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**ATTORNEY GENERAL: INDIAN TRIBE
PROPERTY DISPUTES**

**House Bill 4413 as introduced
First Analysis (3-20-97)**

**Sponsor: Rep. Pat Gagliardi
Committee: Constitutional and Civil
Rights**

THE APPARENT PROBLEM:

According to a Detroit Free Press article dated November 30, 1996, the Bay Mills Indian tribe has filed two lawsuits alleging that in 1884-85 the State of Michigan illegally sold at public auction 235 acres of Indian land along one and a quarter miles of the St. Marys River (known as Charlotte Beach) that had been deeded to the state in 1857 in a trust to be used for the tribe. The tribe wants the land returned or compensation of up to \$25 million for the land value plus unspecified damages. The tribe is suing the state in the state court of claims, and Michigan State University, Ameritech, several banks -- all owners or lienholders on the land -- plus the 176 current owners of the disputed land in federal court. Of the 72 private residences affected, reportedly 22 are year-round residents, while the remainder are seasonal homes whose owners live throughout the state. The home owners sought the state's help in defending the litigation, but were refused. Legislation has been introduced that would provide such state help.

THE CONTENT OF THE BILL:

Currently, under the attorney general enabling act (Revised Statutes of 1846, c. 12), one of the enumerated duties of the attorney general is to prosecute and defend all lawsuits relating to matters connected with the governor, the secretary of state, the treasurer, or the auditor general. The bill would amend the statute to require the attorney general, in addition, to represent state residents in civil lawsuits involving disputes between Indian tribes and state residents over the ownership of land, under certain circumstances. The land in dispute would have to have once been owned by an Indian tribe, been sold or transferred by the state (or a person representing the state) to one or more state residents, and the Indian tribe would have to have brought the lawsuit to claim ownership of the land.

MCL 14.29a

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FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill will have no fiscal implications for the state or local governments, as the Department of Attorney General reports that no additional attorneys would have to be hired to handle the anticipated work load. (3-18-97)

ARGUMENTS:

For:

The bill would address a unique situation in which state residents are being unfairly aggrieved as a consequence of their state's actions over 100 years ago. Because the litigation now being faced by the Charlotte Beach homeowners is the result of a mistake that the state apparently made over a century ago, the state should defend these homeowners in the current litigation over their land. According to the Detroit Free Press article, many of the homeowners affected by the lawsuit are elderly retired people for whom a costly, protracted legal battle could be devastating. And according to testimony before the House Committee on Constitutional and Civil Rights, three of the homeowners have died from strokes due to stress since the lawsuit was initiated over a year ago. Moreover, according to testimony, the township has lowered the assessed value of the homeowners' land by 90 percent, so they are precluded even from mortgaging their homes to help pay for legal counsel. And although some of the homeowners may be partially covered by title insurance because they financed the purchase of their land, those who inherited their land from parents or grandparents have no such protection. Since the state created the problem in the first place, it should defend state residents who, through no fault of their own, now find themselves the defendants in a potentially very expensive lawsuit and whose land is virtually worthless due to the title questions raised by these lawsuits. Further, the Detroit Free Press article quotes the director of the state Commission on Indian Affairs as saying that New England Indians recently won cash settlements in

century-old land claims, and that if the Bay Mills Indians are successful in their lawsuits, other Michigan tribes may file similar claims for property in the Upper Peninsula, the northern Lower Peninsula, and in the Mt. Pleasant area. Thus, other current landowners may find themselves in a situation similar to that faced by the Charlotte Beach homeowners, and may require the same kind of help.

Against:

A number of questions can be raised about the bill concerning the extent of its potential application and whether it should be narrowed or broadened. For example, since virtually all of the land in the state once belonged to the Native Americans who lived here before European settlers began to move into what eventually became the State of Michigan, it would appear that the bill could result in an overwhelming flood of cases for the attorney general to defend. It also was pointed out in committee that Fruitport, a small town on the western side of the Lower Peninsula, reportedly is being claimed by an Indian tribe that, while not yet recognized federally, expects to gain federal recognition soon. Would the bill apply to this case also? Or to the potential cases mentioned in the Detroit Free Press article by the director of the state Commission on Indian Affairs? The bill, further, could create a problematic precedent. It has been long established that the attorney general is the sole and proper legal representative of the state and its officers. It is equally clear that statute and common law unquestionably give the attorney general the right to act on behalf of the people of the State of Michigan in any cause or matter. However, the bill would appear to be proposing a new duty for the attorney general, that of representing a specific group of people in the state. Would this set a precedent for other groups to petition for similar representation? Couldn't the people in question instead be allowed some kind of remedy against the state, like being allowed to sue the state? For if they are injured because of the state's action, shouldn't they be allowed to recover against the state? Finally, would it be appropriate for the state to defend this group, who may be either wealthy individuals or some kind of wealthy business entity? Or should there be some kind of "means testing" involved?

On the other hand, it could be asked why the bill should be restricted only to state residents. What about people who live outside of Michigan, but who own land in Michigan? In addition to landowners who never have been Michigan residents, there are a lot of people -- often retired -- who, say, for tax purposes claim residence in another state, such as Florida, and who live in another state for part of the year but who return to Michigan during summers. Shouldn't they have the same protection that would be provided by the bill too? After all, if it's the state's fault in the first place, why should the citizenship of the landowner be relevant?

Response:

In the first place, although it is true that in some sense all of the land now constituting the State of Michigan once was "owned" by Native Americans, the bill addresses a much more specific situation in which there is official documentation that the land in question once was held in trust by the state on behalf of a federally-recognized Indian tribe and was subsequently sold or transferred to one or more residents of the state. Although a few other such cases may exist, surely if the kind of situation described in the bill is the state's fault, then the state should be held responsible for taking care of resulting legal problems for state residents. However, if the owners aren't state residents, the state attorney general shouldn't represent them.

POSITIONS:

There are no positions on the bill.

Analyst: S. Ekstrom

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.