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SFA**BILL ANALYSIS**

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House Bill 4204 (Substitute H-4 as passed by the House)

Sponsor: Representative Mary Schroer

House Committee: Forestry and Mineral Rights

Senate Committee: Economic Development, International Trade and Regulatory Affairs

Date Completed: 3-3-98

CONTENT

The bill would amend the Seller Disclosure Act to do the following: extend the seller disclosure requirements to vacant land intended for residential construction; include the disclosure of mineral rights in the Seller's Disclosure Statement; and add a provision pertaining to the disclosure of subsurface rights in the transfer of an interest in vacant land.

Real Property

Under the Act, the seller disclosure requirements apply to the transfer of any interest in real estate consisting of one to four residential dwelling units, whether by sale, exchange, installment land contract, lease with an option to purchase, any other option to purchase, or ground lease coupled with proposed improvements by the purchaser or tenant, or a transfer of stock or an interest in a residential cooperative. The bill would extend the seller disclosure requirements to the transfer of any interest in real estate that consisted of vacant land, if the vacant land were intended by the parties to be used by the transferee for the construction of one to four residential dwelling units.

Disclosure of Mineral Rights

Currently, the Seller's Disclosure statement includes a question that asks if the seller is aware of certain features of the property, including property shared in common with adjoining landowners, encroachments, easements, zoning violations, "common areas" (areas co-owned with others), a homeowners' association, structural modifications or alterations made without necessary permits or licensed contractors, settling or drainage problems, major property damage, underground storage tanks, or farm operations in the vicinity. The bill would add to the question whether the seller was aware of any legal right retained by the seller or held by any person or entity other than he seller, to remove or receive royalties from the removal of coal, oil, natural gas, or other valuable minerals existing under the surface of the property.

The bill also specifies that a disclosure form printed before the bill's effective date that complied with the Act, except for the changes that would be added by the bill, could be used and would be in compliance with the Act until July 1, 1998.

Vacant Land

The bill provides that the disclosures required under the Act for a transfer of an interest in vacant land would have to be made under the "Seller's Disclosure of Subsurface Rights" form. It would include the following information:

- The property address, which would include the street, and city, village, or township in Michigan.
- The purpose of statement, which would state that the form was a disclosure of the subsurface rights to the property that complied with the Act, a disclosure concerning the property known by the seller, not a warranty of any kind by the seller or the seller's agent in the transaction, and not a substitute for any inspections or warranties the buyer could wish to obtain.
- The seller's disclosure, which would state that the seller disclosed the following information with the knowledge that even though the form was not a warranty, the seller would make the following representations based on the seller's knowledge at the signing of the document. After receiving the statement from the seller, the seller's agent would be required to provide a copy to the buyer or the buyer's agent. The seller would authorize his or her agent to provide a copy of this statement to any prospective buyer in connection with any actual or anticipated sale of property. The information would be representations made solely by the seller and would not be the representations of the seller's agent. The information would be a disclosure only and would not be intended to be a part of any contract between buyer and seller.
- The instructions to the seller, which would state to answer all questions, attach additional pages with the seller's signature if required, and complete the form individually. It would note that failure to provide a purchaser with a signed disclosure statement would enable a purchaser to terminate an otherwise binding purchase agreement. It also would ask if the seller was aware of certain features of the property, such as any deposits of coal, oil, natural gas or other valuable minerals existing under the surface of the property; any legal right held by any person or entity (including the name, address, and the legal right held) other than the seller to remove or receive royalties from the removal of coal, oil, gas, or other valuable minerals existing under the surface of the property, or if the seller would retain any such legal right; any determination that the property constituted a "wetlands" or dunes area, or would be in an area of scenic rivers; or any sale or transfer of development rights from the property.

The Act requires copies of the Seller's Disclosure Statement to be made available to the public by all real estate brokers and real estate salespersons. The bill would include the Seller's Disclosure of Subsurface Rights Statement in the current provision.

MCL 565.952 et al.

Legislative Analyst: N. Nagata

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: G. Cutler

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.