

## MEMORANDUM

TO: Real Property Law Section Council

FROM: Jason Long

DATE: December 8, 2023

SUBJECT: Legislative Committee Report

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1. **Monthly Call.** Since the last RPLS Council meeting, the ad hoc Legislative Committee met via Zoom on December 5, 2023. Jason Long and David Pierson held a call with Tabitha Zimny from Karoub & Associates after the Committee meeting.
2. **Recent Developments.**
  - a. **Marketable Record Title Act.** Rep. John Fitzgerald has agreed to sponsor a “comprehensive fix” bill. At his request, and with Council’s approval, we conferred with ICSC about the comprehensive fix. We have submitted a proposed bill to Rep. Fitzgerald, with the intent that the bill will be introduced when the Legislature returns in mid-January 2024. A copy is attached with this Report. Concurrently, we are going to pursue an extension of the current deadline set for the end of March 2024. Tabitha is working with Sen. Moss’s staff, to whom she has provided bill language, to have an extension bill introduced when the Legislature returns. Nevertheless, it is entirely possible that the existing March 2024 deadline will pass without any changes to the MRTA.
  - b. **Alternative Energy and Owners Associations.** We decided to monitor HB 5109 and HB 5028, both of which would impact the power of homeowners and condo associations regarding alternative energy installations. Afterward, the Condo Committee provided a comprehensive analysis of the bills and suggested that the RPLS oppose the bills. HB 5028 has now passed the House and is pending in the Senate. Tabitha advises that the policies reflected in these bills are the type of policies that the Legislature as a whole wants to promote.

The Legislative Committee reviewed the Condo Committee’s analysis and found it insightful and persuasive. But with HB 5028 passing the House and the general support for these policies, the Legislative Committee concluded that opposing the bills is likely futile. The better approach would be to try to influence them to render them more acceptable.

To that end, the Legislative Committee prepared proposed revisions to HB 5028, which are being provided with this Report. The Committee proposed that Council authorize conditional opposition to the bills unless our revisions or revisions that accomplish the same clarifications are implemented. At the November Council meeting, the decision was

for Council to study the proposed amended language and determine whether to take any action.

- c. **Housing.** The Legislature saw a number of bills pertaining to housing introduced since our last Council meeting. They are listed in the “new legislation” section of this Report, but include bills pertaining to landlord-tenant issues involving security deposits, utilities, and other mostly residential-oriented matters. Tabitha advised that these bills are unlikely to receive any serious consideration and that the Speaker of the House apparently has no intent to bring them to a vote. Accordingly the Legislative Committee recommends no action on these bills.
- d. **Alternative Energy.** Bills were introduced, approved by committees, and adopted by the Legislature to allow the Michigan Public Service Commission to site alternative energy installations such as solar farms and windmills notwithstanding local zoning. Two of the bills were adopted as 2023 PA 233 and 234. These bills moved on a schedule that did not allow the RPLS to take a position.
- e. **Tenancy by the Entireties Bills.** Previously, David sent Tabitha a list of statutes to be amended to correct the lingering issues arising out of Michigan’s failure to implement the Supreme Court’s decision in *Obergefell v Hodges*. Fourteen bills were introduced to remedy the issues (with various sponsors but organized by the legislative LGBTQ+ Caucus). As introduced, all of the bills are tie-barred to 2023 House Joint Resolution F, which would amend the Michigan Constitution by striking Const 1963, art 1, § 25, the provision for “one man-one woman” marriage adopted in 2004, and amending Const 1963, art 10, § 1, which related to coverture, to make it gender-neutral. The amendments would require approval by statewide vote. Because the bills were tie-barred to HJR F, nothing will happen with them until that vote takes place.

TBE issues are happening in real time, however, so the Legislative Committee has continued to pursue these issues. Tabitha is going to contact Sen. Moss about the possibility of pursuing a TBE fix outside the context of the joint resolution.

### 3. **RPLS Positions.**

a. **Blight Citations.** At the Council meeting on September 13, 20223, Council voted to oppose HB 4332, which would amend the Home Rule Cities Act to provide for certain citations for property owners whose properties have blight violations, based on the bill allowing service by first-class mail and email if there is a “good faith” effort at personal service that fails, which can lead to blight violations and even criminal convictions. The bill nevertheless passed the House on September 26 and was referred to the Senate.

b. **Prompt Pay Bills.** At the Council meeting at the summer conference on July 21, 2023, Council voted to oppose HB 4837 and SB 0451, which are the subcontractor “prompt payment” bills. Since their introduction, there has been no activity with these bills.

**c. Foreign Ownership.** At the last Council meeting, we decided to monitor HB 5050 and HB 5073. They were introduced but the Legislature has not taken any action on them, and now is out of session until January.

**d. Tax Tribunal.** Council voted to oppose SB 19 and SB 20, which would take certain cases involving commercial property away from the Tax Tribunal and grant jurisdiction over them to a local board. These bills were a reaction to the courts' treatment of a tax case called Menard's, Inc v City of Escanaba, involving "big box" stores. There has been no activity since the bills' introduction.

**4. Old Business.**

**a. 2022 PA 234, MCL 565.861 et seq.** This was the act adopted to allow for removal of racial and other odious restrictive covenants from title documents. The RPLS had suggested revisions pertaining to the capacity of the persons signing the documents to remove the restrictions. The act was adopted without our revisions. Sen. Anthony initially expressed that she would work with us to address the revisions but then declined to do so. Tabitha is working on getting us back in front of Sen. Anthony and her staff to address our concerns.

**b. Kessler v Longview Agriculture Asset Mngmt-Fix Bill.** This opinion concluded that the purchaser at a mortgage foreclosure sale can wait until the day before the redemption period expires to record the sheriff's deed, and the redemption period will expire the following day. The Council passed a resolution supporting our proposed amendments to MCL 600.3232 and MCL 600.3240 to correct this. During June 2023, Mike and Tabitha met with Representative Samantha Steckloff on June 21, 2023. Rep. Steckloff agreed to sponsor our bill, and a bill was prepared but never was introduced. Tabitha is going to revisit this with Rep. Steckloff and her staff.

**5. New Bills.** The Legislature has been out of session since November 9. There were a few bills introduced after the November legislative report, which are identified here:

***Allows assessment of state highways and state land for drain improvements and maintenance***  
[HB 5335 of 2023](#)

Drains: other; lands under the ownership of the department of natural resources; allow to be levied for drain assessments. Amends secs. 151, 154, 280, 468 & 520 of 1956 PA 40 (MCL 280.151 et seq.).

***Requires cities with poverty levels above 20% to use federal affordable housing standards***  
[HB 5336 of 2023](#)

Housing: affordable; use of certain factors in local housing ordinances to designate area median income for affordable housing determinations; require. Creates new act.

***Together with HB 5349, preempts local regulation, including zoning, of vertiports***  
[HB 5352 of 2023](#)

Aeronautics: other; zoning ordinances; make subject to the aeronautics code of the state of Michigan. Amends sec. 205 of 2006 PA 110 (MCL 125.3205). TIE BAR WITH: HB 5349'23

***Expanded package (with HB 4532) to address lead-based paint remediation and exposure***  
[HB 5368 of 2023](#)

Health: children; reporting requirements for blood lead levels for minors; modify, and update certain definitions. Amends sec. 5474 of 1978 PA 368 (MCL 333.5474) & adds sec. 5456a. TIE BAR WITH: HB 4532'23

[HB 5369 of 2023](#)

Children: health; automatic qualification for children's special health care services for certain children affected by lead exposure; require. Amends secs. 5823 & 5825 of 1978 PA 368 (MCL 333.5823 & 333.5825). TIE BAR WITH: HB 5368'23

***Expands real property tax exemption for “continuing care communities”***

[HB 5380 of 2023](#)

Property tax: other; definition of nonprofit charitable institution; clarify. Amends sec. 7o of 1893 PA 206 (MCL 211.7o).

***Bills to create special liability for property owners who do not allow guns on their property***

[HB 5381 of 2023](#)

Torts: premises liability; governmental agencies that maintain weapon-free zones; impose liability. Amends 1964 PA 170 (MCL 691.1401 - 691.1419) by adding sec. 6b. TIE BAR WITH: HB 5377'23

[HB 5377 of 2023](#)

Torts: premises liability; safety of individuals in a designated weapon-free zone; establish liability for. Amends 1846 RS 66 (MCL 554.131 - 554.139) by adding sec. 40. TIE BAR WITH: HB 5381'23

***This three-bill package allows using summary proceedings to evict home sellers who stay past the agreed time under a purchase agreement while not making them “tenants” under the various tenant-protection statutes.***

[HB 5384 of 2023](#)

Housing: landlord and tenants; definition of residential premises; modify. Amends sec. 2 of 1978 PA 454 (MCL 554.632).

[HB 5385 of 2023](#)

Housing: landlord and tenants; definition of rental unit; modify. Amends sec. 1 of 1972 PA 348 (MCL 554.601).

[HB 5386 of 2023](#)

Civil procedure: evictions; eviction after expiration of temporary possession under a sales agreement; provide for. Amends sec. 5714 of 1961 PA 236 (MCL 600.5714).

***The two following bills would create “benefit corporations” that are formed to do good things. It is noteworthy that the sponsors are from both parties. It is not clear what purpose they would serve that a nonprofit or even a profit corporation could not equally address.***

[HB 5387 of 2023](#)

Businesses: business corporations; benefit corporations; create. Amends 1972 PA 284 (MCL 450.1101 - 450.2098) by adding ch. 9A. TIE BAR WITH: HB 5388'23

[HB 5388 of 2023](#)

Businesses: business corporations; business corporation act; general revisions concerning formation of benefit corporations. Amends secs. 105, 106, 131, 202, 211 & 911 of 1972 PA 284 (MCL 450.1105 et seq.). TIE BAR WITH: HB 5387'23