



Senate Fiscal Agency  
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BILL ANALYSIS

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House Bills 5200 and 5201 (as reported without amendment)  
Sponsor: Representative Harold Haugh  
House Committee: Regulatory Reform  
Senate Committee: Economic Development and Regulatory Reform

Date Completed: 4-1-10

### **RATIONALE**

Several provisions of Michigan law govern the sale in Michigan of land located outside the State. Section 2511(2) of the Occupational Code requires a real estate broker offering for sale, in Michigan, land located in another state to submit to the Department of Energy, Labor, and Economic Growth (DELEG) a description of the land in question and proposed terms of sale. The provision also requires a real estate broker to comply with conditions imposed by DELEG. Under the Land Sales Act, unless subdivided land or the transaction for it is exempted by the Act, a person may not offer or dispose of any interest in subdivided land located in Michigan or offer or dispose of in Michigan any interest in subdivided land located outside the State before the subdivided land is registered under the Act. The regulatory oversight provided by the Land Sales Act and Section 2511(2) essentially duplicates Federal requirements under the Interstate Land Sales Full Disclosure Act and, according to DELEG, there have not been any complaints or prosecutions under the State statute for many years. It has been suggested that Michigan's Land Sales Act be repealed and Section 2511(2) be deleted.

### **CONTENT**

**House Bill 5200 would delete provisions of the Occupational Code that govern promotional sales in Michigan of out-of-State real property. House Bill 5201 would repeal the Land Sales Act, which regulates the disposition of subdivided land.**

The bills are described below.

#### **House Bill 5200**

Section 2511(2) of the Occupational Code requires a real estate broker who proposes to engage in sales of a promotional nature in Michigan of property located outside of the State to submit to DELEG a full description of the property and the proposed terms of sale. The real estate broker and his or her salespersons must comply with rules, restrictions, and conditions pertaining to the sale as imposed by DELEG. The real estate broker must pay any expense incurred by DELEG in investigating the property and its proposed sale in Michigan. A real estate broker or salesperson may not refer to the Michigan Corporation and Securities Commission in selling, offering for sale, advertising, or otherwise promoting the sale, mortgage, or lease of property and may not make a representation that the property has been inspected or approved or otherwise passed upon by DELEG or by a State official, department, or employee.

The bill would delete Section 2511(2).

#### **House Bill 5201**

The Land Sales Act prohibits a person in Michigan from offering or disposing of any interest in subdivided land located in or outside the State before the land is registered with DELEG. The Act also prohibits a person from disposing of any interest in subdivided land unless a current property report is delivered to the purchaser and the purchaser is given a reasonable

opportunity to examine the report. In addition, a person may not engage in any unfair or deceptive act or practice in the conduct and disposition of subdivided land.

The required property report must comply with the Act, and may not be used for promotional purposes. A person may not claim that DELEG approved or recommends the subdivided land or its disposition.

Before subdivided land is offered for disposition, the developer must file an application and other documents with DELEG and pay a registration fee. The Department must determine whether conditions for registration are met and enter an order registering the subdivided land or rejecting the registration. A developer must file an annual report regarding registered land. All advertising material that did not accompany the original application must be submitted to DELEG for prior approval.

The Act requires DELEG to investigate every subdivision offered for disposition in the State, and authorizes the Department to perform various functions. The Act also authorizes DELEG to impose administrative sanctions, prescribes criminal penalties for violations, and provides for civil liability.

The bill would repeal the Act.

MCL 339.2511 (H.B. 5200)  
565.801-565.835 (H.B. 5201)

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

The Land Sales Act and Section 2511(2) of the Occupational Code are not needed and would not be missed. According to information supplied by DELEG, the State's role in regulating the sale of out-of-State land to Michigan purchasers and Michigan land to out-of-State buyers is redundant with Federal oversight by the U.S. Department of Housing and Urban Development (HUD) under the Interstate Land Sales Full Disclosure Act, and Michigan's regulatory program serves no useful purpose. Managing the paperwork generated by the State's statutory requirements is burdensome and costly, and

fees collected for that purpose cover less than half the revenue required for the administration of the program. The Department has limited staff to review submitted documents and the program's cost to the State does not justify its continuation. The bills would allow the State to use staff resources more efficiently and productively.

### **Opposing Argument**

The bills would deprive Michigan citizens of a valuable consumer protection tool. While Federal law does require some of the same information to be filed with HUD, some claim that HUD enforcement of interstate land sales regulations is almost nonexistent. Federal authorities may not be likely to pursue cases unless they involve large-scale financial losses, and State regulators are in a much better position to protect individual victims. Indeed, Michigan has other oversight responsibilities that are redundant with Federal requirements (e.g., securities regulations) because State requirements often are more effective law enforcement mechanisms.

According to a private investigator who testified before the Senate Economic Development and Regulatory Reform Committee, occurrences of land fraud continue to occur but Federal enforcement has practically disappeared. Reportedly, most land fraud cases are addressed through civil remedies brought by individuals because the victims find it difficult to get the attention of Federal regulators. Michigan's law is a good safeguard for the State's residents and should not be repealed.

**Response:** According to committee testimony by a DELEG official, there evidently have been no complaints filed in more than 20 years. Furthermore, someone who engaged in fraudulent land sales potentially could be prosecuted for criminal activity under the Michigan Penal Code.

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

The bills would reduce the responsibilities of the Bureau of Commercial Services within the Department of Energy, Labor, and Economic Growth by eliminating State oversight of certain real estate sales, which are currently also regulated by the U.S. Department of Housing and Urban

Development. House Bill 5200 would eliminate filings by real estate brokers promoting out-of-State property to buyers in Michigan and House Bill 5201 would repeal the Land Sales Act. This would eliminate fee revenue, which totaled \$14,500 in FY 2008-09. This revenue, however, was not sufficient to cover the estimated \$35,000 cost of the regulations under the Land Sales Act. According to the Department, the Federal government currently collects and reviews the same documents and filings as required under the State regulation that would be eliminated by the bills.

There are no data to indicate how many offenders have been or would be found guilty of violations of the Land Sales Act. Under current law, a range of both felony and misdemeanor penalties is associated with violations of the Act. Repealing the Act would, of course, eliminate these penalties. Local governments would no longer incur the costs of incarceration in local facilities. The State would no longer incur the cost of felony probation at an annual average cost of \$2,000, or the cost of incarceration in a State facility at an average annual cost of \$33,000. Public libraries would no longer receive penal fine revenue generated by violations of the Act.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.