Land Division Act
Act 591, Public Acts of 1996
Act 87, Public Acts of 1997

ENROLLED SENATE BILL 112 ✦ ENROLLED SENATE BILL 345

AN ACT to amend the title and sections 101, 102, 103, and 105 of Act No. 288 of the Public Acts of 1967, entitled as amended "An act to regulate the subdivision of land; to promote the public health, safety, and general welfare; to further the orderly layout and use of land; to require that the land be suitable for building sites and public improvements and that there be adequate drainage of the land; to provide for proper ingress and egress to lots; to promote proper surveying and monumenting of land subdivided and conveyed by accurate legal descriptions; to provide for the approvals to be obtained by subdividers prior to the recording and filing of plats; to provide for the establishment of special assessment districts and for the imposition of special assessments to defray the cost of the operation and maintenance of retention basins for land within a final plat; to establish the procedure for vacating, correcting, and revising plats; to control residential building development within floodplain areas; to provide for reserving easements for utilities in vacated streets and alleys; to provide for the filing of amended plats; to provide for the making of assessors plats; to provide penalties for the violation of the provisions of this act; to repeal certain parts of this act on specific dates; and to repeal certain acts and parts of acts," section 102 as amended by Act No. 78 of the Public Acts of 1996, being sections 560.101, 560.102, 560.103, and 560.105 of the Michigan Compiled Laws; and to add sections 108 and 109. [PA 591 of 1996] and by amending sections 105, 109,264, and 267 (MCL 560.105, 560.109, 560.264 and 560.267), section 105 as amended and section 109 as added by 1996 PA 591, and by adding sections 109a and 109b. [PA 87 of 1997]

The People of the State of Michigan enact:

Section 1. The title and sections 101, 102, 103, and 105 of Act No. 288 of the Public Acts of 1967, section 102 as amended by Act No. 78 of the Public Acts of 1996, being sections 560.101, 560.102, 560.103, and 560.105 of the Michigan Compiled Laws, are amended and sections 108 and 109 are added to read as follows:

TITLE

An act to regulate the division of land; to promote the public health, safety, and general welfare; to further the orderly layout and use of land; to require that the land be suitable for building sites and public improvements and that there be adequate drainage of the land; to provide for proper ingress and egress to lots and parcels; to promote proper surveying and monumenting of land subdivided and conveyed by accurate legal descriptions; to provide for the approvals to be obtained prior to the recording and filing of plats and other land divisions; to provide for the establishment of special assessment districts and for the imposition of special assessments to defray the cost of the operation and maintenance of retention basins for land within a final plat; to establish the procedure for vacating, correcting, and revising plats; to control residential building development within floodplain areas; to provide for reserving easements for utilities in vacated streets and alleys; to provide for the filing of amended plats; to provide for the making of assessors plats; to provide penalties for the violation of the provisions of this act; to repeal certain parts of this act on specific dates; and to repeal acts and parts of acts.

Sec. 101. This act shall be known and may be cited as the "land division act".

Sec. 102. As used in this act:

(a) "Plat" means a map or chart of a subdivision of land.

(b) "Land" means all land areas occupied by real property.

(c) "Preliminary plat" means a map showing the salient features of a proposed subdivision submitted to an approving authority for purposes of preliminary consideration.

(d) "Division" means the partitioning or splitting of a parcel or tract of land by the proprietor thereof or by his or her heirs, executors, administrators, legal representatives, successors, or assigns for the purpose of sale, or lease of more than 1 year, or of building development that results in 1 or more parcels of less than 40 acres or the equivalent, and that satisfies the requirements of sections 108 and 109. Division does not include a property transfer between 2 or more adjacent parcels, if the property taken from 1 parcel is added to and adjacent parcel; and any resulting parcel shall not be considered a building site unless the parcel conforms to the requirements of this act or the requirements of an applicable local ordinance.

(e) "Exempt split" means the partitioning or splitting of a parcel or tract of land by the proprietor thereof or by his or her heirs, executors, administrators, legal representatives, successors, or assigns that does not result in 1 or more parcels of less than 40 acres or the equivalent. For a property transfer between 2 or more adjacent parcels, if the property taken from 1 parcel is added to an adjacent parcel, any resulting parcel shall not be considered a building site unless the parcel conforms to the requirements of this act or the requirements of an applicable local ordinance.

(f) "Subdivide" or "subdivisions" means the partitioning or splitting of a parcel or tract of land by the proprietor thereof or by his or her heirs, executors, administrators, legal representatives, successors, or assigns for the purpose of sale, or lease of more than 1 year, or of building development that results in 1 or more parcels of less than 40 acres or the equivalent, and that is not exempted from the platting

(ee) "Flood plains" means that area of land adjoining the channel of a river, stream, water course, lake, or other similar body of water which will be inundated by a flood which can reasonably be expected for that region.

Sec. 103. (1) An exempt split is not subject to approval under this act so long as the resulting parcels are accessible. A division is not subject to the platting requirements of this act but subject to the requirements of sections 108 and 109. A subdivision is subject to the platting requirements of this act.
(2) Plats of retracement or boundary surveys made by a department or agency of the United States or of state owned lands made by a department or agency of the state for the retracement and division of public lands according to the survey instructions issued by the United States department of the interior may be recorded with the register of deeds of the county in which the lands represented on the plats are situated and need not otherwise comply with this act, except that plat size shall be as provided in section 132.
(3) A survey and plat shall be made when any amendment, correction, alteration or revision of a recorded plat is ordered by a circuit court.
(4) Urban renewal plats authorized by the governing body of a municipality as provided in Act No. 344 of the Public Acts of 1945, being sections 125.71 to 125.84 of the Michigan Compiled Laws, shall conform to this act.

Section 105 amended by PA 87, 1997

Sec. 105. Approval of a preliminary plat, or final plat shall be conditioned upon compliance with all of the following:
(a) The provisions of this act.
(b) Any ordinance or published rules of a municipality or county adopted to carry out the provisions of this act.
(c) Any published rules of a county drain commissioner, county road commission, or county plat board adopted to carry out the provisions of this act.
(d) The rules of the state transportation department relating to provisions for the safety of entrance upon and departure from the abutting state trunk line highways or connecting streets and relating to the provisions of drainage as required by the departments then currently published standards and specifications.
(e) The rules of the department of consumer and industry services for the approval of plats, including forms, certificates of approval, and other required certificates, captioning of plats, and numbering of lots.
(f) The rules of the department of environmental quality for the determination and establishment of floodplain areas of rivers, streams, creeks, or lakes, as provided in this act, as published in the state administrative code.
(g) The rules of the department of environmental quality relating to suitability of groundwater for on-site water supply for subdivisions not served by public water or to suitability of soils for subdivisions not served by public sewers. The department of environmental quality may authorize a city, county, or district health department to carry out the provisions of this act and rules promulgated under this act relating to suitability of groundwater for subdivisions not served by public water or relating to suitability of soils for subdivisions not served by public sewers. The department of environmental quality may require percolation tests and boring tests to determine suitability of soils. When such tests are required, they shall be conducted under the supervision of a registered engineer, registered land surveyor, or registered sanitarian in accordance with uniform procedures established by the department of environmental quality.

Sec. 108. (1) A division is not subject to the platting requirements of this act.
(2) Subject to subsection (3), the division, together with any previous divisions of the same parent parcel or parent tract, shall result in a number of parcels not more than the sum of the following, as applicable:
(a) For the first 10 acres or fraction thereof in the parent parcel or parent tract, 4 parcels.
(b) For each whole 10 acres in excess of the first 10 acres in the parent parcel or parent tract, 1 additional parcel, for up to a maximum of 11 additional parcels.
(c) For each whole 40 acres in excess of the first 120 acres in the parent parcel or parent tract, 1 additional parcel.
(3) For a parent parcel or parent tract of not less than 20 acres, the division may result in a total of 2 parcels in addition to those permitted by subsection (2) if 1 or both of the following apply:
(a) Because of the establishment of 1 or more new roads, no new driveway accesses to an existing public road for any of the resulting parcels under subsection (2) of this subsection are created or required.
(b) One of the resulting parcels under subsection (2) and this subsection comprises not less than 60% of the area of the parent parcel or parent tract.
(4) A parcel of 40 acres or more created by the division of a parent parcel or parent tract shall not be counted toward the number of parcels permitted under subsections (2) and (3) and is not subject to section 109, if the parcel is accessible.
(5) A parcel or tract created by an exempt split or a division is not a new parent parcel or parent tract and may be further partitioned or split without being subject to the platting requirements of this act if all of the following requirements are met:
(a) Not less than 10 years have elapsed since the parcel or tract was recorded.
(b) The partitioning or splitting results in not more than the following number of parcels, whichever is less:
(i) Two parcels for the first 10 acres or fraction thereof in the parcel or tract plus 1 additional parcel for each whole 10 acres in excess of the first 10 acres in the parcel or tract.

Section 109a added by PA 87 of 1997

Sec. 109a. (1) If a parcel resulting from a division is less than 1 acre in size, a building permit shall not be issued for the parcel unless the parcel has all of the following:

(a) Public water or city, county, or district health department approval for the suitability of an on-site water supply under the same standards as set forth for lots under rules described in section 105(g).

(b) Public sewer or city, county, or district health department approval for on-site sewage disposal under the health department standards as set forth for lots under rules described in section 105(g).

(2) The municipality or county approving a proposed division resulting in a parcel less than 1 acre in size and its officers and employees are not liable if a building permit is not issued for the parcel for the reasons set forth in this section. A notice of approval of a proposed division resulting in a parcel of less than 1 acre in size shall include a statement to this effect.

(3) A city, county, or district health department may adopt by regulation a fee for services provided under this section. The fees shall not exceed the reasonable costs of providing the services for which the fees are charged.

Section 109b added by PA 87 of 1997

Sec. 109b. (1) An exempt split or other partitioning or splitting of a parcel or tract that only results in parcels of 20 acres or more in size is not subject to approval under this act if the parcel or tract is not accessible and 1 of the following applies:

(a) The parcel or tract was in existence on March 31, 1997.

(b) The parcel or tract resulted from an exempt split or other partitioning or splitting under this section.

(2) The proprietor shall provide the purchaser of a parcel resulting from an exempt split or other partitioning or splitting under subsection (1) with the following written statement before closing: "This parcel is not accessible as defined in the land division act, 1967 PA 288, MCL 560.101 to 560.298.".

Section 264 added by PA 87 of 1997

Sec. 264. (1) Any person who sells or agrees to sell any lot, piece, or parcel of land without first having recorded a plat thereof when requirec by this act is guilty of a misdemeanor and shall be punished by a fine of not more than $1,000.00, or imprisonment for not to exceed 180 days, or both. For each offense under this subsection after a first offense under this subsection, the person shall be punished by a fine of not more than $1,000.00, or imprisonment for not to exceed 1 year, or both. Agreement to sell under this section does not include an option to buy extended from the seller for a money consideration to the prospective buyer.

(2) Any person who violates section 108, 109, 109b, or the exempt split provision of section 103(1) and sells a resulting parcel of land is responsible for the payment of a civil fine of not more than $1,000.00 for each parcel sold. A default in the payment of a civil fine or costs ordered under this subsection or an installment of the fine or costs may be remedied by any means authorized under the revised judicature act of 1961, 1961 PA 236, MCL 600.101 to 600.9948.

(3) Any person who violates any provision of this act other than section 108, 109, 109b, or the exempt split provision of section 103(1) is guilty of a misdemeanor and upon conviction shall be punished as provided by law.

Section 267 added by PA 87 of 1997

Sec. 267. Any sale of lands subdivided or otherwise partitioned or split in violation of this act is voidable at the option of the purchaser, and shall subject the seller to the forfeiture of all consideration received or pledged therefor, together with any damages sustained by the purchaser, recoverable in an action at law.

Enacting section 1. Section 264 of the land division act, 1967 PA 288, MCL 560.264, as amended by this amendatory act, takes effect October 1,1997.

This act is ordered to take immediate effect.

Michigan Townships Association
August 1, 1997

fee amount when it establishes that a fee may be charged, or the ordinance may simply state that a fee may be charged by the municipality or county which undertakes the local review process, and leave the fee amount to be established by subsequent resolution of the municipality. The latter practice comports with the customary practice in most municipalities. The Act states that the fee shall not exceed the reasonable costs of providing the services for which the fee is charged.[11] The measures involving fees were added to the Act by 1997 PA 87 to avoid any possible Headlee implications from the Act.[12]

A. Criteria for Land Division Approval

1. Tentative Parcel Map.

The applicant for a land division must first demonstrate to the municipality (or authorized county) that each resulting parcel has a adequate and accurate legal description, by including the same in a tentative parcel map showing area, parcel lines, public utility easements, accessibility. If lot width to depth ratio, lot width, and lot area are valid criteria for review (discussed below), then these elements must also be demonstrated.[13] The tentative parcel map must also provide some historical background about the original parent parcel or parent tract associated with the parcels being created, in a manner which is sufficient to demonstrate that splits are available to be taken under the formulas of Section 108 (discussed below). This probably means that all prior splits of the parent parcel or parent tract since March 31, 1997 must be shown on the map.

The Act does not define the term "tentative parcel map" other than to say that it "shall be a scale drawing showing the approximate dimensions of the parcels."[14] The Act conspicuously does not use the term "survey" to refer to the tentative parcel map, although the requirements for "adequate and accurate legal descriptions" of each proposed resulting parcel and for a "scale drawing" will likely necessitate the assistance of a surveyor in preparing the tentative parcel map in most instances.

2. Lot Width to Depth Ratio.

Each applicant must demonstrate that the resulting parcels of the proposed division satisfy a new state lot width to depth ratio, or any local ratio adopted in place of the state standard under a land division ordinance.[15] The state standard, which applies to parcels or tracts of 10 acres or less which are not retained by the applicant, requires that each resulting parcel have a depth of not more than 4 times the width.[16] A municipality (or authorized county) may require a smaller or greater depth to width ratio in a land division ordinance. If the ratio is greater, it must be based upon standards set forth in the ordinance.[17] There is

no parallel requirement for smaller depth to width ratios. If a land division ordinance is adopted, the provisions of such ordinance will take precedence over the-state standard. The standards for a greater depth to width ratio may include, but are not limited to: (1) exceptional topographic or physical conditions with respect to the parcel; and (2) compatibility with surrounding lands. The fact that specific standards must be set forth in the land division ordinance in order for a greater lot width to depth ratio to apply should not be ignored. The absence of these standards may preclude the local criteria from overriding the state standard.

It is important to re-emphasize that the depth to width ratio does not apply to a resulting parcel greater than 10 acres in size unless a local land division ordinance provides otherwise. Unlike the greater lot width to depth ratio discussed above, the municipality does not have to include the rationale (or any standards) for applying the ratio to larger parcels in the land division ordinance.

The depth to width ratio also does not apply to any resulting parcels which are "retained by the applicant", regardless of the presence of any local land division ordinance. There is no guidance in the Act as to what "retained by the applicant" means, nor any time period associated with the holding of a parcel "retained by the applicant". Obviously, an applicant may change his or her intentions with respect to the parcel at some point in time. The closer this point in time occurs following a division approval, the more this provision will look like a giant loophole in the Act.

3 and 4. Width and Area

Each resulting parcel must have a width and area not less than that required by an ordinance adopted to carry out the provisions of the Act [18] If there is no applicable land division ordinance, width and area are not valid criteria for municipal review of a division. A municipality may make only width a criteria but not area; and vice versa. It is important to note that the absence of a land division ordinance does not mean that lot width and/or area are not valid criteria for land development in the community where the property is located.[19] Regulations concerning these concepts may be expressed in a local zoning ordinance, for example, and any applicant who develops land in the community will eventually have to confront such requirements and conform to them. Unless incorporated in a land division ordinance, however, a municipality may not use lot width and/or area as criteria for review of a proposed division.

There is no definition of the terms "area" and "width" found in the Act and as a result, the exact meaning of these terms is subject to some speculation. Similarly, the Act does not

have any rules governing how or where lot width and area are measured. Fortunately, these are common concepts found in most zoning ordinances and presumably, the treatment given such concepts by applicable zoning ordinances will be a upheld as a reasonable manner of governing such concepts. For example, if a municipality measures lot area by excluding certain right of way and private road easement areas in their zoning ordinance, presumably the municipality could exclude such areas in the calculation of area for land division approvals. If a municipality does not have a zoning ordinance in effect and it wishes to regulate these aspects of land divisions, it will need to resolve some of these "how" and "where" issues in its land division ordinance.

A special issue may arise in areas of the State where counties assume the administration the approval process under the Act. Since both the county and the township are authorized under the Act to adopt a land division ordinance, it is possible that a situation may arise where both authorities have adopted land division ordinances and the ordinances have conflicting provisions. Any agreement between the county and township to transfer authority over land division approvals should specify whether the township or county ordinance provisions will control the disposition of the property and preferably, the non-controlling provisions should be repealed or adjusted accordingly. The agreements should also address who is entitled to charge and collect fees associated with the review process; if the county administers the process, it will likely collect and keep most or all of the fees associated with the process.

5. Accessibility.

Each resulting parcel must be accessible in order to qualify for a division.[20] A parcel is "accessible" when it satisfies one of the following requirements:

(a) It has an area where a driveway provides vehicular access to an existing road or street and meets all applicable location standards of the state transportation department or county road commission under Act No. 200 of the Public Acts of 1969, being sections 247.321 to 247.329 of the Michigan Compiled Laws, and of the city or village (together "applicable road location standards");

(b) It has an area where a driveway can provide vehicular access to an existing road or street and meet all applicable road location standards;

(c) It is served by an existing easement that provides vehicular access to an existing road or street and it meets all applicable road location standards; or

(d) It can be served by a proposed easement that will provide vehicular access to an existing road or street and the proposed easement will meet all applicable road location standards.

The definition of "accessibility" has raised at least two concerns for municipalities, one involving the meaning of "applicable road location standards" and the other involving regulation of the driveway "area" or "easement" which leads to the intersection with the public road or street.

The Act does not state what is meant by the term "applicable road location standards" within the definition of "accessible", other than to say that such standards are established only by state, county, city or village authorities.[21] Road location standards are commonly thought of to include such matters as the distances between intersections, the alignment of road, street and driveway access points (so as to avoid conflicting turns), and favorable grading and vision conditions, including minimum sight distances.[22] It is uncertain whether items such as clear vision corners, turn lanes, buffer areas, and other design and construction features of roadways are included within the concept.

Fortunately, whether a particular matter is properly included within the term "applicable road location standard" is more often than not, a matter for academic debate. The exclusion of some matters does not mean that such matters may be ignored by the applicant or are no longer valid. Obviously, the state, county, village or city will not grant the requisite construction or use permits unless all of their criteria are satisfied, however they may be labeled by the Act. The inclusion or exclusion of such matters is simply important for determining whether a municipality may or must consider the same when approving or disapproving a proposed division. The Act provides that approval of a division is not a determination that the resulting parcels comply with other ordinances or regulations.[23]

Many municipalities have already realized that most of the determinations involving road location standards are better made by the governmental authority who has established the "applicable road location standard", than by the staff of the municipality. In most instances, the municipality will not attempt to define "applicable road location standards" but will simply request their applicants to supply proofs from the relevant governmental authority that they are satisfied with the proposed access point to the public street or roadway.

With respect to the meaning of "area" or "easement", there is a wide disparity of opinion. At one end of the spectrum are minimalists who require only a simple means of vehicular access to the parcel, either by some reasonable frontage on a public street or road

or by means of an existing or proposed easement. Generally speaking, if one satisfies the requirements of the party establishing the "applicable road location standards," one satisfies the requirements of the municipality. On the other end of the spectrum are those who have the resources and staff and want to avoid any potential injury to prospective purchasers of the parcels from inadequate access.[24] These municipalities have significantly regulated the qualitative aspects of private drives in the past and most will require full compliance with local private drive or driveway ordinances at the time a land division is reviewed. Since value judgments are involved with either interpretation, and these value judgments involve local concerns, no attempt is made here to determine the answer. Both approaches appear to be viable options under the Act.

Once again, note that if the minimalist approach is taken, the absence of the additional criteria does not mean that a particular means of access does not have to comply with the private road and/or driveway ordinances of the community.[25] If these concepts are expressed in a local zoning ordinance, for example, any applicant who develops land in the community will eventually have to confront such requirements and conform to them. The Act provides that approval of a division is not a determination that the resulting parcels comply with other ordinances or regulations.[26]

Regardless of the approach taken to measure accessibility, one big "caveat" is in order. The word "accessible" is used throughout the Act. Whatever approach is applied by a municipality to determine "accessibility" in the context of division reviews will probably be used by and against the municipality in order to determine whether a parcel is subject to the local approval process at all under Section 109b. A rigorous view of "driveway area" and "easements" may have the undesirable effect of expanding the reach of Section 109b to exempt many 20 acre or larger sites from the local approval process entirely.

6. Development Sites

If any of the resulting parcels are development sites, the applicant must prove that adequate easements for public utilities exist from the resulting parcel to existing public utility facilities. A **"development site"** is defined as "any parcel or lot on which exists or which is intended for building development.[27] The Act excludes from this definition:

> "(1) Agricultural use involving the production of plants and animals useful to humans, including forages and sod crops; grains, feed crops, and field crops; dairy and dairy products; poultry and poultry products; livestock, including breeding and grazing of cattle, swine, and similar animals; berries; herbs;

flowers; seeds; grasses; nursery stock; fruits; vegetables; Christmas trees; and other similar uses and activities; or

(2) Forestry use involving the planting, management, or harvesting of timber."[28] It is unclear what objective factors will be employed by municipalities to determine the intent of the applicant applying for a proposed division. The applicant for a development site must demonstrate that adequate easements for public utilities from the parcel to existing public utility facilities. There is no guidance in the Act as to what the Act considers "adequate easements for public utilities" and therefore, this is likely to be a matter determined primarily by local government."

When there is no existing building development on a resulting parcel, the issue of whether a particular parcel is a development site is a little more difficult. It is not clear under the Act whether the applicant's subjective intent, as represented to the municipality or authorized county by the applicant, will be the controlling issue or whether some type of objective standard should be employed ("what would a reasonable person expect this property to be used for"). The seriousness of this inquiry has been tempered somewhat since the 1997 amendments eliminated water and sewer issues as criteria to be reviewed.

7. Available Divisions

Finally, the applicant must next demonstrate to the municipality (or authorized county) that the proposed division qualifies for a division under the **regular** and **bonus formula**, or the **redivision** formula of Section 108 of the Act.[29] This analysis requires some evidence of the history of parent parcel or parent tract, the acreage of the parcel or tract and resulting parcels, and some knowledge of the manner in which the parent parcel or tract was developed.

IV. CALCULATING PERMISSIBLE DIVISIONS --- SECTION 108

The process of determining how many divisions may be made from a particular piece of real estate begins by first analyzing and identifying the "**parent parcel**" and/or "**parent tract**" involved, and then determining the acreage of the parent parcel or parent tract. The analysis continues by identifying the acreage of each of the parcels which will be created from the proposed land split (the "resulting parcels"). Once the sizes of the resulting parcels are determined, it is possible to determine which of the two new types of exempt transaction may be involved to grant an exemption from the platting requirements of the Act.