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SFA**BILL ANALYSIS**

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House Bill 5282 (Substitute H-1 as reported without amendment)

Sponsor: Representative Kim Rhead

House Committee: Commerce

Senate Committee: Financial Services

CONTENT

The bill would amend Public Act 237 of 1879, which provides for the execution, acknowledgment, and recording of contracts for the sale of land, to allow the creation, recording, and enforcement of mortgages granted against land contracts in generally the same fashion that is currently allowed for real estate mortgages. The bill also would repeal a section of the Act that governs the proper discharge of land contracts and sets penalties (MCL 565.355).

The bill would allow either a buyer or seller of property under a land contract to grant a land contract mortgage to secure any debt or obligation that could be secured by a real estate mortgage. The bill specifies that this provision would not alter any otherwise enforceable contractual provision that prohibited or provided for the default of the contract for mortgage, sale, assignment, or further encumbrance of the buyer's or seller's interest. ("Land contract mortgage" would mean a mortgage granted by a vendor or a vendee. "Real estate mortgage" would mean "a mortgage granted upon an interest in real property, which is created when the vendor and the vendee join in or subject their respective interests to a single mortgage". The bill specifies that a land contract mortgage would not be a real estate mortgage.)

A mortgage under the bill would encumber the entire interests of the buyer or seller that were mortgaged, unless otherwise provided by the parties, in the same fashion and to the same extent as would a real estate mortgage. The interests of the seller or buyer would include, but not be limited to, the seller's right to payment and the buyer's right to conveyance. These interests would be real property interests, for the purposes of the bill. The bill specifies that the Act would be in addition to existing legal rights and remedies with respect to financing and encumbering the buyer's and seller's interests in the land contract.

A land contract mortgage could be enforced in the same manner as a real estate mortgage, including judicial foreclosure and foreclosure by advertisement. A party that purchased the foreclosed mortgage interest would obtain all of the mortgaged rights and interests of the foreclosed seller or buyer. A land contract mortgagee would have the same rights and remedies available to a real estate mortgagee. Remedies that existed before the bill's effective date would continue to apply; however, a land contract mortgagee would have the option of enforcing a mortgage created under the bill.

Proposed MCL 565.356-565.361

Legislative Analyst: P. Affholter

FISCAL IMPACT

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

Date Completed: 5-12-98

Fiscal Analyst: R. Ross