House
Legislative
Analysis
Section

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LAND DIVISION: PA 591 AMENDMENTS

House Bill 4737 (Substitute H-4)
First Analysis (6-24-97)

Sponsor: Rep. Tom Alley
Committee: Conservation, Environment and Recreation

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. (See BACKGROUND INFORMATION.)

Many people, including land developers, believed that the platting requirements of the Subdivision Control Act of 1967 were too onerous, cumbersome, complicated, costly, and time-consuming. Public Act 591 of 1996 (see BACKGROUND INFORMATION) amended the Subdivision Control Act of 1967, renaming it the Land Division Act and making a number of changes in the act that significantly increased the number of land parcels that are exempted from the act's platting requirements. One of the changes the 1996 amendments also made was to require that landowners have their land tested for water availability and suitablilty for septic systems (so-called "percolation" tests) as part of the approval process for splitting their land under the act. Some people believe that this requirement would impose unnecessary costs on property owners and that such tests should be done only when a new owner plans to build. Legislation has been introduced to address this and other issues.

THE CONTENT OF THE BILL:

The bill would amend some of the 1996 amendments made by Public Act 591 to the Land Division Act (Public Act 288 of 1967). The bill would do the following:

** Remove development sites (see BACKGROUND INFORMATION) from the act's requirements that subdivisions and development sites not served by public water or public sewers be subject to the Department of Environmental Quality's (DEQ) rules regarding the suitability of groundwater for on-site water supply or to the "suitability" of soils not served by public sewers for septic systems.

** Prohibit the issuance of building permits for parcels of less than one acre (43,520 square feet) in size that resulted from a division, unless the parcel had public water and public sewer or (city, county, or district) health department approval for the suitability of an on-site water supply and for on-site sewage disposal under the health department administrative rules for standards for lots (see BACKGROUND INFORMATION).

** Exempt from liability the municipality or county (and their officers and employees) that had approved either a proposed land division or a one-acre parcel if the building permit wasn't issued for the parcel either because it didn't conform with local zoning ordinances or didn't meet the water and sewer requirements for one-acre parcels. (Note: While the bill would require on-site water and sewer approval for one-acre parcels, it would exempt municipalities from liability for lots of one and one-half acres.) Approval notices of proposed one-acre divisions would have to include a statement regarding this liability exemption.

** Allow cities, counties, or district health departments to adopt by regulation a fee or schedule of fees reflecting the costs of providing the services required by the bill for public water and/or sewer or approval for on-site water supply and sewage disposal for one-acre parcels.

** Allow the governing bodies of municipalities (or the county board of commissioners of counties with the authority to approve or disapprove a division) to adopt ordinances setting out certain requirements (depth to width ratios, parcel widths, minimum areas) and fees for reviews under sections 108 and 109. Any such fees couldn't exceed the reasonable costs of providing the services for which the fees were charged.

** Allow municipalities with 2,500 or fewer people to enter into agreements with counties to transfer to the county the authority to approve or disapprove a land division.

** Require municipalities to approve or disapprove (rather than simply require them to approve) proposed land divisions, and increase the amount of time for municipalities to make this decision from 30 days to 45 days after the filing of "a complete application" for the proposed division. (Under the bill, an application would be "complete" if it contained information necessary to ascertain whether the requirements of sections 108 and 109, which were added to the Land Division Act by Public Act 591 of 1996 were met.) The official who had the authority to approve or disapprove a proposed division (the assessor or other municipally -- rather than "locally" -- designated official, or the county official) would have to provide the person who filed the application with written notice of his or her approval or disapproval of the application, and, if the application were disapproved, with "all the reasons for disapproval".

** Require a proprietor transferring the right to make an exempt division under the act to "promptly" give written notice of the transfer to the assessor (or other municipally designated or county official having the authority to approve or disapprove a proposed division).

** Delete the current prohibition against selling parcels of unplatted land unless the deed states whether or not the right to make further exempt divisions was to be conveyed with the land (where the statement must be in substantially the following form: "The grantor grants to the grantee the right to make [insert number] division(s) under section 108 of the Land Division Act, Act No. 288 of the Public Acts of 1967."). (Currently, also, without such a statement, the right to make such exempt divisions is not transferred, but stays with the remainder of the parent tract or parent parcel kept by the original owner ["grantor"].)

** Exempt from approval under the act exempt splits of parcels or tracts that were in forestry use and that were not accessible (see BACKGROUND INFORMATION); however, the bill would require the proprietor to provide the buyer of a resulting parcel with the following written statement before closing: "This parcel is not accessible as

defined in the Land Division Act, 1967 Act 288, MCL 560.101 to 560."

MCL 560.105 et al.

BACKGROUND INFORMATION:

The Subdivision Control Act of 1967. The legal title of the Subdivision Control Act says, in part, that it is "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."

As used in the Subdivision Control Act, the "subdivision" of land was a technical term defined in the act. It referred to the partitioning or dividing of land by landowners for certain purposes (sale, lease for more than one year, or building development), into a certain minimum number of parcels (five), with a maximum ten-acre size per parcel. More specifically, the "subdivision" of land applied to the partitioning or dividing of land where five or more parcels or tracts of land, each of which was at least ten acres or less in area, were created either by (a) the act of division, or (b) successive divisions within a period of ten years. Since the act required that any division of land which resulted in a "subdivision" be surveyed and platted, parcels above ten acres or up to four small redivisions every ten years are exempt from the act's platting requirements.

The act, in addition to defining "subdivision", also defines "parcel" or "tract" (of land) as "a continuous area or acreage of land which can be described as provided for in [the] act"), and "lot" as "a measured portion of a parcel or tract of land, which is described and fixed in a recorded plat."

Public Act 591 of 1996. The act increased the number of exemptions from the act's platting requirements in a number of ways: the granting of an initial set of exempt parcels, based on the size of the piece of land in question; the granting of additional exempt parcels upon redivision every ten years; the transferability of exempt parcels; and the granting of bonus parcels in exchange for landowners not developing 60 percent of their land.

"Subdivision" vs "division." Public Act 591 does away with the platting exemption of parcels of land larger than ten acres by changing the definition of "subdivision" to

apply to certain parcels of land under 40 acres in area and adding a new definition of “division” that exempts certain other parcels of less than 40 acres from the act’s platting requirements so long as they comply with the requirements of two new sections added to the newly-named Land Division Act.

Public Act 591 changes the definition of "subdivision" to refer to the partitioning or "splitting" (rather than "dividing") of land that results in one or more parcels of less than 40 acres ("or the equivalent"), and adds a second kind of partitioning or splitting of land, "division," that also results in one or more parcels of less than 40 acres ("or the equivalent"). (The act defines "40 acres or the equivalent" to mean "40 acres, a quarter-quarter section containing not less than 30 acres, or a government lot containing not less than 30 acres." Thus, both “subdivision” and “division” can refer to parcels of land that in some cases are less than 40 acres in area and in other cases less than 30 acres in area.)

While "subdivisions" remain subject to the act’s platting requirements, "divisions" are not. Instead, "divisions" must satisfy certain new requirements added by Public Act 591 including municipal approval, a statement of "the right to farm" in the sale of unplatted land, and certain formulas concerning the number of resulting parcels.

"Development site.” Public Act 591 defines “development site” to mean any parcel (where a “parcel” is a continuous area or acreage of land which can be described as provided for in the act, as opposed to a “tract,” which means two or more parcels that share a common property line and are under the same ownership) or lot (where a “lot” is a measured portion of a parcel or tract of land, which is described and fixed in a recorded plat) on which exists, or is intended for, building development other than agricultural or forestry use.

"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.

FISCAL IMPLICATIONS:

Fiscal information is not available. (However, a Senate Fiscal Agency analysis of a similar bill [Senate Bill 345] notes that the proposal would allow local units to adopt fees to cover the actual reasonable costs of providing services specified under the act. [5-20-97])

ARGUMENTS:

For:

The bill would make a number of much-needed amendments to the 1996 amendments to the (newly renamed) Land Division Act.

Currently, under the 1996 amendments, property owners are required to have lots that they propose to split from a larger piece of land tested for water availability and suitability for septic systems (so-called "percolation" tests). Supposedly, the reason for this requirement was to ensure that property owners didn't sell lots unsuited for buildings, but critics of the requirement argue that these testing requirements could wind up imposing excessive costs on property owners and are better done at the time the new owner applied for a building permit. Under the bill, parcels would not have to be tested for water availability and septic system suitability before being split. Instead, as under the building code, parcels would have to be tested when a new owner planned on building on the parcel. At the same time, the bill would protect local units of government from lawsuits if they refused a building permit because the parcel in question didn't conform to local zoning ordinances or, in the case of one-acre (or less) lots, didn't have public water and/or sewage or receive approval for on-site water and/or sewage disposal.

The bill also would correct a defect of the 1996 amendments by giving local governments explicit authority to adopt ordinances to administer the act, and would, furthermore, allow local units to adopt ordinances or regulations establishing fees (or fee schedules) to cover their costs of performing the reviews required of them under the act. In addition, where the 1996 act required municipalities to approve proposed land divisions under certain circumstances, it did not give them authority to disapprove them. The bill would do this, as well as require a "complete" application, and extend from 30 to a more realistic 45 days the amount of time allowed municipalities for such approval or disapproval. The bill

also would correct another problem with the 1996 amendments by requiring landowners who transferred the right to make exempt divisions to new owners to promptly notify the appropriate local official, thereby enabling local governments to track the transfer of rights ro exempt divisions.

Finally, the bill would make an exception to its "accessibility" requirements (generally, the requirement that exempt splits have guaranteed vehicular access) for land that is in forestry use. As a normal and continuous part of their land management operations, large timberland owners routinely buy, sell, or trade with other forest landowners to improve productivity, adjacency and blocking, location, and specific timber types. They often own many large tracts of land that do not have "access" as defined under the 1996 amendments, but adjoining landowners traditionally have cooperated to allow access for ingress and egress for the purposes of forest management and for the 15- to 60-year timber harvesting cycles without either guaranteeing vehicular access or granting specific legal easements. (In fact, reportedly, federal and state agencies, by policy, do not grant legal easements across their properties.) And even where large timberland owners could meet the new accessibility requirements, doing so would still result in increased road construction that not only would be costly to the landowners but that would also adversely affect forest land restructuring. The bill would address this issue, allowing large timberland owners to resume essential forest land management and restructuring.

Against:

While the bill would be a good beginning in making some much-needed changes to the 1996 amendments to the Land Use Act, as many groups have pointed out, there are more problems with the 1996 changes that also need to be addressed. For example, many people believe that the changes grant far too many land splits exempt from the act's platting requirements, and farm representatives have argued, for example, that the number of exempt divisions should not be allowed to accumulate over time and that the number of parcels resulting from ten-year re-divisions should be limited to four. Other suggestions include requiring a 2.5 acre maximum development size and a maximum 4:1 depth-to-width ratio unless otherwise provided for by a local unit of government, adding enforcement provisions to ensure compliance with the act, and providing consistency between local zoning and exempt division approvals by including both area and/or density requirements.

POSITIONS:

The Michigan Association of Home Builders supports the bill but prefers the lot size of 62,500 square feet in the bill as originally introduced. (6-23-97)

The Champion International Corporation supports the bill. (6-23-97)

The Michigan Association of Realtors supports the bill. (6-23-97)

The Michigan Manufacturers Association supports the bill. (6-23-97

The Michigan Townships Association does not oppose the bill. (6-23-97)

The Michigan Farm Bureau opposes the bill. (6-23-97)

The Michigan Environmental Council opposes the bill. (6-23-97)

The Michigan Association for Local Public Health opposes the bill. (6-23-97)

The Michigan Municipal League opposes the bill. (6-23-97)

The Michigan Association of Counties has not yet taken a position on the bill. (6-23-97)

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.