



**House
Legislative
Analysis
Section**

Manufacturer's Bank Building, 12th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

LOCAL ENFORCEMENT OF OBSCENITY LAW

House Bill 4645 as passed by the House
Sponsor: Rep. Roland G. Niederstadt

RECEIVED

House Bill 4646 as passed by the House
Sponsor: Rep. Philip E. Hoffman

MAR 6 1990

House Bill 4647 as passed by the House Mich. State Law Libr
Sponsor: Rep. Michael J. Griffin

House Bill 4648 as passed by the House
Sponsor: Rep. Kirk Profit

House Bill 4649 as passed by the House
Sponsor: Rep. Nelson W. Saunders

Second Analysis (2-13-90)
Committee: Towns and Counties

House Bill 4645	PA 246 of 1945 (townships)	MCL 41.183
House Bill 4646	PA 359 of 1947 (charter townships)	MCL 42.21
House Bill 4647	PA 3 of 1895 (villages)	MCL 66.2
House Bill 4648	PA 278 of 1909 (villages)	MCL 78.24
House Bill 4649	PA 278 of 1909 (cities)	MCL 117.4i

FISCAL IMPLICATIONS:

Fiscal information is not available. (2-13-90)

ARGUMENTS:

For:

Allowing municipal adoption and enforcement of the obscenity law would improve enforcement of the act. At present, obscenity cases can be brought only by county prosecutors and the attorney general, who may not give obscenity prosecutions the priority they might receive from a city attorney more concerned about local offenses. Under current law, local units can attempt to eliminate commercial obscenity only by regulating "obscene" establishments through zoning ordinances. The bills, in conjunction with the rest of the antipornography package, would give communities greater opportunity for self-determination, and enable them to more effectively combat pornography within their borders.

Against:

By enabling municipal attorneys to conduct felony prosecutions, the bills would assign to attorneys inexperienced in criminal prosecutions an important role best left to county prosecutors. Further, in allowing a prosecutor's professional judgment to be bypassed, the bills would make businesses and individuals vulnerable to actions brought by city attorneys responding to pressure from local extremists. In addition, the bills would exacerbate one of the weaknesses of the package as a whole: that by allowing "contemporary community standards" to be determined at the local level, the legislation would lead to a patchwork of regulation and variable interpretation.

THE APPARENT PROBLEM:

Although Public Act 343 of 1984 was considered by its proponents to be a comprehensive criminal obscenity statute, many are now calling for it to be strengthened. In defining "obscene material," Public Act 343 codified the U.S. Supreme Court's guidelines in Miller v. California (1973). Under those guidelines, one of the criteria in determining obscenity is whether "the average person, applying 'contemporary community standards' would find that the work, taken as a whole, appeals to the prurient interest." Michigan's 1984 law defined "contemporary community standards" with reference to statewide standards, established misdemeanor penalties for obscenity offenses, and pre-empted local obscenity ordinances. Critics of Public Act 343 now claim that prosecutions under the law are impeded because jurors either cannot deduce a statewide standard, or believe that residents elsewhere in the state are more liberal. Critics also believe obscenity prosecutions to have unacceptably low priority in many jurisdictions. They contend that the law should permit both local enforcement and the application of local standards. Legislation has been proposed to meet these and other criticisms of Public Act 343.

THE CONTENT OF THE BILLS:

Senate Bill 330 proposes to amend Public Act 343 of 1984 to, among other things, establish felony penalties for various obscenity offenses, define "contemporary community standards" as the standards existing in the vicinity from which the jury was drawn, and authorize cities, villages and townships to adopt and enforce the act as an ordinance. House Bills 4645 through 4649 would amend various laws governing municipalities to exempt Public Act 343 enforcement actions from limitations on penalties for ordinance violations. (The proposed antipornography package also contains a sixth bill amending a municipal incorporation act, Senate Bill 332; Senate Bills 331, 338, 339, 340, and 341 are the other bills in the package.) Under amendments added on the floor of the House, House Bills 4645 through 4649 could not take effect unless House Bill 4642, the House counterpart to Senate Bill 330, was enacted. The bills and the acts they propose to amend are as follows.

H.B. 4645 (2-13-90)

That patchwork would create serious problems for legitimate booksellers and video stores, who might purge their shelves of material considered obscene in one locality only to find remaining material subject to criminal action in an adjacent community. The current statewide standard affords a degree of certainty as to what the law treats as obscene, thus enabling law-abiding businesses to make rational choices about which publications to carry and which to avoid. Without that certainty, businesses would have to take a chance on individual judgment as to what would be considered obscene. The variable and unpredictable nature of local obscenity regulation would give rise to problems with due process of law: as the Michigan Supreme Court said in People v. Llewellyn (401 Mich 314 977), "it is a long-standing rule in this state that criminal offenses must establish with reasonable certainty the elements of the offense so that all persons subject to their penalties may know what acts it is their duty to avoid."

Response: Under Senate Bill 330, as with current law, a defendant would have to have knowledge of the material's content and character to be guilty of an offense.

POSITIONS:

The American Family Association of Michigan supports the bills. (1-25-90)

The Michigan Association of Counties supports the concept of the bills. (1-24-90)

The Michigan Municipal League supports the concept of the bills. (1-29-90)

The Prosecuting Attorneys Association of Michigan supports proposed revisions in the state obscenity law that would employ local community standards and outlaw hard-core material, but does not support giving municipal attorneys the authority to prosecute felony violations of the obscenity law, and therefore does not support the bills. (1-30-90)

The American Civil Liberties Union of Michigan opposes the bills. (1-29-90) The Michigan News and Video Association opposed the bills as reported from the House Towns and Counties committee. (11-3-89)