

**Report on Public Policy Position****Name of section or committee:**

Real Property Law Section

**Contact Person:**

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**Bill Number:**

[HB 5032](#) (Byrum) Land use; zoning and growth management; zoning enabling act; make corrective and technical revisions. Amends secs. 102, 103, 202, 208, 301, 401, 601, 604, 606 & 702 of [2006 PA 110](#) (MCL [125.3102](#) et seq.).

**Date position was adopted:**

November 19, 2007

**Process used to take the ideological position:**

Position adopted after discussion and vote of the Council of the Section

**Number of members in the decision-making body:**

17

**Number who voted in favor and opposed to the position:**

12 Voted for position

**Position:**

Please see statement below

**Explanation of the position, including any recommended amendments:**

The Real Property Law Section of the State Bar of Michigan opposes the current version of the substitute for HB 5032 (H-2) as amended, for the reasons described below. The policy expressed is that of the Real Property Law Section and does not necessarily represent the policy of the State Bar of Michigan. It was adopted by vote of the Council of the Section. Of the 16 members of the Council, 13 voted for the policy position, none voted against, none abstained, and three did not vote.

HB 5032 (Byrum), is the technical corrections bill for the 2006 consolidated Michigan zoning enabling act (the "MZEA"). The workgroup convened to draft it, including the Michigan Municipal League, Michigan Townships Association, Michigan Association of Planning, the Michigan Association of REALTORS, and other stakeholders, worked under ground rules limiting amendments to corrections and avoiding any substantive changes to zoning law; any substantive changes should be introduced in separate bills which could then be debated on their merits.

A floor amendment made a change to subsection 606(3) that is not consistent with prior law, introduces a substantive change, and is the grounds for the Section's opposition to the bill unless it is removed.

The section of the MZEA treating appeals to the circuit court from zoning boards of appeal, MCL 125.3606(3), carries over language from all three prior zoning enabling acts. All three said that, "As a result of the review required by this section, the court may affirm, reverse, or modify the decision of the board of appeals." MCLA 125.585(13) (cities and villages); MCL 125.293a(3) (townships); and MCL 125.223(4) (counties). The amendment added in the House removes the authority of the court to modify the decision; the court may only affirm or reverse the decision of the zoning board of appeals.

This change would be a major change that the Section opposes. It would restrict the jurisdiction of the courts in a way that is not comparable to many other appeals and would effectively give additional power to local governments through their zoning boards of appeal. The appeal to circuit court is the first review by someone trained in the law, with jurisdiction to determine whether or not the decision of the zoning board of appeals complies with the law and constitution. There are any number of actions taken by boards of appeal, many of which are limited in their knowledge or application of the law, for which modification by the court makes sense and may be far more likely than reversal or another application to the zoning board of appeals to reach a correct result, and to do so in a timely fashion, without additional cost. It is not clear what the objection is to the courts having this kind of authority. If the only choices are to affirm or reverse, without correction by the court, the case may be more likely to turn on political rather than on the legal issues, and leaves the parties to go back and forth between the zoning board of appeals and the court.

The Section recommends amendment of the bill to restore "or modify" to section 606(3).

**The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.**

<http://legislature.mi.gov/doc.aspx?2007-HB-5032>