



**House
Legislative
Analysis
Section**

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**ALLOW DETROIT TO CREATE
ADMIN. HEARINGS BUREAU**

House Bill 4589

Sponsor: Rep. Bill McConico

House Bill 4590

Sponsor: Rep. Ken Daniels

House Bill 4591

Sponsor: Rep. Steve Tobocman

Committee: Judiciary

Complete to 5-5-03

A SUMMARY OF HOUSE BILLS 4589-4591 AS INTRODUCED 4-29-03

House Bills 4589-4591 would allow Detroit to create an administrative hearings bureau to conduct hearings and make legal determinations regarding alleged municipal civil infractions of its city charter or ordinances. Detailed summaries of each of the bills are provided below.

House Bill 4591. The Home Rule City Act (Public Act 17 of 1994) authorizes district courts, municipal courts, or circuit courts (as otherwise provided by law) to hear, try, and determine actions and prosecutions for the recovery and enforcing of fines, penalties, and forfeitures imposed by the charter and ordinances of a city, and to sanction offenders for violations of the city's charter and ordinances.

House Bill 4591 would amend the Home Rule City Act (MCL 117.29) to allow any city with a population of 750,000 or greater (i.e., Detroit) to establish an administrative hearings bureau to conduct hearings and make determinations regarding alleged municipal civil infractions of its city charter or ordinances.

House Bill 4590. Currently the Revised Judicature Act gives district courts jurisdiction over civil infraction actions. However, the RJA also allows a county, city, village, or township ("local unit of government") to establish a municipal ordinance violations bureau to accept admissions of responsibility for municipal civil infractions and to collect and retain civil fines and costs according to a schedule set forth by ordinance. The expense of a municipal ordinance violation bureau is borne by the local unit of government, and bureau personnel are employees of the local unit.

House Bill 4590 would amend the RJA (MCL 600.8301 and 600.8396) to give Detroit's administrative hearings bureau (if one was created under the new provision of the Home Rule City Act proposed by House Bill 4591) exclusive jurisdiction to hear and make determinations regarding alleged municipal civil infractions of Detroit's city charter or ordinances. The administrative hearings bureau would accept admissions of responsibility, conduct hearings, and make determinations regarding alleged violations. The bureau could collect and retain civil fines and costs as prescribed by ordinance, and the expense of operating the bureau would be borne by

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the city. (The bill does not specify whether administrative hearings bureau personnel would be employees of the City of Detroit.)

House Bill 4589 would amend the RJA to establish guidelines for Detroit to follow in writing an ordinance defining the jurisdiction of the administrative hearings bureau and to set forth procedures for defendants to follow in responding to an allegation in a municipal ordinance violation notice before the bureau.

Ordinance establishing administrative hearing bureau's jurisdiction. Detroit would have to establish by ordinance the administrative hearings bureau's jurisdiction for making municipal civil infraction determinations. The ordinance would have to provide for adjudicatory hearings by hearings officers. A hearings officers authority and duties would have to include all of the following:

- hearing testimony and accepting evidence that is relevant to the existence of the ordinance violation;
- issuing subpoenas directing witnesses to appear and give relevant testimony at the hearing, upon the request of the parties or their representatives;
- preserving and authenticating the record of the hearing and all exhibits and evidence introduced at the hearing;
- issuing a determination (as described in the bill) of whether an ordinance violation occurred, based on the evidence presented at the hearing;
- imposing penalties consistent with applicable ordinance provisions and assessing costs upon finding the defendant responsible for the alleged violation, except that in no event may a hearings officer impose a penalty of incarceration or (with qualifications set forth in the bill) impose a fine of more than \$50,000.

Training for hearings officers. Administrative hearings officers would have to complete a formal training program before conducting administrative adjudication proceedings. The program would have to include instruction on procedural rules of the administrative hearings they will conduct, orientation to each subject area of the ordinance violations they will adjudicate, observation of administrative hearings, and participation in hypothetical cases. An administrative hearings officer would have to be an attorney who had been licensed to practice law in Michigan for at least five years.

Other procedures. Parties would have to be provided with the opportunity for a hearing during which they could be represented by counsel, present witnesses, and cross-examine opposing witnesses. A decision by a hearings officer of an administrative hearings bureau would be a final decision and order subject to judicial review by appeal to the district court or as otherwise provided by law. The final decision and order would be enforceable in the same manner as a judgment by a court of competent jurisdiction.

An appeal to district court of an administrative hearing would be a review by the court of the certified record provided by the administrative hearings bureau. The scope of review would

be whether the hearings officer's decision and order were supported by competent, material, and substantial evidence on the whole record.

Defendant's response to allegation in "violation notice". The RJA permits police officers and parks and recreation personnel ("authorized local officials") to issue citations to a person if:

- based on an investigation, the official has reasonable cause to believe the person is responsible for a municipal civil infraction; or
- based upon investigation of a complaint by someone who allegedly witnessed the person violate an ordinance whose violation is a municipal civil infraction, the official has reasonable cause to believe the person is responsible for a municipal civil infraction *and* the prosecution attorney (or other attorney for the political subdivision employing the official) gives written approval of issuing a citation.

Instead of issuing a citation, an official of a local unit of government with a municipal ordinance violations bureau may issue and serve a municipal ordinance violation notice (except when a trailway municipal civil infraction causes damage to a natural resource or facility or an official impounds a vehicle involved in such an infraction).

Under the bill, a defendant to whom a municipal ordinance violation notice had been issued would have to appear on or before the time specified in the notice and could respond in one of two ways. If the defendant wished to admit responsibility for the municipal civil infraction, he or she could do so by appearing in person, by representation, or by mail. If appearance was made by representation or mail, the administrative hearings bureau could accept the admission as though the defendant personally appeared. Upon acceptance of the admission of responsibility, an administrative officer could order any of the sanctions set forth in current law for such infractions. (See below for a change in the sanctions, which eliminates a restriction on the costs of an action payable by a defendant.) Alternatively, if the defendant wished to deny responsibility for the municipal civil infraction or admit responsibility with an explanation, the defendant could do so by appearing in person on the date scheduled for the administrative hearing for the purpose of adjudicating the alleged violation.

If the defendant failed to appear, a decision and order of default could be entered. Further, if the defendant failed to appear at the hearing, an admission of responsibility was not made, and the civil fine and costs, if any, prescribed by ordinance for the violation were not paid at the administrative hearings bureau, a final decision and order of liability in the amount of the prescribed fine and costs could be issued by the bureau.

Detroit could establish rules and procedures for a defendant to set aside the entry of a decision and order of default.

"Violation notice". The bill would add the following definition of "violation notice" to the RJA: a violation notice is a written notice that not a municipal civil infraction citation, on which an authorized local official records the occurrence or existence of one or more municipal civil infractions by the defendant cited and directs the defendant to pay a civil fine for the violation or to appear at a municipal civil infractions bureau or an administrative hearings bureau.

In addition, the bill would specify that a violation notice to appear at an administrative hearings bureau would be treated as made under oath if the violation alleged in the notice occurred in the presence of the authorized local official signing the violation notice and if the notice contained the following statement immediately above the date and the official's signature: "I declare under the penalties of perjury that the statements above are true to the best of my information, knowledge, and belief." (The RJA currently specifies that this statement must appear on a citation for a municipal civil infraction, if the citation is to be treated as made under oath.)

Eliminate restriction on costs of action to be paid by defendant. Under the RJA, if a defendant is determined to be responsible or responsible "with explanation" for a municipal civil infraction and ordered to pay a civil fine, he or she must also pay the costs of the action, generally to the plaintiff's general fund. Cases adjudicated in Detroit's administrative hearings bureau would be subject to this provision. Currently, the RJA states that the defendant may be ordered to pay not less than \$9 and not more than \$500 in costs. The bill would eliminate this restriction.

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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.