

GENERAL LAW VILLAGES

**House Bill 5437 as enrolled
Public Act 254 of 1998
Sponsor: Rep. Patricia Birkholz**

**House Bill 5438 as enrolled
Public Act 255 of 1998
Sponsor: Rep. George Mans**

**House Committee: Local Government
Senate Committee: Local, Urban and
State Affairs**

Second Analysis (7-21-98)

THE APPARENT PROBLEM:

A village, generally speaking, is an incorporated unit of government within a township -- typically a built-up, "in town" area. According to 1996 research paper on local government by the Legislative Research Division of the Michigan Legislative Service Bureau, "residents of a village participate in township affairs and pay township taxes in addition to having their own government, unlike city residents who are separate from townships." The report notes that "a village normally provides several types of local services such as police and fire protection, the maintenance of streets and sidewalks, and provision of public utilities, but must rely on the township for property assessment, certain tax collections, and general election management." According to information from the Michigan Municipal League, while villages collect their own taxes, other tax assessment and collection functions are handled by the township. According to MML information, of Michigan's 261 villages, 213 are general law villages, with the remaining 48 operating as home rule villages.

The General Law Village Act dates from 1895 and apparently has never been comprehensively revised. Under the aegis of the Michigan Municipal League, village officials and attorneys have deliberated for a number of years in order to produce a long list of recommended amendments to the 103-year-old act. The aim of the amendments, according to an MML representative, in addition to eliminating troublesome antiquated provisions and rewriting others, is not to change the basic character of village government but rather to provide villages with greater flexibility -- with more options -- in their structure and operations.

THE CONTENT OF THE BILLS:

The bills would amend the General Law Village Act (Public Act 3 of 1895). House Bill 5438 addresses Chapters I-VII, and House Bill 5437 addresses Chapters VIII-XIV. The following is a brief description of major provisions. The bills are tied to one another.

House Bill 5438. Among the bill's many provisions are the following.

**** Villages could reduce the size of the council from seven to five.** Village councils currently are made up of the village president and six trustees. A council could by a two-thirds vote adopt an ordinance to reduce the number of trustees to four. The ordinance would take effect 45 days after adoption unless a petition was filed during the 45-day period signed by at least ten percent of the registered electors of the village. The petition would force an election on the question of council reduction. Ballot language would be prepared by the village clerk. Subsequently, the number of trustees could be increased using the same process. (An ordinance to reduce the size of the council would have to be considered at two or more council meetings at least 10 days apart, and notice of each meeting would have to be published at least 10 days beforehand in a newspaper of general circulation in the village.)

**** Villages could provide by ordinance for appointed clerks or treasurers (or both) using the same process described above, except that if ballot language was needed, it would be prepared by the village council**

rather than the clerk. Treasurers and clerks are now elected. The process could be used subsequently to provide once again for the election of a treasurer or clerk. The bill also would eliminate the office of assessor and give those duties to the village treasurer.

** The act requires an elected or appointed officer to be an elector of the village. The bill would only require an elected officer to be an elector.

** Currently, the act says a person cannot be appointed or elected to village office if he or she "has been or is a defaulter to the village or to any board of officers thereof, or to any school district, county, or other municipal corporation of the state." The bill would say instead that "a person in default to the village" would not be eligible for village office. The term "in default" would mean delinquent in payment of property taxes or a debt owed to the village if either 1) the taxes remained unpaid after the last day of February in the year following the year in which they were levied; or 2) another debt to the village remained unpaid 90 days after the due date. This would not apply if the tax or debt was the subject of an administrative appeal or a contested court case.

** A council could by a two-thirds vote adopt an ordinance making elections non-partisan. (Village elections are currently partisan.) The ordinance would apply beginning with the first village election for which the nominating deadline was at least 30 days after the ordinance's effective date. The ordinance would be subject to referendum if a petition with sufficient signatures was filed within 45 days after adoption of the ordinance (as with earlier provisions). The same process could subsequently be used to revert to partisan elections.

** A number of actions that now require a two-thirds vote would instead require a majority vote. These would include creating and abolishing an office; vacating a street, alley, or public ground; purchasing, leasing, selling, or disposing of real estate; ordering a public improvement; and appropriating money. However, raising a tax or imposing an assessment would require a two-thirds vote of the council.

** A village council could enter into a contract with a village manager extending beyond the terms of the members of the council, although it could not exceed six years. An employment contract would have to be in writing and specify the compensation of the manager and any procedure for changing compensation, any fringe benefits, and other

conditions of employment. The contract would have to say that the manager serves at the pleasure of the council. The contract could provide for severance pay if the manager's employment was terminated at the pleasure of the council.

** The bill contains a "general powers" provision. It would specify that, except where otherwise provided or limited, a village "is vested with all the powers and immunities, expressed or implied, that villages are, or hereafter may be, permitted to exercise under the constitution and laws of the State of Michigan." It says that "the enumeration of particular powers or immunities is not exclusive." Specifically, under the bill, a village could exercise all municipal powers in the management and control of municipal property and in the administration of the municipal government whether such powers were enumerated or not; do any act to advance the interests, good government, and prosperity of the village; and through its regularly constituted authority, pass and enforce all laws, ordinances, resolutions, and rules relating to its municipal concerns subject to the constitution and laws of the state. The powers of the village would have to be liberally construed in favor of the village and would include those fairly implied and not prohibited by law or constitution; and the specific powers listed in the act could not be construed as limited by the general powers set forth in the bill.

** A village council could provide for the powers conferred in the act at present on a board of cemetery trustees to be exercised by the director of a public works department or a village manager.

** Currently, the council must publish its minutes ("the proceedings") within 15 days after a meeting in a newspaper of general circulation. The bill would permit a synopsis prepared by the clerk and approved by the president to be published as an alternative.

House Bill 5437. Among the bill's many provisions are the following.

** The term "taxable value" would be substituted in various places for "assessed value" to reflect changes in property tax administration since the imposition of the property tax assessment cap as part of Proposal A, enacted in 1994.

** The village president could nominate and the council appoint a chief of police. The office of village marshal (the name for the current police chief) would be eliminated. Further, the council could by

ordinance delegate authority to the police chief to employ police officers and other personnel. The chief would serve at the pleasure of the council, unless some other condition of appointment had been agreed to, and would be subject to the direction of the president and council or, if provided by ordinance, the village manager. The police force would have to comply with the minimum standards for law enforcement officers published by the law enforcement council under the Michigan Law Enforcement Officers Training Council Act of 1965.

** A village council could create by ordinance a department of public safety and delegate to it all the power, authority, and duties otherwise exercised by a fire department or police department, or both. (This means a police and fire department could be combined into a single public safety department, although the two could remain separate within a department of public safety.) If an ordinance called for the combining of existing police and fire departments, the ordinance would have to provide for a right of referendum. A director of public safety would be appointed and supervised in the same manner as a police chief. In fact, if a public safety department was created, any reference in statute or ordinance to a village police chief or fire chief would be considered a reference to the public safety director.

** The role of street commissioner would be eliminated and replaced by a street administrator (as that role is described in Public Act 51 of 1951). A council could also create by ordinance a department of public works to perform the duties of a street administrator and other duties authorized by law or by the council. The village manager could be designated as director of public works.

** The fiscal year of a village would commence on March 1, although the council could by ordinance adopt another date. If a village had another date for the fiscal year when the bill took effect, it would be ratified and would continue until changed or modified.

** The bill specifies that villages that want to acquire private property for the use and benefit of the public would have to follow procedures in the Uniform Condemnation Procedures Act. A number of separate provisions regarding the appropriation of private property would be repealed. The condemnation provisions would not prohibit a village from obtaining private property for a public use by negotiation and purchase. Further, the provisions would not permit a

village to acquire property by condemnation that was located outside of the village.

** New provisions would be provided for the disincorporation of a village. Two procedures would be available. In either case, the bill would require that to initiate disincorporation, a petition signed by at least 15 percent of the registered voters in the village be filed with the village clerk. The petition would designate the township or townships into which the village was to be disincorporated. A village would have to be disincorporated into the township or townships in which it was located, along existing township boundaries. Once the petition was determined to be sufficient, the village council could either 1) allow the question of disincorporation to go directly to the ballot at the next general or special election or 2) decide to form a disincorporation commission to develop a disincorporation plan, which would then be put on the ballot. Under the first procedure, disincorporation would require a "yes" vote from at least two-thirds of the electors voting on the question.

Under the second procedure, the village council could decide by resolution at the next meeting after the petition was found sufficient to form a disincorporation commission. The commission would be composed of three members from each township into which the village would be disincorporated and an equal number of village representatives as total township members. The village appointments would be made by the village president with council approval, and the township appointments would be made by the township supervisor with board approval. The commission would be subject to the Freedom of Information Act and Open Meetings Act. A disincorporation plan would require a two-thirds vote from the village members and a two-thirds vote of members from each township represented. The bill specifies what issues a plan should address.

The plan would be submitted to the village council and to the township board of each affected township for ratification. If each body ratified the plan, the question of disincorporation under the plan would be submitted to voters and would require approval by a majority of the voters of the village and a majority of the voters of each township involved. (The votes of village residents would not be taken into account in determining a majority in a township.) If the plan was not ratified, the question of disincorporation would still be submitted to voters, but in the manner

prescribed for disincorporation without the appointment of a commission (which requires two-thirds voter approval).

If voters disapproved disincorporation (under either procedure), a new petition could not be filed for two years after the election.

[The disincorporation provisions that would be replaced provide that disincorporation can be put on the ballot by a majority vote of the village council or by a petition containing the signatures of one-quarter of the village electors. In either case, a two-thirds vote of the electors is required for disincorporation.]

****** A village incorporated under the General Law Village Act could amend the act by complying with the provisions for amending a charter found in the Home Rule Village Act.

Repealers. The bills would repeal numerous sections of the current act, many of which would be superseded by new provisions in the bills.

MCL 61.1 et al.

FISCAL IMPLICATIONS:

The bills would have no fiscal impact on state or local government, according to the Senate Fiscal Agency. (Floor analyses dated 5-25-98 and 6-5-98)

ARGUMENTS:

For:

The bills would modernize the 103-year-old General Law Villages Act, providing villages greater flexibility in making local decisions about governmental structure and operations. The amendments are the result of several years of work by village officials and attorneys under the sponsorship of the Michigan Municipal League. Many outdated provisions have been removed or rewritten, in recognition of the many changes in village life since 1895 (although some antiquated provisions that have not caused any difficulties have been left alone). Many of the provisions speak for themselves. Some simply provide general law villages with the options available to home rule villages and cities. Some of the key changes include:

-- Villages could decide to reduce the size of the village council. In some villages, reportedly, it is difficult to find candidates to run for local office. Similarly, the officers of clerk or treasurer could be made appointive offices. Residency requirements for appointive offices could be waived. This would permit villages, at their

discretion, to fill some local offices with non-residents. (Both reducing the size of the council and making the clerk and treasurer appointed could be subject to a referendum.)

-- Villages would be granted "general powers" to conduct their business in accordance with the state constitution and state laws, rather than be limited to a list of enumerated powers. The act's current list of powers is out of date.

-- Simple majority votes would replace two-thirds votes for many routine council functions, much like in other units of government.

-- Elections could be made non-partisan, like in many other local units, by a two-thirds council vote (with a referendum option available to village residents).

-- A number of provisions would improve basic public administration, such as allowing the appointment of a police chief (rather than a marshal) who could then hire officers, a job now given to the village president; allowing a public safety department to be created, with either separate or combined police and fire departments; allowing the creation of a public works department (in place of a street commissioner); allowing the abolition of the cemetery board of trustees, with those duties to go to the village manager or public works director; allowing a long-term employment contract for a village manager, thus potentially attracting better candidates for the job; and eliminating the office of village assessor, since property assessment is a task carried out by the township. In most cases, the bills allow, but do not require, villages to make these changes.

-- A clear, orderly procedure would be provided in the event a village wanted to disincorporate and become part of the surrounding township or townships. The procedure gives equal representation to village and township officials and requires separate majority votes by village and township electors.

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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.