

House Bill 5871 (Substitute H-2)
First Analysis (6-11-98)

Sponsor: Rep. Mark Schauer
Committee: Urban Policy and Economic
Development

THE APPARENT PROBLEM:

The increasingly high cost of purchasing a home and the inability of many people who live at the lower end of the income scale to have reasonable access to credit makes it difficult, if not impossible, for many to purchase a home. As a result, an increasing number of nonprofit organizations, like Habitat for Humanity and the Inner City Christian Federation, are making efforts to help low income families to find affordable housing. These organizations and others often rehabilitate homes in distressed areas and resell them to people with lower incomes. The work of these groups serves the twin purpose of assisting low income persons by offering reasonably priced housing and encouraging urban renewal by rehabilitating properties.

In order to make this work, the groups involved must find properties that are cheap. This often means that they rely on property that is donated or purchased for less than its fair market value. One source for such property has been cities or local governments. Currently, many cities and other local governmental units have been willing to convey publicly owned property to these nonprofit groups for rehabilitation and resale to low income families. However, even though some cities have been willing to convey property to such groups at less than the fair market value, other local units have refused to do this, arguing that doing so is barred by the constitution. These units assert that according to Article VII, Section 26 of the Michigan Constitution, cities or villages are prohibited from "loaning [their] credit for any private purpose or, except as provided by law, for any public purpose." Furthermore, they assert that this position is supported by the Michigan Supreme Court's opinion in *Sinas v City of Lansing*, 382 Mich 407 (1969), where the court concluded that the constitution prohibits a city from giving away publicly held urban renewal land, even for a public purpose, without statutory authority. As a result of this difference of interpretation, it has been suggested that statutory clarification is needed to allow and encourage all governmental units to assist nonprofits in providing affordable housing for low income families.

THE CONTENT OF THE BILL:

The bill would create the Homestead Assistance Act. It would allow for local governmental units to sell publicly owned real property for less than market value under certain circumstances. Prior to such a sale, the local unit of government would be required hold a public hearing under the Open Meetings Act. Only nonprofit organizations qualified under the Internal Revenue Code that purchased real property for the purpose of constructing single- or multi-family homes and reselling them for use as family residences would be eligible receive property under these circumstances. The conveyance agreement would have to provide that the property was sold to the nonprofit for one of the following purposes:

- 1) Constructing new or rehabilitated housing designed to increase the supply of affordable housing within the local unit.
- 2) Encouraging economic development within the local unit.
- 3) Constructing a facility as defined under the State Building Authority Act for the benefit of the citizens of the local governmental unit. [The definition of facilities under the act would include "furnishings or equipment, existing facilities, and all new buildings, parking structures and lots, and other facilities, the sites for the buildings, structures, or facilities, and furnishings and equipment for the buildings, structures, or facilities in any way acquired or constructed by the building authority" under the State Building Authority Act.]
- 4) Constructing a project as defined under the Economic Development Corporations Act. [The term project is defined in that act to include industrial or commercial enterprises and enterprises related to housing and neighborhood improvement programs.]

If the property were sold for any of these purposes, the bill would specify that the conveyance was for a public purpose.

The powers granted to local governmental units under the bill would be in addition to any powers already granted to such units by state laws or charters adopted under state law.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

The bill is needed either to clarify or to correct a problem that has arisen for some nonprofit entities engaged in rehabilitating property and providing affordable housing for low-income families. According to supporters of the bill, there is some disagreement among local units of government regarding the necessity of such legislation. Some have interpreted Section 26 of Article VII of the state constitution as prohibiting cities and other local units from conveying publicly owned property to nonprofit groups, while others have determined that the units have the authority to make such conveyances. In any event, without specific statutory authority it can be problematic to convey public property to private entities for less than fair market value. The bill will provide specific statutory authority to allow all cities to transfer public land to certain nonprofits and to protect those cities that already engage in this practice from the threat of lawsuits.

Response:

The bill is unnecessary, as many cities and other local units of government claim that they have authority to allow them to convey public property as would be allowed by the bill. The bill would unnecessarily interfere with this ongoing practice by adding restrictions and potentially slowing down an already slow enough process.

Rebuttal:

The bill specifies that the powers it provides are in addition to those already possessed by the local governmental units. Therefore, it would seem that it would not interfere with the powers already granted to the local units. Local units of government that already have the authority to transfer ownership of property in this fashion would, arguably, not need to follow the provisions of the bill. However, if those units of government that are already engaged in this practice are wrong about the constitutionality of their actions,

the bill will provide a means of legally conveying property to nonprofit entities.

Against:

The bill is far too broad. While allowing public property to be given or sold at less than market value to rehabilitate and sell it to families as dwellings is one thing, but it is quite another to allow the construction of industrial or commercial enterprises, buildings, parking structures or other facilities for the use of the state or any of its agencies. The terms from the state building authority act and the Economic Development Corporations Act are inclusive of almost all types of construction or rehabilitation. This could open the door for all sorts of abuses; transfers to "nonprofits" that will make a great deal of profit when they turn around and sell the property. While this risk is minimized when the only allowed use of the property is low-income housing, it is increased by allowing a supposed nonprofit to build a commercial or industrial park.

Response:

The scope of the bill's provisions is intended to allow for the widest variety of uses of the public lands. Encouraging businesses to move into certain areas is an equally important part of urban redevelopment as is encouraging and improving housing. Further uses of land could include museums, libraries and stores. [Although, it should be noted that if the intent is to allow these types of uses of public property to be transferred under the bill, the title and the definition of a nonprofit organization do not conform with that intent.]

Finally, the requirement that an open meeting be held prior to any sales or transfers of property under the bill's provisions should do a great deal to prevent any abuses.

POSITIONS:

Habitat for Humanity of Michigan supports the bill. (6-10-98)

The Michigan Municipal League supports the bill. (6-10-98)

The Local Initiatives Support Corporation supports the bill. (6-10-98)

The Inner City Christian Federation supports the bill's concept, but is concerned about the effect that the hearing requirement might have on the process of transferring property (6-10-98). ~~An affidavit filed by House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.~~