

# MEMORANDUM

TO: Real Property Law Section Council

FROM: Mike Luberto

DATE: January 6, 2023

SUBJECT: Legislative Committee Report

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1. **Monthly Call.** The ad hoc Legislative Committee met via conference call Tuesday, January 3, 2023, to discuss recent legislation.
2. **Current status.** David and Mike had a call with Tabitha Zimney from Karoub & Associates on Tuesday, January 3, 2023. The Legislature's first day to be in session is on January 11, 2023.
3. **Legislation of interest.**
  - a. MRTA  
House Bill 6370 introduced 9-8-22, Passed the House 9-28-22. This has become law.

[HB 6370 of 2022](#)

Property: recording; marketable record title; modify. Amends sec. 4 of 1945 PA 200 (MCL 565.104).

This legislation amends the Marketable Record Title Act (MRTA) to provide that the Act must not be applied to bar or extinguish certain kinds of easements or use restrictions. Specifically, it describes the bar of the application of MRTA by adding the following language in italics. The amendment adds 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*. It further removes certain easements, observable or not, that are for either (1) flowage rights for an impoundment that exists as part of a federally licensed hydroelectric facility and (2) the management of vegetation within the easement from the application of MRTA. Of key importance to real estate practitioners, the amendment further provides that MRTA may not be applied to extinguish any land and resource use restrictions, including by not limited to restrictive covenants, easements, conservation easements or any other recorded instrument that protects public health, safety, welfare, or the environment.

The Section has modifications and clarifying provisions that it has sought to add to the MRTA. Unfortunately, these concerns are not addressed by or consistent with House Bill 6370. The Section has been working diligently with our lobbyist and it is anticipated that another MRTA related bill will be introduced soon. HB 6370 is not consistent with our objectives.

Our concerns were shared with the stakeholders of this bill. The response was essentially "thank you, we understand, but we're moving forward." The utility companies hinted that they are willing to work with us on a fix next year.

RPLS Council has tasked this Committee with providing recommendations to revise the RPLS proposed bill that address the concerns of EGLE and the utility companies. EGLE's concerned with preserving environmental, health, welfare and safety restrictions; RPLS is fine with that, as long as it does not preserve all restrictions. RPLS previously had an ad hoc committee to prepare a proposed bill to amend the MRTA. The members of that committee were Nick Scavone, Cathy LaMont, Brian Page, Rick Sundquist, Kim Shierk, Greg Gamalski, Jason Seaver, Phil Savich, J. Adam Rothstein and me. At the last Council meeting, it was suggested that the ad hoc committee consist of Nick, Cathy and David.

**David asked Tabitha if we should start with a proposed bill that fixes our concerns with the utility/EGLE bill, or start with our comprehensive bill. Tabitha advised that it's better to start with the abbreviated bill to address the utility/EGLE legislation.**

b. HB 4416 Substitute Bill (Restrictive Covenants) – Now law.

[HB 4416 of 2021](#)

Property: other; certain restrictive covenants in deeds and other instruments; prohibit. Creates new act.

**This bill passed, without our suggested language pertaining to the capacity of the signer (individual or representative of an association). Sarah Anthony has indicated that she would work with us on an amendment.**

4. **New Proposed Legislation.** None. All bills introduced before the end of the 2022 session are dead, and will need to be re-introduced.