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Failed to Pass Senate

House File 426

February 27, 1947.
County and Township Affairs.

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A BILL FOR

An Act granting to the board of supervisors of any county, with a population of not less than 75,000 inhabitants with respect to lands located within the county but lying outside the corporate limits of any city or town, the power to appoint a zoning commission and to prescribe its duties; to divide the county into districts with respect to the development and uses of the property therein; to adopt uniform rules for such property which may affect the general welfare; to appoint an administrative officer authorized to enforce such uniform rules; to provide for the appointment of a board of adjustment and to prescribe its duties; to institute appropriate action or proceedings in case of violation of this act or of any ordinance or regulations made under authority conferred thereby; to provide for appeals and from the board of supervisors or its administrative officer, and prescribing notice and hearing of such appeal; and to impose sanitation requirements in dwellings now or hereafter erected which shall install forced water systems and providing penalties for violations.

Be It Enacted by the General Assembly of the State of Iowa:

1 Section 1. The provisions of this act shall apply only
2 to counties which now have, or may hereafter have, popula-
3 tion of not less than 75,000 inhabitants as determined by
4 the last preceding official federal census.

1 Sec. 2. No regulation or ordinance adopted under the
2 provisions of this act shall be construed to apply to land,

3 farm houses, farm barns, farm out-buildings or other buildings,
4 structures, or erections which are adapted, by reason of nature
5 and area, for use for agricultural purposes as a primary means
6 of livelihood, while so used.

1 Sec. 3. Subject to the provisions of Sections 1 and 2
2 hereof, the board of supervisors of any county is hereby empower-
3 ed to regulate and restrict the height, number of structures,
4 and size of buildings and other structures, the percentage of
5 lot that may be occupied, the size of yards, courts and other
6 open spaces, the density of population, and the location and use
7 of buildings, structures, and land for trade, industry, resi-
8 dence or other purposes, and to regulate, redistrict and prohibit
9 the use for residential purposes of tents, trailers and portable
10 or potentially portable structures; provided that such powers
11 shall be exercised only with reference to land and structures
12 located within the county but lying outside of the corporate
13 limits of any city or town.

1 Sec. 4. For any and all of said purposes the board of
2 supervisors may divide the county, or any area or areas within
3 the county, into districts of such number, shape, and area as
4 may be deemed best suited to carry out the purposes of this act;
5 and within such districts it may regulate and redistrict the erec-
6 tion, construction, reconstruction, alteration, repair, or
7 use of buildings, structures or land. All such regulations
8 and restrictions shall be uniform for each class or kind of
9 buildings throughout each district, but the regulations in one

10 district may differ from those in other districts.

1 Sec. 5. Such regulations shall be made in accordance
2 with a comprehensive plan and designed to lessen congestion in
3 the street or highway; to secure safety from fire, panic, and
4 other dangers; to protect health and the general welfare; to
5 provide adequate light and air; to prevent the over-crowding
6 of land; to avoid undue concentration of population; to facili-
7 tate the adequate provision of transportation, water, sewerage,
8 schools, parks and other public requirements.

9 Such regulations shall be made with reasonable consid-
10 eration, among other things, as to the character of the area
11 of the district and the peculiar suitability of such area for
12 particular uses, and with a view to conserving the value of
13 buildings and encouraging the most appropriate use of land
14 throughout such county.

1 Sec. 6. The board of supervisors shall provide for the
2 manner in which such regulations and restrictions and the
3 boundaries of such districts shall be determined, established,
4 and enforced, and from time to time amended, supplemented or
5 changed. However, no such regulation, restriction, or boundary
6 shall become effective until after a public hearing in relation
7 thereto, at which parties in interest and citizens shall have
8 an opportunity to be heard. At least 15 days' notice of the
9 time and place of such hearing shall be published in a paper
10 of general circulation in such county.

1 Sec. 7. Such regulations, restrictions, and boundaries

2 may, from time to time, be amended, supplemented, changed,
3 modified, or repealed. In case, however, of a protest against
4 such change signed by the owners of twenty per cent or more
5 either of the area included in such proposed change, or of
6 the area immediately adjacent thereto and within five hundred
7 (500) feet of the boundaries thereof, such amendment shall not
8 become effective except by the favorable vote of at least
9 sixty percent of all members of the board of supervisors.
10 The provisions of Section 6 relative to public hearings and
11 official notice shall apply equally to all changes or amend-
12 ments.

1 Sec. 8. In order to avail itself of the powers conferred
2 by this act, the board of supervisors shall appoint a commission
3 to be known as the county zoning commission, to recommend the
4 boundaries of the various original districts, and appropriate
5 regulations and restrictions to be enforced therein. Such
6 commission shall, with due diligence, prepare a preliminary re-
7 port and hold public hearings thereon before submitting its
8 final report; and the board of supervisors shall not hold its
9 public hearings or take action until it has received the final
10 report of such commission. After the adoption of such regula-
11 tions, restrictions, and boundaries of districts, the zoning
12 commission may, from time to time, recommend to the board of
13 supervisors amendments, supplements, changes or modifications.

1 Sec. 9. The board of supervisors shall appoint an admin-
2 istrative officer authorized to enforce the resolutions or

3 ordinances so adopted by the board of supervisors. Such
4 administrative officer may be a person holding other public
5 office in the county, or in a city or other governmental subdi-
6 vision within the county, and the board of supervisors is auth-
7 orized to pay to such officer out of the general fund such
8 compensation as it shall deem fit.

1 Sec. 10. The board of supervisors shall provide for the
2 appointment of a board of adjustment, and in the regulations and
3 restrictions adopted pursuant to the authority of this act
4 shall provide that the said board of adjustment may, in appro-
5 priate cases, and subject to appropriate conditions and safe-
6 guards, make special exceptions to the terms of the ordinances
7 or regulations in harmony with its general purpose and intent
8 and in accordance with the general or specific rules therein
9 contained, and provide that any property owner aggrieved by the
10 action of the board of supervisors in the adoption of such regu-
11 lations and restrictions may petition the said board of adjust-
12 ment direct to modify regulations and restrictions as applied
13 to such property owners.

1 Sec. 11. The board of adjustment shall consist of five
2 members each to be appointed for a term of five years, excepting
3 that when the board shall first be created one member shall be
4 appointed for a term of five years, one for a term of four
5 years, one for a term of three years, one for a term of two
6 years, and one for a term of one year. Members shall be re-
7 movable for cause by the appointing authority upon written

8 charges and after public hearing. Vacancies shall be filled for
9 the unexpired term of any member whose term becomes vacant.

1 Sec. 12. The board shall adopt rules in accordance with
2 the provisions of any ordinance adopted pursuant to this chapter.
3 Meetings of the board shall be held at the call of the chairman
4 and at such other times as the board may determine. Such
5 chairman, or in his absence, the acting chairman, may admin-
6 ister oaths and compel the attendance of witnesses. All
7 meetings of the board shall be open to the public. The board
8 shall keep minutes of its proceedings, showing the vote of
9 each member upon each question, or if absent or failing to
10 vote, indicating such fact, and shall keep records of its
11 examinations and other official actions, all of which shall be
12 immediately filed in the office of the board and shall be a
13 public record.

1 Sec. 13. Appeals to the board of adjustment may be taken
2 by any person aggrieved or by any officer, department, board
3 or bureau of the county affected by any decision of the admin-
4 istrative officer. Such appeal shall be taken within a reason-
5 able time, as provided by the rules of the board of adjustment,
6 by filing with the officer from whom the appeal is taken and
7 with the board of adjustment a notice of appeal specifying the
8 grounds thereof. The officer from whom the appeal is taken shall
9 forthwith transmit to the board of adjustment all the papers
10 constituting the record upon which the action appealed from was
11 taken.

1 Sec. 14. An appeal stays all proceedings in furtherance
2 of the action appealed from, unless the officer from whom
3 the appeal is taken certified to the board of adjustment after
4 the notice of appeal shall have been filed with him that by
5 reason of facts stated in the certificate a stay would, in his
6 opinion, cause imminent peril to life or property. In such
7 case proceedings shall not be stayed otherwise than by a
8 restraining order which may be granted by the board of ad-
9 justment or by a court of record on application on notice to
10 the officer from whom the appeal is taken and on due cause
11 shown.

1 Sec. 15. The board of adjustment shall have the following
2 powers:

3 1. To hear and decide appeals where it is alleged
4 there is error in any order, requirement, decision or deter-
5 mination made by an administrative official in the enforce-
6 ment of this chapter or of any ordinance adopted pursuant
7 thereto.

8 2. To hear and decide special exceptions to the
9 terms of the ordinance upon which such board is required to
10 pass under such ordinance.

11 3. To authorize upon appeal, in specific cases, such
12 variance from the terms of the ordinance as will not be con-
13 trary to the public interest, where owing to special conditions
14 a literal enforcement of the provisions of the ordinance will
15 result in unnecessary hardship, and so that the spirit of the

16 ordinance shall be observed and substantial justice done.

1 Sec. 16. In exercising the above mentioned powers such
2 board may, in conformity with the provisions of this chapter,
3 reverse or affirm, wholly or partly, or may modify the order,
4 requirement, decision, or determination appealed from and may
5 make such order, requirement, decision, or determination as
6 ought to be made, and to that requirement, decision, or deter-
7 mination as ought to be made, and to that end shall have all
8 the powers of the officer from whom the appeal is taken.

1 Sec. 17. The concurring vote of three members of the
2 board shall be necessary to reverse any order, requirement,
3 decision, or determination of any such administrative official,
4 or to decide in favor of the applicant on any matter upon which
5 it is required to pass under any such ordinance or to effect
6 any variation in such ordinance.

1 Sec. 18. Any person or persons, jointly or severally,
2 aggrieved by any decision of the board of adjustment under
3 the provisions of this act, or any taxpayer, or any officer,
4 department, board or bureau of the county, may present to a
5 court of record a petition, duly verified, setting forth that
6 such decision is illegal, in whole or in part, specifying the
7 grounds of the illegality. Such petition shall be presented to
8 the court within thirty days after the filing of the decision
9 in the office of the board.

1 Sec. 19. Upon the presentation of such petition, the
2 court may allow a writ of certiorari directed to the board

3 of adjustment to review such decision of the board of adjustment
4 and shall prescribe therein the time within which a return
5 thereto must be made and served upon the relator's attorney,
6 which shall not be less than ten days and may be extended by
7 the court. The allowance of the writ shall not stay proceedings
8 upon the decision appealed from, but the court may, on applica-
9 tion, on notice to the board and on due cause shown, grant a
10 restraining order.

1 Sec. 20. The board of adjustment shall not be required
2 to return the original papers acted upon by it, but it shall
3 be sufficient to return certified or sworn copies thereof or
4 of such portions thereof as may be called for by such writ. The
5 return shall concisely set forth such other facts as may be
6 pertinent and material to show the grounds of the decision
7 appealed from and shall be verified.

1 Sec. 21. If upon the hearing which shall be tried de
2 novo it shall appear to the court that testimony is necessary
3 for the proper disposition of the matter, it may take evidence
4 or appoint a referee to take such evidence as it may direct and
5 report the same to the court with his findings of fact and
6 conclusions of law, which shall constitute a part of the
7 proceedings upon which the determination of the court shall be
8 made. The court may reverse or affirm, wholly or partly,
9 or may modify the decision brought up for review.

10 Costs shall not be allowed against the board unless
11 it shall appear to the court that it acted with gross negli-

12 gence or in bad faith or with malice in making the decision ap-
13 pealed from.

1 Sec. 22. All issues in any proceedings under the fore-
2 going sections shall have preference over all other civil
3 actions and proceedings.

1 Sec. 23. In case any building or structure is erected,
2 constructed, reconstructed, altered, repaired, converted, or
3 maintained; or any building, structure, or land is used in
4 violation of this act or of any ordinance or other regulation
5 made under authority conferred thereby, the board of supervisors,
6 in addition to other remedies, may institute any appropriate
7 action or proceedings to prevent such unlawful erection, construc-
8 tion, reconstruction, alteration, repair, conversion, maintenance,
9 or use, to restrain, correct, or abate such violation, to pre-
10 vent any illegal act, conduct, business, or use in or about
11 such premises.

1 Sec. 24. Wherever the regulations made under authority
2 of this act require a greater width or size of yards, courts
3 or other open spaces, or require a lower height of buildings
4 or less number of stories, or require a greater percentage of
5 lot to be left unoccupied, or impose other higher standards
6 than are required in any other statute or local ordinance
7 or regulation, the provisions of the regulations made under
8 authority of this act shall govern. Wherever the provisions
9 of any other statute or local ordinance or regulation require
10 a greater width or size of yards, courts or other open spaces,

11 or require a lower height of building or a less number of
12 stories, or require a greater percentage of lot to be left un-
13 occupied, or impose other higher standards than are required by
14 the regulations made under authority of this act, the provisions
15 of such statute or local ordinance or regulation shall govern.

1 Sec. 25. Subject to the provisions of Sections 1 and 2
2 hereof, the board of supervisors of any county is further auth-
3 orized to adopt regulations to provide that every dwelling,
4 whether now or hereafter erected within the county but outside
5 the corporate limits of any city or town which shall develop
6 a private water supply or install a pressure water system or
7 install sanitary house drains, shall comply with the recom-
8 mendations of the state department of health on minimum re-
9 quirements as set out in the state plumbing code in regard
10 to such development or installation. Any such regulation may
11 be enforced in the same manner as any other regulation adopted
12 under this act.

1 Sec. 26. In addition to any other remedy granted herein,
2 the violation of any regulation, restriction or boundary
3 adopted under this act or the occupancy or use of any struc-
4 ture erected, altered or maintained in violation of this
5 act shall constitute a misdemeanor. Such occupancy or use shall
6 be deemed a continuing violation and may be the subject of
7 repeated prosecutions if so continued. Every person convicted
8 of a misdemeanor, by reason of violations hereinabove set forth,

- 9 shall be punished by a fine of not more than \$100.00 or by
10 imprisonment of not more than thirty days.

EXPLANATION OF H. F. 426

This bill is designed to permit boards of supervisors to zone property outside of cities and towns in the same manner and under the same provisions of law according to which city and town councils act in the case of property in cities and towns, with appropriate changes to make the act applicable to the county rather than city areas. It also permits boards of supervisors to make certain provisions of the housing law (which otherwise is applicable only in cities and towns) applicable outside cities and towns.

However, the act is applicable only to counties having a population of 75,000 and exempts land used for agricultural purposes and agricultural buildings from any regulation which a board of supervisors could adopt under this bill. It is intended to make the exemption of agricultural land and buildings as broad as possible and the writers of the bill believe this has been done.

The purpose of the bill is to prevent undesirable housing conditions from arising in rural areas. At present there are numbers of undesirable settlements located in rural areas near cities and towns. These are undesirable because there is no regulation assuring that minimum sanitation and health standards will be met and minimum sound construction standards followed. This bill will at least prevent the growth of undesirable areas or enable a board of supervisors in any county to do so. The bill is intended as a protection for the farmer and his investment in his land, which must be impaired if undesirable neighborhoods grow up around it. The bill is also intended to be in the general public interest.