

MEMORANDUM

TO: Real Property Law Section Council

FROM: Mike Luberto

DATE: November 16, 2022

SUBJECT: Legislative Committee Report

1. **Monthly Call.** The ad hoc Legislative Committee met via conference call Tuesday, November 8, 2022, to discuss recent legislation.
2. **Current status.** David and Mike had a call with Tabitha Zimney from Karoub & Associates on November 1, 2022. The Legislature will be in session for limited periods this calendar year.
3. **Legislation of interest.**

a. MRTA

House Bill 6370 introduced 9-8-22, Passed the House 9-28-22!

<http://legislature.mi.gov/doc.aspx?2022-HB-6370>

This bill would amend 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 would further describe 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.” Tabitha reports that it will likely become law this year. The utility companies hinted that they are willing to work with us on a fix next year.

b. HB 4416 Substitute Bill (Restrictive Covenants) – still in the House

i. <http://legislature.mi.gov/doc.aspx?2021-HB-4416>

ii. H-2 Substitute

[http://www.legislature.mi.gov/\(S\(qk4yff3mxi3jccg25q05pagn\)\)/documents/2021-2022/billcurrentversion/House/PDF/2021-HCVBS-4416-0N295.pdf](http://www.legislature.mi.gov/(S(qk4yff3mxi3jccg25q05pagn))/documents/2021-2022/billcurrentversion/House/PDF/2021-HCVBS-4416-0N295.pdf)

The sponsor of this bill seemed receptive to our proposal to address this.

This bill was on the agenda for the Senate Committee on Local Government on Thursday, November 10.

- c. SB 1148 Probate: powers of attorney; uniform power of attorney act. Creates new act & repeals secs. 5501 - 5505 of 1998 PA 386 (MCL 700.5501 - 700.5505).
<http://legislature.mi.gov/doc.aspx?2022-SB-1148>
- d. SB 1150 Probate: powers of attorney; reference to powers of attorney in natural resources and environmental protection act; revise to reflect adoption of uniform power of attorney act. Amends sec. 20101b of 1994 PA 451 (MCL 324.20101b). Incorporates Uniform Power of Attorney Act into Natural Resources and Environmental Protection Act.
<http://legislature.mi.gov/doc.aspx?2022-SB-1150>

There has been no movement on these two bills since our last meeting.

- e. Short Term Rental Bills
HB 4722, [2021-HEBH-4722.pdf \(mi.gov\)](http://legislature.mi.gov/doc.aspx?2021-HEBH-4722) (<http://legislature.mi.gov/doc.aspx?2021-HB-4722>) This is also known as the “Realtor Bill”. It is the “ban on the ban” bill. Linked is the substitute version that was passed by the House on 10-27-21 (at 2 am, I believe).
HB 5605 (12/8/21) Taxation: excise taxes; excise tax on business of providing accommodations to include certain short-term rentals; modify. Creates new act. <http://legislature.mi.gov/doc.aspx?2021-HB-5605>
SB 880, Creates short-term rental regulation act. Tie Bar with HB 4722.
 - i. Drafting of substitute bill is in progress. Tabitha will send us the substitute bill once its finalized.
 - ii. <http://legislature.mi.gov/doc.aspx?2022-SB-0880>
 - iii. SB 880 and HB 5605 will likely be close to identical after revisions.

HB 4722 has passed out of committee in the House; now on the House floor. Still in committee of the whole in the Senate. The Legislature is still working on SB880, which needs to be passed to get the Governor to sign it.

- f. <http://legislature.mi.gov/doc.aspx?2022-HB-5697>

Property tax: tax tribunal; privacy of taxpayer information; provide for. Amends sec. 46 of [1973 PA 186](#) (MCL [205.746](#)). **Send to our State and Local Tax folks for review and comment?**

- g. [SB 589](#) Land Use ([Hertel, C.](#))
Modifies certified survey map requirements.
[Text/Analysis](#)
Introduced (6/30/2021; To [Local Government Committee](#))

David opined that if the Legislature is going to pass this, it should be part of the Land Division Act. David will circulate a memo. But Senator Hertel is term-limited, so if it is going to pass, it will have to occur in the limited number of days that the Legislature is in session.

- h. Michigan Construction Payment Act <http://legislature.mi.gov/doc.aspx?2022-SB-1020>
and <http://legislature.mi.gov/doc.aspx?2022-HB-6174>

The proponents of SB 1020 and HB 6174 have revised the bill in the hopes of reducing objections, but they have created some additional issues:

- The mandatory payment clause requires the owner to pay within 30 days of receipt of an invoice [regardless of any contractual requirements for documentation or other conditions precedent like a Sworn Statement under MCL 570.1110(9)]
- The owner is required to state that sufficient funds are available to complete the work.
- There is 12% penalty interest required on amounts wrongfully withheld from the contractor.
- The owner is precluded from withholding retainage - Section 5(3).
- If the owner is withholding any amount, the owner must provide specific notice within 10 days of receiving the invoice from the contractor.
- Any withheld or disputed amounts must be placed into a separate escrow account and held until dispute resolution proceedings are complete.
- Prevailing party or substantially prevailing party awarded attorney fees and costs, including expert fees – unless the contract provides to the contrary, but the specific language to negate is unclear.

House Bill 6174 was introduced by Representative Joe Tate who is the incoming Speaker of the House in the next term. There are several problems with this bill, and the drafters have indicated that the major focus is to find a way to require owners on construction projects to pay faster and more reliably regardless of the protections of the Construction Lien Act and other legal and contractual requirements and prerequisites for payment.

4. **New Proposed Legislation.** The Legislation Committee did a great job of discovering newly-introduced legislation. The Committee did not feel that any of the following required consideration by Council.

[HB 6434 of 2022](#)

Property tax: exemptions; disabled veteran exemption; modify. Amends sec. 7b of 1893 PA 206 (MCL 211.7b).

[HB 6463 of 2022](#)

Land use: planning; Michigan planning act; allow for alternate members to serve on the commission. Amends sec. 15 of 2008 PA 33 (MCL 125.3815).

[HB 6467 of 2022](#)

Property tax: payment and collection; application of a certain income tax credit toward payment of property taxes levied on certain community land trust property; provide for. Amends 1893 PA 206 (MCL 211.1 - 211.155) by adding sec. 7yy. TIE BAR WITH: HB 6468'22

[HB 6468 of 2022](#)

Individual income tax: property tax credit; community land trust homestead tax credit; provide for. Amends sec. 504 of 1967 PA 281 (MCL 206.504) & adds sec. 518. TIE BAR WITH: HB 6467'22

5. **Bills of Interest.**

- **Remote Notarization legislation:**

- HB 5759 was introduced on February 16, 2022.

The Board of Commissioners for the State Bar of Michigan decided to support this legislation. The SBM Bylaws provide that: “A State Bar Section may not advocate a policy position on behalf of the Section that is inconsistent with State Bar policy, unless expressly authorized to do so by a majority vote of the Board of Directors or Representative Assembly.” Article VIII, Section 7(2). Accordingly, we may not

take a contrary position. We did submit our comments timely to the State Bar with respect to drafting concerns. Tabitha also gave a copy of our comments to the sponsor of the legislation. They are not expecting this legislation to move prior to the end of the spring session.

6. **Potential Future Action.**

- **Prior Tax Foreclosure Amendments (issue with MCL §78l(1))** – the Section’s lobbyist is working to assist us in trying to fix the problem the Section previously identified with this legislation [see November 2020 Legislative Report].

7. **Pending Legislation; Positions**

- **Construction Lien Act Amendment** – HB 4668

<https://www.legislature.mi.gov/documents/2021-2022/billintroduced/House/pdf/2021-HIB-4668.pdf>

Position: At the May 12, 2021 Council meeting, Council voted to oppose this Bill.

- **Prohibited Restrictive Covenants Act** – HB 4416

(<https://www.legislature.mi.gov/documents/2021-2022/billintroduced/House/pdf/2021-HIB-4416.pdf>)

Position: At the May 12, 2021 Council meeting, Council voted to oppose this Bill.

According to Tabitha, Representative Anthony is trying to move this legislation. David Pierson has had discussions with the primary sponsor of the bill, Rep Anthony. Some of our requested changes were made. David will be making some comments on their proposed discharge form.

- **SB 1020** (established for contractors to pay subcontractors and suppliers in a timely manner). At its last meeting, the RPLS Council passed a resolution opposing this legislation.
- **HB 6343** – Proposes some cleanup and exempts from uncapping of taxable value upon transfer to sons-in-law and daughters-in-law. At its last meeting, the RPLS Council passed a resolution supporting this legislation. <http://legislature.mi.gov/doc.aspx?2022-HB-6343>
- **SB 1082** Property Tax McBroom Amends process for appealing certain assessment-related disputes as to certain property. To amend 1893 PA 206 by amending section 34 (MCL 211.34), as amended by 1986 PA 105, and by adding sections 34f and 34g. The RPLS Council voted to oppose this legislation at its last meeting.

8. **Additional matters.**

- **Land Contract Reform Initiative** – On June 20, 2022, David Pierson and Dawn Patterson were invited to a call with Samuel Buchalter of MSHDA to discuss his concerns regarding the initiative. He would like to have RPLS approve his proposed draft before it is introduced. David Pierson shared our comments. Mr. Buchalter agreed that clarification will be added that this intended legislation will not apply to commercial real estate.
- **MSHDA Missing Middle Housing Program** introduced. \$50 million in funding. Please see the report submitted at the July 2022 Council meeting for further information.