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BILL ANALYSIS

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Senate Bill 46 (Substitute S-8 as reported by the Committee of the Whole)
Sponsor: Senator Arlan Meekhof
Committee: Agriculture

(as enrolled)

Date Completed: 4-11-11

RATIONALE

The Michigan Zoning Enabling Act authorizes local units of government to enact zoning ordinances that regulate land development and establish districts in which land and structures may be used for particular purposes. The legislative body of a local unit also may provide for special land uses in a zoning district, subject to approval by a local body or official as provided in the zoning ordinance. These provisions relate to a situation in which a farm owner applied for special land use approval in order to produce ethanol at a facility on the farm. Evidently, approval was not granted either because the local body or official denied it or because the statutory procedures were not followed. In order to address this situation and others that might arise, some people believe that the Act should identify relatively small on-farm biofuel production facilities as a permitted use, and provide that approval would not be required if the farms grow most of the necessary feedstock and use most of the biofuel produced.

CONTENT

The bill would amend the Michigan Zoning Enabling Act to provide that a biofuel production facility with a maximum annual production capacity of 100,000 gallons would be a permitted use of property and would not be subject to special land use approval if were on a farm, met setback requirements, and met criteria regarding the farm's production of feedstock and use of the biofuel or byproducts. The bill also would do the following:

- **Provide that a biofuel production facility with a capacity of up to 500,000 gallons would be a permitted use if it were on a farm, met setback requirements, and received special land use approval.**
- **Prescribe special land use approval application requirements, require a public hearing, and prescribe conditions of approval.**
- **Provide that the bill's requirements for special land use approval would not apply if a facility were subject to different criteria under a zoning ordinance.**
- **Permit a local unit to authorize a facility as a permitted use not subject to special land use approval.**

The bill would define "biofuel" as any renewable fuel product, whether solid, liquid, or gas, that is derived from recently living organisms or their metabolic byproducts and meets applicable quality standards, including ethanol and biodiesel. Biodiesel would not include methane or any other fuel product from an anaerobic digester.

Permitted Use of Property

A biofuel production facility with a maximum annual production capacity of 100,000 gallons of biofuel would be a permitted use of property and would not be subject to special land use approval if all of the following requirements were met:

- The facility was located on a farm.
- The facility was located at least 100 feet from the boundary of any contiguous

property under different ownership and met all applicable setback requirements of the zoning ordinance.

- On an annual basis, at least 75% of the feedstock for the facility was produced on the farm where it was located, and at least 75% of the biofuel or another product or byproduct produced by the facility was used on that farm.

Subject to provisions in the bill regarding a local ordinance, each of the following would be a permitted use of property if it received special land use approval, as described below:

- A biofuel production facility with a maximum annual production capacity of 100,000 gallons of biofuel that met the first two requirements listed above but not the third.
- A biofuel production facility with a maximum annual production capacity of more than 100,000 gallons but not more than 500,000 gallons of biofuel that met the first two requirements above.

A local unit of government could authorize a biofuel production facility described above as a permitted use of property not subject to a special land use approval.

Special Land Use Approval Application

An application for special land use approval would have to include all of the following:

- A site plan, 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 gallons of biofuel anticipated to be produced annually.
- An emergency access and fire protection plan that was reviewed and approved by the appropriate responding police and fire departments.
- Information demonstrating that the facility would comply with the bill's requirements.

The application also would have to contain additional information requested by the body or official responsible for granting special land use approval and relevant to compliance with a zoning ordinance provision described in Section 502(1) or 504 of the Act. (Section 502(1) allows a

legislative body to provide in a zoning ordinance for special land uses in a zoning district; makes a special land use subject to local review and approval; and requires the ordinance to specify certain information. Section 504 pertains to the regulations and standards upon which discretionary decisions for special land uses are made.)

In addition, for an ethanol production facility that would produce more than 10,000 proof gallons annually, the application would have to include completed U.S. Department of the Treasury, Alcohol and Tobacco Tax and Trade Bureau, environmental information forms required to implement regulations under the National Environmental Policy Act and the Federal Water Pollution Control Act.

Within 60 days after the application was filed, the local unit of government would have to hold a hearing on it.

Special Land Use Approval Criteria

Special land use approval of a biofuel production facility would have to be made expressly conditional on the facility's meeting all of the following requirements before beginning operations, and no additional requirements.

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 give the local unit of government proof that all necessary approvals had been obtained from the Department of Environment Quality 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.

Local Criteria

The bill's provisions regarding special land use approval would not apply to a biofuel production facility if a zoning ordinance provided different criteria for special land use approval of a biofuel production facility located on a farm.

An amendment to a zoning ordinance adopted only to provide such criteria would not be subject to a protest petition under Section 403 of the Act. (Under that section, an amendment to a city or village zoning ordinance is subject to a protest petition. A protest petition must be presented to the local legislative body before final legislative action on the amendment and must be signed by a prescribed percentage of landowners. Approval of the amendment then requires a two-thirds vote of the legislative body, unless a larger vote is required by ordinance or charter.)

The bill specifies that it would not affect the authority of a local unit of government to prohibit or authorize biofuel production facilities that were not located on farms.

Proposed MCL 125.3513

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 establish a biofuel production facility as a "use by right" if the facility were on a farm and met the proposed criteria regarding capacity, location, production of feedstock, and use of biofuel and byproducts. Since special land use approval would not be required, a local government could not prevent the facility from being built and operated. A larger facility that did not meet feedstock production and biofuel use requirement also would be a permitted use but would have to receive special land use approval as described in the bill, or under different criteria prescribed by a zoning ordinance. These provisions would

enable a farm to produce much or most of the energy it needs to operate, as well as a byproduct that can be used for livestock feed. As a result, the farm would save money on both energy and feed, and make full use of its resources. At the same time, increased use of biofuel would reduce environmentally harmful emissions and reliance on foreign oil.

Supporting Argument

Corn, which is commonly used to produce ethanol, is Michigan's second-largest commodity, according to the Michigan Corn Growers Association. In 2010, 20% of the State's corn was fed to livestock, 27% was used to make ethanol commercially, 8% was carried over for the next year, 7% was used for miscellaneous purposes, and 38% was shipped out of state. By allowing on-farm biofuel production facilities, the bill would help keep more of Michigan's corn crop in the State.

The bill also would create a marketing opportunity for a farm that did not meet the requirements for production of the feedstock and use of the biofuel and byproducts, but met the other criteria for a biofuel production facility and obtained special land use approval. The farm could sell the biofuel and livestock feed it produced, generating income for the farm and contributing to the local economy.

Opposing Argument

The industrial nature of a biofuel production facility is out of character with rural and agricultural land use. The amount of biofuel that a facility could produce without special land use approval is far more than needed to support a local farming operation, and the amount of fuel stored on site could dwarf the capacity of a local volunteer fire department to provide protection. Biofuel production belongs in an industrial district where the local government has planned for this land use and invested in adequate fire apparatus and other safety equipment. Although some of these concerns might be addressed by the bill's application and approval requirements for special land use approval, those requirements would apply only to a facility that needed such approval, and not to one that was a use by right.

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.