

MEMORANDUM

TO: Real Property Law Section Council

FROM: Mike Luberto

DATE: December 9, 2022

SUBJECT: Legislative Committee Report

1. **Monthly Call.** The ad hoc Legislative Committee met via conference call Tuesday, December 6, 2022, to discuss recent legislation.
2. **Current status.** David and Mike had a call with Tabitha Zimney from Karoub & Associates on Tuesday, December 6, 2022. The Legislature's last day to be in session was Wednesday, December 7, 2022.
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.

This bill was previously passed by the House, and was passed by the Senate on Wednesday, December 7, 2022. It is expected to be signed by the Governor.

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 previously passed by the House, and was passed by the Senate on Wednesday, December 7, 2022.

- 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. Assuming that the Legislature will not be in session again in 2022, these bills will have to be re-introduced.

- e. Short Term Rental Bills

HB 4722, [2021-HEBH-4722.pdf \(mi.gov\)](#) (<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.

These bills did not get passed this session. They will have to be re-introduced next session.

- 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](#)). **At it’s November meeting, the RPLS Council unanimously voted to support this legislation. However, since it was not passed into law, it will need to be re-introduced.**

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

This legislation was not passed in the 2022 session. As such, it will need to be re-introduced, which is unlikely.

- 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.

This bill was not passed in the 2022 session and will have to be re-introduced. That is likely, since the sponsor is now the Speaker of the House.

At a previous meeting, the RPLS Council unanimously passed a resolution opposing HB 6174, a companion bill to SB 1020.

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, though two should be monitored, if re-introduced.

On November 9, 2022:

- Rep. Carra introduced HB 6474 of 2022 - a bill to prohibit municipalities from adopting or enforcing certain ordinances related to primary caregivers, qualifying patients, or the medical use of marihuana.
- Rep. Johnson introduced HB 6487 of 2022 – a bill that amends sec. 9 of 1909 PA 279 (MCL 117.9) (The Home Rule City Act); requires a township-wide vote before land in a township can be annexed. **Tabitha reported that this bill is unlikely to move.**

On November 10, 2022:

- Rep. Schmidt introduced HB 1224 of 2022 – a bill to amend 1961 PA 120, entitled “an act to authorize the development or redevelopment of principal shopping districts and business improvement districts; to permit the creation of certain boards; to provide for the operation of principal shopping districts and business improvement districts; to provide for the creation, operation, and dissolution of business improvement zones; and to authorize the collection of revenue and the bonding of certain local governmental units for the development or redevelopment projects.”
- The House passed the House Substitute for Senate Bill 362 of 2021 – Senate Bill 362 would create a new act, the Attainable Housing Facilities Act, to allow a city, township, or village to establish one or more attainable housing districts. An owner of rental housing property rehabilitated or newly built in a district

could receive a tax abatement on the property if certain requirements were met. Notably, the property could consist of no more than four units, and at least 30% of the units would have to be rented to a household with a combined annual income after specified adjustments of 120% or less of the county median income, and the rent could not exceed 30% of the household's income after specified modifications.

- The House passed the House Substitute for Senate Bill 364 of 2021 - Senate Bill 364 would amend the Neighborhood Enterprise Zone Act to allow any city, village, or township to designate a neighborhood enterprise zone (NEZ) under the act. Currently, only county seats and certain distressed communities can do so.
- The House passed the House Substitute for Senate Bill No. 422 of 2021 – Senate Bill 422 would create a new act, the Residential Housing Facilities Act, to allow a city, township, or village to establish one or more residential housing districts. An owner of rental housing property rehabilitated or newly built in a district could receive a tax abatement on the property if certain requirements were met. Notably, the property would have to be rented to a household with a combined annual income after specified adjustments of 120% or less of the county median income, and the rent could not exceed 30% of the household's income after specified modifications. Qualified property owners would be exempt from standard ad valorem property taxes and instead would pay a specific tax, the residential housing facility tax, in an amount as determined under the bill. This abatement would apply to structures and not to land. New exemptions could not be granted after December 31, 2027, but exemptions then in effect could continue until they expired.
- The House passed the House Substitute for Senate Bill No. 432 of 2021 – Senate Bill 432 would amend the State Housing Development Authority Act to exempt from ad valorem property taxes a workforce housing project that has been approved for exemption by the city, village, or township where it is located. The owner would have to pay an annual service charge for public services in lieu of taxes to that city, village, or township, which would distribute it to applicable taxing units. A county board of commissioners could require payment of an additional amount to the county. The bill also would change conditions that now apply to a similar exemption and payment in lieu of taxes for certain housing projects for low-income individuals or families.

[HB
6507 of
2022](#)

Housing: hotel-motel special assessments; persons in charge of hotels to provide smoking policy fees before leasing or renting the hotels; require. Amends 1913 PA 188 (MCL 427.1 - 427.15) by adding sec. 3a.

Introduced

[HB
6513 of
2022](#)

Property tax: exemptions; poverty exemption; modify. Amends sec. 7u of 1893 PA 206 (MCL 211.7u)

Introduced

[HB
6534 of
2022](#)

Housing: other; energy-saving home improvements; invalidate prohibition of by homeowners' association. Creates new act.

Introduced. May want to track this in case it is introduced in the next session.

[HB
6535 of
2022](#)

Housing: condominium; condominium association rules prohibiting installation of energy saving improvements; prohibit. Amends secs. 6, 10 & 47 of 1978 PA 59 (MCL 559.106 et seq.) & adds sec. 47b.

Introduced. May want to track this in case it is introduced in the next session.

SB 1230 of 2022	Individual income tax: credit; credit for landlords who rent to certain individuals; provide for. Amends 1967 PA 281 (MCL 206.1 - 206.847) by adding sec. 280.	Introduced.
HB 6358 of 2022	Property: conveyances; transfer of state-owned property from the department of corrections to the state land bank authority and conveyance of state-owned property from the department of state police to Kent County. Creates new land transfer act.	Passed by the House.
SB 1084 of 2022	Property tax: exemptions; disabled veteran exemption; replace with process to apply for an income tax credit. Amends sec. 7b of 1893 PA 206 (MCL 211.7b). TIE BAR WITH: SB 0783'21	Passed by the Senate.
SB 0432 of 2021	Housing: other; payment in lieu of taxes for rural workforce housing projects; provide for. Amends sec. 15a of 1966 PA 346 (MCL 125.1415a).	Enrolled. Presented to Governor on 12-2-2022

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.

6. Potential Future Action.

- **Prior Tax Foreclosure Amendments (issue with MCL §781(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.

This passed both the House and the Senate. It is expected to be signed by the Governor. The bill includes a form for “removing” prohibited restrictive covenants. The form states that it is being signed by the owner or an officer of an association, without requiring the signor to state whether they are the owner or an officer, and if the latter, which association. The sponsor has indicated a willingness to work with us to clean up the legislation.

- **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.
- Supreme Court amended court rules regarding evictions – The Supreme Court proposed revised Court rules, keeping in effect COVID-era court rules which essentially make it more difficult for landlords to evict tenants. During the public comment period, the Court received a lot of comments, many opposing the Court rules. The State Bar commented that it believed this should be addressed by the Legislature. According to the Court’s liaison to the Legislature, revisions to the proposed Court rules, though those proposed revisions are unknown.