

HOUSE BILL No. 5620

January 16, 2008, Introduced by Rep. Young and referred to the Committee on Intergovernmental, Urban and Regional Affairs.

A bill to amend 1909 PA 279, entitled "The home rule city act," by amending section 4q (MCL 117.4q), as added by 2003 PA 316.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4q. (1) A city that has a population of 7,500 or more and
2 is located in any county, or a city that has a population of 3,300
3 or more and is located in a county that has a population of
4 2,000,000 or more, may establish an administrative hearings bureau
5 to adjudicate and impose sanctions for violations of the charter or
6 ordinances designated in the charter or ordinance as a blight
7 violation. The bureau may accept admissions of responsibility for
8 blight violations. Pursuant to a schedule of civil fines and costs,
9 the bureau may collect civil fines and costs for blight violations.

10 (2) The expense of the operation of an administrative hearings

1 bureau shall be borne by the city establishing the bureau.

2 (3) An administrative hearings bureau shall not have
3 jurisdiction over criminal offenses, traffic civil infractions,
4 municipal civil infractions, or state civil infractions. The bureau
5 and its hearing officers shall not have the authority to impose a
6 penalty of incarceration and may not impose a civil fine in excess
7 of \$10,000.00. **A CITY WITH A POPULATION OF MORE THAN 750,000 THAT
8 ESTABLISHES AN ADMINISTRATIVE HEARINGS BUREAU UNDER THIS SECTION
9 SHALL ADOPT THE FOLLOWING SCHEDULE OF CIVIL FINES FOR BLIGHT
10 VIOLATIONS TO BE USED BY THE ADMINISTRATIVE HEARINGS BUREAU:**

11 (A) FOR A FIRST BLIGHT VIOLATION, A CIVIL FINE OF \$100.00.

12 (B) FOR A SECOND BLIGHT VIOLATION, A CIVIL FINE OF \$300.00.

13 (C) FOR A THIRD BLIGHT VIOLATION, A CIVIL FINE OF \$700.00.

14 (D) FOR A FOURTH BLIGHT VIOLATION, A CIVIL FINE OF \$1,500.00.

15 (E) FOR A FIFTH BLIGHT VIOLATION, A CIVIL FINE OF \$3,000.00.

16 (F) FOR A SIXTH BLIGHT VIOLATION, A CIVIL FINE OF \$5,000.00.

17 (G) FOR A SEVENTH BLIGHT VIOLATION, A CIVIL FINE OF \$7,500.00.

18 (H) FOR AN EIGHTH OR SUBSEQUENT BLIGHT VIOLATION, A CIVIL FINE
19 OF \$10,000.00.

20 (4) A city that establishes an administrative hearings bureau
21 under this section shall establish by ordinance the jurisdiction of
22 the bureau for adjudicating alleged blight violations, making
23 determinations of responsibility, and imposing sanctions upon those
24 found responsible for a violation. The city may designate only a
25 violation of any of the following types of ordinances as a blight
26 violation:

27 (a) Zoning.

1 (b) Building or property maintenance.

2 (c) Solid waste and illegal dumping.

3 (d) Disease and sanitation.

4 (e) Noxious weeds.

5 (f) Vehicle abandonment, inoperative vehicles, vehicle
6 impoundment, and municipal vehicle licensing.

7 (5) To initiate a proceeding for a blight violation, the city
8 shall issue and serve upon an alleged violator a written violation
9 notice on which an authorized local official records the occurrence
10 or existence of 1 or more blight violations by the person cited and
11 which directs the named person to pay a civil fine for the
12 violation or appear at the administrative hearings bureau as
13 provided in this section. A violation notice to appear at an
14 administrative hearings bureau shall be treated as made under oath
15 if the violation alleged in the notice occurred in the presence of
16 the authorized local official signing the violation notice and if
17 the notice contains the following statement immediately above the
18 date and signature of the official: "I declare under the penalties
19 of perjury that the statements above are true to the best of my
20 information, knowledge, and belief.". An authorized local official
21 may issue a violation notice to appear if, based upon
22 investigation, the official has reasonable cause to believe that
23 the person is responsible for a blight violation and if the city
24 attorney or an assistant city attorney approves in writing the
25 issuance of the violation notice.

26 (6) If a city has a rental inspection program with which a
27 landlord must register in order to rent premises for residential

1 purposes and if a landlord of premises rented in the city for
2 residential purposes is registered with the city's rental
3 inspection program, the city shall not issue a blight violation
4 notice during an inspection of the premises unless either of the
5 following occurs:

6 (a) The landlord is given a written correction notice of the
7 violation and a reasonable opportunity to correct the circumstances
8 before a reinspection of the premises or a date specified in the
9 notice.

10 (b) The violation is a direct result of the landlord's action
11 or inaction and creates an emergency that presents an immediate
12 risk of harm to people or damage to property including, but not
13 limited to, a flooded basement or premises without heat.

14 (7) A city that does not have a rental inspection program, or
15 does not require a landlord to register as part of a rental
16 inspection program, shall not issue a blight violation notice to a
17 landlord of premises rented in the city for residential purposes
18 during an inspection of the premises unless either of the following
19 occurs:

20 (a) The landlord is given a written correction notice of the
21 violation and a reasonable opportunity to correct the circumstances
22 before a reinspection of the premises or a date specified in the
23 notice.

24 (b) The violation is a direct result of the landlord's action
25 or inaction and creates an emergency that presents an immediate
26 risk of harm to people or damage to property, including, but not
27 limited to, a flooded basement or premises without heat.

1 (8) The person named in the violation notice shall appear on
2 or before the time specified in the violation notice and may
3 respond to the allegations in the notice, as follows:

4 (a) If the alleged violator wishes to admit responsibility for
5 the blight violation, the person may do so by appearing in person,
6 by representation, or by mail. If appearance is made by
7 representation or mail, the administrative hearings bureau may
8 accept the admission as though the person personally appeared. Upon
9 acceptance of the admission, a hearing officer may order any of the
10 sanctions permitted under this section.

11 (b) If the alleged violator wishes to deny responsibility for
12 the blight violation, or admit responsibility with an explanation,
13 the person may do so by appearing in person on the date scheduled
14 for the administrative hearing for the purpose of adjudicating the
15 alleged violation.

16 (c) If the alleged violator fails to appear, a decision and
17 order of default may be entered.

18 (9) If an admission of responsibility is not made and the
19 civil fine and costs, if any, prescribed by charter or ordinance
20 for the violation are not paid at the administrative hearings
21 bureau, and the alleged violator fails to appear at a hearing
22 scheduled in accordance with this section, a final decision and
23 order of responsibility in the amount of the prescribed civil fine
24 and costs may be issued by the administrative hearings bureau.

25 (10) The city establishing an administrative hearings bureau
26 shall establish rules and procedures for an alleged violator to set
27 aside the entry of a decision and order of default.

1 (11) The ordinance establishing the bureau shall provide for
2 adjudicatory hearings by hearing officers. Each hearing officer
3 shall be an attorney licensed to practice law in this state for at
4 least 5 years. Hearing officers shall be appointed in a manner
5 consistent with the charter of the city for the appointment of
6 other municipal officers or employees and shall only be removed for
7 reasonable cause. Before conducting administrative adjudication
8 proceedings, administrative hearing officers shall successfully
9 complete a formal training program which includes all of the
10 following:

11 (a) Instruction on the rules of procedure of the
12 administrative hearings that they will conduct.

13 (b) Orientation to each subject area of the ordinance
14 violations that they will adjudicate.

15 (c) Observation of administrative hearings.

16 (d) Participation in hypothetical cases, including ruling on
17 evidence and issuing final orders.

18 (e) The importance of impartiality in the conduct of the
19 administrative hearing and adjudication of the violation.

20 (f) Instructions on the preparation of a record that is
21 adequate for judicial review.

22 (12) The authority and duties of a hearing officer shall
23 include all of the following:

24 (a) Hearing testimony and accepting evidence that is relevant
25 to the existence of the blight violation.

26 (b) Issuing subpoenas directing witnesses to appear and give
27 relevant testimony at the hearing, upon request of a party or a

1 party's attorney.

2 (c) Preserving and authenticating the record of the hearing
3 and all exhibits and evidence introduced at the hearing.

4 (d) Issuing a determination, based upon the evidence presented
5 at the hearing, whether a blight violation exists. The
6 determination shall be in writing and shall include written
7 findings of fact, a decision, and an order. The city shall have the
8 burden of establishing the responsibility of the alleged violator
9 by a preponderance of the evidence. Unless the burden is met, the
10 matter shall be dismissed. A decision and an order shall not be
11 made except upon consideration of the record as a whole or a
12 portion of the record as may be cited by any party to the
13 proceeding and as supported by and in accordance with the
14 competent, material, and substantial evidence. A decision and order
15 finding the alleged violator responsible for the violation shall
16 include the civil fine, if any, or any action with which the
17 violator must comply, or both.

18 (e) Imposing reasonable and proportionate sanctions consistent
19 with applicable ordinance provisions and assessing costs upon a
20 finding that the alleged violator is responsible for the alleged
21 violation. The maximum monetary civil fine allowed under this
22 section excludes costs of enforcement or costs imposed to secure
23 compliance with the city's ordinances and is not applicable to
24 enforce the collection of any tax imposed and collected by the
25 city.

26 (13) In addition to fines and costs imposed under subsection
27 (12), the hearing officer shall impose a justice system assessment

1 of \$10.00 for each blight violation determination. Upon payment of
2 the assessment, the city shall transmit the assessment collected to
3 the state treasury to be deposited into the justice system fund
4 created in section 181 of the revised judicature act of 1961, 1961
5 PA 236, MCL 600.181.

6 (14) A party shall be provided with the opportunity for a
7 hearing during which they may be represented by counsel, present
8 witnesses, and cross-examine witnesses. A party may request the
9 hearing officer to issue subpoenas to direct the attendance and
10 testimony of relevant witnesses and the production of relevant
11 documents. Hearings shall be scheduled with reasonable promptness,
12 except that for hearings scheduled in all nonemergency situations
13 the alleged violator if he or she requests shall have at least 14
14 days after service of process to prepare for the hearing. For
15 purposes of this subsection, "nonemergency situation" means any
16 situation that does not reasonably constitute a threat to the
17 public interest, safety, or welfare. If service is provided by
18 first-class mail, the 14-day period begins to run on the day that
19 the notice is deposited in the mail.

20 (15) In an administrative hearing under this section, the
21 rules of evidence as applied in a nonjury civil case in circuit
22 court shall be followed as far as practicable, but the hearing
23 officer may admit and give probative effect to evidence of a type
24 commonly relied upon by reasonably prudent persons in the conduct
25 of their affairs. Irrelevant, immaterial, or unduly repetitious
26 evidence may be excluded. Effect shall be given to the rules of
27 privilege recognized by law. Objections to offers of evidence may

1 be made and shall be noted in the record. Subject to these
2 requirements, the hearing officer, for the purpose of expediting
3 hearings and when the interests of the parties will not be
4 substantially prejudiced thereby, may provide in an administrative
5 hearing or by rule for submission of all or part of the evidence in
6 written form.

7 (16) Any final decision by a hearing officer that a blight
8 violation does or does not exist constitutes a final decision and
9 order for purposes of judicial review and may be enforced in the
10 same manner as a judgment entered by a court of competent
11 jurisdiction.

12 (17) A party may file an appeal within 28 days after entry of
13 the decision and order by the hearing officer. An appeal of a final
14 decision and order of an administrative hearing officer is to the
15 circuit court.

16 (18) An alleged violator who appeals a final decision and
17 order to circuit court shall post with the administrative hearings
18 bureau, at the time the appeal is taken, a bond equal to the fine
19 and costs imposed. A party who has paid the fine and costs is not
20 required to post a bond. If a party who has posted a bond fails to
21 comply with the requirements of supreme court rules for an appeal
22 to the circuit court, the appeal may be considered abandoned, and
23 the bureau may dismiss the appeal on 7 days' notice to the parties.
24 The administrative hearings bureau must promptly notify the circuit
25 court of a dismissal, and the circuit court shall dismiss the claim
26 of appeal. If the appeal is dismissed or the decision and order are
27 affirmed, the administrative hearings bureau may apply the bond to

1 the fine and costs. An appeal by the city must be asserted by the
2 city's attorney and a bond is not required.

3 (19) An appeal to circuit court shall be a review by the court
4 of the certified record provided by the administrative hearings
5 bureau. Pending appeal, and subject to the bond requirement under
6 subsection (18), the hearing officer may stay the order and any
7 sanctions or costs imposed. Once an appeal is filed, and subject to
8 the bond requirement under subsection (18), the court may stay the
9 order and any sanctions or costs imposed. The court, as
10 appropriate, may affirm, reverse, or modify the decision or order,
11 or remand the matter for further proceedings. The court shall hold
12 unlawful and set aside a decision or order of the hearing officer
13 if substantial rights of an alleged violator have been prejudiced
14 because the decision or order is any of the following:

15 (a) In violation of the constitution or a statute, charter, or
16 ordinance.

17 (b) In excess of the authority or jurisdiction of the agency
18 as conferred by statute, charter, or ordinance.

19 (c) Made upon unlawful procedure resulting in material
20 prejudice to a party.

21 (d) Not supported by competent, material, and substantial
22 evidence on the whole record.

23 (e) Arbitrary, capricious, or clearly an abuse or unwarranted
24 exercise of discretion.

25 (f) Affected by other substantial and material error of law.