House
Legislative
Analysis
Section

Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

LAND DIVISION ACT AMENDMENTS

Senate Bill 345 (Substitute H-2)
First Analysis (6-26-97)

Sponsor: Sen. Leon Stille
Senate Committee: Local, Urban, and State Affairs
House Committee: Agriculture

THE APPARENT PROBLEM:

Public Act 591 of 1996 amended (and renamed) the Subdivision Control Act of 1967, the statute that, generally speaking, regulates the division of land in the state (see BACKGROUND INFORMATION) and that requires that certain pieces of land be surveyed and "platted." The platting process involves the submission, review, and recording of a "plat" (a detailed map or chart) of "subdivisions" of land. The plat must be reviewed and approved by various public entities, including the state Departments of Transportation, Natural Resources (since divided into the Departments of Natural Resources and Environmental Quality), and Public Health (since merged with the Department of Mental Health into the Department of Community Health); county drain commissioners, road commissions, or plat boards; and municipalities (that is, cities, villages, and townships). The aim of this review is to provide for the orderly development of land and to ensure that the land in question is suitable for the proposed development, including ensuring adequate drainage and proper access ("ingress and egress") to lots.

However, many people, including land developers, believe that these platting requirements of are too onerous, cumbersome, complicated, costly, and time-consuming. Public Act 591 of 1996 (see BACKGROUND INFORMATION), which amended the Subdivision Control Act of 1967, renamed it the Land Division Act and significantly increased the number of land divisions that bypass the whole platting process by exempting them from that process. Although much of the discussion concerning revision of the land use statute centered on slowing "urban sprawl" and preserving farmland and other open spaces, critics of Public Act 591 argue not only that it did not revise the much-criticized platting process, but it also has the potential for exacerbating rather than ameliorating the loss of farmland to urban sprawl by creating so many exemptions to the platting process. Local units of government also have expressed concern about the act's provisions regarding local approval for proposed land divisions. Legislation has been introduced to address these and other issues.

THE CONTENT OF THE BILL:

The bill would amend the Land Division Act (MCL 560.105 et al.) to:

** Generally (except for sewage disposal on parcels of less than one acre) exempt development sites from Department of Environmental Quality (DEQ) rules relating to the suitability of on-site water supply and sewage disposal, in the absence of public water and sewer service, for the purposes of municipalities' approval of a (preliminary or final) plat. Instead, at the time of proposed division, in order to obtain local approval each development site would have to have (a) either public water or local (city, county, or district) health department approval for an on-site water supply and (b) approval for sewage disposal under local health department rules for parcels of more than one acre ("43,520 square feet") or under DEQ rules for parcels of less than one acre.

** Give municipalities and counties clear statutory authority to adopt ordinances or publish rules to carry out the provisions in sections 108 (regarding exempt divisions) and 109 (regarding local approval of proposed land divisions) of the act.

** Increase from 30 to 45 days the amount of time a municipality would have to approve or disapprove a proposed land division after the filing of a complete application with the appropriate local official. Currently, the law requires a municipality to approve a proposed land division if certain requirements are met, but does not give explicit statutory authority for disapproval if the requirements are not met. Also, the current law does not require that the "filing" of a proposed land division be in the form of a complete application, which the bill would define to mean one containing information necessary to ascertain whether the requirements of sections 108 and 109 were met. The bill also would require the local official responsible for approving or disapproving applications for land divisions to provide written notice regarding his or her decision to the applicant, and, if the application was disapproved, all the reasons for disapproval.

** Allow municipalities (cities, villages, or townships) with populations of 2,500 or less to enter into agreements with a county to transfer their authority to approve or disapprove a proposed land division.

** Allow the governing body of a municipality (or the county board of commissioners, if approval/disapproval authority had been transferred to the county) and local health departments to establish fees for the reasonable costs of reviewing a proposed land division and for evaluating a parcel's suitability for on-site water supply and sewage disposal.

** Require that, for local approval, a proposed land division conform to local zoning requirements (instead of, as currently, have a width not less than that required by local ordinance).

** Delete the current requirement that, for local approval, each resulting parcel of a proposed land division have an area not less than that required by local ordinance.

** Change the public utility easement requirements for development sites. Currently, the act requires, for local approval, that development sites have adequate easements for public utilities from the parcel to existing public utility facilities. The bill would delete "existing" and instead require adequate easements from the parcel to public utility facilities "that served, or that were available and had easements to serve, the parcel or tract being partitioned or split."

** Require that when a proprietor transferred the right to make "exempt divisions" (land divisions exempt from platting requirements), he or she give, within 45 days, written notice of the transfer to the assessor of the city or township where the property was located on the form currently required by the State Tax Commission under the General Property Tax Act. The commission would be required to revise the form to include, in the mandatory information portion of the form, substantially the following two questions: (1)

(2)

If a municipality had entered into an agreement with a county to transfer land division approval or disapproval authority, the municipality would have to ("promptly") forward to the county a copy of each of these forms filed with it.

** Waive the local approval requirements for exempt splits that were not accessible (see BACKGROUND INFORMATION) if the parcel either (a) existed on March 31, 1997, or (b) was created by an exempt split.

The proprietor of such a parcel would be required to provide a buyer with the following written statement before closing:

** Add penalties for selling any parcel of land without first obtaining any approval of a local unit of government required under section 109 of the act. Violations would be misdemeanors punishable by a fine of up to $1,000, imprisonment for up to 90 days, and/or community service. For any offense after a first offense, the person, firm, or corporation would be punished by a fine of up to $1,000, imprisonment for up to 180 days, and/or community service. The bill also would add an additional penalty for those who violated the act's requirements that anyone who sells or agrees to sell land without first having recorded a plat (when so required): after a first offense, each subsequent offense would be punished by a fine of up to $1,000 and/or imprisonment for up to one year.

** Reduce the number of land divisions exempted from the act's platting requirements by changing the formula for redivision after ten years, capping the maximum number of possible exempt splits at five. Parcels or tracts resulting from division or exempt splits could not be further partitioned or split unless the redivision (a) complied with the act's platting requirements, (b) was an exempt split, and/or (c) met all of the following requirements: (1) the owner of the parcel or tract had already used up all of his or her allowable divisions; (2) the division satisfied the local approval requirements of section 109; and (4) the division, together with any other previous divisions under this subsection, resulted in no more than five parcels, with not more than two parcels for the first ten acres or less plus one additional parcel for each whole ten acres in excess of the first ten acres in the parcel or tract. The bill would delete the other option allowed in Public Act 591 of seven or ten exemptions for keeping not less than sixty percent of the area of the parcel being split or partitioned in one of the parcels resulting from the redivision, and would restrict the right to make redivisions to the remainder of the parent parcel (or tract) kept by the owner of the parent parcel after one or more divisions or exempt splits, unless he or she had transferred these rights under section 109 of the act.

** Give the penalty section of the bill an effective date of October 1, 1997.

HOUSE COMMITTEE ACTION:

The House Committee on Agriculture substituted the bill as passed by the Senate (S-3). The House substitute, H-2, kept the Senate-passed provisions that would (a) allow municipalities to approve or disapprove proposed land divisions within 45 days, instead of 30 days, of a completed application, (b) require written notification to applicants of the municipality's (or county's) decision (and, if the application were disapproved, of the reasons why), and (c) allow municipalities with populations of less than 2,500 to transfer this approval/disapproval authority to a county.

The House substitute also revised some of the Senate-passed bill's provisions:

** Substitute S-3 would require DEQ rules for on-site water supply and sewage disposal only for sites less than 62,500 square feet (1.5 acres) in size, and only when someone sought a building permit for the site. The Senate-passed bill also would provide legal immunity for local units of government if an approved 62,5000 square foot parcel didn't get a building permit because it didn't have public water or public sewage, or local health department approval for the suitability of an on-site water supply or on-site sewage disposal under "health department" standards set out for lots under administrative rules. The House committee substitute would require lots to meet DEQ sewer requirements and local health department water supply requirements at the time of the proposed division.

** The House committee substitute would add to the Senate bill's requirement of written notification by proprietors to municipalities of any transfer of exempt division rights, a 45-day deadline and the specific form on which such notification would have to be made.

** Substitute H-2 would allow local units of government to adopt ordinances and rules to carry out all of sections 108 and 109, instead of only ordinances "setting forth the standards in subdivisions 109(b), 109(c), and 109(d)." [Presumably, the correct references are to 109(1)(b), 109(1)(c), and 109(1)(d), which refer to, respectively, the depth-to-width ratio of a parcel, the minimum width of a parcel, and the minimum area of a parcel, as the bill would add section 109(b), the so-called "forestry" exemption from the act's accessibility requirements, and there are no sections 109(c) or 109(d).] Also, where Substitute S-3 would allow local ordinances to establish fees for reviews under sections 108 and 109, Substitute H-2 would allow fees not only for these reviews but also for local health department reviews.

** Where Substitute S-3 would require that development sites have adequate easements for public utilities from the parcel to existing public utility facilities, Substitute H-2 would require development sites to have adequate easements from the parcel to public utility facilities "that served, or that were available and had easements to serve, the parcel or tract being partitioned or split."

** The so-called "forestry" exemption for inaccessible parcels or tracts would be rewritten to exempt from the local approval process inaccessible parcels or tracts that either were in existence on March 31, 1997, or that were created by an exempt split. In addition, H-2 would require written notification by the proprietor to the buyer of such a parcel that it was not accessible as defined under the Land Division Act.

In addition, Substitute H-2 would add new provisions requiring that all divisions conform to local zoning requirements, limit ten-year redivisions to a maximum of five parcels instead of ten, and provide penalties for violations of the act's provisions.

BACKGROUND INFORMATION:

The Subdivision Control Act of 1967. The legal title of the Subdivision Control Act -- which, among other things, was renamed the Land Division Act by Public Act 591 of 1996 -- said, in part, that it was "an act to regulate the subdivision of land; to promote the public health, safety, and general welfare; to further the orderly layout and use of land; to require that the land be suitable for building sites and public improvements and that there be adequate drainage of the land; to provide for proper ingress and egress to lots; to promote proper surveying and monumenting of land subdivided and conveyed by accurate legal descriptions; [and] to provide for the approvals to be obtained by subdividers prior to the recording and filing of plats."

"Accessibility." Under Public Act 591 of 1996, parcels of land consisting of 40 acres or more are not subject to section 109 of the Land Division Act if they are "accessible"; "exempt splits" also are not subject to approval under the act so long as they, too, are "accessible." Under Public Act 591, the term "accessible," in reference to a parcel of land, means that the parcel meets one or both of the following requirements:

** Has an area where a driveway provides vehicular access to an existing road or street and meets all applicable location standards of the state Department of Transportation or county road commission, and of the city or village; or has an area where a driveway can provide such access to an existing road or street and meets all such standards; or,

** is served by an existing easement providing vehicular access to an existing road or street and meets all applicable location standards, or could be served by a proposed easement providing such access and meeting such standards.

Other current land division legislation. This session, a number of other bills have been introduced that would amend the Public Act 591 of 1996, the new Land Division Act. House Bill 4381 would reduce the number of exempt splits under the Land Division Act, as well as make a number of other changes. House Bill 4481 would repeal the amendments to the Subdivision Control Act of 1967 made by Public Act 591 of 1996. House Bill 4737, among other things, would remove development sites from the act's current requirement that subdivisions and development sites not served by public water or public sewers meet the Department of Environmental Quality's (DEQ) rules regarding the suitability of groundwater for on-site water supply and of soils for septic systems. Senate Bill 93, which was vetoed by the governor, would have closed the "gap" left between enactment of Public Act 591 of 1996 and its effective date. For more information on these bills, see the House Legislative Analysis Section summary of House Bill 4481 dated 4-10-97 and analyses of House Bills 4381 (dated 3-18-97) and 4737 (dated 6-24-97), and the Senate Fiscal Agency analysis of Senate Bill 93 dated 2-7-97.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

The bill would make a number of much-needed revisions to last year's legislation amending the Subdivision Control Act, providing at least some of the changes required to ensure that land is used wisely and that farmland is appropriately preserved. Many people believe that the changes made by Public Act 591 of 1996 were hastily done and at the time poorly understood. At the time Public Act 591 was being considered by the legislature, many thought that the amendments to the Subdivision Control Act would preserve farmland by eliminating so-called "bowling alley" lots (strings of long, thin, land parcels of at least 10.1 acres with minimum road frontage) encouraged by the old Subdivision Control Act and slow down "urban sprawl" by discouraging uncontrolled rural development. However, to the disappointment of many, Public Act 591 did nothing to eliminate rural "bowling alley" lots and in fact has the potential for escalating urban sprawl by exempting so many more land divisions from the platting process, with the likelihood that rural areas will continue to experience -- perhaps even at an accelerated pace -- the kind of density of major subdivision developments without adequate local public review and infrastructure support. Public Act 591 of 1996 removed many land divisions completely from the

act's platting requirements while at the same time not clearly giving local units of government adequate authority to regulate land division even while requiring them to approve these divisions.

The bill would reduce the number of "exempt" (i.e. exempt from the act's platting requirements) parcels allowed upon division every ten years and would end landowners' ability to accumulate unused land divisions over time, would give clear -- and adequate -- authority to local units of government to regulate the oversight of land division required of them by the act (including giving them the ability to charge fees to cover the costs of their services, extending the time limit for approval, and defining and requiring a complete application for land division), require all land divisions to conform to local zoning, assure adequate review for on-site water and sewer for all development sites at the time of proposed land division (rather than allowing such a review to be put off until applications for building permits), clearly provide a mechanism for tracking the transfer of division rights, and adding for the first time penalties for failing to approve local approval for proposed exempt land divisions. The bill also would address concerns raised by the forestry industry and by people who own hunting camps concerning the act's "accessibility" requirements for exempt divisions, as well as concerns by the smaller local governments who feared that the approval requirements would be too onerous for their small staffs (the bill would allow such small units to enter into agreements with counties to take responsibility for the approval/disapproval decision making process). Finally, the bill would address what has come to be known as "the DEQ problem" -- the water and septic approvals under Department of Environmental Quality rules that Public Act 591 added to the process of splitting land. According to some reports, some local health departments are using these DEQ rules to deny splits and preventing homes from being built on land where they had previously been allowed under the old Subdivision Control Act (apparently because the old act allowed what essentially are sealed septic systems on sandy land that otherwise do not meet the DEQ "percolation" test requirements). While many would prefer that the bill be strengthened even further -- for example, by completely eliminating the ten-year redivision "clock" and by reducing the large number of initial exempt splits still allowed under the bill and the act -- the bill would make a good start on addressing many of the problems raised by Public Act 591.

Against:

Representatives of developers argue that beyond solving a major technical problem with Public Act 591 (the "DEQ problem") which reportedly has stopped landowners from splitting and selling their land or building homes in many areas in the state, the other changes proposed in the House substitute are either

unnecessary or even harmful to sensible land development. They argue that Public Act 591 already reduced the number of splits allowed under the old Subdivision Control Act, and that unless and until the real problem - streamlining the platting process -- is addressed, no further reductions should be made in the number of exempted splits nor should other slow growth/no growth controls (like local ordinances more stringent than objective, statewide rules set by the legislature) be allowed.

POSITIONS:

The Michigan Farm Bureau strongly supports the bill. (6-24-97)

The Michigan Townships Association supports the bill. (6-24-97)

The Michigan Municipal League supports the bill. (6-24-97)

The Michigan Environmental Council supports the bill. (6-25-97)

The Michigan Association of Homebuilders indicated opposition to many of the changes made in the House committee substitute. (6-24-97)

Analyst: S. Ekstrom

#This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.