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SFA



BILL ANALYSIS

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Senate Bill 831 (as enrolled)
Senate Bill 832 (as enrolled)
Senate Bill 833 (as enrolled)
Senate Bill 834 (as enrolled)
Senate Bill 855 (as enrolled)
Senate Bill 856 (as enrolled)
Sponsor: Senator William Van Regenmorter (Senate Bill 831)
Senator Thaddeus G. McCotter (Senate Bill 832)
Senator Bev Hammerstrom (Senate Bill 833)
Senator Shirley Johnson (Senate Bill 834)
Senator Mike Rogers (Senate Bill 855)
Senator Mike Goschka (Senate Bill 856)

Senate Committee: Judiciary

House Committee: Local Government and Urban Policy (Senate Bills 831-834)
Criminal Law and Corrections (Senate Bills 855 & 856)

Date Completed: 2-14-00

RATIONALE

In the 1997-98 legislative session, the Michigan Legislature passed a number of measures designed to crack down on repeat drunk drivers and those who repeatedly drive without a license or while a driver's license is suspended. This legislation includes a system whereby offenders who commit certain misdemeanors must be fingerprinted, for the purpose of effective criminal history tracking. To accomplish this, the legislation extended the sentence for some misdemeanors to 93 days, since fingerprinting is not required for offenses subject to a 90-day maximum sentence. That legislation, which was passed in the fall of 1998 and went into effect October 1, 1999, inadvertently left local units without the authority to extend their substantially similar 90-day local ordinance misdemeanors to 93 days. To rectify that situation, subsequent legislation was passed in the spring of 1999, allowing local units to revise their ordinances to provide for the same 93-day maximum penalties that were provided in State law. This legislation also took effect on October 1, 1999.

As local units began rewriting ordinances to meet the October 1 effective date, a new problem was uncovered by some municipal attorneys: There is a 90-day maximum sentence limit in the charters of some home rule cities and home rule villages. Since this charter limit superceded any ordinance that a local unit might pass, these municipalities were not able to prosecute repeat offenders as envisioned by the original repeat offender legislation. It was suggested that, in order to extend local authority

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while saving citizens the time and cost of conducting a charter revision election, the law governing municipalities should be amended so that, irrespective of a charter limit, local officials may enact 93-day jail sanctions for ordinances for which there is a corresponding State statute. Further, proponents of this change claimed that, in order to ensure more uniform enforcement of State statutes generally, local units should be authorized to adopt by reference the Michigan Vehicle Code as well as provisions of any State statute for which the maximum period of imprisonment is 93 days.

Also, Public Act 77 of 1999 made revisions to the law governing fingerprinting procedures to permit the fingerprinting of some local offenders, so that prior offenses would be recorded more accurately. Some people believe that taking the fingerprints of people arrested for those offenses should be mandatory. In addition, once the 1997-98 repeat offender legislation took effect, it became apparent that some provisions pertaining to vehicle immobilization, purchase, and titling that were added to the Michigan Vehicle Code by that legislation needed further revision.

CONTENT

Senate Bills 831-834 amended various acts to authorize local units of government to adopt by reference a provision of State law that is punishable by up to 93 days' imprisonment or the

Michigan Vehicle Code. The bills prohibit local units from enforcing any provision adopted by reference for which the maximum period of imprisonment is greater than 93 days.

Senate Bill 855 amended the bureau of criminal identification Act to revise fingerprinting requirements that were enacted by Public Act 77 of 1999 for a violation of a local ordinance.

Senate Bill 856 amended the Michigan Vehicle Code to make various revisions pertaining to repeat violations of drunk driving or driving without a valid license.

All of the bills were tie-barred to each other.

Senate Bill 831

The bill amended the Home Rule Village Act to specify that, notwithstanding any charter provision to the contrary, a village may adopt an ordinance punishable by up to 93 days' imprisonment and/or a maximum fine of \$500, if the violation substantially corresponds to a violation of State law that is a misdemeanor punishable by imprisonment for up to 93 days.

In addition, the Act authorizes a village to adopt a plumbing code, electrical code, or building code that has been promulgated by the State, by a department, board, or other agency of the State, or by an organization or association that is organized and conducted for the purpose of developing that code, by making reference to that code in an adopting ordinance without publishing the code in full. The bill added to that provision the authority for a village to adopt, in the same manner, a provision of any State statute for which the maximum period of imprisonment is 93 days' imprisonment or the Michigan Vehicle Code.

Senate Bill 832

The bill amended Public Act 246 of 1945, which authorizes township boards to adopt ordinances and regulations for the public health, safety, and general welfare, to authorize a township to adopt a provision of any State statute for which the maximum period of imprisonment is 93 days' imprisonment or the Michigan Vehicle Code, by reference in an adopting ordinance. The adopted State statute must be identified clearly in the adopting ordinance.

If an ordinance adopts by reference a provision of State statute punishable by up to 93 days' imprisonment or the Michigan Vehicle Code, a statement of the purpose of the statute must be published with the adopting ordinance or with the summary of the adopting ordinance published as required under the Act. Copies of the statute

adopted by reference must be kept in the township clerk's office and be available for inspection by and distribution to the public. The township must include in the publication the designation of a location in the township where a copy of the statute may be inspected or obtained.

The Act provides that, within one week after publication of an ordinance as required under the Act, the township clerk must record the ordinance in a book of ordinances kept for that purpose; record the date of the passage of the ordinance, the names of the board members voting, and how each member voted; and file an attested copy of the ordinance with the county clerk. The bill specifies that, if an ordinance adopts by reference a provision of any State statute, the township clerk also must file a copy of that statute with the county clerk.

The Act previously required the county clerk to maintain separate files for ordinances of each township in the county, and to make the files readily available to the public. The bill instead requires the county clerk to maintain separate files for any statute filed under the bill and to make those files readily available to the public. In addition, the Act permits the county clerk to charge a reasonable fee for the reproduction or furnishing of a copy of an ordinance. The bill also refers to a statute filed under the bill.

Senate Bill 833

The General Law Village Act authorizes a village to adopt by reference a plumbing code, electrical code, mechanical code, fire protection code, building code, or other code promulgated by the State, by a department, board, or other agency of the State, or by an organization or association organized or conducted for the purpose of developing a code. The bill added authority to adopt by reference a provision of any State statute for which the maximum period of imprisonment is 93 days and the Michigan Vehicle Code.

Senate Bill 834

The bill amended the Home Rule City Act to specify that, notwithstanding any charter provision to the contrary, a city may adopt an ordinance punishable by up to 93 days' imprisonment and/or a maximum fine of \$500, if the violation substantially corresponds to a violation of State law that is a misdemeanor punishable by imprisonment for up to 93 days.

Also, the Act specifies that, whether or not provided in its charter, a city may adopt by reference in an adopting ordinance a law, code, or rule promulgated and adopted by an authorized agency of the State pertaining to fire protection or any of certain specified codes. The bill added to that provision the authority for a city to adopt, in the same manner, a provision of any State statute for which the maximum period of imprisonment is 93 days' imprisonment or the Michigan Vehicle Code.

In addition, the Act requires that a city's charter provide for the annual laying and collecting of taxes in a sum, except as otherwise provided by law, not to exceed 2% of the value of real and personal property in the city. Also, the governing body of a city may levy and collect taxes for municipal purposes in a sum not to exceed 1% of the value of real and personal property in the city. Previously, these provisions referred to the "assessed value" of the property. The bill changed "assessed value" in these provisions to "taxable value" and defines "taxable value" as the value determined under Section 27a of the General Property Tax Act (MCL 211.27a).

Senate Bill 855

Public Act 77, which took effect on October 1, 1999, amended the bureau of criminal identification Act to permit (but not require) an arresting law enforcement agency to take the fingerprints of a person arrested for a misdemeanor violation of a local ordinance for which the maximum penalty exceeded 92 days' imprisonment and that substantially corresponded to a misdemeanor violation of State law whose maximum term of imprisonment exceeded 92 days. Under Public Act 77, the law enforcement agency

could not forward the fingerprints to the Department of State Police before conviction. If the person were convicted, the law enforcement agency had to take the person's fingerprints, if not previously taken, and forward them to the Department within 72 hours.

Under Senate Bill 855, a law enforcement agency is required to take the fingerprints of a person arrested for a misdemeanor violation of a local ordinance for which the maximum possible penalty is 93 days' imprisonment and that substantially corresponds to a misdemeanor violation of State law whose maximum possible term of imprisonment is 93 days. The bill deleted the prohibition against a law enforcement agency's forwarding the fingerprints to the Department of State Police before conviction.

If the person is convicted of a violation described above, the bill requires the law enforcement agency to take the person's fingerprints before sentencing, if not previously taken. The court must forward to the law enforcement agency a copy of the disposition of conviction, and the agency is required to forward the fingerprints and a copy of the disposition to the Department of State Police within 72 hours after receiving the disposition of conviction.

The bill specifies that fingerprints are not required to be taken solely because a person is arrested for or convicted of a first offense of driving without a license or driving while a license or registration is suspended or revoked.

Senate Bill 856

The bill prohibits a person from buying, leasing, or otherwise acquiring a motor vehicle during a period of suspension, revocation, or denial if the person's driver's license is suspended, revoked, or denied for a third or subsequent drunk driving violation or a fourth or subsequent offense of driving while a license is suspended, revoked, or denied. A violation of this prohibition is a misdemeanor punishable by up to 93 days' imprisonment, a maximum fine of \$100, or both. This provision takes effect on June 1, 2000.

The Code provides for vehicle immobilization for certain drunk driving offenses and violations of driving while a license is suspended, revoked, or denied. The bill specifies that immobilization does not apply to a vehicle owned by the Federal government, the State, or a local unit of government, or to a vehicle not subject to registration under the Code.

The bill deleted a provision requiring the Secretary of State to refuse to issue a certificate of title or a salvage certificate of title if the driver's license of the owner or co-owner or lessee or co-lessee is suspended, revoked, or denied or the operator has never been licensed in Michigan because of a third

or subsequent drunk driving offense or a fourth or subsequent offense of driving while a license is suspended, revoked, or denied. (Section 219(1)(d) of the Code requires the Secretary of State to refuse to issue a registration or a transfer of registration to such a person.) The bill requires that a certificate of title include on its face whether the vehicle's owner or co-owner or lessee or co-lessee is subject to registration denial under Section 219(1)(d).

MCL 78.23 (S.B. 831)

41.181 et al. (S.B. 832)

66.4 (S.B. 833)

117.3 (S.B. 834)

28.243 (S.B. 855)

257.219 et al. (S.B. 856)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Senate Bills 831-834 will help to jail additional repeat offenders by facilitating the creation of more criminal history files, triggered by the 93-day sanction. Since fingerprints are not required to be taken when a person is arrested for violating a 90-day ordinance, the State Police criminal history files might not include a 90-day violation as a prior offense, and it then is not included in the offender's criminal history records where it would be used to enhance the penalty for repeat violations. The bills will allow for more local ordinance penalties to meet the 93-day standard.

In addition, permitting local units to adopt the provisions of any State statute for which the maximum period of imprisonment is 93 days will allow and perhaps encourage local communities to adopt ordinances with identical or substantially similar penalties to those in State statutes for retail fraud, domestic violence, malicious damage to property, and numerous theft offenses that are 93-day misdemeanors, and that carry enhanced penalties for repeat offenses.

Supporting Argument

Allowing local units to adopt the Michigan Vehicle Code by reference is advantageous for a number of reasons. It may facilitate uniform traffic rules and enforcement statewide; ensure that recent drunk driving statutory changes are effective throughout the State; discourage a shift of prosecution from city, village, or township attorneys to the county prosecutor and county budgets; and enable communities to respond more readily to ongoing changes in State traffic laws.

In addition, Senate Bills 831-834 will make the

Michigan Vehicle Code more readily available in the community, as well as subject to common interpretation. Adoption by reference allows a municipality to adopt a code or statute as its ordinance without having to publish the law, code, or rule in full, although the underlying code or statute must be clearly identified in the ordinance and its purpose published. Although not required to be published in full in the ordinance, printed copies of an adopted code must be kept in the local clerk's office and be made available for inspection and distribution to the public.

Further, although the Vehicle Code includes some violations with penalties that are greater than 93 days' imprisonment, the bills protect against overzealous local enforcement by prohibiting local units from enforcing any provision adopted by reference for which the maximum period of imprisonment is greater than 93 days.

Supporting Argument

Senate Bills 855 and 856 supplement previous legislation providing more restrictive sanctions for repeat drunk drivers and other traffic offenders. Senate Bill 855 provides that fingerprinting is required for certain local offenders, and Senate Bill 856 makes license sanctions in the Vehicle Code more consistent.

Supporting Argument

In addition to addressing the 93-day penalty/fingerprinting issue, Senate Bill 834 updates language in the Home Rule City Act relative to a city's authority to lay and collect property taxes. The term "taxable value" is used in property tax statutes to reflect the constitutional limit on property tax assessment increases from year-to-year. That limit was added to the State Constitution with the passage of Proposal A in 1994, and holds that the assessment on a parcel of property can increase annually only by the lesser of 5% or the rate of inflation, until the property is sold. When sold, the property is assessed at its State equalized valuation (SEV), a measure of the parcel's true cash value. This means, then, that property taxes are now based on the "taxable value" of property instead of the "assessed value" until the property is sold. Since the passage of Proposal A, the Legislature has amended many statutes to change the term "assessed value" to "taxable value". Senate Bill 834 made that change in the Home Rule City Act, bringing cities' statutory taxing authorization into conformity with the State Constitution, the General Property Tax Act, and current assessment practices.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.

FISCAL IMPACT

Senate Bills 831-834

Local units that adopt provisions of State laws, as specified in the bills, will minimally reduce costs associated with publishing the local ordinance. The bills will have no fiscal impact on State government.

Senate Bill 855

The bill will have a minimal fiscal impact on State and local government.

Senate Bill 856

The bill will have an indeterminate fiscal impact on State and local government.

The bill establishes misdemeanor penalties for an individual who acquires a vehicle while his or her license is suspended. Local units of government will receive the fine revenue and/or pay the cost of incarceration. There are no data to indicate how many people might be subject to conviction under these sections, and the cost of incarceration varies from county to county.

Because the number of individuals who will fall under the purview of these provisions is unknown, the fiscal impact on the Department of State is indeterminate.

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