



# SENATE BILL No. 783

November 30, 1995, Introduced by Senators HONIGMAN and DUNASKISS and referred to the Committee on Local, Urban and State Affairs.

A bill to amend section 5 of Act No. 207 of the Public Acts of 1921, entitled as amended

"An act to provide for the establishment in cities and villages of districts or zones within which the use of land and structures and the height, area, size, and location of buildings may be regulated by ordinance, and for which districts regulations shall be established for the light and ventilation of those buildings, and for which districts or zones the density of population may be regulated by ordinance; to designate the use of certain state licensed residential facilities; to provide by ordinance for the acquisition by purchase, condemnation, or otherwise of private property that does not conform to the regulations and restrictions of the various zones or districts provided; to provide for the administering of this act; to provide for amendments, supplements, or changes in zoning ordinances, zones, or districts; to provide for conflict with the state housing code or other acts, ordinances, or regulations; and to provide sanctions for the violation of this act,"

as amended by Act No. 191 of the Public Acts of 1986, being section 125.585 of the Michigan Compiled Laws.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1 Section 1. Section 5 of Act No. 207 of the Public Acts of  
2 1921, as amended by Act No. 191 of the Public Acts of 1986, being  
3 section 125.585 of the Michigan Compiled Laws, is amended to read  
4 as follows:

5 Sec. 5. (1) The legislative body of a city or village may  
6 act as a board of appeals upon questions arising under a zoning  
7 ordinance. The legislative body may establish rules to govern  
8 its procedure as a board of appeals. In the alternative, ~~if the~~  
9 ~~legislative body of a city or village desires,~~ the legislative  
10 body may appoint a board of appeals consisting of not less than 5  
11 members, each to be appointed for a term of 3 years.

12 Appointments of the first members shall be for terms of 1, 2, and  
13 3 years, respectively, so as nearly as possible to provide for  
14 the SUBSEQUENT appointment of an equal number of members each  
15 year. After the initial appointments, each member shall hold  
16 office for the full 3-year term.

17 (2) ~~In accord with~~ UNDER procedures specified in the  
18 zoning ordinance, the legislative body of a city or village may  
19 appoint not more than 2 alternate members for the same term as  
20 regular members of the board of appeals. The alternate members  
21 may be called on a rotating basis as specified in the zoning  
22 ordinance to sit as regular members of the board of appeals in  
23 the absence of a regular member. An alternate member may also be  
24 called to serve in the place of a regular member for the purpose  
25 of reaching a decision on a case in which the regular member has  
26 abstained for reasons of conflict of interest. The alternate  
27 member ~~having been appointed~~ CALLED shall serve in the case

1 until a final decision ~~has been~~ IS made. The alternate member  
2 ~~shall have~~ HAS the same voting rights as a regular member of  
3 the board of appeals.

4 (3) The board of appeals shall hear and decide appeals from  
5 and review any order, requirements, decision, or determination  
6 made by an administrative official or body charged with the  
7 enforcement of an ordinance adopted under this act. The board of  
8 appeals shall also hear and decide matters referred to the board  
9 or upon which the board is required to pass under an ordinance  
10 ~~of the legislative body~~ adopted under this act. For special  
11 land use and planned unit development decisions, an appeal may be  
12 taken to the board of appeals only if provided for in the zoning  
13 ordinance.

14 (4) In a city or village having a population of less than  
15 1,000,000, the concurring vote of a majority of the members of  
16 the board ~~shall be~~ IS necessary to reverse an order, require-  
17 ment, decision, or determination of an administrative official or  
18 body, or to decide in favor of the applicant a matter upon which  
19 the board is required to pass under an ordinance, or to effect a  
20 variation in an ordinance except that a concurring vote of 2/3 of  
21 the members of the board ~~shall be~~ IS necessary to grant a vari-  
22 ance from uses of land permitted in an ordinance. In a city  
23 having a population of 1,000,000 or more, the concurring vote of  
24 2/3 of the members of the board ~~shall be~~ IS necessary to  
25 reverse an order, requirement, decision, or determination of an  
26 administrative official or body, or to decide in favor of the  
27 applicant a matter upon which the board is required to pass under

1 an ordinance, or to ~~effect a variation~~ GRANT A VARIANCE in an  
2 ordinance.

3 (5) An appeal may be taken by a person aggrieved, or by an  
4 officer, department, board, or bureau of the city or village. IN  
5 ADDITION, AN AGENCY MAY SEEK A VARIANCE FROM THE BOARD OF APPEALS  
6 UNDER SECTION 4 OF THE UNIFORM CONDEMNATION PROCEDURES ACT, ACT  
7 NO. 87 OF THE PUBLIC ACTS OF 1980, BEING SECTION 213.54 OF THE  
8 MICHIGAN COMPILED LAWS. If a city or village has created or may  
9 create a board of rules or board of building appeals, that board  
10 may be enlarged to consist of not less than 5 members, and these  
11 may be appointed as the board of appeals as provided in this  
12 section.

13 (6) An appeal under this section shall be taken, within a  
14 time prescribed by the board of appeals by general rule, by the  
15 filing with the officer or body from whom the appeal is taken and  
16 with the board of appeals of a notice of appeal specifying the  
17 grounds for the appeal. The officer or body from whom the appeal  
18 is taken shall immediately transmit to the board all the papers  
19 constituting the record upon which the action appealed from was  
20 taken.

21 (7) An appeal under this section stays all proceedings in  
22 furtherance of the action appealed from unless the officer or  
23 body from whom the appeal is taken certifies to the board of  
24 appeals, after the notice of appeal is filed, that by reason of  
25 facts stated in the certificate, a stay would in the opinion of  
26 the officer or body cause imminent peril to life or property. →  
27 ~~in which case~~ IF SUCH A CERTIFICATION IS FILED, the proceedings

1 shall ~~not~~ ONLY be stayed ~~otherwise than~~ by a restraining  
2 order. ~~which~~ A RESTRAINING ORDER may be granted by the board  
3 of appeals or by the circuit court, on application, on notice to  
4 the officer or body from whom the appeal is taken and on due  
5 cause shown.

6 (8) The board of appeals shall fix a reasonable time for the  
7 hearing of the appeal and give due notice of the appeal to the  
8 persons to whom real property within 300 feet of the premises in  
9 question is assessed, and to the occupants of single and 2-family  
10 dwellings within 300 feet. ~~, the notice to~~ THE NOTICE SHALL be  
11 delivered personally or by mail addressed to the respective  
12 owners and tenants at the address given in the last assessment  
13 roll. ~~The board of appeals shall decide the appeal within a~~  
14 ~~reasonable time.~~ If ~~the~~ A tenant's name is not known, the term  
15 "occupant" may be used. Upon the hearing, a party may appear in  
16 person or by agent or by attorney.

17 (9) THE BOARD OF APPEALS SHALL DECIDE THE APPEAL WITHIN A  
18 REASONABLE TIME. The board of appeals may reverse or affirm,  
19 wholly or partly, or may modify the order, requirement, decision,  
20 or determination appealed from and shall make an order, require-  
21 ment, decision, or determination as in the board's opinion ought  
22 to be made in the premises, and to that end shall have all the  
23 powers of the officer or body from whom the appeal is taken. If  
24 there are practical difficulties or unnecessary hardship in the  
25 way of carrying out the strict letter of the ordinance, the board  
26 of appeals may in passing upon appeals ~~vary or modify~~ GRANT A  
27 VARIANCE IN any of its rules or provisions relating to the

1 construction, or structural changes in, equipment, or alteration  
2 of buildings or structures, or the use of land, buildings, or  
3 structures, so that the spirit of the ordinance shall be  
4 observed, public safety secured, and substantial justice done.

5 (10) The board of appeals may impose conditions upon an  
6 affirmative decision, as provided in section 4c(2). The legisla-  
7 tive body of ~~any~~ A city or village may authorize the remunera-  
8 tion of the members of the board for attendance at each meeting.

9 (11) The decision of the board of appeals shall be final.  
10 However, a person having an interest affected by the zoning ordi-  
11 nance may appeal to the circuit court. Upon appeal, the circuit  
12 court shall review the record and decision of the board of  
13 appeals to ~~insure~~ ENSURE that the decision meets all of the  
14 following:

15 (a) Complies with the constitution and laws of this state.

16 (b) Is based upon proper procedure.

17 (c) Is supported by competent, material, and substantial  
18 evidence on the record.

19 (d) Represents the reasonable exercise of discretion granted  
20 by law to the board of appeals.

21 (12) If the court finds the record of the board of appeals  
22 inadequate to make the review required by this section, or that  
23 additional MATERIAL evidence exists which ~~is material and~~ with  
24 good reason was not presented to the board of appeals, the court  
25 shall order further proceedings before the board of appeals on  
26 conditions ~~which~~ THAT the court considers proper. The board of  
27 appeals may modify its findings and decision as a result of the

1 new proceedings, or may affirm the original decision. The  
2 supplementary record and decision shall be filed with the court.

3 (13) As a result of the review required by this section, the  
4 court may affirm, reverse, or modify the decision of the board of  
5 appeals.

6 Section 2. This amendatory act shall not take effect unless  
7 Senate Bill No. 778

8 of the 88th Legislature is enacted into law.