



Olds Plaza Building, 10th Floor  
Lansing, Michigan 48909  
Phone: 517/373-8468

## LAND RECLAMATION AUTH'S.

Senate Bill 598 (Substitute H-1)  
First Analysis (6-10-92)

Sponsor: Senator Paul Wartner  
Senate Committee: Local Government  
and Urban Development  
House Committee: Towns and Counties

### ***THE APPARENT PROBLEM:***

There is some interest in reclaiming and developing large tracts of land that formerly were used for industrial, mining, or commercial purposes, and currently are unsuitable for such use. Although the eventual reuse of this land could be financially rewarding, the reclamation and development could be very expensive. In order to avoid burdening state or local government with the costs of such improvements, it has been suggested that the affected landowners could form an authority that would undertake the reclamation and finance the authority's activities by issuing tax-exempt bonds and imposing special assessments on the benefitted property. According to the proponents of this approach, other states permit the establishment of this type of entity, and Michigan could pattern similar legislation after existing laws that authorize the creation of other local authorities and the imposition of special assessments.

### ***THE CONTENT OF THE BILL:***

The bill would create the Land Reclamation and Improvement Authority Act to permit the establishment of land reclamation and improvement authorities upon approval by the Department of Treasury of a petition signed by the owners of all of the land in a proposed authority district. A district would have to contain at least 300 acres within one county and one or two townships, and at least 20 percent of the total area or 100 acres, whichever was less, would have to be "blighted area." The bill would do the following:

- Provide that an authority would be controlled by a five- or seven-member appointed board.
- Permit an authority to perform certain functions, including carrying out an "improvement".

- Permit an authority to issue tax-exempt bonds in anticipation of special assessments, and specify other sources of financing for an authority.
- Provide that the amount of a special assessment could not exceed the value of the benefits received from an improvement.
- Provide for public hearings concerning the creation of an authority and the collection of special assessments.

"Blighted area" would mean land that had been used for mining, commercial, or industrial use that significantly disturbed the land's natural qualities; that was not currently useful for residential, recreational, or commercial purposes; that could be reclaimed and made useful for such purposes; and that was not on the list for response activity under the Environmental Response Act or on the national priorities list (Superfund list) established under the federal Comprehensive Environmental Response, Compensation and Liability Act.

"Improvement" would refer to the construction, improvement, maintenance, repair, acquisition, or installation of sewers, water systems, public or private roads, foot bridges, bicycle paths, other public recreational facilities (excluding golf courses), erosion control structures or dikes, sidewalks, waterways, harbors, sea walls, fences, intercommunication systems, other security structures and devices, structures to control or direct surface water runoff, public parks, and lighting systems; garbage collection and disposal; tree planting, maintenance, and removal; the eradication or control of aquatic weeds and plants; the improvement of land and the construction, improvement, maintenance, equipping, or operation of a building and for the appurtenances of a building to be used by the authority or for other public purposes; the reclamation of blighted areas,

Senate Bill 598 (6-10-92)

including the replanting, grading, and restoration of land, and the removal of minerals or nonhazardous waste; easements; demolition and site preparation; and the payment of any operational and administrative costs of an authority.

**Establishment of Authority.** A person seeking to establish a land reclamation and improvement authority would have to file a petition with the department that indicated the boundaries of the proposed authority district, described a blighted area within the district, and described anticipated improvements, including a preliminary estimate of costs and schedule of completion. The petition would have to be signed by the record owners of all of the land within the proposed district. The petition also would have to be accompanied by a written nomination of three individuals for appointment to the authority board: one for a two-year term, one for a four-year term, and one for a six-year term.

Within 15 days after a petition was filed, the department would have to determine whether it met the bill's requirements and return a noncomplying petition to the person who filed it. At least 30 days but not more than 45 days after a satisfactory petition was filed, the department would have to hold a public hearing in the county where the proposed district was located. The department would have to publish notice of the hearing, give notice as required by the Open Meetings Act, and mail notice to each record owner of land in the proposed district, to the county clerk, and to the township clerk(s).

Within 30 days after the hearing, the department would have to approve or disapprove the establishment of the authority. The department would have to approve it if the following conditions were met:

- The proposed district contained one or more blighted areas that in the aggregate were at least 20 percent of the total area of the district or 100 acres, whichever was less.
- The district contained at least 300 acres.
- The district did not have more than 100 residents at the time the petition was filed.
- The entire district was located within one or two townships and within one county.
- The blighted area could be reclaimed and made useful for recreational, residential, or commercial purposes. In making this determination, the

department could not consider the costs or availability of financing for reclamation.

Immediately upon approving or disapproving an authority, the department would have to mail to the township board(s), the county board of commissioners, and the person who filed the petition a statement of approval or disapproval. After an authority board had been appointed, the person who filed the petition would have to file with the secretary of state, the township clerk(s), the county clerk, and the county register of deeds certified copies of the petition and the statement of approval, and certificates of the board members' appointment.

**Appointment of Authority Board.** Within 30 days after a statement of approval was issued, the county board of commissioners and the township board each would have to nominate one individual for a four-year term and one for a six-year term on the authority board. (If the authority were in two townships, the one containing the larger part of the authority would make the nominations.) A county or township board, however, instead could file a statement with the department that the county or township elected not to nominate any authority board members.

Within 45 days after the statement of approval was issued, the state treasurer would have to appoint authority board members, depending upon whether the county and/or township nominated individuals. If neither the township nor the county nominated individuals, the state treasurer would have to appoint the individuals nominated by the petitioners for a four-year term and a six-year term; one employee of the department for a two-year term; one individual (not an employee) for a four-year term and one for a six-year term. If the township had not nominated individuals but the county had, the state treasurer would have to appoint the individuals nominated by the petitioners; one employee of the department for a two-year term; one individual (not an employee) for a two-year term and one for a four-year term; and both individuals nominated by the county. If the township had nominated individuals but the county had not, the state treasurer would have to appoint the two nominees of the petitioners; one department employee for a two-year term; one individual (not an employee) for a two-year term and one for a four-year term, and both nominees of the township. If both the county and the township

had nominated individuals, the director would have to appoint the two nominees of the petitioners, one department employee for a two-year term; one individual (not an employee) for a two-year term and one for a four-year term; the individual nominated by the county for a four-year term; and the individual nominated by the township for a six-year term.

Except for individuals appointed for a two-year or four-year term as provided above, the term of office of a board member would be six years.

**Qualifications of Board Members.** An individual appointed or nominated to an authority board would have to be qualified by training or experience to perform the functions required of an authority board member by the bill. An individual appointed or elected to an authority board would have to be and remain during his or her term of office either a record owner of real property within the district or a state resident, but would not have to be a resident of the district or of the county or a township in which the district was located. Of the individuals appointed to the first board, one would have to live within the county, and one within a township in which the district was located.

**Removal of Board Members.** If satisfied from the evidence submitted that a member was guilty of official misconduct, willful neglect of duty, extortion, or habitual intoxication, or had been convicted of a misdemeanor of which intoxication was an element, then the governor would be required to remove an elected or appointed board member. The governor could not act upon the charges until they were made in writing and verified by affidavit. Also, an authority board member could not be removed for official misconduct or willful neglect of duty unless a copy of the charges were served on the member and he or she were given an opportunity to be heard. A board member who was removed would not be eligible for election or appointment to an authority board office for three years after removal.

Nominees of the petitioners who were appointed to the first authority board could be removed from office as provided above or if petitions signed by two-thirds of the landowners within the district were filed with the state treasurer. In addition, a board member appointed by the state treasurer or a member nominated or appointed by a township or county board of commissioners could be removed with or without cause.

**Board Vacancy.** A vacancy would be created on an authority board by: the death or resignation of an incumbent; the removal of an incumbent as provided above; an incumbent's conviction of a felony or a crime involving the violation of his or her oath of office; the decision of a competent tribunal declaring void an individual's election or appointment to the board; or an individual's failure to be and remain a record owner of land within the district or a resident of Michigan. Vacancies would have to be filled as provided in the bill.

**Authority Director.** An authority board could appoint a director, who would serve at the authority board's pleasure, and would have to furnish a bond. The director would be responsible for the preparation of plans and the performance of the functions of the authority in the manner authorized by the bill. An authority also could appoint an acting director and an assistant treasurer, retain legal counsel, and employ other personnel.

**Board Activities.** The bill would permit an authority board to undertake certain activities, including carrying out an improvement; implementing a plan of development; entering into contracts; acquiring, purchasing, condemning, leasing, demolishing, relocating, or rehabilitating real or personal property; collecting rents, fees, and charges for the use of property under the board's control; and incurring costs in connection with performing its authorized functions. The state treasurer would be required to exercise the power of condemnation on behalf of the authority board, pursuant to the Uniform Condemnation Procedures Act, but could not condemn property outside the authority's district.

**Elections.** At an election conducted on or after the date on which the authority had no outstanding indebtedness, or six years after the date the authority was established, whichever came later, each record owner of real property located with the an authority district could cast one vote. At other elections property owners could cast one vote for each acre, or portion of an acre, owned.

**Authority Financing.** An authority's activities could be financed from one or more of the following sources:

--Special assessments imposed by the authority board.

--Proceeds of bonds and notes issued in anticipation of the collection of special assessments.

--Revenues from property, buildings, or facilities owned, leased, licensed, or operated by the authority or under its control, subject to limitations imposed upon the authority by trusts or other agreements.

--Contributions of property, labor, or other things of value from a public or private source.

--Money obtained from any other legal source approved by the board.

An authority board could carry out an improvement, provide for the payment of an improvement by the issuance of bonds, and determine that all or any part of the cost of an improvement would be defrayed by special assessments against property located in the authority district and especially benefitted by the improvement. In addition, an authority board could determine that all or part of an authority obligation assessed or contracted for pursuant to Public Act 185 of 1957 (which authorizes the establishment of county departments of public works) or the Drain Code would be defrayed by special assessments against the property specially benefitted. The special assessment could be levied and collected in accordance with the bill, although the requirements for a public hearing would not apply.

Interest earned from the investment of money collected under a special assessment under the bill, of money received as bond proceeds from a bond issued under the bill, or of money from interest or penalties charged and collected on an unpaid special assessment under the bill, could be used only for the following:

--To pay for the improvement for which the special assessment was assessed.

--To pay the principal and interest of bonds that were issued for the improvement.

--To pay the principal and interest of an advance from the authority that was used for the improvement.

Improvements/Special Assessment Districts. A board could proceed with an improvement unless a petition -- signed by 18 record owners representing 1/5th of the votes that could be cast in an election - - were filed in objection to it. If such a petition were filed, or if the board required a petition in support of an improvement before proceeding, then the board could not proceed with the improvement

until a petition -- signed by record owners representing 2/3rd of the votes that could be cast in an election -- were filed in support. The above petitions could be supplemented as to signatures by having an additional signed copy filed and the validity of the signatures determined by the records as of the day of filing. Upon receipt of a petition supporting an improvement, or upon determination of the board that one was not required, an authority board, if it desired to proceed with an improvement, would have to prepare plans describing the improvement and its location, with an estimate of its cost on a fixed or periodic basis. Upon receiving the plans and estimate, the board would have to file a copy of them with the township clerk(s). If it wanted to proceed with the improvement, the board would be required to tentatively declare its intention and designate the special assessment district against which the cost was to be assessed. For each improvement carried out by the board, there could be separate special assessment districts.

Hearings. The authority board would have to fix a time and place for a hearing on a petition supporting an improvement, if required, or on objections to an improvement or to the special assessment district. The board would have to mail notice to each record owner of, or party in interest in, property to be assessed, and publish notice in the township. The notice would have to indicate that the plans and estimate were on file with the township clerk(s), describe the special assessment district, and, if periodic redeterminations of cost would be necessary without a change in the district, indicate that those redeterminations could be made without further notice.

Notice of hearings in special assessment proceedings would have to be given to the clerk of each township where the authority district was located, at least 10 days before a hearing. After the hearing, the board could revise the plans, the cost estimate, or the district. Property could not be added to the district unless notice were given as described above, and a hearing were held. If a petition supporting an improvement was required because property had been added to the special assessment district that made the original petition supporting the improvement insufficient, then a supplemental petition would have to be filed containing sufficient additional signatures or record owners. If, due to the nature of the improvement to be made, a periodic redetermination of costs would be necessary without a change in the special



assessment district boundaries, the authority board would have to include in its cost estimate any projected incremental increases. If at any time during the term of the district an actual incremental cost increase exceeded the estimated incremental increase by 10 percent or more, notice would have to be given and a hearing held.

**Special Assessment Roll.** If, after the hearing on the improvement and special assessment district, the authority board desired to proceed with an improvement, the board would have to approve or disapprove, by resolution, the carrying out of the improvement; the original or revised plans and cost estimate; the boundaries of the special assessment district and the term of its existence; and, if applicable, the dates upon which periodic redeterminations of cost would be made. The board then would have to prepare a special assessment roll in which all of the parcels to be assessed were entered and described, with the names of the record owner of each parcel and the total amount to be assessed against each parcel. The amount to be assessed against a parcel would be "the relative portion of the whole sum to be levied against all the parcels of land in the special assessment district as the benefit to the parcel of land bears to the total benefit to all parcels of land in the special assessment district." Before confirming the assessment roll, the authority board would have to set a time and place to review and hear objections to the roll. After the hearing, the board could confirm the roll as prepared or revised by the board, or annul it and prepare a new roll. Within 20 days after the roll was confirmed, the authority secretary would have to mail notice of the special assessment to each record owner of, or party in interest in, property to be assessed. If the nature of an improvement would necessitate a periodic redetermination of cost without a change in the district, the notice would have to state that changes could be made without further notice to record owners or parties in interest. After a roll was confirmed, all assessments on it would be final and conclusive unless a petition contesting an assessment were filed with the State Tax Tribunal pursuant to the Tax Tribunal Act.

An authority would be required to take affirmative steps to provide for the full disclosure of information concerning financing improvements and special assessments relating to real property within the district. The disclosure would have to state that the amount assessed could not exceed the value of

the benefits received from the improvement. This information would have to be made available to all prospective residents of the district.

If the assessments in a special assessment roll were insufficient for any reason, including the noncollection of the assessments, to pay for the improvement for which they were made or to pay the principal and interest on the bonds issued in anticipation of their collection, the authority board would have to make additional pro rata assessments to supply the deficient amount. The total amount assessed against any parcel of land, however, could not exceed the value of the benefits received from the improvement.

The bill also provides for: the payment of special assessments in installments; assessments' being a lien upon the parcels assessed; the collection of special assessments; delinquencies; the division of parcels after an assessment was confirmed; and procedures to be followed if an assessment were found invalid or illegal.

**Authority Bonds and Notes.** After a special assessment roll for an improvement was confirmed, the authority board could borrow money and issue the bonds and notes of the authority in anticipation of the collection of special assessments to defray all or part of the cost of the improvement. The bonds and notes could not exceed the amount of such special assessments, and would bear interest at a rate that could not exceed the maximum rate permitted by the Municipal Finance Act. To the extent that special assessment collections were pledged for the payment of bonds or notes, the collections would have to be set aside in a special fund for that payment. Bonds or notes could be issued in anticipation of the collection of special assessments levied in respect to one or more improvements. Except as otherwise provided in the Revenue Bond Act with respect to bonds issued under that act, bonds or notes issued by an authority could be sold at public or private sale.

Bonds and notes issued by an authority would have to be issued in the authority's name and not in the name of the county or a township in which the authority was located. The county or township would not be liable on the authority's bonds or notes, and the bonds or notes would not be a debt of the county or township.

Authority bonds and notes would be exempt from all taxation except inheritance and transfer taxes, and the interest on the bonds and notes would be exempt from all taxation in this state, notwithstanding that the interest could be subject to federal income tax. Authority bonds and notes could be invested in by all public offices, state agencies, political subdivisions, insurance companies, banks, savings and loan associations, investment companies, and fiduciaries and trustees. Authority bonds and notes also could be deposited with and received by all public officers and state agencies and political subdivisions for any purpose for which the deposit of bonds is authorized.

**Other Provisions.** The bill also provides for the appointment of successor members, officers, and meetings. Authority board members could not receive compensation for their services but would be entitled to reimbursement of expenses. An authority would be subject to the Open Meetings Act and the Freedom of Information Act. The bill specifies that an authority board member would not be subject to personal liability for, or because of the issuance of, bonds or notes of the authority. An authority board could provide for the purchase of insurance indemnifying board members from personal liability for the acts or omissions of the board.

**County/Township Reimbursement.** The county or a township in which all or part of an authority district was located could charge the authority, and the authority would be required to reimburse the county or township, for expenses reasonably incurred by it in satisfying the bill's requirements. If requested to do so by a county or township, an authority could enter into a contract for the reimbursement of such expenses.

**Delinquent Taxes.** The bill specifies that an authority would not be a taxing unit or local taxing unit for purposes of sections of the General Property Tax Act that allow a county to establish a delinquent tax revolving fund, provide that delinquent taxes due to taxing units within the county are payable to the county, and require the county treasurer to pay from the fund delinquent taxes due to the county and political units within it.

**Roads.** A road under the jurisdiction of the state transportation department or a board of county road commissioners could not be improved under the bill without the written approval of the

department or the county board. As a condition of granting approval, the department or board could require one or more of the following:

--That all engineering with respect to the improvement be performed by the state transportation department or the board of county road commissioners.

--That all construction, including the awarding of construction contracts, in connection with the improvement be in accordance with the specifications of the transportation department or county board.

--That the cost of the engineering and supervision be paid to the department or county board from the funds of the special assessment district.

**Property Transfer.** A township where an authority district was located could transfer all or a portion of the property in the township that was within the authority district to a local unit under Public Act 425 of 1984. (Public Act 425 allows two or more local units to transfer property conditionally, by contract, for up to 50 years, for the purpose of an economic development project.) A transfer would not affect the validity or continued existence of the authority. A contract for the conditional transfer of property could provide that appointment to the board be made as provided in the contract. The contract for the conditional transfer of property could provide that the local unit to which the property was transferred would have to assume a function or duty otherwise assigned by the bill to the transferring township. The local unit, and its officials, employees, agents, and appointees, would have the same authority, rights, immunity, and duties as the township, and its officials, employees, agents, and appointees, in carrying out an assumed function or duty.

### ***FISCAL IMPLICATIONS:***

According to the House Fiscal Agency, the bill would impose additional responsibilities on the Department of Treasury, resulting in an indeterminate loss in revenues if the department's existing staff, which is used to generate revenues, were used to fulfill these responsibilities. (6-9-92)

### ***ARGUMENTS:***

#### ***For:***

The bill would provide a vehicle for a group of landowners to band together and effectuate the

reclamation of blighted land. This would promote both economic development and environmental improvement. Reportedly, for example, there is a tract of land south of Petoskey that is ripe for reclamation and improvement; the land in question contains a former cement plant and a developer would like to use the property for a marina, condominiums, shops, etc.: a project whose costs have been estimated in the \$500 million range. The developer, however, needs a way of financing reclamation activities without burdening the local government and taxpayers with the cost of such things as a sewer system, water supply, and roads. A land reclamation and improvement authority created for this or a similar situation would pay its own way. What an authority would not do is reduce or adversely affect tax revenue available to school districts or other taxing jurisdictions; impose any financial obligations on a township or any other municipality; impose any direct costs on the state; or require the use of any federal volume cap on the financing programs of state agencies, such as the Michigan State Housing Development Authority, and local issuers, such as economic development corporations. The bill's language comes largely from existing laws allowing the establishment of community development districts, as well as laws governing special assessments.

#### ***For:***

The bill would protect landowners in an authority district in several ways. First, all of the landowners in a proposed district would have to petition for the creation of an authority, and there would be an opportunity for public input before an authority was created, an improvement was undertaken, or a special assessment was imposed. Also, an authority board would not be controlled by a developer or any one landowner, but could contain township, county, and Department of Treasury representatives, as well as members nominated by the landowners. Further, an authority would be authorized to levy special assessments but would have no taxing powers. Perhaps most importantly, the amount of a special assessment on a parcel could not exceed the value of the benefits received from an improvement. Finally, an authority would be required to take steps to disclose information related to financing improvements and to special assessments, and make this information available to prospective residents.

These provisions are designed to prevent the type of situation that apparently arose in a Colorado

district, where a substantial infrastructure was built with the proceeds of bonds that were supported only by taxes levied on the property owners within the district. When a significantly smaller number of homes were built and sold than had been projected, relatively few parcels were available to support the principal and interest payments on the infrastructure bonds, the homeowners within the district bore the entire burden of the debt service, and the value of the property was substantially adversely affected. Under the bill, this would not happen in Michigan.

#### ***POSITIONS:***

A representative of LoPatin and Company, a Southfield, Michigan, real estate development company, testified before the House Towns and Counties Committee in support of the bill. (5-9-92)

The Michigan Townships Association has no position on the bill. (5-9-92)