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**DID YOU KNOW?** Corporations VOTED to adopt this. Through ALEC, global companies work as "equals" in "unison" with politicians to write laws to govern your life. Big Business has "a VOICE and a VOTE," according to newly exposed documents. **DO YOU?**

**An Act Granting the Authority of Rural Counties to Transition to Decentralized Land Use Regulation**

**Section 1.**

(A) Findings and Purpose. The Legislature finds that the planning and zoning authority granted to rural counties may encourage land use regulation which is overly centralized, intrusive and politicized. The Legislature further finds that rural counties, local elected officials and their citizens may reasonably prefer transitioning to a system of decentralized land use regulation based on restrictive covenants and the common law of private nuisance. Accordingly, the Legislature herewith intends to grant rural counties the legal authority to abandon their planning and zoning authority in order to transition to decentralized land use regulation consisting of restrictive covenants and the common law of private nuisance.

(B) Legal Authority. Any county with a population of fewer than 100,000 residents is herewith granted legal authority to designate all or a portion of the area within its jurisdiction for decentralized land use regulation and, with respect to such designated area, to abandon its planning and zoning authority under any statute or law, to unilaterally withdraw from any obligation to exercise planning or zoning authority under any intergovernmental agreement, and to transition to decentralized land use regulation as provided in the following subsections:

(1) Mode of Exercise. The legal authority granted herein may be exercised through county legislation or local initiative, which shall state in reasonably intelligible terms with respect to a clearly designated area within its jurisdiction that the county is abandoning its planning and zoning authority, withdrawing from any intergovernmental agreement obliging it to exercise such authority, and transitioning to decentralized land use regulation based on restrictive covenants and the common law of nuisance. The procedures established by general law governing local legislation or local initiatives shall be applicable to local legislation or local initiatives that propose transition to decentralized land use regulation. However, in addition to such procedures, the prior public notice required for any such proposed local law shall be at least as effective as the public notice requirements applicable to county rezoning.

(a) Substance of Exercise. To effectively authorize the transition to decentralized land use regulation based on restrictive covenants and the common law of private nuisance, the local law shall reasonably detail two transitional implementation phases as follows:

(i) Phase 1. Sunset Review of Existing Planning and Zoning Regulations.

(1) Substantive Requirements. The local law shall require the county to repeal or modify any land use restriction stemming from the county's exercise of its planning or zoning authority, which prohibits or conditionally restricts the peaceful or highest and best uses of private property, or which would cause a diminishment in the value of the affected private property if the land use restriction were converted to a restrictive covenant, to allow the otherwise restricted uses unless the county: 1) fully compensates the affected land owner(s) for the loss of such value; or 2) a preponderance of the evidence considered at a sunset review hearing establishes the restriction is necessary for public health and safety and: (1) owners of properties located within 300 feet of the property in question reasonably and detrimentally relied upon the restriction in purchasing or improving their property; (2) the restriction is roughly proportional to the costs the restricted land use would otherwise impose on public infrastructure; or (3) the restriction is roughly proportional to that which would result from enforcing the common law of private nuisance.

(2) Procedural Requirements. Owners of private real property within the county's designated area for decentralized land use regulation shall be given a reasonable opportunity after passage of the local law requiring transition to decentralized land use regulation to file sunset review applications with the local body responsible for rezoning seeking modification or repeal of any land use restriction stemming from the county's exercise of its planning or zoning authority, which prohibits or conditionally restricts the peaceful or highest and best uses of the owner's private property or which would cause a diminishment in the value of the affected land if imposed on the land as a restrictive covenant under the following subsection. Applicants for sunset review shall be responsible for complying with public notice requirements applicable to the most analogous private rezoning application; however, the sunset review applications are to be liberally construed in favor of the applicant. The local body responsible for rezoning shall then conduct a public hearing on each sunset review application to determine whether the challenged land use restriction must be modified or repealed under the factors of the previous subsection. All sunset review decisions shall be

subject to administrative review without deference to the local body's determination. The local law shall set a reasonable deadline for interested parties to record final sunset review decisions against title to the affected real property and shall give reasonable notice to such interested parties of that deadline and of its legal implications; the failure to timely record such decisions shall be deemed the abandonment of any such sunset review application.

(ii) Phase 2. Recordation of Zoning Map Applicable to Designated Area. Concurrently with the sunset review process, the local law shall authorize the county to record all or a portion of its zoning map, as it pertains to the designated area of decentralized land use regulation, in a format substantially equivalent to plats of subdivision, together with a printed statement of all restrictions on land uses entailed by the zoning map (which also specifies the objective factors, if any, established in the formerly governing zoning law allowing for modification of the restrictions of the specified zoning classifications by special exception, conditional use, variance or rezoning). Subsequently recorded sunset review decisions shall: i) refer to the document number of the recorded zoning map; ii) be effective as of the date the zoning map is recorded; and iii) shall be deemed to modify and supersede any contrary provision or classification of the zoning map and its accompanying statement. Upon recordation, the land use restrictions specified in the zoning map and related statement, as modified by recorded sunset review decisions, shall thereby become restrictive covenants against title to the burdened private properties specified in the zoning map, with the right to enforce such covenants presumptively running with title to all private properties within 300 feet.

(iii) Effect of Completion of Phases 1 and 2. The general law applicable to private restrictive covenants shall apply to restrictive covenants created by this process subject to two exceptions: a) the local law shall provide that owners of properties burdened by such restrictive covenants shall have standing to file a special action in any court of competent jurisdiction seeking a declaratory judgment granting a special exception, conditional use, variance or rezoning under the objective factors of the previously governing zoning law, as set forth in the recorded zoning map; and b) in order to perfect the restrictive covenants established by this process against subsequent purchasers for value, the local law shall provide for a reasonable deadline by which benefited property owners must record their enforcement rights as running with title to the benefitted properties and against title to all burdened properties by reference to the document number of the recorded zoning map.

(iv) Effect of Exercise. A local law effectively exercising the legal authority granted herein shall have the effect of: a) granting owners and subsequent transferees of private real property located within the respective designated decentralized land use regulation area a vested property interest under state law in every land use not prohibited by the restrictive covenants on title generated by the transition to decentralized land use regulation or the common law of nuisance to protect health and safety; b) prohibiting the exercise of county planning and zoning powers directly or indirectly with respect to private real property located within the designated decentralized land use regulation area under any statute or law, so long as the county's population is fewer than 100,000 residents; c) prohibiting the exercise of planning and zoning powers by any state agency, political subdivision of the state, special district or other local government within the designated decentralized land use regulation area which is similar to county planning and zoning powers under any statute or law, so long as the county's population is fewer than 100,000 residents; d) prohibiting the county from exercising development moratorium authority in the designated decentralized land use regulation area under any statute or law, so long as the county's population is fewer than 100,000 residents; and e) releasing the respective county from any existing obligation to exercise planning or zoning authority under any intergovernmental agreement in the designated decentralized land use regulation area.

*Adopted by the Energy, Environment, and Agriculture Task Force at the Annual Meeting, August 7, 2010. Approved by the ALEC Board of Directors, September 19, 2010.*

## Related Files

[An Act Granting the Authority of Rural Counties to Transition to Decentralized Land Use Regulation](#) (Microsoft Word Document)

### ALEC EXPOSED

"ALEC" has long been a secretive collaboration between Big Business and "conservative" politicians. Behind closed doors, they ghostwrite "model" bills to be introduced in state capitols across the country. This agenda-underwritten by global corporations--includes major tax loopholes for big industries and the super rich, proposals to offshore U.S. jobs and gut minimum wage, and efforts to weaken public health, safety, and environmental protections. Although many of these bills have become law, until now, their origin has been largely unknown. With **ALEC EXPOSED**, the Center for Media and Democracy hopes more Americans will study the bills to understand the depth and breadth of how big corporations are changing the legal rules and undermining democracy across the nation.

From CMD: This "model" legislation would repeal ALL land use planning and zoning for "rural" counties by both county and state governments. Land could be used for any purpose, without regard for "single family," "agricultural," or "industrial" zoning, or environmental land use restrictions. (The bill would allow an existing zoning or land use restriction to stand if it makes economic sense or landowners acted in reliance on the restriction). Neighbors who were concerned about the use of land would have to litigate individual to protect their rights against nuisances, such as the smells from factory farms, and would not be able to act democratically to set rules for zoning in their towns. Land use could also be restricted by contracts but could not be restricted in perpetuity. This would require individuals to spend their own money to protect community interests in channelling growth in a community or even in limiting certain times of businesses near residences or schools, such as nude dancing or bars. It is an effort to roll back the clock and take away local democracy rights of citizens.

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