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LAND USE: REDUCE PA 591 PLATTING EXEMPTIONS

House Bill 4381 (Substitute H-5*)
First Analysis (3-18-97)

Sponsor: Rep. Howard Wetters
Committee: Agriculture

THE APPARENT PROBLEM:

Public Act 591 of 1996 amended the Subdivision Control Act of 1967, the statute that, generally speaking, regulates the division of land in the state and that requires that certain pieces of land be surveyed and "platted." (Public Act 591 renamed the act the "Land Division Act", effective March 31, 1997.) The platting process involves the submission, review, and recording of a "plat" (a detailed map or chart) of "subdivisions" of land. The plat must be reviewed and approved by various public entities, including the state Departments of Transportation, Natural Resources (since divided into the departments of Natural Resources and Environmental Quality), and Public Health (since merged with the Department of Mental Health into the Department of Community Health); county drain commissioners, road commissions, or plat boards; and municipalities (that is, cities, villages, and townships). The aim of this review is to provide for the orderly development of land and to ensure that the land in question is suitable for the proposed development, including ensuring adequate drainage and proper access ("ingress and egress") to lots. (See BACKGROUND INFORMATION.)

As used in the Subdivision Control Act, the "subdivision" of land is a technical term defined in the act. It refers to the partitioning or dividing of land by landowners for certain purposes (sale, lease for more than one year, or building development), into a certain minimum number of parcels (five), with a maximum ten-acre size per parcel. More specifically, the "subdivision" of land applies to the partitioning or dividing of land where five or more parcels or tracts of land, each of which is at least ten acres or less in area, are created either by (a) the act of division, or (b) successive divisions within a period of ten years. Since the act requires that any division of land which results in a "subdivision" be surveyed and platted, parcels above ten acres or up to four small redivisions every ten years are exempt from the act's platting requirements.

Critics of the Subdivision Control Act point out that the definition of "subdivision" provides developers with the incentive to create narrow but deep "bowling alley"

parcels of land of just over ten acres in order to avoid the act's platting requirements, which critics have characterized as onerous, cumbersome, complicated, and time-consuming. Strings of such long, thin (and often oddly configured) parcels, with minimum road frontage, too often can be found strung out along rural roads like slats on a wire. This practice not only reduces the rural character of an area, but leads to numerous driveways on busy roads, with the potential for auto accidents and the slowing of traffic. The automatic ten-year redivision provision of act's definition of "subdivision" also provides landowners with an incentive to create four small parcels of land every ten years (also to avoid the act's platting requirements), which critics of the act say result in rural areas developing the density of major subdivisions -- and subsequent infrastructure strains -- without there ever being any kind of public review of the development.

Public Act 591 of 1996 was introduced to address these and other issues concerning "urban sprawl," and the resulting loss of farmland, forest land, and other open spaces. However, critics of the 1996 legislation argue that it does not address the issues of either urban sprawl or of the onerous nature of the platting process, while at the same time increasing the incentives for uncontrolled rural development because of the greatly increased number of "exempt" parcels of land it allows. (See BACKGROUND INFORMATION for further details of Public Act 591's provisions.) Legislation has been introduced that would reduce the number of platting exemptions allowed under the Land Use Act, along with a number of other changes.

THE CONTENT OF THE BILL:

The bill would amend the Land Division Act (the Subdivision Control Act as amended by Public Act 591 of 1996) to do the following:

**** Reduce the number of "exempt" parcels of land (that is, parcels of land exempted from the platting process) allowed by changing the formulas for initial exempt parcels and for redivision (including doubling the**

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"redivision clock" from ten to twenty years, restricting the accumulation of new exempt parcels, and eliminating the transferability of exempt divisions).

** Close the "window" for capitalizing on the fact that Public Act 591 won't take effect until March 31, 1997 (thereby providing an incentive to create as many new exempt parcels under the old Subdivision Control Act as possible in order to be able to receive the new set of allowable exempt divisions under the new Land Division Act) by changing the date for "parent" parcels to January 22, 1997 (the day the governor signed the act) and by subtracting any parcels created by an exempt division between January 22 and March 31 from the total number of initial exempt parcels granted on March 31;

** Require that if an easement is required for "access" to a parcel of land, the proposed easement would have to be at least 66 feet unless a municipal ordinance allowed otherwise.

** Allow municipalities or counties to adopt ordinances (or publish rules) to carry out the act.

** Change the amount of time municipalities would have to approve proposed (exempt) "divisions" from 30 to 45 days;

** Apply the depth to width ratio in Public Act 591 (which requires a 4:1 depth to width ratio for parcels of less than ten acres) to all parcels smaller than 40 acres except for the remainder of a parent parcel (or tract) kept by the original owner after one or more divisions or exempt splits;

** Require that the "right to farm" statement be included in deeds for platted, as well as unplatted, parcels of land (and include a statement as to whether the mineral rights to the property were severed);

** Apply the existing penalties for violations of the act's platting requirements to the act's exempt division requirements. Violations are misdemeanors with fines up to \$1,000 and/or imprisonment for either 180 days or one year, depending on whether the violation is a first or subsequent one.

Formulas for exempt divisions. The bill would change the formulas in Public Act 591 allowing bonus "exempt" land divisions to decrease the number of such exemptions as follows:

** It would reduce the number of parcels allowed for the first ten acres or less in the parent parcel (or parent tract) from four to two.

** It would also reduce the maximum number of additional parcels allowed for each whole ten acres in

excess of the first ten acres in the parent parcel (or tract) from eleven to three.

** It would place a maximum of ten additional parcels to the number of additional parcels allowed for each whole forty acres in excess of the first 120 acres in the parent parcel (or tract).

** It also would allow a maximum of four additional parcels, with one additional parcel allowed for each whole twenty acres in excess of the first forty acres in the parent parcel (or tract).

The bill would make no change to the provision that for a parent parcel (or tract) of at least 20 acres, the division could result in a total of 2 parcels in addition to those permitted above, if one or both of the following apply:

** Because of the establishment of one or more new public roads, no new driveway accesses to an existing public road for any of the resulting parcels are created or required; or

** One of the resulting parcels constitutes not less than 60 percent of the area of the parent parcel (or tract).

Redivision of parcels created as exempt splits or by division. The bill also would reduce the number of exemptions allowed through the redivision of parcels created by "exempt splits" (a new kind of partitioning of land allowed by Public Act 591 through which landowners can avoid platting requirements if the partitioning does not result in one or more parcels of less than 40 acres) or by "division" (another new kind of partitioning allowed under Public Act 591 which also is exempt from platting, provided that the resulting parcels do result in one or more parcels of 40 acres or the equivalent and that satisfy the requirements of two new sections, 108 and 109, added by the act). Parcels or tracts resulting from division or exempt splits could be further partitioned or split if one or more of the following requirements were met:

** the redivision complied with the act's replatting requirements,

** the redivision was an exempt split, and/or

** the redivision met all of the following requirements:

(1) the owner of the parcel or tract had already used up all of his or her allowable divisions;

(2) at least twenty (instead of ten) years had elapsed since the parcel or tract was approved;

(3) the division satisfied the requirements of section 109 (which requires municipal approval, in addition to meeting the requirements of section 108, if each resulting parcel has an “adequate and accurate legal description,” a depth to width ratio of 4:1, and adequate easements for public utilities, plus allowing the transferability of exempt divisions and requiring a statement of “right to farm” in the sale of unplatted land); and

(4) the division, together with any other previous divisions under this subsection, resulted in no more than five parcels, with not more than two parcels for the first ten acres or less plus one additional parcel for each whole ten acres in excess of the first ten acres in the parcel or tract. (The bill would delete the other option allowed in Public Act 591 of seven or ten exemptions for keeping not less than sixty percent of the area of the parcel being split or partitioned in one of the parcels resulting from the redivision.)

The right to make redivisions under this subdivision would be restricted to the remainder of the parent parcel (or tract) kept by the owner of the parent parcel after one or more divisions or exempt splits.

“Accessibility.” Parcels of land consisting of 40 acres or more are not subject to section 109 if they are “accessible”; “exempt splits” also are not subject to approval under the act so long as they, too, are “accessible.” (See section 103.) Under Public Act 591, the term “accessible,” in reference to a parcel of land, means that the parcel meets one or both of the following requirements:

** Has an area where a driveway provides vehicular access to an existing road or street and meets all applicable location standards of the state Department of Transportation or county road commission, and of the city or village; or has an area where a driveway can provide such access to an existing road or street and meets all such standards; or

** Is served by an existing easement providing vehicular access to an existing road or street and meets all applicable location standards, or could be served by a proposed easement providing such access and meeting such standards.

The bill would amend the definition of “accessible” to mean, instead, that a parcel met one or more of the following requirements:

** Had a driveway or was served by an easement that provided vehicular access to an existing road or street and met all applicable location standards; or

** Had an area for a proposed driveway, or could be served by a proposed easement, that could provide vehicular access to an existing road or street and met all applicable location standards.

If, moreover, a parcel required an easement, the proposed easement would have to be 66 feet, unless otherwise allowed by municipal ordinance.

“Development site.” Public Act 591 defines “development site” to mean any parcel (where a “parcel” is a continuous area or acreage of land which can be described as provided for in the act, as opposed to a “tract,” which means two or more parcels that share a common property line and are under the same ownership) or lot (where a “lot” is a measured portion of a parcel or tract of land, which is described and fixed in a recorded plat) on which exists or is intended for building development other than agricultural or forestry use. The bill would amend this definition of “development site” to mean any parcel or lot on which existed or which was intended for building development other than agricultural use, forestry use, or recreational use.

Effective date. The bill would take effect March 31, 1997.

MCL 560.102 et al.

BACKGROUND INFORMATION:

The Subdivision Control Act of 1967. The legal title of the Subdivision Control Act says, in part, that it is “an act to regulate the subdivision of land; to promote the public health, safety, and general welfare; to further the orderly layout and use of land; to require that the land be suitable for building sites and public improvements and that there be adequate drainage of the land; to provide for proper ingress and egress to lots; to promote proper surveying and monumenting of land subdivided and conveyed by accurate legal descriptions; [and] to provide for the approvals to be obtained by subdividers prior to the recording and filing of plats.”

The act, in addition to defining “subdivision”, also defines “parcel” or “tract” (of land) as “a continuous area or acreage of land which can be described as provided for in [the] act”, and “lot” as “a measured portion of a parcel or tract of land, which is described and fixed in a recorded plat.”

Public Act 591 of 1996. Public Act 591 (enrolled Senate Bill 112) of 1996 amended the Subdivision Control Act of 1967, renaming it the Land Division Act and making a number of changes in the act that increase the number of land parcels that would be exempted from the act’s platting requirements. It would do this through the

granting of an initial set of exempt parcels, based on the size of the piece of land in question, through the granting of additional exempt parcels upon redivision every ten years, through the transferability of exempt parcels, and through the granting of bonus parcels in exchange for landowners not developing 60 percent of their land.

"Subdivision" vs "division." Public Act 591 does away with the platting exemption of parcels of land larger than ten acres by changing the definition of "subdivision" to apply to certain parcels of land under 40 acres in area and adding a new definition of "division" that exempts certain other parcels of less than 40 acres from the act's platting requirements so long as they comply with the requirements of two new sections added to the newly-named Land Division Act.

Public Act 591 changes the definition of "subdivision" to refer to the partitioning or "splitting" (rather than "dividing") of land that results in one or more parcels of less than 40 acres ("or the equivalent"), and adds a second kind of partitioning or splitting of land, "division," that also results in one or more parcels of less than 40 acres ("or the equivalent"). (The act defines "40 acres or the equivalent" to mean "40 acres, a quarter-quarter section containing not less than 30 acres, or a government lot containing not less than 30 acres." Thus, both "subdivision" and "division" can refer to parcels of land that in some cases are less than 40 acres in area and in other cases less than 30 acres in area.)

While "subdivisions" remain subject to the act's platting requirements, "divisions" are not. Instead, "divisions" must satisfy certain new requirements added by Public Act 591 including municipal approval, a statement of "the right to farm" in the sale of unplatted land, and certain formulas concerning the number of resulting parcels.

"Exempt splits." In addition to exempting "divisions" of less than 40 acres of land from the act's platting requirements, Public Act 591 also exempts certain parcels or tracts of land (called "exempt splits") of more than 40 acres ("or the equivalent") from the act's platting requirements. More specifically, Public Act 591 adds a new kind of partitioning of land, "exempt splits," defined as the partitioning or splitting of a parcel or tract of land that does not result in one or more parcels of less than 40 acres ("or the equivalent"). "Exempt splits" are not subject to platting requirements so long as the resulting parcels are "accessible" as defined by Public Act 591.

"Parent" parcels and bonus exempt parcels. Under the Subdivision Control Act, four small parcels can be created every ten years without having to meet the act's

platting requirements. Public Act 591, in contrast, exempts a large number of small redivided parcels from platting requirements under a complicated formula based on the acreage or size of the "parent" parcel (or tract) being divided, and increases the number of exempt ten-year redivisions (under a similar complicated formula) from the current four parcels (under the Subdivision Control Act) to ten parcels. One of the effects of Public Act 591 is that when the act takes effect on March 31, 1997, each landowner will automatically receive a new set of allowable exempt land divisions even if the owner has just completed four exempted divisions allowed every ten years under the Subdivision Control Act.

Public Act 591 sets the maximum number of initial "bonus" parcels of land that are exempt from the platting process in terms of "parent" parcels or tracts of land (that is, parcels or tracts of land lawfully in existence on the act's March 31, 1997, effective date). Under section 108, a division, together with any previous divisions of the same parent parcel or parent tract, could result in the following maximum number of parcels :

** Four additional exempt parcels for the first ten acres of a parent parcel;

** One additional exempt parcel -- up to a maximum of eleven -- for each whole ten acres of the parent parcel in addition to the first ten acres of the parent parcel;

** One additional exempt parcel (with no maximum) for each whole forty acres of parent parcel in excess of the first 120 acres of parent parcel; and

** Two additional exempt parcels for a parent parcel of at least 20 acres if either (a) no new driveway access to an existing road were created or needed for any of the additional exempt parcels because one or more new roads had been established; and/or (b) one of the resulting additional exempt parcels made up at least sixty percent of the parent parcel.

Ten-year "redivision clock," accumulation and transferability of exempt parcels. Just as the Subdivision Control Act allows perpetual redivision of parcels not subject to platting, Public Act 591 allows the redivision of certain parcels every ten years and exempts them from platting requirements under certain circumstances. More specifically, Public Act 591 specifies that a parcel or tract created either by an "exempt split" (which is over 40 acres) or by a "division" (which is 40 acres or less) is not a new "parent" parcel and may be further partitioned or split without undergoing platting if all of the following requirements are met:

** At least ten years has lapsed since the parcel or tract was recorded;

** The partitioning or splitting results in the lesser number of either (a) two parcels for the first ten acres or less, plus one additional parcel for each whole ten acres in excess of the first ten acres; or (b) seven or ten parcels if one of the resulting parcels under this subsection makes up at least sixty percent of the area of the parcel or tract being split; and

** The partitioning or splitting satisfies the municipal approval and "right to farm" deed statement requirements of the act.

Public Act 591 allows exempt parcels to accumulate under these redivision provisions (that is, a landowner need not use up all of one set of his or her exempt parcels before accumulating a new set every ten years). Moreover, Public Act 591 further allows the transfer of the right to make exempt "divisions," though only from a parent parcel or parent tract to a parcel created from that parent parcel or parent tract. The act specifies that parcels created under the redivision provisions may not be further partitioned or split without being subject to the act's platting requirements, except in accordance with the act's redivision provisions.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have no fiscal impact at the state or local level. (3-17-97)

ARGUMENTS:

For:

Although proponents of P.A. 591 argued that it should result in a reduction in the amount of farmland lost to development by eliminating some of the current incentives for development, critics argue that by significantly increasing the number of small "exempt" parcels of land instead of minimizing them, P.A. 591 could actually increase incentives for such development and the resulting loss of farmland. Currently, as critics of the Subdivision Control Act have pointed out, the kinds of parcels of land that are exempted from the platting process -- namely, those larger than 10 acres and sets of four small exempt parcels currently allowed under the act's perpetual 10-year redivision "clock" -- have led to the development of real estate parcels slightly larger than 10 acres, too often in the form of deep but narrow "bowling alley" lots with minimal frontage on rural roads. P.A. 591 changes the definition of "subdivision" to apply to lots of up to 40 acres in size, and adds a 4:1 depth-to-width requirement that purportedly will decrease the number of new "bowling alley" lots. However, as critics of P.A. 591 point out, the act significantly increases the number of "exempt" parcels of land -- through the granting of an initial

number of exempt parcels based on the size of the land area in question, through the exemptions allowed every ten years upon redivision, through allowing the accumulation of unused exemptions, through allowing the transfer of exempt parcels, and through the granting of "bonus" exempt parcels in exchange for landowners not developing 60 percent of their land.

For example, P.A. 591's initial division provisions, coupled with its 10-year redivision provisions, would allow 26 homes to be built on 120 acres of land after eleven years -- all without having to undergo the planning and review process involved in platting. For, under P.A. 591, the landowner would initially be allowed 17 exempt parcels (based on the size of the acreage). If the landowner creates only one parcel and then waits 10 years, he or she would become eligible for an additional 10 exempt parcels, for a cumulative total of 26 parcels (16 parcels left over from the initial allocation plus 10 new parcels). Thus, the equivalent of a miniature housing subdivision conceivably could be built -- possibly accelerating urban sprawl and eating up valuable farmland -- without ever having to take into consideration the impact of such high density development both on existing farmland or on the area's infrastructure needs. In addition to the division and redivision provisions, however, P.A. 591 also allows landowners to transfer a number of their exempt divisions to new landowners who buy land from the original landowner, so that someone buying land could receive a number of exempt divisions if the selling landowner agreed to transfer some of his or her initial exempt divisions.

The bill would address these issues by reducing the overall number of initial exempt divisions, by doubling the amount of time that would have to pass before new exemptions were allowed under redivision, by eliminating the transferability of exempt divisions, and by requiring a landowner to use all of his or her exempt divisions before he or she could receive a set of new exempt divisions (thus addressing the accumulation issue).

The bill also would address the "bowling alley" issue, which P.A. 591 supposedly also did. However, although before P.A. 591 there was no effective depth-to-width regulation of land parcels, P.A. 591 established this ratio only for lots less than 10 acres. But since, historically, these "bowling alley" lots are 10.1 acres or larger, P.A. 591 does nothing to stop this practice, or the resulting loss of farmland. The bill would apply the 4:1 depth-to-width ratio to all parcels smaller than 40 acres, with the exception of the land kept by the original landowner, thereby eliminating the proliferation of "bowling alley" lots.

Finally, the bill would address a number of other problems inherent in P.A. 591. For example, although under P.A. 591 a parcel must be approved if it meets certain requirements under section 109 -- many of which refer to standards established in local ordinance -- the act doesn't specifically authorize local units of government to adopt local ordinances to implement the act. The bill would remedy this by providing explicit authority for local units of government to do this. Another issue partially addressed by P.A. 591 is that of land conflicts as the number of non-farming residents move to land next to working farms. Although P.A. 591 requires a "right to farm" notification statement in the deeds of all unplatted parcels of land, as the number of platted development sites increase in rural areas, it is important that these new owners also be aware of the nature of possible neighboring farming operations. The bill would require a "right to farm" statement in the deeds of all newly created parcels of land, whether unplatted or platted. The bill also would make sure that local units of government had enough time to review and approve exempt land divisions as required under the act by increasing the amount of time local units would have to review and approve proposed exempt divisions from 30 days to 45 days. With regard to enforcement of the act's provisions, while there are penalties for failing to conform with the platting requirements of the Subdivision Control Act, there are none for failing to comply with the requirements for exempt divisions. The bill would extend the existing penalties for failing to comply with the platting requirements of the act to the exempt division requirements. In order to avoid the creation of land-locked parcels of land with no legal access, P.A. 591 required that exempt parcels be "accessible" in order to be eligible for the required approval, where "accessible" means a driveway to a public or private road or access to a public or private road by means of an easement. But because there is no limit as to how many parcels could be served through an easement, many parcels could be created without the construction of a public or private road so long as there was an easement. This effectively allows landowners to circumvent local infrastructure requirements for roads in the approval process by simply providing easements for access. The bill would address this issue by making sure that all access, whether through driveways or easements, met minimum state or local requirements, including a width of 66 feet -- the width necessary for public roadways and utilities. Finally, the bill would address the issue raised by the fact that P.A. 591 was not given immediate effect, thereby allowing the possibility that some landowners might take advantage of the "window" between the time the act was signed (on January 22, 1997) and when it will take effect (on March 31, 1997) to create additional land divisions in order to qualify for the new, additional exempt divisions allowed by P.A. 591. The bill would ensure that parcels created before March 31 would be considered in

compliance with the act, so long as they were created in accordance with the current Subdivision Control Act, and would eliminate the incentive for landowners to create as many small parcels allowed before that date by requiring that any parcels created by an exempt division between January 22 and March 31 would be subtracted from the total number of initial exempt parcels allowed on March 31 under P.A. 591.

Against:

Opponents of the bill argue that by limiting the development allowed under P.A. 591, the bill would force the development of more, rather than less, agricultural land and cause more rather than less sprawl because of the requirements of Department of Environmental Quality rules. They argue that the crucial issue is not the number of allowable exempt splits but rather the kind of land that is protected, and that the bill would encourage the development of farmland while discouraging development elsewhere, over-restricting areas that should be developed, while under-restricting the development of agricultural land. They say that DEQ rules will prevent the splitting of road frontage, for example, because these rules would apply to development sites.

Response:

The bill would allow some development to continue, though with fewer exempt parcels allowed than under P.A. 591, which creates an economic incentive to strip the frontage of farms. One of the problems with the act is that DEQ rules apply only to "development sites" as defined in the bill. Thus, if a landowner wanted to sell 18 three-quarter "farms" or "garden lots" from the front of a farm bordering a public road -- both of which are explicitly exempted from the definition of "development site" -- then he or she could do so without having to deal with DEQ rules at all. All a landowner would have to do, in other words, is to deny that the parcels in question were "development sites" and he or she would be exempt from DEQ regulation. Without the changes proposed by the bill, developers will take advantage of the many platting exemptions allowed under P.A. 591, and strong incentives will remain for landowners to sell off pieces of farmland to take advantage of the act's many platting exemptions.

Against:

Representatives of homebuilders believe that the bill should focus narrowly on the perceived problems surrounding the lack of immediate effect for P.A. 591 and not return to the issue of exempt splits at this point. They further believe that there should be no decrease in the number of divisions allowed under P.A. 591, that the 4:1 ratio should not be applied to parcels over 10.1 acres, and that divisions should continue to be transferable. Further, they argue that local ordinances or rules to implement the act would add a new and

unnecessary layer of bureaucracy to land division and could expand and change the requirements of the Land Division Act. They believe that the goal should be to simplify the process, not complicate it, as they believe this provision for local ordinances would do.

POSITIONS:

The Michigan Farm Bureau supports the bill. (3-17-97)

The Michigan Townships Association supports the bill. (3-17-97)

The Michigan Municipal League supports the bill. (3-17-97)

The Michigan Environmental Council supports the bill. (3-17-97)

The Michigan Association of Homebuilders opposes the bill. (3-17-97)

The Michigan Realtors Association opposes the bill. (3-17-97)

Analyst: S. Ekstrom

■ 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.