House
Legislative
Analysis
Section

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MUNICIPAL BLIGHTING PROPERTY PROGRAM

House Bill 4028 as enrolled
Public Act 27 of 2002
Third Analysis (3-1-02)

Sponsor: Rep. Andrew Richner
House Committee: Land Use and Environment
Senate Committee: Local, Urban and State Affairs

THE APPARENT PROBLEM:

Cities throughout Michigan have thousands of vacant and abandoned buildings open to trespass and criminal activity, creating a dangerous and unsafe environment for adults and children. Often, these kinds of properties are especially dangerous for school-age children who make their way through neighborhoods going to and from school. In addition, the blight caused by empty buildings and vacant lots makes neighborhoods unlivable and unsafe, as well as unsightly, because the blighting properties proliferate to create a visual wasteland so unattractive that it can debilitate a community's sense of purpose and the residents' pride of place. Further, blighting properties nearly always reduce the value of surrounding property. When the blighting properties and those around them lose resale and taxable value, both the property owners and the local units of government that levy property taxes lose revenue. Then the public funds available for school and neighborhood improvement are substantially diminished.

Customarily cities have programs to rehabilitate residential buildings and provide affordable low income housing. Housing rehabilitation is also the focus of many private, nonprofit housing development groups. Generally, cities also have programs to identify the worst of their abandoned buildings that cannot be rehabilitated, and these are placed on lists for expedited demolition. When funds are available, the abandoned buildings are razed (although absent cooperation from utility companies to strip the buildings of their utilities to make them safe for demolition, some buildings languish on the lists for years). Once the buildings are taken down, however, the vacant lots remain, awaiting workable plans for redevelopment.

In order to implement these kinds of community development programs, municipal governments must sometimes have title to structures and lots that are badly in need of redevelopment. This is the case when absentee and uncaring property owners, or property owners who are unable to leverage funds for improvement and redevelopment, slow and, in some instances, entirely derail a municipal government's efforts to provide affordable housing, raze empty buildings, and re-develop vacant lots. In order to assist local government officials in their efforts to improve both residential neighborhoods and land that is zoned for commercial use, legislation has been introduced to designate some kinds of structures and lots as "blighting property." To better ensure re-development, the bill's proponents propose to allow local governments an opportunity to purchase the blighting properties after paying their owners fair market value; to exchange the properties; to take the properties from their owners under condemnation proceedings; or, to offer owners incentives that would encourage them to donate the properties to municipal governments.

THE CONTENT OF THE BILL:

House Bill 4028 would create a new act to allow a municipality to designate a structure or lot as "blighting property," to purchase or condemn blighting property, and to transfer blighting property for development. The act would be repealed five years after its effective date.

Essential public purpose. The bill specifies that the powers granted in the act relating to the designation and transfer for development of blighting property would constitute the performance of essential public purposes and functions.

Blighting Property. The bill would define "blighting property" to mean, subject to certain exclusions (see below), property that is likely to have a negative financial impact on the value of surrounding property or on the increase in value of surrounding property and that meets any of the following criteria:

-the property has been declared a public nuisance in accordance with a local housing, building, plumbing, fire, or other related code or ordinance;

-the property was an attractive nuisance because of physical condition, use, or occupancy.

However, a structure or lot would not be considered blighting property under this provision because of an activity that is inherent to the functioning of a lawful business. ["Attractive nuisance" is defined to mean a condition on property that children are reasonably likely to come in contact with or be exposed to and that involves an unreasonable risk of death or serious bodily harm to children.]

-the property was a fire hazard or was otherwise dangerous to the safety of persons or property;

-the property has had the utilities, plumbing, heating, or sewerage, permanently disconnected, destroyed, removed, or rendered ineffective so that the property was unfit for its intended use;

-a portion of a building or structure located on the property has been damaged by any event so that the structural strength or stability of the building or structure was appreciably less than it was before the event and did not meet the minimum requirements of the housing law of Michigan, or a building code of the city, village, or township in which the building or structure was located for a new building or structure;

-a building or structure or part of a building or structure located on the property was likely to fall, become detached or dislodged, or collapse and injure persons or damage property; and,

-a building or structure located on the property used or intended to be used as a dwelling, including the adjoining grounds, was unsanitary or unfit for human habitation, was in a condition that a local health officer determined was likely to cause sickness or disease, or was likely to injure the health, safety, or general welfare of people living in the dwelling, and this was due to dilapidation, decay, damage, or faulty construction; accumulation of trash or debris, an infestation of rodents or other vermin; or any other reasons.

Exempt properties. The bill specifies that the definition of "blighting property" would not include any of the following: (i) structures or lots, whether improved or unimproved, that are inherent to the functioning of a farm or farm operation as those terms are defined in the Michigan Right to Farm Act (MCL 286.472); (ii) structures or lots, whether improved or unimproved, that were industrial properties in an area zoned industrial, and that were current on tax obligations; (iii) track, right-of-way, and rolling stock belonging to a railroad company, or any other property necessarily used in operating a railroad in this state belonging to a railroad company; and, (iv) a single family dwelling for which the owner claimed a homestead exemption under the General Property Tax Act.

Designation of blighting property by city, village, or township. Under the bill, a city, village, or township could do one of the following: a) designate a structure or lot within its jurisdiction as a blighting property, and acquire title by purchase, gift, exchange, or condemnation (under procedures set forth in the bill), except that a township could take these actions within a village only upon adoption by a village of a resolution; b) upon entering into a written agreement with the county, adopt a resolution transferring the authority to designate blighting property to that county; or, c) in the case of a village, adopt a resolution transferring the authority to designate blighting property to the township. Under option b), the written agreement would be entered into with the county executive if there was one elected, or with the county board of commissioners if there were no county executive. Further and under option b), a county could designate a structure or lot as blighting property, and acquire fee simple title in the property by purchase, gift, exchange, or condemnation (under procedures set forth in the bill).

Under the bill, a city could not designate a property as blighting property if the property had been forfeited to a county treasurer under the General Property Tax Act, and remained subject to foreclosure. Further, a municipality could not designate a property as blighted based solely on the presence of native grasses or plants indigenous to Michigan that were planted or maintained as part of a garden or designated wildlife area, or for landscaping, erosion control, or weed control purposes.

Hearing before designation. House Bill 4028 specifies that a municipality that proposed to designate a property as blighting property would be required to hold a hearing on the designation. That hearing would take place not less than 42 days, and not more than 119 days, after the municipality provided written notice of the hearing and proposed designation (however, a

municipality could hold the hearing more than 119 days after it provided written notice only if an extension had been requested by a person with a legal interest contesting the blighting designation).

The written notice, in plain English, would have to include all of the following: a) time, date, and location; b) a description, including the street address, of the property subject to designation as blighting property; c) an explanation of the reasons the municipality considered the property to be blighting; d) the name, address, and telephone number of the person to whom communication about the hearing could be addressed; e) names, addresses, and telephone numbers of state and local agencies or other resources that could be available to assist an occupant of the property to avoid the designation of the property as blighting property, or to obtain comparable safe, decent, and quality affordable housing; and, f) a description of the property improvements that should be made, in order to avoid designation.

Title search and notice. Under the bill, a municipality would be required to perform a thorough title search to identify all people with a legal interest in the property, and then take the following steps to provide notice to them:

a) determine the address reasonably calculated to apprise owners of the pendency of the hearing, and send notice to each with a legal interest by certified mail, return receipt requested, not less than 42 days before the hearing;

b) send a representative to the property to ascertain personally whether or not the property was occupied, and if so, do all of the following not less than 42 days before the hearing: i) make reasonable efforts in good faith personally to serve the person occupying the property with a copy of the written notice; ii) if a person was occupying the property and was personally served, then to orally inform the occupant of both of the following: (a) that the property could be designated as blighting property, and (b) public and private agencies or other resources could be available to assist the occupant to avoid the designation of the property as blighting property, or to obtain comparable safe, decent, and quality affordable housing; iii) if the occupant indicated that he or she had a health problem that affected his or her ability to make improvements that would cause the property no longer to meet the definition of blighting property, or if it should be apparent to the representative of the municipality that the occupant had such a health problem, place the occupant with an appropriate public or private agency to assist the occupant to avoid the designation of the property as blighting property; iv) if the occupant appeared to lack the ability to understand the advice given, or was unwilling to cooperate, then to provide him or her with the names and telephone numbers of the agencies that might be able to assist the occupant; and, v) if an authorized representative of the municipality was not able personally to meet with the occupant, to place the written notice at a conspicuous location on the property;

c) correct any deficiency that the municipality might know of in the provision of the notice as soon as practicable before designating the property;

d) if the municipality was unable to ascertain the address of an owner, or was unable to deliver notice to any occupant, service of the notice could be made by publishing the notice for three successive weeks (once each week) in a newspaper published and circulated in the county in which the property was located, or, if there was no newspaper in that county, then in an adjoining county's newspaper.

Incentives. Under the bill, any notice provided would be required to include an explanation of any tax benefits or other incentive offered by the municipality that could encourage the transfer of the blighting property.

Proof of notice filed with register of deeds. A municipality would be required to file proof of the notice provided to owners and occupants with the county register of deeds. The proof of notice would be in the form of an affidavit and include all of the following: a) a description of the content of the notice provided; b) the name or names of the person or persons to whom the notice was addressed; and, c) a statement that the property was subject to designation as blighting property, and subsequent transfer or condemnation.

Under the bill, an affidavit recorded in this manner would create a rebuttable presumption in the courts that any person obtaining a legal interest in property subject to designation as blighting property following the recording was properly notified of the consequences of the designation, including but not limited to, the condemnation of the property, or the transfer of the property to the municipality or another person.

If a municipality subsequently did not designate the property as blighting property, it would be required to record, as soon as practicable, that the property was not designated as blighting property, and that the

municipality no longer sought to designate the property as blighting property.

Contesting the proposed blighting designation; delayed designation. Under the bill, a person with a legal interest in the property could contest the designation by doing one of the following: a) appearing at the hearing to show cause why the property should not be designated as blighting property; or, b) if incarcerated, impaired, or otherwise unable to attend a public hearing, submit a written presentation to show cause why the property should not be designated as blighting property. If a person with a legal interest demonstrated at the hearing that improvements had been made, or were actively being made, that would cause the property to no longer meet the definition of blighting property, the municipality would be required to delay the designation for 91 days. If at the end of 91 days the municipality found that the property no longer met the definition, then it would be required to issue a certificate stating that the property was no longer blighting property.

Public notice after hearing. If after notice and hearing the municipality determined that the property was blighting, then it would be required to designate it as such, and then to provide public notice of the designation. However, a municipality could, at any time, suspend proceedings leading to the designation of property as blighting property, if a person with a legal interest in the property entered into an agreement with the municipality, establishing an improvement plan for the property, and a schedule for completion of the improvements. Under the bill, a person with a legal interest could appeal that decision to the circuit court within 28 days of the designation, and the circuit court would be required to review the municipal decision using the standard of review for administrative review. If the decision were reversed by the court and the court determined that the municipality had been acting arbitrarily or in bad faith, then the court could award the successful appellant the costs, including but not limited to the attorney fees that were actually and reasonably incurred by the person making the appeal.

Purchase, donation, exchange; power of eminent domain. Under the bill, a municipality could offer to purchase property designated as blighting property at the fair market value, or to acquire the property by donation or exchange. If the offer were rejected, it could institute proceedings under the power of eminent domain under the laws of the state, or the provisions of any local charter relative to condemnation.

Transfer property for development; written development plan. Within 119 days after acquiring title to a blighting property, or after a condemnation award was ordered under the Uniform Condemnation Procedures Act (whichever was later), the municipality would be required either to transfer the property for development, or have adopted a written development plan for the property. A municipality that transferred title that was classified as residential could transfer it for affordable low income housing to a person who had experience with (and was able to demonstrate financial capacity in) developing affordable low income housing. A municipality that did not transfer title would be required to develop the property in accord with its written development plan.

If a municipality failed to comply with these requirements, a person whose legal interest in the property was conveyed by sale, donation, exchange, or condemnation as provided for under the bill could bring an action in the circuit court to compel the municipality to convey that legal interest back to that person. Upon a finding that the person bringing the action had a plan likely to result in the development of that property that was consistent with applicable law, and that the municipality had not complied with its development requirements, the court would be required to enter an order restoring the person's legal interest in the property. That order would be required to contain all of the following: a) that all amounts paid in consideration for the property, including any taxes extinguished, be repaid and, if applicable, distributed to the appropriate taxing jurisdiction; b) that all costs incurred by the municipality for demolition, environmental response activities, title clearance, and site preparation be repaid; and c) that the court retain jurisdiction to determine if the development plan presented by the petitioner was implemented.

Donation and transfer of property; incentives. To encourage the donation or transfer of property designated as blighting property under the act, a municipality could accept a deed conveying all persons' interests, in lieu of foreclosure of the blighting property for delinquent property taxes.

Under the bill, a municipality could not offer or accept a deed in lieu of foreclosure if either of the following applied: a) the blighting property had been forfeited to a county treasurer under section 78g of the General Property Tax Act and remained subject to foreclosure under section 78k; or, b) the blighting property had been foreclosed under section 78k of the General Property Tax Act, and had not been transferred by the foreclosing governmental unit under section 78m.

If a deed in lieu of foreclosure was accepted, all of the following would occur: a) any unpaid taxes levied under the General Property Tax Act would be extinguished; b) all liens against the property, except future installments of special assessments and liens recorded by the state pursuant to the Natural Resources and Environmental Protection Act, would be extinguished; and c) all existing recorded and unrecorded interest in the property would be extinguished, except a visible or recorded easement or right-of-way, private deed restriction, or restriction imposed under the Natural Resources and Environmental Protection Act.

Not less than 30 days before accepting a deed, a municipality would be required to inform each taxing jurisdiction that had levied taxes on the blighting property. Each taxing jurisdiction would be afforded the opportunity to inform the municipality of the revenue impact of the issuance of a deed in lieu of foreclosure, and to show cause why the municipality should not accept a deed in lieu of foreclosure.

Under the bill, a municipality would be required to record any deed in the office of the register of deeds, and to pay any applicable recording costs. Further, it would be required to forward a copy of a deed to the treasurer of the city, village, or township, and to the treasurer of the county where the property was located.

Finally, to encourage the donation or transfer of blighting property, a municipality could forgive fines levied by the municipality against the property, or fines relating to the property levied against a person with a legal interest in the property.

Transfer to Developer. The bill specifies that a municipality could, for reasonable and valuable consideration, transfer for development blighting property acquired under the act. A municipality could transfer the property after the transferee presented all of the following: a) a development plan for the property; and, b) guarantees of the transferee's financial ability to implement the development plan for the blighting property.

Pro rata distribution of excess revenue to taxing jurisdictions. If a property obtained by a municipality was subsequently sold by the municipality for an amount in excess of any costs incurred by the municipality relating to demotion, renovation, improvement, or infrastructure development, the excess amount would be returned on a pro rata basis to any taxing jurisdiction affected by the extinguishment of taxes, as a result of the designation of the property as blighting property. Upon the request of any taxing jurisdiction in which the blighting property was located, the municipality would provide cost information regarding any subsequent sale or transfer by the municipality of the property.

Finally, the bill would specify that the powers granted under the bill would be in addition to powers granted to municipalities under the statutes and local charters. Further, the bill would specify that nothing in the bill could be construed to amend or repeal any of Public Act 18 of 1933 (Extra Session) (MCL 125.651to 125.709c), which allows local governments to establish housing commissions, or of Public Act 344 of 1945 (MCL 125.71 to 125.84), which allows local governments to rehabilitate blighted property.

Definitions. The bill would define "dwelling" to mean any house, building, structure, tent, shelter, trailer, or vehicle, or portion thereof, which is occupied in whole or in part as the home, residence, or living or sleeping place of one or more human beings, either permanently or transiently. Dwelling would not include railroad rolling stock on tracks or rights-of-way. The bill would define "fire hazard" to mean that term as defined in section 1 of the Fire Prevention Code. The bill would define "municipality" to mean a city, village, or township in this state or a county described under the bill. "Person" would be defined to mean an individual, partnership, association, trust, or corporation, or any other legal entity or combination of legal entities. The bill would define "public nuisance" to mean an unreasonable interference with a common right enjoyed by the general public involving conduct that significantly interferes, or that is known or should have been known to significantly interfere, with the public's health, safety, peace, comfort, or convenience, including conduct prescribed by law. The bill also would define "taxing jurisdiction" to mean a jurisdiction, including but not limited to, the state, an agency of the state, a state authority, an intergovernmental authority of the state, a school district, or a municipality, that levies taxes under the General Property Tax Act.

"Sunset" date. The act would be repealed five years after its effective date.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, to the extent that municipalities opted to use the bill's provisions, local costs related to administering the designation process would increase. Any state or local property tax

revenue currently collected on blighting properties acquired by a municipality would be eliminated. Future local revenues could also decrease in municipalities that choose to forgive unpaid property tax or fines on a property to the extent that the revenue would have been collected at some point in time. (3-1-02)

ARGUMENTS:

For:

The elected officials of Michigan's urban centers need more legal tools in order to redevelop blighted areas within their communities. Too often, vacant lots or abandoned buildings have been the sites for heinous crimes, including assaults on children as they walk to and from school. What's more, blighted sites proliferate when the visual landscape grows increasingly grim, and a community's pride of place is destroyed, while both the resale and taxable value declines. When property owners are absent, uncaring, or unable to re-develop their dangerous property—whether structures or vacant lots—the local government should be equipped to intervene and to reverse the decline. This legislation would help local governments eliminate these dangerous sites and better ensure redevelopment efforts in blighted neighborhoods.

Against:

This legislation is a good idea, and the bill makes every effort to afford property owners ample notice when their property is to be designated as blighting property. However, there is a risk that some property owners who have an unrecorded legal interest would not be notified that their property was about to be designated as blighted by a local unit of government. This could be the case for parties in land contracts, or those whose interests in property had been granted or transferred in a divorce, death, or other probate proceeding where such transfers sometimes go unrecorded. The fact that a party had an interest that did not appear of record does not mean that he or she is not deserving of protection—both as a constitutional matter, and as a matter of public policy. There is, then, a possibility that a court would find an owner with an unrecorded property interest had been denied due process protection, and the taxpayers within a local unit of government could be required to pay court costs and attorney fees.

Response:

As was pointed out in committee testimony, while it is true a blighting designation could take place without all parties have a legal interest being made aware of that designation, a property could not then be taken or condemned. Under this bill, a party with an unrecorded legal interest could not lose a property since a property deed could not transfer to the municipality without all owners' active participation in the transfer process. Further, all parties, including those with unrecorded property rights, would be afforded the opportunity to be heard at a meaningful time and in a meaningful manner, since all would have recourse through the circuit courts and judicial appellate process.

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■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.