MICHIGAN CHAMBER of Commerce

Changes to the Marketable Record Title Act: A Two-Pronged Issue

Background: In 2018, the Marketable Record Title Act was amended with the intent of simplifying land title transactions, requiring property owners to file a notice of claim in order to preserve interests or use restrictions that were more than 40 years old (20 for mineral interests). In 2021, it was amended (PA 294 of 2020) again to extend the timeframe of which notice of claims needed to be filed, creating a five year window expiring March 29, 2024. The language being proposed by the Michigan Chamber would solve two key unintended issues:

Problem #1: There are concerns about the effect this could have on easements not clearly observable (as the original legislation prescribes). For example, current statute states that you could not bar or extinguish an easement if there is a clearly observable facility in use. However, especially in the interest of vegetation management, there are easements that encumber property adjacent to utility infrastructure – which would not necessarily be covered by the exemptions already prescribed in law.

Solution #1: The proposed language further clarifies that definition by saying "if the easement is for the operation, construction, maintenance, improvement, removal, replacement, or protection" of the already described types of infrastructure (i.e. pipe, valve, road, wire, cable, etc – which should cover 'adjacent parcels' with existing easements). Additionally language is included to address existing easements that exist for vegetation management on parcels adjacent to our infrastructure– helping to ensure that Michigan's grid reliability is not jeopardized by unclear paperwork.

Problem #2: The Marketable Title Act would have the unintended consequences of impacting *environmental* restrictive covenants that are:

- Required to be maintained even after property is sold to a 3rd party
- Required to be in place to protect human health and the environment without and not tied to an arbitrary expiration date
- A key component to brownfield redevelopment
- Examples of restrictions believed to be affected are:
    - Contaminated with deed restrictions subject to cleanup to specific levels under Part 201 / Part 213
    - Landfills required to maintain restrictions under Part 115/Part 111 for solid waste / hazardous waste landfills
    - Conservation easements following Part 301/303 preserving wetlands and sensitive properties and wetland mitigation areas

Solution #2: The solution is to prevent these environmentally related restrictive covenants from expiring automatically after 40 years. Without this change , there would be a significant burden on the regulated community and EGLE to identify all environmental restrictive covenants and require filing an extension for every single restrictive covenant with the registrar of deeds. The potential adverse impact to public

health and the environment is significant if a restrictive covenant unintentionally expired and natural resources were harmed or a brownfield site was used inappropriately.

In Summation:

- This would solve a time-consuming and very costly problem of having to manually review all of the 'possible' easements (more than 10,000 documents) to determine the applicability to the notice requirement.
- This will ensure public health is protected by codifying the original intent of environmental restrictive covenants exist in perpetuity without expiration
- This legislation would **not** make it easier to get an easement.
- This legislation would **not** give anybody any easement that they've not already obtained.