

Legislative Analysis



CONDOMINIUM ASSOCIATIONS: 10-YEAR PERIOD TO EXPAND, CONTRACT, OR CONVERT

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House Bill 5046 (Substitute H-1)

Sponsor: Rep. Joe Haveman

Committee: Local, Intergovernmental, and Regional Affairs

First Analysis (12-6-11)

BRIEF SUMMARY: The bill allows a condominium association's documents to be amended, without the consent of the co-owners, in order to extend from six years to 10 years the time during which a developer could expand, contract, or convert units or common elements, provided that the current six-year time limit was still in effect before the amendment to extend the time occurred. This provision would not apply after December 31, 2021, at which date the time period would revert to six years.

FISCAL IMPACT: House Bill 5046 will not have an impact on the Department of Licensing and Regulatory Affairs since the Legislature repealed LARA's regulatory and enforcement responsibilities under the Condominium Act in 1983.

By extending the timeframe to exercise an option to develop convertible, expandable, or contractible areas from 6 to 10 years, HB 5046 could have an indeterminate effect on property assessments (hence property tax collections) for local units of government and the School Aid Fund.

THE APPARENT PROBLEM:

The Michigan Condominium Act permits developers to include a provision in their project's master deed that gives them the option to expand their project in the future. So, it is customary for a developer to construct a condominium project in phases. For example, a developer may build condominium units on, say, 20-acres of a 40-acre parcel during phase I; sell those units to co-owners; and then use the revenue to build out the remaining 20-acres, filling the entire 40-acre parcel by the end of phase II. The current Michigan statute limits the time during which a developer can expand, contract, or convert the remaining property to six years after the master deed is first recorded.

During the downturn in the Michigan economy during the past decade, condominium sales have fallen sharply, overall, and the value of individual units has declined as much as 25-30 percent in some real estate markets. In new condominium projects, developers reportedly have been unable to sell their already constructed, but as yet unoccupied, phase I units, and consequently have been unable to raise the revenue to finance their effort to build out phase II within the six-year time limit.

Legislation has been introduced to extend the six-year time limit to ten years, until December 31, 2021, giving the economy time to recover, and condominium sales to improve so that developers can realize adequate profits from their original investments.

THE CONTENT OF THE BILL:

House Bill 5046 (H-1) would amend the Condominium Act to specify that a condominium association's documents could be amended, without the consent of the co-owners, in order to extend from six years to 10 years the time during which a developer could expand, contract, or convert units or common elements, provided that the current six-year time limit was still in effect before the amendment to extend the time occurred. This provision would not apply after December 31, 2021, when the time period would revert to six years. A more detailed explanation of the bill follows.

Currently under the law if a condominium project contains any convertible area, then the master deed must contain all of the following: (a) a specific reference to the convertible area within the condominium project; (b) the maximum number of condominium units that can be created there; (c) a statement to describe the types of units that can be created there; (d) a statement to describe the extent to which a structure erected there will be compatible with other structures elsewhere in the condominium project; (e) a description of improvements that can be made on the convertible area; (f) a description of the developer's reserved right, if any, to create and designate limited common elements within the convertible area; and (g) a time limit of not more than six years after initial recording of the master deed, by which the election to use this option expires. House Bill 5046 **would retain all of these provisions, but modify provision (g) to extend the expiration date of the developer's option to develop convertible area from six years to 10 year.** Further, the bill specifies that for a master deed initially recorded on or after January 1, 2022, the time limit, again, would be not more than 6 years.

Similarly and under the law, if a condominium project is an expandable condominium project, then the master deed must contain 15 provisions including, among other things, the explicit election (on the part of the developer or a successor) to expand the condominium project. In addition, the master deed must include a time limit based on the size and nature of the project, of not more than six years after the initial master deed is recorded. House Bill 5046 would retain all of the statute's current provisions concerning expandable condominium projects, **but extend the expiration date by which the developer must elect to expand the condominium project from six years to 10 years.** Under the bill, the expiration date would revert to six years, for any master deed initially recorded on or after January 1, 2022.

Finally, if a condominium project is a contractable condominium project under the law, then the master deed must contain certain provisions, including a time limit of not more than six years after the initial recording of the master deed, by which the developer can elect to contract the condominium project. House Bill 5046 **would extend this expiration date by which a condominium project could be contracted from six years to 10 years.** As above, the bill specifies that for a master deed initially recorded on or after January 1, 2022, the time limit, again, would be not more than 6 years.

Finally and under the law, a condominium association's documents can be amended *without the consent of co-owners* (or mortgagees), if the amendments do not materially alter or change the rights of a co-owner, and if the condominium documents contain a reservation of the right to amend for that purpose to the developer or the association of co-owners. The law further specifies that such an amendment--that is, an amendment that does not materially change the rights of a co-owner (or mortgagee)--includes, but is not limited to an amendment that modifies the types and sizes of unsold condominium units and their common elements. House Bill 5046 would retain these provisions, but in addition the bill specifies that an

association's documents could also be amended *without the consent of the co-owners*, in order to extend the time during which a developer could expand, contract, or convert units or common elements from six years to 10 years (as described above) provided that the current six-year time limit is still in effect, before the amendment to extend the time occurs.

MCL 559.131 et al.

ARGUMENTS:

For:

Proponents of the bill say that the extended time limit proposed by this legislation will eventually increase condominium sales, after allowing developers to weather the worst of Michigan's economic downturn. The bill amends the Condominium Act to specify that a condominium association's documents can be amended, without the consent of the co-owners, in order to extend from six years to 10 years the timeframe during which a developer can expand a newly built condominium project beyond phase I. Currently condominium projects remain incomplete, because developers cannot expand their projects within the six-year time limit.

Proponents note that the bill would extend the time-limit for a period of ten years, but then sunset that provision on December 31, 2021. During the ensuing time, proponents argue that the economy will have time to recover, and condominium sales--which lag residential sales, having lost both value and appeal--will regain their market share in the real estate housing markets throughout the state.

Against:

Opponents of the bill have questioned why co-owners in the already purchased condominium units are not informed about the developer's plans to change their condominium community. Why, they ask, would you amend the master deed of an emerging development, without the consent of those who have already invested in the community? They argue that greater transparency is essential for existing co-owners. They have a need to know a developer's plans for the project, because a developer's unilateral decision would likely greatly affect their property values.

POSITIONS:

The Michigan Association of Realtors supports the bill. (12-1-11)

The Michigan Association of Home Builders supports the bill. (12-1-11)

The Community Association Institute is neutral on the bill. (12-1-11)

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■ 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.