

MEMORANDUM

TO: Real Property Law Section Council

FROM: Jason Long

DATE: November 10, 2023

SUBJECT: Legislative Committee Report

1. **Monthly Call.** Since the last RPLS Council meeting, the ad hoc Legislative Committee met via Zoom on November 7, 2023. Jason Long and David Pierson held a call with Tabitha Zimny from Karoub & Associates that morning, before the Committee's call.
2. **Recent Developments.**
 - a. **Marketable Record Title Act.** Rep. John Fitzgerald has agreed to sponsor a "comprehensive fix" bill. Rep. Fitzgerald wants RPLS to confer with ICSC about the comprehensive fix. At the July meeting, Council resolved that we should attempt to work with ICSC to ensure that we do not lose Rep. Fitzgerald as a bill sponsor.

We have had several exchanges with ICSC representatives, primarily Emily D'Agostini, and last week sent language to her as the proposed RPLS-ICSC bill for Rep. Fitzgerald. A copy is attached to this Report. Emily advised that she would approve the language but needed to hear from her cohorts on behalf of ICSC. Once we have that response, the bill can be provided to Tabitha, who will provide it to Rep. Fitzgerald.

Rep. Fitzgerald continues to want to push for the comprehensive fix rather than the six-month extension. Time is short until the MRTA expiration date, however, and now the House is deadlocked because two Democratic representatives will be leaving for their new positions as mayors.

In response, our plan as of the date of this Report is to get the comprehensive fix to Rep. Fitzgerald so that he can introduce it ASAP when the Legislature is back in January, and to also pursue the six-month extension. The extension will require introduction of a new bill, too, because there is no pending bill that could be used to accomplish the extension. Tabitha is going to reach out to Sen. Moss to introduce the extension ASAP when the Legislature is back in session. We hope to start the bill in the Senate, where it can be approved, while the House sorts itself out after the two Democrats elected as mayors are gone.

We are including a short article in the e-journal to update RPLS members of the status and that it is possible that, notwithstanding our efforts over the past several years, the MRTA deadline could pass. If we can get the bills introduced in January, we should all contact our legislators to pressure them to support the bills.

- b. **Alternative Energy and Owners Associations.** At the last Council meeting, 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 proposes that Council authorize us to submit conditional opposition to the bills unless our revisions or revisions that accomplish the same clarifications are implemented.

- 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.** In the past few weeks, 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. These include HB 5120, HB 5121, SB 585, and SB 588. The House Bills passed both houses of the Legislature and Tabitha advises that the Governor will sign them. 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 continues to be especially busy. The following bills were introduced since the last RPLS Council meeting.

- [SB 0558 of 2023](#) Housing: other; solar generators; invalidate prohibition of by homeowners' association. Creates new act
- [SB 0554 of 2023](#) Housing: landlord and tenants; right for water and sewer bill to be in tenant's name; provide for. Amends 1972 PA 348 (MCL 554.601 - 554.616) by adding sec. 1d.
- [SB 0551 of 2023](#) Public utilities: water utilities; water shutoff protection act; enact. Creates new act. TIE BAR WITH: SB 0550'23, SB 0549'23
- [SB 0539 of 2023](#) Housing: landlord and tenants; return of security deposit by electronic transfer; allow. Amends sec. 9 of 1972 PA 348 (MCL 554.609).
- [HB 5091 of 2023](#) Housing: landlord and tenants; right for water and sewer bill to be in tenant's name; provide for. Amends 1972 PA 348 (MCL 554.601 - 554.616) by adding sec. 1d.
- [HB 5109 of 2023](#) Housing: other; installation of electric vehicle supply equipment; allow condominium associations to permit under certain conditions. Amends sec. 47 of 1978 PA 59 (MCL 559.147).
- [HB 5118 of 2023](#) Energy: alternative sources; participation in property assessed clean energy program; extend to energy, environmental hazard, and water usage projects on residential property. Amends title of 2010 PA 270 (MCL 460.931 - 460.949); designates sec. 1 as pt. 1 & secs. 3 - 19 as pt. 2 & adds pt. 3. TIE BAR WITH: HB 5119'23
- [HB 5119 of 2023](#) Energy: conservation and efficiency; credits for property assessed clean energy projects on residential property; grant to utility. Amends sec. 83 of 2008 PA 295 (MCL 460.1083). TIE BAR WITH: HB 5118'23
- [HB 5120 of 2023](#) Energy: alternative sources; solar, wind, and storage facilities of 100 MW or more; authorize MPSC certification for zoning exemptions. Amends title of 2008 PA 295 (MCL 460.1001 - 460.1211) & adds pt. 8. TIE BAR WITH: HB 5121'23
- [HB 5121 of 2023](#) Land use: zoning and growth management; certification of solar, wind, and storage facilities of 100 MW or more; make zoning enabling act subject to. Amends sec. 205 of 2006 PA 110 (MCL 125.3205). TIE BAR WITH: HB 5120'23
- [HB 5122 of 2023](#) Land use: zoning and growth management; solar and storage facilities of 50 or more MW but less than 100 MW; authorize MPSC certification for zoning exemptions. Amends title of 2008 PA 295 (MCL 460.1001 - 460.1211) & adds pt. 8. TIE BAR WITH: HB 5123'23
- [HB 5123 of 2023](#) Land use: zoning and growth management; certification of solar and storage facilities of 50 or more MW but less than 100 MW; make zoning enabling act subject to. Amends sec. 205 of 2006 PA 110 (MCL 125.3205). TIE BAR WITH: HB 5122'23

- [HB 5157 of 2023](#) Mobile homes: other; mobile home commission act; revise. Amends title & secs. 2, 3, 4, 5, 6, 7, 14 & 16 of 1987 PA 96 (MCL 125.2302 et seq.) & adds secs. 16b & 16c. TIE BAR WITH: HB 5160'23, HB 5159'23, HB 5158'23, HB 5161'23
- [HB 5158 of 2023](#) Mobile homes: other; procedure for declaring a mobile home abandoned; provide for. Amends 1987 PA 96 (MCL 125.2301 - 125.2350) by adding sec. 30j. TIE BAR WITH: HB 5157'23, HB 5160'23, HB 5159'23, HB 5161'23
- [HB 5159 of 2023](#) Mobile homes: other; mobile home commission act; revise. Amends secs. 17, 18, 25, 28, 28a & 29 of 1987 PA 96 (MCL 125.2317 et seq.) & adds sec. 28d. TIE BAR WITH: HB 5157'23, HB 5160'23, HB 5158'23, HB 5161'23
- [HB 5160 of 2023](#) Mobile homes: owner's rights; requirement of written leases for mobile home park tenants; modify. Amends 1978 PA 454 (MCL 554.631 - 554.641) by adding sec. 4a. TIE BAR WITH: HB 5157'23, HB 5159'23, HB 5158'23, HB 5161'23
- [HB 5161 of 2023](#) Mobile homes: other; mobile home commission act; revise. Amends secs. 35, 43 & 48 of 1987 PA 96 (MCL 125.2335 et seq.) & adds sec. 30m. TIE BAR WITH: HB 5157'23, HB 5160'23, HB 5158'23
- [HB 5162 of 2023](#) Taxation: mobile homes; specific tax on certain owners and occupants of certain mobile homes; modify. Amends sec. 41 of 1959 PA 243 (MCL 125.1041). TIE BAR WITH: HB 5163'23
- [HB 5163 of 2023](#) Property tax: other; scope of mobile homes subject to general ad valorem property taxes; modify. Amends sec. 2a of 1893 PA 206 (MCL 211.2a). TIE BAR WITH: HB 5162'23
- [HB 5235 of 2023](#) Housing: landlord and tenants; requirement to accept and screen rental applications on a first-come first-served basis; provide for. Amends title of 1972 PA 348 (MCL 554.601 - 554.616) & adds sec. 1c.
- [HB 5236 of 2023](#) Housing: landlord and tenants; form containing summary of tenant's rights; require state court administrative office to provide. Amends 1978 PA 454 (MCL 554.631 - 554.641) by adding sec. 4a.
- [HB 5237 of 2023](#) Civil procedure: defenses; tenants right to counsel; provide for. Creates new act.
- [HB 5238 of 2023](#) Civil procedure: evictions; court records of evictions; require to be expunged. Amends sec. 8371 of 1961 PA 236 (MCL 600.8371) & adds sec. 5755.
- [HB 5239 of 2023](#) Housing: landlord and tenants; certain relocation assistance for tenants in hazardous or dangerous buildings; provide for. Amends 1917 PA 167 (MCL 125.401 - 125.543) by adding sec. 130a.
- [HB 5240 of 2023](#) Housing: landlord and tenants; purchase of rental property by tenants; provide for. Creates new act.
- [SB 0585 of 2023](#) Energy: alternative sources; solar, wind, and storage facilities of 100 MW or more; authorize MPSC certification for zoning exemptions. Amends title of

2008 PA 295 (MCL 460.1001 - 460.1211) & adds pt. 8. TIE BAR WITH: SB 0588'23

[SB 0586 of 2023](#) Land use: zoning and growth management; solar and storage facilities of 50 or more MW but less than 100 MW; authorize MPSC certification for zoning exemptions. Amends title of 2008 PA 295 (MCL 460.1001 - 460.1211) & adds pt. 8. TIE BAR WITH: SB 0587'23

[SB 0587 of 2023](#) Land use: zoning and growth management; certification of solar and storage facilities of 50 or more MW but less than 100 MW; make zoning enabling act subject to. Amends sec. 205 of 2006 PA 110 (MCL 125.3205). TIE BAR WITH: SB 0586'23

[SB 0588 of 2023](#) Land use: zoning and growth management; certification of solar, wind, and storage facilities of 100 MW or more; make zoning enabling act subject to. Amends sec. 205 of 2006 PA 110 (MCL 125.3205). TIE BAR WITH: SB 0585'23

[SB 0602 of 2023](#) Occupations: real estate; right-to-list home sale agreement; require certain provisions of a valid agreement. Amends secs. 2501 & 2512 of 1980 PA 299 (MCL 339.2501 & 339.2512) & adds sec. 2512g.