Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 345 (as enrolled) **PUBLIC ACT 87 of 1997**
Sponsor: Senator Leon Stille
Senate Committee: Local, Urban and State Affairs
House Committee: Agriculture

Date Completed: 8-18-97

RATIONALE

Under the Land Division Act, a land division that results in one or more parcels of less than 40 acres or the equivalent, is exempt from the Act's platting requirements, if the division satisfies certain requirements concerning the number of resulting parcels, municipal approval, and the sale of unplatted land. In addition, a municipality is required to approve a proposed division if it meets certain requirements, including depth to width ratios, accessibility, and, health department approval for water and sewage, if a parcel is a development site. Specifically, each resulting parcel that is a development site must have public water or health department approval for an on-site water supply and public sewer or city, county, or district health department approval for on-site sewage disposal. Approval is contingent upon a parcel's complying with rules of the Department of Environmental Quality (DEQ) relating to suitability of groundwater for on-site water supply for subdivisions or development sites not served by public water or suitability of soils for subdivisions or development sites not served by public sewers. The Act further states that the Department may authorize a local health department to carry out the provisions on the suitability of groundwater and soils as they apply to on-site water availability and sewage disposal. The provisions of some local health department rules vary from the DEQ rules in their application, with some being more restrictive and others less restrictive than DEQ rules. In order to provide a uniform statewide approach to the Act's implementation, the Department issued procedures for local health departments that generally specify that existing DEQ rules or subdivisions would apply for the division of two acres or less, and local health department codes would apply for divisions of more than two aces. Some people contend, however, that the DEQ's implementation procedures resulted in more stringent standards that have forced some builders to delay or halt building projects.

CONTENT

The bill amended the Land Division Act to do the following:

- **Exempt development sites from water and sewer requirements for purposes of a municipality's approving a proposed division and compliance with State rules.**
- **Prohibit a building permit from being issued for a parcel that is less than one acre in size unless water and septic suitability is approved.**
- **Permit a city, county, or district health department to adopt a fee for review services.**
- **Increase from 30 to 45 days the period of time after the filing of a complete application that a municipality has to approve or disapprove a proposed division.**
- **Require a proprietor transferring the right to make a division to give written notice of the transfer to the assessor of the city or township where the property is located.**
- **Permit a municipality or county to enact an ordinance setting forth standards in the bill requiring a parcel to have certain depths, widths, and area.**
- **Specify that under certain conditions an exempt split that results in parcels of less than 20 acres is not subject to approval under the Act.**
- **Establish penalties for violations of certain provisions of the Act and specify that the penalties will take effect October 1, 1997.**

Plat Approval

Under the Act, approval of a preliminary or final plat is conditioned upon compliance with the Act's

provisions; municipal or county ordinances or rules adopted to carry out the Act; rules of a county drain commissioner, road commission, or plat board adopted to carry out the Act; and rules of the Departments of Transportation, Consumer and Industry Services, and Environmental Quality. Specifically, a plat must comply with the rules of the DEQ relating to suitability of groundwater for on-site water supply for subdivisions not served by public water or to suitability of soils for subdivisions not served by public sewers. In addition, the DEQ may authorize a city, county, or district health department to carry out the Act and rules promulgated under it relating to suitability of groundwater for subdivisions not served by public water or relating to suitability of soils for subdivisions not served by public sewers. Previously, the requirements concerning groundwater and soil suitability for water and sewage had applied to both subdivisions and development sites. The bill retains these requirements for subdivisions but deleted references to development sites.

Previously under the Act, each resulting parcel that was a development site had to have all of the following: public water or health department approval for on-site water supply under Department of Environmental Quality rules; public sewer or city, county, or district health department approval for on-site sewage disposal under those rules; and, adequate easements for public utilities from the parcel to existing public utility facilities. The bill deleted the first two criteria. Under the bill, each resulting parcel that is a development site must have adequate easements for public utilities from the parcel to existing public utility facilities.

Building Permits

Under the bill, if a parcel resulting from a division is less than one acre in size, a building permit may not be issued for the parcel unless it has both of the following:

-- Public water or city, county, or district health department approval for the suitability of an on-site water supply under the same standards as set for lots under DEQ rules.
-- Public sewer or city, county, or district health department approval for on-site sewage disposal under the health department standards as set forth for lots under DEQ rules.

The municipality or county approving a proposed division resulting in a parcel less than one acre in size and its officers and employees will not be liable if a building permit is not issued for the parcel for the reasons set forth in these provisions. A notice of approval of a proposed division resulting in a parcel of less than one acre must include a statement to that effect.

A city, county, or district health department may adopt by regulation a fee for services provided under these provisions. The fees cannot exceed the reasonable costs of providing the services for which the fees are charged.

Divisions: Municipal Approval

Previously, a municipality had to approve a proposed division within 30 days after it was filed with the assessor or other locally designated official, if certain requirements were met. Under the bill, a municipality has 45 days after the filing of a complete application to approve or disapprove a proposed division. A municipality with a population of up to 2,500, however, may enter into an agreement with a county to transfer to the county authority to approve or disapprove a division. An application is complete if it contains information necessary to ascertain whether the Act's requirements on the division of a parent parcel or tract and the above provisions concerning plat approval are met. The assessor or other municipally designated official, or the county official, having authority to approve or disapprove a proposed division must provide the person who filed the application written notice whether the application was approved or disapproved and, if disapproved, all the reasons for disapproval.

Transfer of Division Rights

Under the Act, the right to make divisions exempt from the Act's platting requirements may be transferred, but only from a parent parcel or parent tract to a parcel created from that parent parcel or parent tract. The bill also provides that a proprietor transferring the right to make a division pursuant to this provision, within 45 days, must give written notice of the transfer to the assessor of the city or township where the property is located on the form prescribed by the State Tax Commission under the General Property Tax Act for the transfer of ownership. The State Tax Commission must revise the form to include substantially the following questions in the mandatory information portion of the form: "Did the parent parcel or parent tract have any unallocated divisions under the Land Division Act...? If so, how many?" and "Were any unallocated divisions transferred to the newly

created parcel? If so, how many?"

Ordinances

Under the bill, the governing body of a municipality or the county board of commissioners of a county having authority to approve or disapprove a division may adopt an ordinance setting forth the standards in provisions of the Act that require a resulting parcel to have certain depths, widths, and area. The ordinance may establish a fee for municipal reviews, but the fee may not exceed the reasonable costs of providing the services for which the fee is charged. The bill specifies that approval of a division is not a determination that the resulting parcels comply with other ordinances or regulations.

Accessibility

Under the bill, an exempt split or other partitioning or splitting of a parcel or tract that only results in parcels of at least 20 acres in size will not be subject to approval under the Act if the parcel or tract is not accessible and one of the following applies: the parcel or tract existed on March 31, 1997; or, the parcel or tract resulted from an exempt split or other partitioning or splitting under this provision.

Before closing, a proprietor must provide the purchaser of a parcel resulting from an exempt split or other partitioning or splitting under this provision with the following written statement: "This parcel is not accessible as defined in the Land Division Act."

(Under the Act, "accessible", in reference to a parcel, 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 Transportation Department or county road commission and of the city or village, or has an area where a driveway can provide vehicular access to an existing road or street and meet all such applicable location standards.
-- Is served by an existing easement that provides vehicular access to an existing road or street that meets all applicable location standards of the State Transportation Department or county road commission and of the city or village, or can be served by a proposed easement that will provide vehicular access to an existing road or street and that will meet all such applicable location standards.)

Penalties

The bill establishes a civil fine of up to $1,000 for each parcel sold for any person who violates certain provisions and sells a resulting parcel of land. The applicable provisions pertain to land divisions not subject to platting requirements, municipal approval of proposed divisions, exempt splits resulting in parcels of at least 20 acres, or exempt splits resulting in accessible parcels. A default in the payment of a civil fine or costs ordered under this provision or an installment of the fine or costs may be remedied by any means authorized under the Revised Judicature Act. The bill specifies that this provision will take effect October 1, 1997.

MCL 560.105 et al.

BACKGROUND

Before the Land Division Act took effect on March 31, 1997, the Department of Environmental Quality issued to local health departments procedures for implementing the Act's requirements concerning local health department approval for on-site sewage disposal or water supply for divisions of land intended for building development. According to a DEQ memo to local health departments, these procedures were "offered as an interim uniform statewide approach for implementation of the act". The procedures are described below.

On-Site Sewage Disposal. Local health departments may conduct review and approvals for all subdivisions, site condominiums, and divisions of land in accordance with DEQ rules and guidelines for the subdivision of land. If the local sanitary code is more stringent than Department rules and guidelines, the local code takes precedence. Local health departments also may conduct reviews and approvals for land divisions within their jurisdictions. When a lot area measures two acres or less, the local health department must apply the DEQ rules and guidelines for subdivisions and site condominiums. When a lot or division is more than two acres, a local health department may submit to the DEQ the local sanitary code's site suitability provisions for review and approval to be used instead of the Department's rules and guidelines. A local health department must cite in its local sanitary code specific site suitability criteria for conventional and alternative methods of sewage

treatment and subsurface disposal as well as an appeals procedure. For alternative methods, verification must provide that local sanitary code provisions have been adopted to regulate properly site suitability, design, permitting, installation, inspection, and monitoring of the alternative. Data also must be available to confirm that the alternative method of subsurface sewage disposal will not create a nuisance, result in a hazard to the public health or safety, or endanger the natural environment. Authorization is based upon receipt and review of a written request and a determination that adherence to the sanitary code will assure compliance with the Act. The Department will consider on a case-by-case basis other requests by a local health department that go beyond these provisions with respect to site suitability for on-site sewage disposal.

On-Site Water Supply. The Act requires subdivisions and land divisions to provide public water or obtain health department approval for development of an on-site water supply. A proposed development with an on-site water supply must ensure that a protected, long-term quality source of groundwater is available at a rate adequate for the proposed development. In accordance with DEQ rules for subdivisions, a developer is responsible for demonstrating the availability of this groundwater formation. The Department also will apply existing rules and guidelines for subdivisions and site condominium proposals to all land divisions. Water quality must meet State drinking water standards. In determining the acceptable quality of water for aesthetic purposes, the secondary water quality standards of the U.S. Environmental Protection Agency are to be used. A typical single-family home must have a water system that can produce approximately 10 gallons of water per minute. In areas where wells cannot produce at an adequate rate, storage may be used to supplement the well production rate. Proposals for development with wells must be evaluated on the availability of groundwater formation protected from surface sources of contamination. A groundwater formation is considered by the DEQ to have adequate protection if a confining clay layer is present and partial chemical sampling data indicate no degradation from surface sources of contamination. Under DEQ rules, a health department may require well logs and pumping records from nearby developments and test wells and pumping tests to demonstrate that an adequate supply is available on each lot. Where known contamination sources exist but their impact on long-term water quality within a project's boundaries is not known, a local health department may request a hydrogeological study to be conducted and a report with conclusions on the relative risk be provided.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Under the Land Division Act, approval of a preliminary or final plat is conditioned upon the plat's compliance with certain county and municipal ordinances and State departmental rules. This includes DEQ rules relating to the suitability of groundwater for on-site water supply or to the suitability of soils for sewage disposal. The Act permits the DEQ to authorize a city, county, or district health department to carry out the Act's provisions and rules relating to groundwater or soil suitability. These provisions apply to all parcels, regardless of size. While the provisions were designed to result in a consumer protection standard, some developers contended that local health departments were using DEQ rules to deny land splits and prevent homes from being built on property where construction previously was allowed under the Subdivision Control Act. (Public Act 591 of 1996 amended the Subdivision Control Act and renamed it the Land Division Act.) The bill deleted a pre-approval process for development sites. Thus, property owners will not have to conduct expensive tests on land, which may not be sold or developed for some years, to prove the existence of suitable sources of potable water and appropriate ground conditions for a septic field existed on the property. The bill also makes a number of other revisions to the Act, such as authorizing local units of government to regulate the oversight of land divisions; permitting local governments to charge reasonable fees to cover the costs of their reviews; extending from 30 to 45 days the time period for approval of a land division; providing a process to track a transfer of property rights that allows a landowner to transfer exempt divisions from a "parent" parcel to the new owner; and, adding penalties for persons who violate certain provisions concerning land divisions and splits. The bill also allows units of government with populations under 2,500 to enter into agreements with counties to assume responsibility for the land division approval process. In addition, the bill addresses concerns raised by the forestry industry and others about the Act's accessibility requirements for exempt divisions. Under the bill,

landlocked parcels measuring more than 20 acres are exempt from the approval process. The buyer, however, must be notified that the parcels do not meet the Act's accessibility requirement.

Opposing Argument

The uniform requirement for evaluation and approval for site suitability previously in the Act served to ensure environmental and public health protection for all proposed land divisions in excess of one acre intended for building development. The bill transfers consideration of water and sewer suitability from the land division stage to the building permit stage. A parcel under one acre cannot be issued a building permit unless the lot meets DEQ standards for water and sewer. Parcels larger than one acre must meet local requirements for water and sewer. There is some concern, however, that vacant lots not eligible for a building permit may be sold to an unsuspecting buyer. The one-acre threshold for water and sewer suitability also limits the opportunity for homeowners to find suitable sites for water and sewer systems on unplatted lots. Furthermore, approval of a division under the bill is not a determination that the resulting parcels comply with other ordinances or regulations. Thus, local governments might find themselves approving land divisions that do not comply with zoning ordinances, and subsequently denying building permits because the building sites do not meet zoning regulations. Consequently, any protections for purchasers of new lots are removed and potential buyers will have to review the lots prior to purchase for water and sewer suitability and compliance with regulations.

Response: Responsible realtors will advise their clients that the purchase of a lot does not guarantee that the site is eligible for a building permit. In addition, local governments have the option of reviewing a lot and informing the buyer or seller that it does not meet requirements of other ordinances and regulations.

Opposing Argument

The Land Division Act previously gave local governments the authority to review land divisions. The bill authorizes local governments to adopt ordinances setting standards only for a parcel's depth-to-width ratio and area. This limited authority appears to conflict with the broad authority granted to local governments under various zoning enabling Acts. Existing ordinance provisions that govern site density, clustering, and buffers, for example, will be difficult to enforce after lots have been created. In addition, the bill allows a municipality to transfer to a county the authority to approve or disapprove land divisions, if the municipality has a population under 2,500. Some larger municipalities that do not currently control their own zoning or land use decisions, therefore, will be required to review and approve or disapprove proposed divisions.

Opposing Argument

The bill specifies that a municipality or county approving a proposed division resulting in a parcel less than one acre in size is not liable if a building permit is not issued for the parcel. Some people view this provision as a means of addressing concerns regarding potential legal problems for local governments that pre-approve land divisions that are subsequently denied building permits. The confusion created by this provision could be resolved if water and sewer suitability had to be approved when a land division was approved.

Legislative Analyst: L. Arasim

FISCAL IMPACT

The bill allows local units to adopt fees to cover the actual reasonable costs of providing the specified services.

Fiscal Analyst: R. Ross

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