

SFA

BILL ANALYSIS

RECEIVED

Senate Fiscal Agency

• Lansing, Michigan 48909 •

(517) 373-5383 OCT 23 1987

Mich. State Law Library

Senate Bills 410, 411, and 412 (as reported without amendment)**Sponsor:** Senator Joe Conroy**Committee:** Local Government and Veterans**Date Completed:** 10-6-87**RATIONALE**

When zoning violations occur in cities, townships, and other municipalities, local officials traditionally have sought the imposition of criminal penalties against the property owner in order to enforce local zoning ordinances. Given today's glut of the courts with litigation, what should be a simple process to resolve land use disputes, some people contend, often ends up becoming quite time consuming and expensive for local units. Some people believe that local governments should be given the option of seeking criminal or civil penalties, and that zoning enabling acts should be amended to decriminalize zoning violations and allow them to be treated as civil matters.

CONTENT

Senate Bills 410, 411, and 412 would amend the County Rural Zoning Enabling Act, the Township Rural Zoning Act, and Public Act 207 of 1921, which regulates city or village zoning, respectively, to require that when a county board of commissioners, township board, or legislative body enacts an ordinance concerning the use of land or buildings under one of these Acts, civil or criminal penalties for violations of the ordinance be provided.

(Currently, the Acts require that the county board of commissioners, the township board, or legislative body only "provide penalties" when enacting an ordinance pursuant to the Acts.)

MCL 125.224 (Senate Bill 410)
125.294 (Senate Bill 411)
125.587 (Senate Bill 412)

FISCAL IMPACT

The bills would have no fiscal impact on State or local government.

ARGUMENTS**Supporting Argument**

Under the bills, local units could bring civil tort action for nuisance, rather than proceed with criminal sanctions, against a property owner deemed to be in violation of local zoning ordinances. A civil fine system instead of criminal sanctions for enforcing zoning violations would be preferable because courts reportedly are reluctant to find a property owner — who generally is law-abiding citizen — guilty of a criminal charge, which would establish a criminal record for that property owner. The feeling, reportedly, is that a land use matter is civil rather than criminal in scope and consequences.

Supporting Argument

The burden of proof required of the government is not as strict in a civil dispute as in a criminal case. Thus, it is nearly guaranteed that zoning issues must be argued in court, which helps to overburden court dockets. The change to a civil process, therefore, would make the job of enforcement easier for local zoning boards, planners, and attorneys.

Supporting Argument

A summons for a civil infraction, which carries only monetary penalties, would be less likely to incite a property owner than the threat of a criminal charge. In order to avoid litigating a civil suit, the violator would probably pay the fine and correct the violation, thus ending the matter. A property owner would be less likely to hire an attorney and go to court to fight the problem. If a criminal charge were pending, the property owner would be more likely to hire an attorney to contest the case in court, especially since a criminal prosecution could involve jail time and a criminal record. This undoubtedly would result in a delay and expense in the zoning enforcement process.

Response: Institution of a civil fine mechanism for zoning violations would not be a panacea for land use issues. There will always be cases that will need to be resolved in court.

Opposing Argument

Local governments would be given the option of imposing civil or criminal penalties under the bill. It is not clear, however, when and under what circumstances civil penalties would be sought instead of criminal sanctions.

Legislative Analyst: L. Arasim

Fiscal Analyst: G. Olson

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.

S.B. 410 (10-6-87)