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MUNICIPAL CIVIL INFRACTIONS

Senate Bills 731-737 and 739-745 as
passed by the Senate
Senate Bill 738 (Substitute H-2)
Sponsor: Sen. Joe Conroy

Senate Committee: Judiciary
House Committee: Local Government

First Analysis (11-4-93)

THE APPARENT PROBLEM:

The various statutes that provide for the incorporation of cities, villages, townships, and counties generally treat violations of municipal ordinances as misdemeanors, and local officials traditionally have sought criminal penalties for these violations. Currently, a person who violates a local ordinance either is issued a ticket ordering him or her to appear in court for an arraignment or is arrested if the violation was witnessed by a law enforcement officer or a warrant has been issued. If the person pleads guilty to the violation, he or she may be fined, sentenced to a term of imprisonment, or both, and the conviction is recorded on the person's record. If the person pleads not guilty, a trial is scheduled, and he or she usually needs to retain an attorney. Generally, a violation of a local ordinance is punishable by a fine of up to \$500, imprisonment for up to 90 days, or both.

Apparently, however, this process of handling ordinance violations has made it difficult to enforce the ordinances and punish violators. The courts reportedly are not particularly disposed to finding a person guilty of a criminal action for violating an ordinance concerning, for example, sign posting, fence construction, littering or snow removal. Further, persons facing criminal charges are more likely to obtain legal counsel and fight the charges in court, thus making the process time-consuming, burdensome and expensive for both the alleged violator and the local unit of government. It has been suggested, therefore, that local units of government be given the option of creating a municipal ordinance violations bureau and bringing civil, rather than criminal, actions against persons who violate local ordinances--similar to the way traffic violations currently are handled.

THE CONTENT OF THE BILLS:

The bills would amend the Revised Judicature Act to provide for the enforcement and adjudication of a "municipal civil infraction" by local units of government, and would amend various other laws to permit local governmental units to enact ordinances whose violations would be municipal civil infractions. Senate Bills 732 through 745 are all tie-barred to Senate Bill 731, and all of the bills would take effect January 1, 1994.

Senate Bill 731 would amend the Revised Judicature Act (MCL 600.113 et al.) to provide for the enforcement and adjudication of a "municipal civil infraction." Also, the bill would revise various provisions that relate to the issuing of a citation for a municipal civil infraction, judicial procedures involving a municipal civil infraction, fines and costs that could be levied on a person responsible for a municipal civil infraction, and sanctions that could be imposed for failure to pay any fines or costs levied against a violator.

Municipal civil infraction. The bill would define "municipal civil infraction" as a civil infraction involving a violation of an ordinance. The term would not include a traffic or parking violation. The bill also would revise the definition of "civil infraction," which currently refers to an act or omission prohibited by law that is not a crime as defined in Section 5 of the Michigan Penal Code, and for which civil sanctions may be ordered. The bill would refer to an "act or omission that is prohibited by a law and is not a crime under that law or that is prohibited by an ordinance and is not a crime under that ordinance and for which civil sanctions may be ordered."

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Bureau. The bill would allow a county, city, village or township to establish a municipal ordinance violations bureau that would collect and retain fines and costs, pursuant to an ordinance, for determinations of responsibility for municipal civil infractions. A bureau also could accept admissions of responsibility for municipal civil infractions. A bureau's operating expenses would have to be borne by the local unit of government, and its personnel would have to be employees of the local unit.

Municipal civil infraction citations. An authorized local official (i.e., a police officer or other personnel of a local unit authorized by ordinance) who witnessed a municipal civil infraction would have to "prepare and subscribe" a citation and three copies "as soon as possible and as completely as possible." An authorized official could issue a citation, based on an investigation, if he or she had reasonable cause to believe that the person to whom the citation was issued was responsible for a municipal civil infraction. An authorized official also could issue a citation, based on the investigation of a complaint filed by a witness to an alleged municipal civil infraction, if the official had reasonable cause to believe that the person to whom the citation was issued was responsible for a municipal civil infraction and if the prosecuting attorney or other attorney employed by the local unit approved the issuance in writing. Citations generally would have to be served personally upon the alleged violator by the authorized official.

In the case of a municipal civil infraction involving the occupancy or use of land or a building, a person could serve a citation by posting a copy of it on the land in question or attaching the copy to the building. In addition, a copy of the citation would have to be mailed, first class, to the owner of the land or building at his or her last known address. A citation served in this manner would have to be processed in the same manner as a citation served personally.

An authorized official who issued a citation for a municipal civil infraction could not accept a fee for issuing the citation. An official who violated this provision would be guilty of misconduct in office and would be subject to removal from office. An authorized local official who knowingly made a materially false statement in a citation would be in contempt of court and guilty of perjury, a felony punishable by up to 15 years' imprisonment.

A citation would have to include the plaintiff's name, the defendant's name and address, the municipal civil infraction alleged, the location in which the defendant would be required to appear in court, the court's telephone number, and the time at or by which the defendant would have to appear. A citation would have to inform the defendant that he or she could do one of the following:

- * Admit responsibility for the infraction by mail by the time specified for appearance, or in person or by representation at the time specified for appearance.

- * Admit responsibility for the infraction, with explanation, by mail by the time specified for appearance, or in person or by representation at the time specified for appearance.

- * Deny responsibility for the infraction at an informal hearing or a formal hearing.

A citation would have to inform a defendant of all of the following:

- * If the defendant wished to admit responsibility with explanation in person or by representation or to deny responsibility, he or she would have to apply to the court and obtain a scheduled date and time for a hearing.

- * A hearing would be informal unless a formal hearing was requested by the defendant or the plaintiff local unit of government.

- * At an informal hearing, the defendant would have to appear in person before a district court magistrate or judge, without the opportunity of being represented by legal counsel.

- * At a formal hearing, the defendant would have to appear in person before a district court judge with the opportunity of being represented by legal counsel.

A citation would have to include a notice in boldfaced type that a defendant's failure to appear within the time specified or at a scheduled hearing or appearance would be a misdemeanor and would result in a default judgment against the defendant for the municipal civil infraction.

Municipal civil infraction actions. A municipal civil infraction action would be commenced upon the

issuance of a citation. The plaintiff in an action would be the local unit of government whose ordinance allegedly was violated. The district court and any municipal court would have jurisdiction over municipal civil infraction actions unless the defendant were under 17 years of age at the time of the alleged violation, in which case the juvenile division of the probate court of the county in which the violation occurred would have jurisdiction.

A court could accept an admission, with or without explanation, or denial of responsibility without the necessity of a sworn complaint. If a defendant denied responsibility, further proceedings could not continue without the filing of a sworn complaint. An arrest warrant for failure to appear concerning a municipal civil infraction could not be issued until a sworn complaint pertaining to the infraction was filed with the court.

Response to allegations. A person issued a citation under the bill would have to appear by, or at, the time specified in the citation. If a defendant wished to admit responsibility, he or she could do so by appearing in person, by mail, or by representation. If a defendant wanted to admit responsibility with explanation, he or she could do so by mail or by contacting the court to obtain a scheduled date and time to appear, at which time the defendant would have to appear in person or by representation.

If a defendant admitted responsibility with explanation, he or she could do so in person, by representation, or by mail and the court could consider the explanation "by way of mitigating any sanction." If appearance were made by representation or mail, the court could accept the admission, but the court could require the defendant to provide further explanation or to appear in court.

A defendant who wished to deny responsibility would have to do so by appearing for an informal or formal hearing. If a hearing date were not specified on the citation, the defendant would have to contact the court to obtain a scheduled date and time to appear for a hearing. The hearing would be informal unless either party requested a formal hearing, in which case the court would have to schedule a formal hearing. A request for a formal hearing would have to be received by the court at least ten days before the hearing date. A request could be made in person, by mail, by telephone or by representation. The party that requested a

formal hearing would have to notify the other party or parties of the request. Notification would have to be received at least 10 days before the hearing date. The notification could be made in person, by mail, by telephone or by representation.

Informal, formal hearings. An informal hearing would have to be conducted by a municipal or district court judge or a district court magistrate, if authorized by the court's judge or judges. A magistrate could examine witnesses, administer oaths and make findings of fact and law. An informal hearing would have to be conducted in a manner that would "do substantial justice according to the rules of substantive law," but the judge or magistrate would not be bound by statutory provisions or rules of procedure, practice, pleading or evidence except provisions pertaining to privileged communications. Informal hearings would not include juries, and verbatim records of informal hearings would not be required. A defendant could not be represented by an attorney at an informal hearing and the plaintiff could not be represented by the prosecuting attorney or attorney for the local unit of government.

Notice of a scheduled informal hearing would have to be given to the plaintiff, and both parties could subpoena witnesses. Witness fees would not have to be paid in advance. Fees for a witness on behalf of the plaintiff would be payable by the district court's control unit or by the city or village if the hearing involved an ordinance violation in a district where the district court was not functioning.

If a defendant admitted responsibility with explanation, the judge or magistrate would have to accept the admission and could consider the explanation by way of mitigating any sanction available to the court. If the defendant denied responsibility and a judge or magistrate determined by a preponderance of the evidence that the defendant was responsible for a municipal civil infraction, he or she would have to enter an order against that defendant. A victorious defendant would not be entitled to costs of the action. Both the plaintiff and defendant could appeal an informal hearing. An appeal from a municipal judge would have to be a "trial de novo" (a new trial) in circuit court. In other instances, an appeal would have to be "de novo in the form of a scheduled formal hearing." An appeal from a district judge would have to be heard by a different judge of the district.

An appeal from a district magistrate would have to be heard by a district judge.

A formal hearing would have to be conducted by a district or municipal judge. In a formal hearing, the defendant could be represented by an attorney, but would not be entitled to appointed counsel at public expense. Notice of a formal hearing would have to be given to the prosecuting attorney or the attorney for the local unit, and that attorney would have to appear in court on behalf of the plaintiff. The plaintiff's attorney would have to subpoena each of the plaintiff's witnesses and the defendant also could subpoena witnesses. Witness fees for plaintiff's witnesses would be payable by the district court's control unit or by the city or village if the hearing involved an ordinance violation in a district where the district court was not functioning. There would be no jury in a formal hearing.

If a defendant admitted responsibility with explanation, the judge would have to accept the admission and could consider the explanation by way of mitigating any sanction available to the court. If the defendant denied responsibility and the judge determined by a preponderance of the evidence that the defendant was responsible for a municipal civil infraction, he or she would have to enter an order against that defendant. A victorious defendant would not be entitled to costs of the action.

Sanctions. If a defendant were determined to be responsible or responsible with explanation for a municipal civil infraction, the judge or magistrate could order the defendant to pay a civil fine and costs. The judge or magistrate could grant the defendant permission to pay within a specified period or in specific installments. Otherwise, the fine and costs would be due immediately. The judge or magistrate would have to "summarily tax and determine the costs of the action," which would not be limited to costs ordinarily taxable in civil actions and could include all direct and indirect expenses of the plaintiff relative to the infraction. Costs ordered could not be less than \$5 or more than \$100. Unless otherwise provided by law, costs would have to be payable to the plaintiff's general fund. In addition to ordering a civil fine and costs, the judge or magistrate could issue a writ or order necessary to enforce the ordinance. A magistrate could impose the sanctions only to the extent expressly approved by the chief or only judge of the district.

Each court could establish a schedule of civil fines and costs that would be imposed for municipal civil infractions within its district or city. A schedule would have to be posted prominently and be readily available for public inspection. A schedule would not have to include all violations that were designated by ordinance as municipal civil infractions. A schedule could exclude cases on the basis of a defendant's prior record of municipal civil infractions.

Failure to answer a citation or notice to appear in court for a municipal civil infraction would be a misdemeanor. If a defendant failed to comply with a judgment or order issued under the bill within the time prescribed by the order or judgment, the court could proceed with default proceedings.

Default. If a defendant defaulted in the payment of a civil fine, costs or any installment ordered for a municipal civil infraction, the court could require the defendant to show cause why the defendant should not be held in civil contempt. The court could issue a summons, an order to show cause, or a bench warrant of arrest for the defendant's appearance. If a corporation or an association were ordered to pay a fine or costs for a municipal civil infraction, the individuals authorized to make disbursements would have to pay the fine or costs and would be subject to the bill's default provisions.

Unless the defendant showed that a default was not an intentional refusal to obey the order or a failure to make a good faith effort to obtain the necessary funds, the court would have to find that the default was a civil contempt and could order the defendant to be taken into custody until all or a specified portion of the fine, costs, or both, was paid. If it appeared that the default was not civil contempt, the court could enter an order allowing the defendant additional time, reducing the amount due, or revoking the fine and costs.

A term of imprisonment on civil contempt for nonpayment would have to be specified in the commitment order and could not exceed one day for each \$10 owed. A person committed for nonpayment would have to be given credit toward payment in the amount of \$10 for each day of detention. A defendant imprisoned for civil contempt for nonpayment could not be discharged until the amount due was collected, the defendant was credited with the amount due based on days of imprisonment, or the amount due was satisfied by

a combination of payment and days of imprisonment. A civil contempt charge would have to be purged upon the defendant's discharge.

Lien imposition. In a municipal civil infraction action brought for a violation pertaining to the use or occupation of land or a building, if a defendant failed to pay a fine, costs or any installment within 30 days after the date on which payment was due, the plaintiff could obtain a lien against the land or building involved in the infraction. The plaintiff could do so by recording a copy of the order with the county register of deeds. The court order could not be recorded unless a legal description of the property was incorporated in or attached to the order. The lien would be effective immediately. The filed court order would constitute notice of the lien's pendency. A written notice of the lien also would have to be sent by first-class mail to the owner of record of the land or building.

A lien could be enforced and discharged by a local unit of government in the manner prescribed in its charter, by the General Property Tax Act, or by an ordinance passed by the local unit's governing body. Property would not be subject to sale under the General Property Tax Act for nonpayment of a municipal civil infraction fine or costs, unless the property was subject to sale under that act for delinquent property taxes.

A lien created under the bill would have priority over other liens, unless another lien was for taxes or special assessments, was created before the bill's effective date, was given priority by federal law, or was recorded before the lien under the bill was recorded.

A local unit of government could institute an action for the collection of the fines and costs imposed by a court order. An attempt by a local unit of government to collect the fines and costs by any process would not invalidate or waive a lien upon the land or building. A lien imposed under the bill could not continue for longer than five years after the court order was recorded with the register of deeds, unless an action to enforce the lien was commenced within that time.

Senate Bills 732 through 740 would amend various laws to allow local units of government to enact ordinances whose violations would be municipal civil infractions. If a violation of an ordinance were a civil infraction, the ordinance would have to provide for the imposition of a civil fine for the infraction.

A violation of an ordinance would be a municipal civil infraction only if the ordinance explicitly stated that.

An ordinance could not make an act or omission a municipal civil infraction, however, if that act or omission constituted a violation of any of the following:

- * Provisions of the Public Health Code that regulate controlled substances and anabolic steroids;
- * The Michigan Penal Code;
- * The Michigan Vehicle Code;
- * The Michigan Liquor Control Act;
- * The Marine Safety Act;
- * The Aeronautics Code of the State of Michigan;
- * Public Act 74 of 1968, which provides for the registration and regulation of snowmobiles;
- * Public Act 319 of 1975, which provides for the titling, licensure and regulation of off-road vehicles;
- * Public Act 4 of 1986, which prohibits the operation of a locomotive while the operator is impaired by or under the influence of liquor or a controlled substance;
- * Any Michigan law punishable by more than 90 days' imprisonment.

Senate Bill 732 would amend the Charter Township Act (MCL 42.20 and 42.21); **Senate Bill 733** would amend Public Act 246 of 1945 (MCL 41.181 et al.), which authorizes township boards to adopt certain ordinances and regulations; **Senate Bill 734** would amend Public Act 278 of 1909 (MCL 78.24 et al.), which provides for the incorporation of home rule villages; **Senate Bill 735** would amend Public Act 3 of 1895 (MCL 61.1a et al.), which provides for the incorporation of general law villages; **Senate Bill 736** would amend the Home Rule Cities Act (MCL 117.1a et al.); **Senate Bill 737** would amend Public Act 156 of 1851 (MCL 46.11), which defines the powers and duties of county boards of commissioners; **Senate Bill 738** would amend Public Act 215 of 1895 (MCL 81.1a et al.), which provides for the incorporation of fourth class cities; **Senate Bill 739** would amend Public Act 293 of 1966, which provides for the establishment of charter counties;

and Senate Bill 740 would amend Public Act 139 of 1973 (MCL 45.556), which provides for forms of county government.

Senate Bill 741 would amend the State Construction Code Act (MCL 125.1509 et al.) to allow a local governmental unit that, by ordinance, assumed the responsibility for local administration and enforcement of the act to issue citations for municipal civil infractions.

Senate Bills 742 through 744 would amend various zoning laws to provide that a person who used land or a building in violation of local requirements would be "responsible for" rather than "guilty of" maintaining a nuisance per se. Under the bills, the person would be subject to "sanctions" rather than "penalties." Senate Bill 742 would amend the County Rural Zoning Enabling Act (MCL 125.224), Senate Bill 743 would amend the Township Rural Zoning Act (MCL 125.294), and Senate Bill 744 would amend Public Act 207 of 1921 (MCL 125.587), which provides for the establishment of regulated districts or zones in cities and villages.

Senate Bill 745 would amend Public Act 359 of 1941 (MCL 247.64 and 247.70), which provides for the control and eradication of certain noxious weeds, to provide for the imposition of a "fine" rather than a "penalty" for a violation of the act.

HOUSE COMMITTEE ACTION:

The House Local Government Committee adopted Substitute H-2 for Senate Bill 738 which, according to the Legislative Service Bureau, includes language to correct a drafting error and make other technical changes to the bill.

BACKGROUND INFORMATION:

Earlier this year, Senate Bills 348 through 362 were passed by the Senate and the House. Those bills were similar to Senate Bills 731 through 745 but, unlike the current package, did not preclude particular offenses from being designated municipal civil infractions. Although Senate Bills 358 through 362 were enacted, the governor vetoed Senate Bills 348 through 357. Since Senate Bills 349 through 362 were tie-barred to the passage of Senate Bill 348, those that were enacted cannot take effect.

The governor's veto message expressed concern that Senate Bills 348 through 357 would have placed no limit on the scope of the authority of a local unit to

convert existing criminal misdemeanors to noncriminal municipal civil infractions. The governor specified his particular concern that misdemeanors like the possession or use of small amounts of a controlled substance, conduct violations such as disorderly conduct and soliciting prostitution, and certain property offenses such as petty larceny and shoplifting could be decriminalized if Senate Bills 348 through 357 had become law. The veto message, however, stated that the bills could be redrafted to accomplish the intended purpose of the legislation without inviting these unintended consequences.

FISCAL IMPLICATIONS:

According to the Senate Fiscal Agency, the bills would have a fiscal impact on those local governments that chose to enact ordinances designated as municipal civil infractions and establish municipal civil violations bureaus. Those municipalities could receive additional revenue from the civil fines and costs that would be established, collected, and retained by each municipality. The total amount of new revenue received by local governments would depend on the number of municipalities that implemented the bills, the level of fines established, and the amount of enforcement activity.

Under the bills, local governments would be responsible for the operating and personnel expenses of any municipal ordinance violations bureau that was established. Violators would be required to pay certain enforcement costs which would be retained by the municipality. For jurisdictions actively prosecuting ordinance violations through the existing criminal procedures, the operational expenses of a violations bureau could be offset by reduced costs related to fewer criminal prosecutions in district court. The bills could reduce the revenue currently received by public libraries from payments of criminal penalties for violations of municipal ordinances.

The bills also would have an indeterminate fiscal impact on state government. Implementation of the bills by local governments would tend to reduce the number of municipal ordinance violations prosecuted in district courts where the judicial salaries are partially state-funded. The district courts, however, would still be used for hearings in contested cases and enforcing judgments. (9-30-93)

ARGUMENTS:

For:

Giving local units of government the option to seek civil, rather than criminal, sanctions against violators of local ordinances would make it more feasible for the local units to enforce ordinances and punish violators, would relieve crowded court dockets of unnecessary litigation, and would spare otherwise law-abiding citizens the burden of defending themselves against criminal charges for such violations as having a loose pet, riding their bicycles on the sidewalk, and failing to shovel their sidewalks.

At the same time, violations of ordinances outlawing conduct designated as criminal would continue to be considered criminal offenses subject to criminal penalties. Also, unlike an earlier package of bills, most of which were vetoed, Senate Bills 732 through 740 list specific violations of state law that could not, in effect, be decriminalized by local units of government. These bills would prohibit an ordinance from making an act or omission a municipal civil infraction if the act or omission constituted a violation of any of the specified state laws, including the entire Penal Code and the controlled substance provisions of the Public Health Code.

Against:

Senate Bill 731 would give local units a financial incentive to treat offenses as municipal civil infractions, rather than crimes, since local units would be able to retain fines imposed for municipal civil infractions (whereas criminal fines go to public libraries). Also, the costs of issuing a municipal civil infraction citation and holding municipal civil infraction proceedings would be far less than the costs of prosecution.

POSITIONS:

The Michigan Municipal League strongly supports the bills. (11-2-93)

The Michigan Townships Association supports the bills. (11-2-93)

The State Bar of Michigan supports the bills. (11-2-93)