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BILL ANALYSIS

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House Bill 5216 (Substitute H-2 as passed by the House)
House Bills 5217 through 5220 (as passed by the House)
House Bill 5224 (as passed by the House)
Sponsor: Representative Steve Tobocman (House Bill 5216)
Representative Bill McConico (House Bill 5217)
Representative Ken Daniels (House Bill 5218)
Representative Jim Howell (House Bill 5219)
Representative Edward Gaffney (House Bill 5220)
Representative Morris Hood III (House Bill 5224)

House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 12-9-03

CONTENT

The bills would amend various statutes to allow a city with a population of 7,500 or more to establish an administrative hearings bureau to adjudicate and impose sanctions for an ordinance violation designated as a "blight violation". The bills would do all of the following:

- **Establish notice-of-violation requirements to initiate blight violation administrative proceedings.**
- **Require that each hearing officer be an attorney licensed to practice law in Michigan for at least five years and complete a training program.**
- **Require that a hearing officer's determination be in writing and include findings of fact, a decision, and an order.**
- **Specify that the city would have the burden of proving a blight violation by a preponderance of the evidence.**
- **Provide that a party would have to be given opportunity for a hearing, and that the party could be represented by counsel and could present and cross-examine witnesses.**
- **Allow appeals to the circuit court of a hearing officer's final decision.**
- **Allow the city to obtain a lien against land, a building, or a structure involved in a blight violation, if a defendant did not pay a civil fine or costs or an installment payment within 30 days after it was due.**

-- Prohibit certain criminal offenses from being designated as blight violations.

House Bills 5216 (H-2), 5217, and 5218 would amend the Home Rule City Act; House Bill 5219 would amend the Revised Judicature Act (RJA); House Bill 5220 would amend the City and Village Zoning Act; and House Bill 5224 would amend Public Act 359 of 1941, which provides for controlling and eradicating certain noxious weeds within the State.

House Bill 5216 (H-2)

Municipal Civil Infractions & Blight Violations

The Home Rule City Act provides that, whether or not authorized by the city charter, a city's legislative body may adopt an ordinance that designates a violation as a municipal civil infraction and provides a civil fine for that violation. The bill also would allow a city's legislative body, whether or not authorized by the city charter, to adopt an ordinance that designated a violation of the ordinance as a blight violation and provided a civil fine and other sanctions for that violation.

A city could designate only a violation of any of the following types of ordinances as a blight violation:

- Zoning.
- Building or property maintenance.
- Solid waste and illegal dumping.

- Disease and sanitation.
- Noxious weeds.
- Vehicle abandonment, inoperative vehicles, vehicle impoundment, and municipal vehicle licensing.

Under the Act, an ordinance may not make an act or omission a municipal civil infraction if that act or omission constitutes a crime under any of the following:

- Article 7 (Controlled Substances) of the Public Health Code.
- The Michigan Penal Code.
- The Michigan Vehicle Code.
- The Michigan Liquor Control Act.
- Part 801 (Marine Safety), Part 811 (Off-Road Recreation Vehicles), or Part 821 (Snowmobiles) of the Natural Resources and Environmental Protection Act.
- The Aeronautics Code.
- Sections 351 to 365 of the Railroad Code, which pertain to operating a locomotive while impaired or under the influence.
- Any State law under which the act or omission is punishable by imprisonment for more than 90 days.

The bill also would prohibit an ordinance from designating as a blight violation an act or omission that constituted a crime under any of those statutes.

Administrative Hearings Bureau

Bureau Jurisdiction. The bill would allow a city with a population of at least 7,500 to establish an administrative hearings bureau to adjudicate and impose sanctions for violation of the charter or ordinances designated in the charter or an ordinance as a blight violation. The bureau could accept admissions of responsibility for blight violations. Pursuant to a schedule of civil fines and costs, the bureau could collect civil fines and costs for blight violations. The city establishing a bureau would have to bear its expenses.

An administrative hearings bureau could not have jurisdiction over criminal offenses, traffic civil infractions, municipal civil infractions, or State civil infractions. The bureau and its hearing officers would not have the authority to impose a penalty of incarceration and could not impose a civil fine over \$10,000.

A city that established an administrative hearings bureau would have to establish, by ordinance, the bureau's jurisdiction for

adjudicating alleged blight violations, making determinations of responsibility, and imposing sanctions upon those found responsible for a violation.

Notice of Blight Violation/Proceedings. To initiate a proceeding for a blight violation, the city would have to issue and serve a written violation notice upon an alleged violator. An authorized local official would have to record on the notice the occurrence or existence of one or more blight violations by the person cited, and the notice would have to direct the named person to pay a civil fine for the violation or appear at the administrative hearings bureau. An authorized local official could issue a violation notice to appear if, based upon investigation, the official had reasonable cause to believe that the person was responsible for a blight violation and if the city attorney or an assistant city attorney approved of issuing the notice in writing.

If a city had a rental inspection program with which a landlord was required to register in order to rent residential premises, and if a landlord were registered under that program, the city could not issue a blight violation notice during an inspection of the premises unless either of the following occurred:

- The landlord was given a written correction notice of the violation and reasonable opportunity to correct the circumstances before a reinspection of the premises or a date specified in the notice.
- The violation created an emergency that presented an immediate risk of harm to people or damage to property, including a flooded basement or premises without heat.

The person named in a violation notice would have to appear on or before the time specified in the notice and could respond to the allegation as follows:

- If the person wished to admit responsibility for the blight violation, he or she could do so by appearing in person, by representation, or by mail. If appearance were made by representation or mail, the bureau could accept the admission as though the violator had appeared in person. Upon accepting an admission, a hearing officer could order any of the sanctions allowed under the bill.
- If the person wished to deny responsibility for the blight violation, or admit

responsibility with an explanation, he or she could do so by appearing in person on the date scheduled for the hearing to adjudicate the violation.

If the alleged violator failed to appear, a decision and order of default could be entered.

If an admission of responsibility were not made and the civil fine and costs, if any, prescribed by charter or city ordinance were not paid at the administrative hearings bureau, and the alleged violator failed to appear at a scheduled hearing, the bureau could issue a final decision and order of responsibility in the amount of the prescribed civil fine and costs.

A city establishing an administrative hearings bureau also would have to establish rules and procedures for an alleged violator to set aside the entry of a decision and order of default.

Hearing Officers. An ordinance establishing an administrative hearings bureau would have to provide for adjudicatory hearings by hearing officers. Each hearing officer would have to be an attorney licensed to practice law in Michigan for at least five years. Hearing officers would have to be appointed in a manner consistent with the city charter for the appointment of other municipal officers or employees and could be removed only for reasonable cause. Before conducting administrative adjudication proceedings, administrative hearing officers would have to complete successfully a formal training program that included all of the following:

- Instruction on the rules of procedure of the administrative hearings that they would conduct.
- Orientation to each subject area of the ordinance violations that they would adjudicate.
- Observation of administrative hearings.
- Participation in hypothetical cases, including ruling on evidence and issuing final orders.
- The importance of impartiality in the conduct of administrative hearings and adjudication of violations.

A hearing officer's authority and duties would include all of the following:

- Hearing testimony and accepting evidence that was relevant to the existence of the blight violation.

- Issuing subpoenas directing witnesses to appear and give relevant testimony at a hearing, upon request of a party or a party's attorney.
- Preserving and authenticating the record of the hearing and all exhibits and evidence introduced at the hearing.
- Issuing a determination, based upon the evidence presented at the hearing, whether a blight violation existed.
- Imposing reasonable and proportionate sanctions consistent with applicable ordinance provisions and assessing costs upon a finding that the alleged violator was responsible for the alleged violation.

Hearings. A party would have to be given the opportunity for a hearing, during which he or she could be represented by counsel, and present and cross-examine witnesses. A party could request the hearing officer to issue subpoenas to direct the attendance and testimony of relevant witnesses and the production of relevant documents. Hearings would have to be scheduled with reasonable promptness. For hearings scheduled in all nonemergency situations, however, the alleged violator upon request would have at least 14 days after service of process to prepare for the hearing. ("Nonemergency situation" would mean any situation that did not reasonably constitute a threat to the public interest, safety, or welfare.)

In an administrative hearing, the rules of evidence as applied in a nonjury civil case in circuit court would have to be followed as far as practicable, but the hearing officer could admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Irrelevant, immaterial, or unduly repetitious evidence could be excluded. The rules of privilege recognized by law would have to be given effect. Objections to offers of evidence could be made and would have to be noted in the record. For the purpose of expediting hearings and when the interests of the parties would not be substantially prejudiced, the hearing officer could provide in an administrative hearing or by rule for submission of all or part of the evidence in written form.

A hearing officer's determination would have to be in writing and include findings of fact, a decision, and an order. The city would have the burden of establishing an alleged violator's responsibility by a preponderance of the

evidence. Unless the burden was met, the matter would have to be dismissed. A decision and an order could not be made except upon consideration of the record as a whole or a portion of the record as cited by any party to the proceeding and as supported by and in accordance with the competent, material, and substantial evidence.

A decision and order finding the alleged violator responsible for the violation would have to include the civil fine, if any, or any action with which the violator would have to comply, or both. The maximum monetary civil fine allowed would exclude costs of enforcement or costs imposed to secure compliance with the city's ordinances, and could not be applied to enforce the collection of any tax imposed and collected by the city.

Any final decision by a hearing officer that a blight violation did or did not exist would constitute a final decision and order for purposes of judicial review, and could be enforced in the same manner as a judgment entered by a court.

Appeals. A party could appeal to the circuit court within 28 days after the decision and order.

An alleged violator who appealed a final decision and order would have to post with the bureau, at the time the appeal was taken, a bond equal to the fine and costs imposed. A party who paid the fine and costs would not be required to post a bond. If a party who had posted a bond failed to comply with the requirements of Supreme Court rules for an appeal to the circuit court, the appeal could be considered abandoned, and the bureau could dismiss it on seven days' notice to the parties. The bureau promptly would have to notify the circuit court of a dismissal, and the court would have to dismiss the claim of appeal. If the appeal were dismissed or the decision and order were affirmed, the administrative hearing bureau could apply the bond to the fine and costs.

An appeal to circuit court would be a review by the court of the certified record provided by the bureau. Pending appeal, and subject to the bond requirement, the hearing officer could stay the order and any sanctions or costs imposed. Once an appeal was filed, and subject to the bond requirement, the court could stay the order and any sanctions or costs imposed. The court, as appropriate,

could affirm, reverse, or modify the decision or order, or remand the matter for further proceedings. The court would have to hold unlawful and set aside a hearing officer's decision or order if an alleged violator's substantial rights had been prejudiced because the decision or order was any of the following:

- In violation of the Constitution or a statute, charter, or ordinance.
- In excess of the authority or jurisdiction of the agency as conferred by statute, charter, or ordinance.
- Made upon unlawful procedure resulting in material prejudice to a party.
- Not supported by competent, material, and substantial evidence on the whole record.
- Arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion.
- Affected by other substantial and material error of law.

House Bill 5217

Under the bill, if a defendant did not pay a civil fine or costs or an installment payment ordered by a hearing officer under House Bill 5216 within 30 days after the date on which payment was due for a blight violation involving the use or occupation of land or a building or other structure, the city could obtain a lien against the land, building, or structure by recording a copy of the final decision and order with the county register of deeds. The 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 when the order was recorded with the register of deeds.

An order recorded with the register of deeds would constitute notice of the pendency of the lien. In addition, the city would have to send a written notice of the lien, by first-class mail, to the owner of record of the land, building or structure, at the owner's last known address.

The city could enforce and discharge the lien in the manner prescribed by its charter, by the General Property Tax Act, or by an ordinance duly passed by the city's governing body. Property would not be subject to sale under the General Property Tax Act, however, for nonpayment of a civil fine or costs or an installment ordered under House Bill 5216 unless the property also was subject to sale under that Act for delinquent property taxes.

A lien created under House Bill 5217 would have priority over any other lien unless one or more of the following applied:

- The other lien was for taxes or special assessments.
- The other lien was created before May 1, 1994.
- Federal law provided that the other lien had priority.
- The other lien was recorded before the lien under the bill was recorded.

The city could institute an action in court for the collection of the judgment imposed by an order for a blight violation. An attempt by the city to collect the judgment by any process, however, would not invalidate or waive the lien upon the land, building, or structure.

A lien provided for by the bill could not continue for more than 10 years after a copy of the order imposing a fine and/or costs was recorded, unless an action to enforce the lien was commenced within that time.

A default in the payment of a civil fine or costs for a blight violation, or an installment of the fine or costs, could be collected by a means authorized for the enforcement of a court judgment under Chapter 40 (Attachment and Garnishment) or Chapter 60 (Enforcement of Judgments) of the Revised Judicature Act.

House Bill 5218

The Home Rule City Act provides that the district court, a municipal court, or the circuit court may hear, try, and determine actions and prosecutions for the recovery and enforcement of fines, penalties, and forfeitures imposed by a city's charter and ordinances, and may sanction offenders for those violations.

The bill specifies in addition, that, pursuant to House Bill 5216, a city could provide for an administrative hearings bureau to adjudicate alleged violations of ordinances and to impose sanctions consistent with the Act.

House Bill 5219

The Revised Judicature Act provides that a violation of State criminal law must be prosecuted in the district court by the prosecuting attorney. A violation of a political subdivision's ordinance that is a misdemeanor

or that is not designated as a civil infraction must be prosecuted in the district court by the political subdivision's attorney. If the violation is a civil infraction, the prosecuting attorney or the political subdivision's attorney is required to appear in court only in those civil infraction actions that are contested before a district court judge in a formal hearing as provided under the RJA or the Michigan Vehicle Code.

The bill specifies that those provisions would not apply to an ordinance violation designated as a blight violation by a political subdivision that established an administrative hearings bureau to adjudicate and impose sanctions for blight violations.

House Bill 5220

Under the City and Village Zoning Act, a building erected, altered, razed, or converted, or a use carried on in violation of a local ordinance or regulation adopted pursuant to the Act is a nuisance per se. The court must order the nuisance abated, and the owner or agent in charge of the building or land, or both the owner and the agent, are liable for maintaining a nuisance per se. The legislative body, in the ordinance adopted under the Act, must designate the officials required to administer and enforce the ordinance and either impose a penalty for the violation or designate the violation as a municipal civil infraction and impose a civil fine for the violation.

The bill also would allow the ordinance to designate the violation as a blight violation and impose a civil fine and other sanctions authorized by law, if the city or village established an administrative hearings bureau to adjudicate and impose sanctions for blight violations.

House Bill 5224

Under Public Act 359 of 1941, the owner of land on which noxious weeds are found growing must destroy the weeds before they reach a seed-bearing stage and prevent their regrowth, or must prevent the weeds from becoming a detriment to public health. An owner who refuses to destroy noxious weeds is subject to a maximum fine of \$100. Revenue from those fines must become part of the township's, village's, or city's "noxious weed control fund". By ordinance, the township, city, or village may designate

refusal to destroy noxious weeds as a municipal civil infraction, in which case the fine is a civil fine.

The bill specifies that, if the township, city, or village established an administrative hearings bureau to adjudicate and impose sanctions for blight violations, the township, city, or village by ordinance could designate the refusal to destroy noxious weeds as a blight violation and any fine imposed would be a civil fine.

MCL 117.4l et al. (H.B. 5216)
Proposed MCL 117.4r (H.B. 5217)
MCL 117.29 (H.B. 5218)
600.8313 (H.B. 5219)
125.587 (H.B. 5220)
247.64 (H.B. 5224)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills would increase local unit revenue by an unknown amount as well as change the timing of when some local unit revenue is received. The amount of the increase would depend upon how many local units used administrative hearings bureaus allowed under the bills as well as the nature and number of the violations processed. At a secondary level revenues could increase if local units were able to adjudicate ordinance violations more rapidly and such actions resulted in more effective policing of ordinances and/or increased property values.

The bills also would reduce revenue received by the State Justice System Fund by an unknown amount, depending on the extent to which cases were not assigned or appealed to the court system.

This estimate is preliminary and will be revised as new information becomes available.

Fiscal Analyst: David Zin

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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.