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BILL ANALYSIS



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Senate Bill 1107 (as enrolled)

**PUBLIC ACT 336 of 2006**

Sponsor: Senator Patricia L. Birkholz

Senate Committee: Natural Resources and Environmental Affairs

House Committee: Natural Resources, Great Lakes, Land Use, and Environment

Date Completed: 11-3-06

### **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 Land Division 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. Nevertheless, apparently several county road commissions believed that the amendatory language was ambiguous and, therefore, that they could decline to accept a surety bond. To address this, it was suggested that a county road commission be required to approve a final plat before all required improvements are completed, if the developer posts a deposit.

In another matter, some people were concerned that county road commissions were preemptively rejecting the inclusion of cul-de-sacs in developers' project plans. It was suggested that a county road commission be precluded from applying a blanket prohibition against cul-de-sacs.

### **CONTENT**

**The bill amended 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 to allow a board of county road commissioners to regulate cul-de-sacs individually, but prohibit the board from disallowing them by policy or rule.**

The bill took effect on August 15, 2006.

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.

Previously, the county road commission also could require 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 selected, or a surety bond, acceptable to the board in an amount sufficient to ensure completion within the specified time.

The bill deleted that item. Instead, if all of the other improvements described above are not made before the final plat is submitted to the board for approval, the board nonetheless promptly must approve the final plat if it otherwise meets the Act's requirements and the proprietor posts a deposit in an amount that the board determines to be sufficient to ensure the proprietor's performance of the obligation to make the required improvements within the specified time. The bill specifies that, regardless of the deposit amount, the actual cost to complete all of the improvements remains the responsibility of the proprietor or its surety agent.

The bill retained the requirement that the deposit be in the form of cash, a certified check, an irrevocable letter of credit, or a surety bond. Under the bill, the board promptly must convert a certified check to cash. Additionally, any surety bond must be prequalified by the Michigan Department of Transportation and acceptable to the board, and underwritten by a surety acceptable to the board.

The bill also deleted a provision under which a board of county road commissioners, as a condition of approving a final plat, had to require that a deposit be made in order to ensure the performance of the proprietor's obligations to make required improvements.

Additionally, the bill allows a board to regulate cul-de-sacs and approve or deny them on an individual basis, but prohibits the board from adopting a policy or rule prohibiting them.

Previously, the Act required a board to reject a final plat isolating land from existing public streets or roads, unless the proprietor provided suitable access by easement or dedicated to public use. Under the bill, a board must reject a final plat isolating other land of the proprietor within or adjoining the plat from existing public streets or roads, unless the proprietor provides suitable access by easement or suitable access dedicated to public use.

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 a 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 accepted surety bonds in exchange for plat approval, there were a few that did not believe the law definitively

required them to do so. The bill eliminates any ambiguity by requiring a road commission to *approve* a plat upon a deposit by the proprietor, if the plat otherwise meets the Land Division Act's requirements.

### **Supporting Argument**

Under the Act, a county road commission must reject a final plat isolating land existing public streets or roads, unless the developer provides access by easement or access dedicated to public use. Apparently, under this provision, some county road commissions prohibited 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 existence of certain natural features makes a cul-de-sac the only practical or economic use of the land. The bill does not require road commissions to allow cul-de-sacs, but simply prevents commissions from prohibiting them generally.

### **Opposing Argument**

Allowing road commissions to regulate cul-de-sacs, but not prohibit them by policy or rule, appears 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.

Under the previous law, county road commissions and local governments evaluated cul-de-sacs in the same manner. The bill, however, creates an additional restriction that applies to road commissions. It would have been more appropriate to codify the regulation of cul-de-sacs 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 Cassidy

### **FISCAL IMPACT**

The bill will 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.