

Legislative Analysis



CERTAIN EASEMENTS AND USE RESTRICTIONS UNDER THE MARKETABLE RECORD TITLE ACT

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House Bill 6370 as introduced
Sponsor: Rep. Roger Hauck
Committee: Regulatory Reform
Complete to 9-20-22

Analysis available at
<http://www.legislature.mi.gov>

(Enacted as Public Act 235 of 2022)

SUMMARY:

House Bill 6370 would amend 1945 PA 200, known as the marketable record title act, to provide that the act must not be applied to bar or extinguish certain kinds of easements or land and resource use restrictions.

Marketable record title generally refers to an ownership interest in land that can be transferred to a new owner without the likelihood that another person can claim an interest in the property. Under the act, a person possesses a marketable record title to an interest in land if he or she had an unbroken chain of title to the interest for 40 years or, for mineral interests, 20 years. Subject to exceptions, the act extinguishes a claim that may affect the person's interest if the claim depends on an event or transaction preceding the 40- or 20-year period, unless, within that period, a notice of claim has been recorded. The bill would add exceptions to the types of interests the act can be used to bar or extinguish.

Currently, the act cannot be used to bar or extinguish an easement or interest in the nature of an easement (or any rights appurtenant to the easement or interest granted, excepted, or reserved by a recorded instrument creating the easement or interest, including any rights for future use) due to a failure to file the notice required under the act if the existence of the easement or interest is evidenced by the location of a pipe, valve, road, wire, cable, conduit, duct, sewer, track, pole, tower, or other physical facility beneath, on, or above any part of the land described in the instrument (regardless of whether or not the existence of the facility can be observed).

The bill would modify the phrasing of the above provision and add that the easement that cannot be barred or extinguished due to a failure to file the notice must be for the *operation, construction, maintenance, improvement, removal, replacement, or protection* of a pipe, valve, road, wire, cable, conduit, duct, sewer, track, pole, tower, or other physical facility and whether or not the existence of the facility is observable.

The bill would also amend this provision to add that the act cannot be used to bar or extinguish an easement or interest in the nature of an easement, as described above, due to a failure to file the notice required under the act, if the easement, observable or not, is for either of the following:

- Flowage rights for an impoundment that exists as part of a federally licensed hydroelectric facility.
- The management of vegetation within the easement.

In addition, the bill would provide that the act cannot be used to bar or extinguish any land and resource use restriction, whether or not the restriction required by a state or federal agency, including, but not limited to, any of the following:

- A restrictive covenant.
- An easement.
- A ***conservation easement***.
- Any other recorded instrument that protects public health, safety, welfare, or the environment.

As defined in section 2140 of the Natural Resources and Environmental Protection Act, ***conservation easement*** means an interest in land that provides limitation on the use of land or a body of water or requires or prohibits certain acts on or with respect to the land or body of water, whether or not the interest is stated in the form of a restriction, easement, covenant, or condition in a deed, will, or other instrument executed by or on behalf of the owner of the land or body of water or in an order of taking, which interest is appropriate to retaining or maintaining the land or body of water, including improvements on the land or body of water, predominantly in its natural, scenic, or open condition, or in an agricultural, farming, open space, or forest use, or similar use or condition.

MCL 565.104

FISCAL IMPACT:

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

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