS A PERMITTED USE
5 OF PROPERTY NOT SUBJECT TO A SPECIAL LAND USE APPROVAL.

6 (8) THIS SECTION DOES NOT AFFECT THE AUTHORITY OF A LOCAL UNIT
7 OF GOVERNMENT TO PROHIBIT OR AUTHORIZE BIOFUEL PRODUCTION
8 FACILITIES THAT ARE NOT LOCATED ON FARMS.

9 (9) AS USED IN THIS SECTION:

10 (A) "BIOFUEL" MEANS ANY RENEWABLE FUEL PRODUCT, WHETHER SOLID,
11 LIQUID, OR GAS, THAT IS DERIVED FROM RECENTLY LIVING ORGANISMS OR
12 THEIR METABOLIC BY-PRODUCTS AND MEETS APPLICABLE QUALITY STANDARDS,
13 INCLUDING, BUT NOT LIMITED TO, ETHANOL AND BIODIESEL. BIOFUEL DOES
14 NOT INCLUDE METHANE OR ANY OTHER FUEL PRODUCT FROM AN ANAEROBIC
15 DIGESTER.

16 (B) "ETHANOL" MEANS A SUBSTANCE THAT MEETS THE ASTM
17 INTERNATIONAL STANDARD IN EFFECT ON THE EFFECTIVE DATE OF THIS
18 SECTION AS THE D-4806 SPECIFICATION FOR DENATURED FUEL GRADE
19 ETHANOL FOR BLENDING WITH GASOLINE.

20 (C) "FARM" MEANS THAT TERM AS DEFINED IN SECTION 2 OF THE
21 MICHIGAN RIGHT TO FARM ACT, 1981 PA 93, MCL 286.472.

22 (D) "PROOF GALLON" MEANS THAT TERM AS DEFINED IN 27 CFR
23 19.907.