

CONVEYANCE OF SURPLUS STATE-OWNED REAL ESTATE

Mary Ann Cleary, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5725 (Substitute H-1)

Sponsor: Rep. Joe Haveman

Committee: Appropriations

Complete to 9-23-14

A SUMMARY OF HOUSE SUBSTITUTE H-1 FOR HOUSE BILL 5725

Currently, the following state agencies are authorized to dispose of surplus real property under their jurisdiction without separate legislation authorizing the sale of each property:

- Department of Natural Resources
- Department of Military and Veterans Affairs
- Department of Transportation
- Michigan Land Bank Fast Track Authority

The Department of Technology, Management, and Budget (DTMB) is charged with disposing of surplus property under its jurisdiction or under the jurisdiction of other state agencies that do not have express authority to dispose of surplus property. In order to convey or transfer property, DTMB must seek legislation authorizing the sale or transfer of each property.

House Bill 5725 (H-1) would amend the Management and Budget Act, 1984 PA 431, to provide DTMB with the statutory authority to convey surplus state-owned land without seeking legislation authorizing the sale of each property. The statutory authority to convey or transfer property would be subject to certain restrictions and requirements that are commonly included in current property conveyance legislation. The bill would revise the standard restrictions when DTMB sells property to local units of government for less than fair market value, are highlighted below.

DTMB would be able to convey or transfer state-owned property if the property was designated as surplus real property by the director of the state agency with jurisdiction over the property and the property is not needed to meet a state objective as determined by the director. The state agency with jurisdiction over the property would be responsible for the expenses of maintaining the property until the time of conveyance.

The State Administrative Board would be required to approve the terms of the conveyance, with the property identified by a legal description approved or prepared by the state surveyor for use in the state quitclaim deed. A deed or affidavit of jurisdictional transfer would be required to be approved by the Department of Attorney General.

Surplus property conveyed or transferred would include all surplus, salvage, and personal property or equipment remaining on the property on the date of conveyance.

If DTMB planned to sell the property for fair market value, the fair market value would be required to be determined by an independent fee appraisal prepared for the department, or by an appraiser who is an employee or contractor of the state.

DTMB would be allowed to convey property using the following means:

- Publicly disclosed competitive method of sale to realize fair market value;
- Offer for sale at fair market value to a local unit of government;
- Transfer of the property to the Land Bank Fast Track Authority;
- Transfer of the property to another state agency via jurisdictional transfer;
- Exchange for other real property of reasonably equal value; or
- Offer of the property to a local unit of government for less than fair market value.

Property offered at less than fair market value to a local unit of government would be subject to the following conditions:

- DTMB may provide notice to each of the units of local government of the property's availability with the first opportunity of purchase going to the first local unit of government to make an offer to purchase the property.
- The property must be used exclusively for public use (previously "public purpose") for 30 years after the conveyance to the local unit of government.
- If the local unit of government intends to convey the property within 30 years after the conveyance, the state must be given first opportunity to purchase at the original sale price. If the state declines to reacquire, the public use restriction would remain in effect.
- If the local unit of government retains the property for 30 years, the public use restrictions automatically terminate.
- DTMB may require the local unit of government to reimburse the state at closing for costs incurred to prepare the property for conveyance.

Under current property conveyance practice some local units of government have interpreted the public purpose requirement to end after 10 years. The Attorney General has interpreted the public purpose requirement to apply in perpetuity. The provisions of the bill would specify a statutory 30-year period.

Grantees may be required to record the instrument of conveyance or transfer with the appropriate register of deeds and provide DTMB with the recorded instrument.

Net revenue from the sale of any property would be credited to the General Fund.

The provisions of the bill state that oil, gas, and mineral rights shall not be reserved by the state on property conveyed or transferred. However, the conveyance or transfer must provide that if the grantee or successor develops oil, gas, or minerals on the property, the state shall receive ½ of the gross revenue generated from the development with the payment deposited in the General Fund.

A conveyance would reserve to this state all aboriginal antiquities, including mounds, earthworks, forts, burial and village sites, mines, or other relics on or within the property.

If the property conveyed was used by the state as a historical monument, memorial, park, or protected wildlife habitat area, the grantee must maintain and protect the property for that purpose in perpetuity.

The state would be able to reenter and take the property for a violation of any of the restrictions. If the state reentered and repossessed the property the state would not be liable to reimburse any person for any improvements made on the property or to compensate any person for any part of an unfulfilled contract or license issued.

DTMB would be required to submit a report to the legislature on conveyances and transfers of property not later than July 1 of each year.

“Fair market value” would be defined as the highest estimated price that the property will bring if offered for sale on the open market, allowing reasonable time to find a purchaser who would buy with knowledge of the property’s possible uses.

“Net revenue” would be defined as the proceeds from the sale of the property less reimbursement for any costs to the department associated with the sale, including, but not limited to, administrative costs, including wages, salaries, and benefits; costs of reports and studies necessary to the preparation of sale; environment remediation; legal fees; and any litigation costs.

“Public use” would be defined as actual use of the property by members of the public or actual use by the local unit of government for any of the following:

- Publicly owned and operating correctional facilities;
- Law enforcement purposes;
- Emergency management response purposes;
- Public educational use;
- Public transportation;
- Public parks and recreational areas;
- Public health uses; or
- Wildlife conservation or restoration.

The provisions state that “public use” would not include use by a for-profit enterprise or any use that is closed to the public.

FISCAL IMPACT:

House Bill 5725 (H-1) would have an indeterminate fiscal impact on state government. The bill would revise the current practice on property conveyances and transfers to give DTMB the statutory authorization to convey or transfer a parcel of property without

seeking legislation authorizing each conveyance or transfer. Most of the standard provisions and restrictions would be retained.

The state would realize maintenance and security cost savings if properties were conveyed in a shorter time frame under the provisions of the bill than under current practice. The degree of savings would depend on the characteristics of the property conveyed and the time saved.

According to DTMB, some local units of government have attempted to sell properties conveyed for less than fair market value to support economic development after a 10-year period. While the Attorney General interprets the current public purpose requirement to apply in perpetuity, the 30-year public use requirement in HB 5725 (H-1) would eliminate any confusion as to how long the public use restriction applies to the property being conveyed. Therefore, a local unit of government may realize a negative fiscal impact if the 30-year public use requirement directly affected its ability to sell the property at a profit inside of the 30-year period. On the other hand, if the local unit of government no longer wanted to own the property but wanted the property developed (assuming the public use restriction still applied), the local unit of government could sell the property back to the state at the purchase price and the state could sell the property at fair market value.

The provisions of the bill would authorize DTMB to transfer property to the Land Bank Fast Track Authority. Property under the jurisdiction of the Land Bank Fast Track Authority is allowed to be sold for less than fair market value and not retain the public purpose. Under MCL 124.757, the transfer and use of the property shall be considered a necessary public purpose and for the benefit of the public. Assuming a property could be conveyed at a positive fair market value, a transfer and conveyance through this mechanism has the potential to reduce revenues to the state.

Fiscal Analyst: Ben Gielczyk

■ 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.