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BILL ANALYSIS



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Senate Bill 1107 (Substitute S-2 as reported)
Sponsor: Senator Patricia L. Birkholz
Committee: Natural Resources and Environmental Affairs

Date Completed: 5-5-06

RATIONALE

Under the Land Division Act, a person planning to develop a subdivision must obtain the approval of a number of different authorities, including the municipality, the county plat board, and the State administrator (in the Department of Labor and Economic Growth). These authorities must approve preliminary and final plats (charts or maps) of the proposed subdivision. If the subdivision includes or abuts roads that are or will be under the jurisdiction of the county road commission, the commission's approval is required, as well. Under Section 183 of the Act, a county road commission may require that certain conditions be met, before the commission will approve a final plat. Among other things, the road commission may require the subdivision developer (the "proprietor") to give the commission a deposit or surety bond, in order to ensure that required improvements will be made.

Several years ago, legislation was enacted to address a problem regarding the deposit provisions. Evidently, upon receiving preliminary plat approval, a developer will begin work on roads and other infrastructure, such as drains and sewer systems. If a project is started late in the year, the weather may prevent the developer from completing the road work until the following spring. Under the previous law, if the county road commission accepted a surety bond and gave final plat approval, the developer then could seek the approval of the remaining authorities, and ultimately record the final plat. On the other hand, if the county road commission did not accept a bond, the developer could not proceed with the approval process until the actual improvements had been completed.

Thus, a county road commission's refusal to accept a surety bond could result in delays of several months. Public Act 122 of 2004 amended the Act to require, rather than permit, county road commissions to accept surety for unfinished improvements, in order to prevent delays in the plat review and approval process. Although the vast majority of county road commissions currently accept surety bonds, apparently several believe that the language enacted by Public Act 122 is ambiguous and, therefore, that they may decline to accept a surety bond. It has been suggested that a county road commission be required to approve a final plat before all required improvements were completed, if the developer posted a deposit.

In another matter, some people are concerned that county road commissions might be preemptively rejecting the inclusion of cul-de-sacs in developers' project plans. It has been suggested that a county road commission be precluded from applying a blanket prohibition against cul-de-sacs, and that geographic features that might affect access to land be taken into account.

CONTENT

The bill would amend the Land Division Act to revise the requirement that a proprietor deposit money or a bond with a board of county road commissioners for the approval of a final plat; and allow a board of county road commissioners to regulate cul-de-sacs, but prohibit the board from disallowing them by policy, practice, or rule.

Under the Act, a county road commission may require the following as a condition of approval of a final plat for all highways, streets, and alleys in its jurisdiction or to come under its jurisdiction, and also for all private roads in unincorporated areas:

- Conformance to the general plan, width, and location requirements that the board of county road commissioners has adopted and published.
- Adequate provision for traffic safety in laying out drives that enter county roads and streets, as provided in the board's current published construction standards.
- Proper drainage, grading, and construction of approved materials of a thickness and width provided in the board's current published construction standards.
- Submission of complete plans for grading, drainage, and construction, to be prepared and sealed by a civil engineer registered in Michigan.
- Installation of bridges, culverts, and drainage structures where the board considers necessary.
- Completion of all required improvements relative to streets, alleys, and roads, or a deposit by the proprietor with the board in the form of cash, a certified check, or irrevocable letter of credit, whichever the proprietor selects, or a surety bond, acceptable to the board in an amount sufficient to ensure completion within the specified time.

The bill would delete the last item. Instead, if all of the other improvements described above were not made before the final plat was submitted to the board for approval, the board nonetheless promptly would have to approve the final plat if it otherwise met the Act's requirements and the proprietor posted a deposit in an amount that the board determined to be sufficient to ensure the proprietor's performance of the obligation to make the required improvements within the specified time. Regardless of the deposit amount, the actual cost to complete all of the improvements would remain the responsibility of the proprietor or its surety agent.

The bill would retain the requirement that the deposit be in the form of cash, a certified check, an irrevocable letter of credit, or a surety bond, as selected by the proprietor. The board promptly would have

to convert a certified check to cash. Additionally, any surety bond would have to be prequalified by the State and underwritten by a surety acceptable to the board.

The bill also would delete a provision under which a board, as a condition of approval of the final plat, must require a deposit to be made in order to ensure the performance of the proprietor's obligations to make required improvements.

Under the Act, the board must reject a final plat isolating land from existing public streets or roads, unless the proprietor provides suitable access by easement or dedication to public use. Under the bill, the board also would not have to reject a final plat isolating land from existing public streets or roads if natural features, such as wetlands, a floodplain, or a slope, made suitable access impractical. Additionally, the bill would allow the board to regulate cul-de-sacs, but would prohibit the board from disallowing them by policy, practice, or rule.

MCL 560.183

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

Public Act 122 of 2004 was enacted to establish a statewide requirement that county road commissions accept a surety bond committing the developer to the completion of necessary road work. If the developer is unable or unwilling to finish the work, the county road commission has the means to contract for the completion of the project. Thus, the developer benefits by avoiding delays, and the county is protected. Evidently, even though most county road commissions accept surety bonds in exchange for plat approval, there are a few that do not believe the law definitively requires them to do so. The bill would eliminate any ambiguity by requiring a road commission to approve a plat upon a deposit by the proprietor, if the plat otherwise met the Act's requirements.

Supporting Argument

Under the Act, a county road commission must reject a final plat isolating land from

existing public streets or roads, unless the developer provides access by easement or dedication to public use. Apparently, under this provision, some county road commissions prohibit the use of cul-de-sacs, regardless of the specific characteristics of the project. Some commissions find cul-de-sacs undesirable because they present increased maintenance needs, and the presence of only one entrance and exit can interrupt the flow of traffic. In some cases, however, the presence of certain natural features, such as those specified in the bill, makes a cul-de-sac the only practical or economic use of the land. The bill would not require road commissions to allow cul-de-sacs, but simply would prevent commissions from prohibiting them generally.

Response: Allowing road commissions to regulate cul-de-sacs, but not prohibit them by policy, rule, or practice, would appear contradictory. Furthermore, the County Road Association of Michigan has established policies detailing the conditions under which cul-de-sacs should be used, although some county road commissions do not follow those guidelines. If cul-de-sac regulation is to be codified, it would be more appropriate to do so in a separate section of the Act, and to enact more specific regulations, rather than the broad provisions included in the bill.

Legislative Analyst: Julie Koval

FISCAL IMPACT

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

Fiscal Analyst: David Zin

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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.