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CONCEALED WEAPONS LICENSES

House Bill 5551 (Substitute H-5)
Sponsor: Rep. Alan Cropsey

House Bill 5552 (Substitute H-2)
Sponsor: Rep. Candace Curtis

House Bill 5553 (Substitute H-3)
Sponsor: Rep. Howard Wetters

House Bill 5554 (Substitute H-2)
Sponsor: Rep. James McNutt

House Bill 5555 (Substitute H-2)
Sponsor: Rep. Kirk Profit

House Bill 5556 (Substitute H-1)
Sponsor: Rep. Allen Lowe

House Bill 5557 (Substitute H-2)
Sponsor: Rep. Eileen DeHart

First Analysis (6-30-98)
Committee: House Oversight and Ethics

THE APPARENT PROBLEM:

Since the enacting of the handgun licensure act, Public Act 327 of 1927, the selling, purchasing, possession and carrying of certain firearms has been regulated by the state. Under current law there are 83 separate county concealed weapon licensing boards that are identified as the licensing authorities for their jurisdictions and have the full authority and responsibility for hearing the petitions of citizens who wish to be granted a license to carry a concealed weapon. Under the current provisions, a three-member county gun board, made up of representatives of the sheriff, prosecutor, and state police, decides whether to grant an applicant a concealed weapons license. In most counties the person who applies for such a license not only must establish that he or she is qualified for the license, but also has the burden of establishing that he or she has a special need for such a license (good reason to fear injury to person or property or other proper reason). (For a further explanation of the current restrictions see BACKGROUND INFORMATION.)

Currently, each county "gun board" has differing standards for what constitutes sufficient need for a concealed weapon license, and what might be sufficient grounds to receive a license in Macomb County might not be sufficient in Kent County. Many people feel that the current system could be improved by providing a uniform statewide system with specific objective criteria for the county gun boards to use in determining whether or not a particular applicant should be granted a license.

THE CONTENT OF THE BILLS:

The bills would change the rules and procedures by which citizens may apply for and receive licenses to carry concealed weapons. Currently, licenses to carry concealed weapons are issued by one of 83 separate county "gun boards." The individual applying for the license has the burden of establishing that he or she has a special need for such a license. The legislation states that "It is the intent of the legislature to create a

standardized system for issuing concealed pistol licenses to prevent criminals and other violent individuals from obtaining licenses to carry a concealed pistol and to allow law abiding residents to obtain a license to carry a concealed pistol. It is also the intent of the legislature to grant an applicant the right to know why his or her application for a concealed pistol license is denied and to create a process by which an applicant may appeal that denial." The bills are tied-barred to each other and would take effect January 1, 1999.

House Bills 5551-5555 would amend the handgun licensure act (MCL 28.422 et al.). Each county would continue to have a concealed weapon licensing board with exclusive authority over issuing or denying licenses to carry a concealed pistol to residents of that county. The boards would review the concealed weapon license applications of county residents, determine whether or not to issue a license, and perform other duties as required by law. The boards would continue to have the following persons or their designees as members: the county prosecuting attorney, the county sheriff, and the director of the Department of State Police. In addition, the board would also include two members of the general public who would be appointed by the county board of commissioners or, if the county had a county executive, by the county executive. A person who was appointed to represent the general public would have to meet the requirements for having a concealed pistol license and at least one of the general public members would have to be certified to provide the pistol safety instruction required for licensure under the bills. The prosecuting attorney or his or her designee would act as the board's chairperson and the county clerk would serve as the clerk of the board. Three members would constitute a quorum; however, the business of the board would be conducted by a majority vote of all of its members.

An individual who received a license to carry a concealed pistol under the bills would not be required to also get a license to purchase, carry, or transport a pistol. If a person with a license purchased a pistol, the seller would have to complete a sales record in triplicate as provided by the state police, including the individual's concealed weapon license number. The seller would retain one copy of the record, provide a copy to the purchaser and forward the original to the state police within 10 days of the purchase. The state police would be able to promulgate rules to implement this. The triplicate record purchase requirements would not apply to wholesalers or those purchasing

antiques. A person who made a materially false statement on a sales record would be guilty of a felony punishable by imprisonment for up to four years, a fine of up to \$2,000, or both.

Application for license. In order to receive a license to carry a concealed pistol, an individual would have to obtain and complete an application form provided by the director of the Department of State Police. County sheriffs, local law enforcement agencies, and county clerks would be required to provide an application kit during normal business hours to anyone who wanted to apply for a license to carry a concealed pistol. The kit would contain an application form, fingerprint cards, and written information regarding the procedures involved in obtaining a license, including where the individual could receive the necessary training to qualify for such a license, the applicant's right to appeal the denial of a license, and the form required for making an appeal. The concealed weapon licensing board would be required to retain a copy of each application as an official record.

The form would provide the applicant a place to indicate whether he or she needed a temporary license while waiting for the regular license to be issued. The applicant would have to file the completed application with the county clerk during normal business hours. The licensing board would have to provide each applicant with a copy of a compilation of the state's firearms laws created by the Legislative Service Bureau. The compilation would be provided to the applicant at the time the application was submitted and the board would have to require the applicant to sign a written statement indicating that he or she had received a copy of the compilation.

The application would have to be signed under oath and include the following: the applicant's name and address and, if appropriate, a statement indicating that the applicant resides in a city, village, or township that has a police department; the names, addresses and telephone numbers of three references -- two who were not related to the applicant, and one who was related to the applicant by marriage, blood, or adoption and was 18 years old or older. If the applicant did not have a spouse, parent, grandparent, great-grandparent, uncle or aunt, sibling, niece or nephew, son or daughter, grandson or granddaughter, great grandson or great granddaughter who was 18 years old or older, the applicant would have to include a statement so indicating. The application would also have to include statements indicating the following:

** that the applicant was familiar with and met the requirements set forth in the act for a license to carry a concealed pistol,

** that the applicant has no history of mental illness that would disqualify him or her from receiving a license and indicating whether he or she has been treated for substance abuse within the preceding five years,

** whether the applicant has been convicted in this state or elsewhere for any crime involving domestic violence,

** that the concealed weapon licensing board would have access to any record of the juvenile division of the probate court or the family division of the circuit court relating to the applicant's eligibility to receive a license, and to the applicant's medical records that relate to his or her statements about history of mental illness and treatment for substance abuse. However, the applicant could request that these records or information be reviewed by the board in a closed session which the applicant and his or her representative would have the right to attend. Information received regarding these records or information would be confidential and could not be disclosed to any person except for the purposes of determining whether to issue a concealed weapon license to the applicant.

** whether the applicant had ever been denied a license to carry a concealed weapon in this or any other state, and, if so, the reasons for the denial, if known.

Finally, the application would also have to contain conspicuous warnings that intentionally making a material false statement on the application would be a felony punishable by imprisonment for up to 4 years, a fine of up to \$2,000, or both, and that the acceptance of a license to carry a concealed weapon would constitute an implied consent to the lawful request of a police officer for the license holder to undergo chemical analysis.

Requirements for license. In order to be eligible to receive a concealed weapon license an individual would have to:

** be a citizen of the United States or a resident legal alien, and a resident of Michigan who has resided in the state for at least one year;

**be at least 21 years old, or at least 18 years old if the individual were required to carry a concealed weapon as part of his or her employment. [A license issued to an 18-,19-, or 20- year-old under this exception would only allow the individual to carry a concealed weapon in the course of his or her employment];

**show evidence of knowledge or training in the safe use and handling of a pistol (see below);

** never have been convicted of or confined after a conviction for a violent felony. [A violent felony would include felonious assault; assault with intent to commit murder; assault with intent to do great bodily harm less than murder; unarmed assault with intent to steal; attempted murder; home invasion; first degree child abuse; solicitation to commit murder; first and second degree murder; manslaughter; kidnaping; breaking or escaping jail, health care facility or other place of confinement; aggravated stalking; carrying or possessing a firearm during the commission of a felony; first, second, and third degree criminal sexual conduct; assault with intent to commit criminal sexual conduct; armed and unarmed robbery; bank, safe, or vault robbery; inciting to riot; or a violation of a substantially corresponding law of the United States, another state, or a local unit of another state. Confinement would include detention in a juvenile facility, and conviction could include a final conviction, payment of a fine, a guilty or nolo contendere plea that was accepted by the court, a finding of guilt for a criminal law violation, or a juvenile adjudication or disposition for a violation that if committed by an adult would be a crime by either the juvenile division of probate court or family division of circuit court, regardless of whether the penalty is rebated or suspended];

**have no other felony charges pending, nor convictions or confinement for any other felonies, in this state or any other, for the eight years immediately prior to the application;

**have not been convicted of or confined for a specified criminal offense during the eight years preceding the application. [Specified criminal offenses would include fleeing and eluding; hindering or obstructing a weights and measures enforcement officer; hindering, obstructing, assaulting, or committing bodily injury upon a director or other authorized representative under the Motor Fuels Quality Act; negligent careless, or reckless operation

of a vessel resulting in crippling or death; exhibiting or providing sexually explicit materials to minors; assault or spouse abuse; third degree child abuse; third degree abuse of a vulnerable adult; solicitation to commit murder or other felony; negligently suffering escape or refusing to receive a prisoner; receiving an award for assisting an escape; impersonating a sheriff, conservation officer, coroner, constable, or police officer; illegal use of self-defense spray or sale to a minor; transporting or possessing a loaded firearm in or upon a sailboat, motor vehicle, aircraft, motorboat, or other vehicle propelled by mechanical means; negligent homicide; desertion from military service; stalking; fourth degree money laundering; use of a motor vehicle without permission without intent to steal; resisting or obstructing an officer; fleeing and eluding; assaulting a peace officer; fourth degree criminal sexual conduct; careless, reckless, or negligent use of a firearm or a bow and arrow; or a violation of a substantially corresponding law of the United States, another state, or a local unit of another state.];

** never have been acquitted of a crime on grounds of insanity;

** not be under a court order of legal incapacity in this state or any other state, nor be under an order of involuntary commitment for mental health treatment;

**not be currently enjoined from possessing, using, transporting, selling, purchasing, carrying, shipping, receiving, or distributing a firearm under MCL 750.224f, which bars individuals convicted of committing or attempting to commit certain crimes from possessing, using, transporting, selling, purchasing, carrying, shipping, receiving, or distributing firearms;

** not be the subject of a LEIN order or disposition entered as the result of his or her involuntary hospitalization or alternative treatment under the Mental Health Code, or legal incapacity under the Revised Probate Code, or due to the existence of an injunction or restraining order for domestic violence, or for stalking under the provisions of the Revised Judicature Act, or for having been declared not guilty of any crime by reason of insanity, or having been released from incarceration subject to conditions or restrictions placed upon him or her for the protection of others;

** have passed a drug screening test administered by the state police within 14 days before the application was submitted.

In addition, the board would have to determine that issuing a license to the applicant would not threaten the safety of the applicant or any other person.

Licenses. The concealed weapon licensing board would be required to issue a license to any applicant who had properly submitted an application and whose application indicated that he or she was eligible to have a license within 30 business days after proper submission of the application.

The concealed weapon licensing board would be required to use the law enforcement information network to verify that an applicant met the requirements. The board could also contact the references provided by the applicant. The board would be allowed to investigate an applicant, including, where possible, contacting his or her local police department, provided that the investigation was restricted to determining whether the applicant was eligible for a license. The board could also require the applicant to appear before the board at a mutually agreed upon time for a conference. The applicant's failure or refusal to appear for such a conference, without good reason, would be grounds for denial of a license.

An applicant could be given a temporary license, pending the issuance of a full license, if the licensing board determined that there was probable cause to believe that the applicant or his or her family would be endangered by the applicant's inability to obtain a license immediately. A temporary license would be issued in a form provided by the state police. The license would be unrestricted and would be valid for no more than 180 days, with the opportunity to renew the license for one additional period of no more than 180 days.

A full license would be valid for three years and could be renewed in the same manner as the original license. However, a license renewal would be subject to lower fees and would not require fingerprints. In order to renew a license, a license holder would be required to present a signed statement to the board certifying that he or she had completed no less than three hours of review of the training required for initial licensing since receiving the license, including firing range time in the six months immediately preceding the renewal application.

A person who possessed a license to carry a concealed pistol at the time the bill took effect (January 1, 1999) would be allowed to continue to carry a weapon under that license until the expiration or termination of the license, whichever occurred first. At that point the person could apply for a license renewal under the bill's provisions. In these cases, the licensee would pay the lower renewal fee; however, he or she would be required to meet the full educational requirements as though he or she were applying for the first time.

The license itself would contain the license holder's name, address, and physical description, as well as the license's effective dates, and any restrictions. The license would authorize the license holder to carry a pistol, concealed on or about his or her person, or in a vehicle (concealed or otherwise) throughout Michigan or other states as allowed by the laws of those states.

Carrying a concealed pistol. A license holder would be required to have the license in his or her possession anytime he or she was actually carrying a concealed pistol and would be required to show the license and his or her driver license or Michigan personal identification card to a police officer at the officer's request. Failure to comply with an officer's request or failure to carry one's concealed pistol license would be a state civil infraction, punishable by a fine of up to \$100, and the court would be required to notify the appropriate concealed weapon licensing board.

If an individual was discovered carrying a concealed weapon without a license, the weapon could be seized by a peace officer immediately without any hearing or other procedure. However, if the licensee had his or her driver's license or Michigan ID and the officer were able to verify that the individual had a license through the LEIN system, then the pistol would not be subject to forfeiture.

If the individual had no license to carry a concealed pistol, the weapon would be forfeited to the state for carrying or possessing a weapon in violation of state law. However, a license holder whose pistol was seized for failing to show his or her license to a police officer would be able to reclaim the pistol by showing his or her license to the law enforcement agency holding the weapon within 45 days of the weapon's seizure. If the weapon was not claimed within 45 days, the law enforcement agency could dispose of the weapon in the same manner as if the owner had been unlicensed.

Alcohol restrictions on license holders. A license holder would be prohibited from carrying a concealed pistol while he or she was under the influence of alcohol or a controlled substance or while having a bodily alcohol content (BAC) of 0.04 grams or greater per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine. A peace officer who believed that a license holder was violating this prohibition could require the license holder to submit to a chemical analysis. The officer would first have to inform the license holder that he or she could refuse to submit to the test, but if he or she did refuse his or her license could be revoked or suspended and/or the officer could get a court order to require the license holder to submit to the test. The officer would also have to inform the license holder that if he or she submitted, he or she could choose who would perform the test. If the license holder refused to submit to the test or if the test was made and the results indicated a prohibited level of alcohol, the officer would be required to promptly report the refusal or violation in writing to the concealed weapon licensing board that issued the license.

The collection and testing of blood, breath, or urine for chemical analysis would be conducted in the same manner as such specimens are collected and tested for alcohol- and drug-related driving violations under the Michigan Vehicle Code. A license holder who was found to be in violation of these restrictions would be subject to the following penalties:

** If he or she had a BAC of .04 or more but less than .08 grams, the person would be responsible for a civil infraction and could be fined not more than \$100. In addition, if the individual were found responsible for a subsequent violation, the court would be required to notify the licensing board that issued the individual's license.

** If the licensee had a BAC of .08 or more but less than .10 grams, he or she would be guilty of a misdemeanor and could be punished by imprisonment for no more than 93 days and/or a fine of \$100. The court could also order the license board that had issued the individual's license to revoke the license and the board would be required to comply.

** If the person had a BAC of .10 grams or more or was under the influence of alcohol, a controlled substance, or a combination of drugs and alcohol, the licensee would be guilty of a misdemeanor punishable

by imprisonment for no more than 93 days and/or a fine of \$100. The court would be required to order the appropriate licensing board to revoke the individual's license for no less than one year or more than three years.

The provisions against carrying a concealed pistol while intoxicated would not prohibit a licensee with any bodily alcohol content from transporting his or her pistol in the locked trunk of his or her motor vehicle or unloaded and separated from its ammunition in a locked compartment or container if the vehicle didn't have a trunk.

Restriction on where a person could carry a concealed pistol under a license. Although an employer, including a police agency, could not prohibit an employee from either applying for and receiving a concealed weapon license or carrying a concealed weapon in compliance with such a license, an employer could prohibit an employee from carrying a concealed pistol during the course of his or her employment.

Furthermore, an owner, his or her agent, or an entity with the authority to regulate entry into a public building or vehicle could post a sign prohibiting carrying a concealed weapon on that property or vehicle. A sign prohibiting a concealed pistol in a public building would have to contain a statement in English, indicating that carrying a concealed weapon into that public building was prohibited by law. The letters would have to be at least one inch tall and in a color that contrasted with the background. The signs would have to be displayed in a conspicuous manner clearly visible to the public and posted at each entrance to, and exit from, the building.

Knowingly entering into or onto posted property while carrying a concealed pistol would be a civil infraction punishable by no more than a \$100 fine and the court would be required to notify the appropriate concealed weapon licensing board. The prohibition against carrying a concealed pistol on posted property would not apply to the owner of the property or his or her agent, a person who was given permission by the appropriate authority (the owner, his or her agent, the entity, or the entity's agent) to carry a concealed pistol on the property or in the vehicle, or a peace officer in the course of his or her employment.

Notification and reporting of crimes committed by license holders. If a license holder were charged with having committed a violent felony, felony, or specified criminal offense, the prosecuting attorney would be required to promptly notify the chairperson of the concealed weapon licensing board that had issued the

license holder's license. The prosecuting attorney would also have to promptly notify the chairperson of the board of the disposition of the charge. If the license holder were convicted of the crime, the prosecuting attorney would be required to indicate to the board whether the crime had involved brandishing or use of a pistol, the license holder had been carrying a pistol during the commission of the crime, or if no pistol had been carried by the license holder during the commission of the crime. The state police would be required to provide a form for reporting this information.

Each year the chair of the board would be required to compile and provide a report to the Department of State Police by a date determined by the director of the department. The report would contain the information reported by the prosecuting attorneys and the information provided by the courts for failure to show a license to a peace officer, carrying a concealed pistol on property appropriately posted as not allowing concealed weapons, or having a bodily alcohol content of more than .04 and less than .08 grams.

Denials, revocations and appeals. A license that had been issued based on an application containing a material false statement would be void from the date it was issued.

Within 10 business days after denying a person's application for a concealed pistol license, a concealed weapon licensing board would be required to inform the applicant in writing of the reasons for the denial and of the applicant's right to appeal the board's decision to the district court. The explanation of the board's decision would have to include a statement of the facts supporting the denial, and copies of any writings, photographs, records, or other documentary evidence used to support the denial.

A concealed weapon licensing board could revoke any license it issued if it determined that the individual was not eligible to have received the license or that the license holder had committed any violation of the act. A person could not have a license revoked for failing to show his or her license to a peace officer, carrying a concealed pistol in violation of a posting prohibiting concealed weapons in or on certain property or vehicles, or having a bodily alcohol content of more than .04 and less than .08 grams while carrying a concealed pistol. However, if the board determined

that the license holder had been found responsible for three or more civil infraction violations of the handgun licensure act, the board would be required to hold a hearing and could suspend the individual's license for no more than one year.

In order to revoke a license the board would have to issue a written complaint and provide the license holder an opportunity for a hearing before the board. The board would be required to give the individual at least seven days notice prior to the hearing. Notice would have to be served personally or by certified mail delivered to the individual's last known address. The clerk of the board would be authorized to administer an oath to anyone who testified before the board in such a hearing.

An applicant could appeal the board's decision to deny a license, fail to issue a license, or to issue a restricted license to the district court for the judicial district where he or she resides. The hearing on the appeal would be a trial de novo (from the beginning -- of the application and qualifications, not of the process) without a jury. Witnesses would be sworn and a verbatim record would have to be taken. If the court determined that the board's decision was arbitrary and capricious, the court could order the board to pay the applicant's actual and reasonable costs and attorney fees for the appeal. If the applicant's appeal was found to be frivolous, the court could order the applicant to pay the board's actual and reasonable costs and attorney fees.

Firearm safety training. An applicant would be required to show that he or she had knowledge or training in the safe use and handling of a pistol. In order to be sufficient to provide the required knowledge and training, the program and instructor would have to be certified by this state or a national or state firearms training organization and provide instruction in at least the following areas: the safe use and handling of a pistol; ammunition knowledge and fundamentals of handgun shooting; handgun shooting positions; firearms and the law, including civil liability issues; avoiding criminal attack and controlling violent confrontations; and Michigan's laws regarding carry a concealed pistol. The course would have to include at least 12 hours of instruction with four hours of firing range time and provide a certificate of completion.

Fingerprinting. As part of the application process, the applicant would be required to have two sets of fingerprints taken. The fingerprints would be taken by the local county sheriff on forms supplied in the application kit. The sheriff's office would be required to take the applicant's fingerprints within three business days after the applicant's request to be

fingerprinted. The fingerprints would be forwarded within 10 days after being taken - one set of fingerprints would be go to the FBI or an entity designated by the FBI and the other would be sent to the Department of State Police. Both sets of prints would be compared by the appropriate subdivision of each agency with the print records retained by each agency. The FBI would then send a report of its comparisons to the Department of State Police. Within 10 days of receiving the FBI's report the department would be required to send copies of the results of both fingerprint comparisons to the county sheriff that took the fingerprints and to the concealed weapon licensing board for the county where the applicant resides. The FBI would be required to return the fingerprints to the department and the department would be required to destroy the prints.

A concealed weapon licensing board could not issue a license to the applicant without both fingerprint comparison reports, nor would the board be required to issue a license to an applicant whose fingerprints were determined to be unclassified by the FBI.

Fees. Each applicant would pay a fee equal to the reasonable and necessary costs of implementing the act, no less than \$49 or more than \$100, payable to the county at the time the applicant filed his or her application. The fee would be divided between the county and the state -- \$10 would go to the county treasurer to be deposited in the county's general fund and credited to the county clerk and \$39 would be forwarded to the state treasurer for deposit into the state general fund to the credit of the Department of State Police. The remaining balance would be credited to the county sheriff for all costs to the sheriff in implementing the bill's provisions.

Fees for a license renewal would be \$35 payable to the county for deposit in the general fund of the county. However, a retired police officer of this state or a political subdivision of this state would not be required to pay a renewal fee, provided that he or she presented satisfactory evidence to the board of his or her status as a retired police officer.

Concealed weapon license data bank and annual report. The Department of State Police would be required to use information from concealed weapon licensing applications to create and maintain a

computerized data base to keep track of who applied for licenses to carry concealed weapons. The data base would contain only the following information about each applicant:

** The names, addresses and county of residence of all applicants.

** Where applicable, the concealed weapon license number, its expiration date, and any restriction on a license issued to a person under the age of 21 for use during his or her employment.

** If the applicant had been denied a license, the reasons for that denial. An explanation of why a license had been denied would be deleted from the data base if the individual were later issued a license.

** A statement of all criminal charges pending and convictions against the applicant during the license period.

** A statement of all civil infractions of the handgun licensure act pending or obtained against the applicant during the course of the license period.

In addition, the data base would contain the following information regarding the behavior of licensees, categorized by offense:

** The number convicted or found responsible for civil infractions of the handgun licensure act or for criminal violations, including the number of crimes in each category that had involved the brandishing or use of a pistol, carrying a pistol during the commission of a crime, and the number where the license holder had not used a pistol during the commission of the crime.

** The number that had criminal charges pending, dismissed, and findings of not responsible or not guilty.

The information contained in the data base would be entered into the LEIN and would only be released for the purposes of the act or for law enforcement purposes. The state police would be required to file an annual report with the Secretary of the Senate and the Clerk of the House of Representatives. The report would have to contain all of the following information for each county concealed weapon licensing board:

** The number of applications received, licenses issued, licenses denied, licenses revoked, and the number of applications pending at the time of the report.

** The categories for the denials and categories for revocation.

** The mean and median amount of time and the longest and shortest times taken by the FBI to supply the fingerprint comparison report (this could be derived from a statistically significant sample).

** The costs incurred per permit in each county.

Repealers. The bills would repeal the current concealed weapons licensure provisions, the fee limit for a license to purchase, carry, or transport a pistol, and the waiver of renewal fees under the handgun licensure act for retired police officers.

House Bill 5556 would amend the provisions of the Michigan Penal Code (MCL 750.239) that require that a pistol carried in violation of the code be summarily forfeited to the director of the Department of State Police and be disposed of according to his or her instructions. The bill would provide an exception for seizure of a concealed pistol that had been carried without a license and provide that such cases would be subject to the provisions of handgun licensure act as amended by the other bills in the package.

House Bill 5557 would amend the Open Meetings Act (MCL 15.268) to provide that a public body could meet in a closed session, upon an applicant's request, for the purpose of considering certain material or information submitted by an applicant for a license to carry a concealed pistol.

BACKGROUND INFORMATION:

Under Michigan's current system, each of the 83 county concealed weapon licensing boards is made up of the county prosecuting attorney, the county sheriff, and the director of the Department of State Police, or their authorized representatives. The prosecuting attorney or his or her representative is the chairperson of the board. The board is required to meet at least once per month and at other times at the call of the chair. These boards have the exclusive authority to grant an applicant a license to carry a concealed pistol on their person within the rules provided by state law.

In order to receive a license or permit to carry a concealed weapon (CCW license or permit) a person must fill out and submit an application to the county

sheriff for the county where the applicant resides. The application forms require general information about the applicant and the applicant must indicate his or her reasons for needing a CCW permit and sign the application under oath. Depending upon where the applicant resides, the completed application form must be approved by the applicant's local chief of police or township supervisor. In such cases, if the application is not approved the applicant has ten days to appeal the objection in writing to the licensing board.

In addition, the applicant must have two sets of fingerprints taken by the local police or county sheriff; one set is checked by the state police while the other is sent to the FBI. Both sets are checked against existing records and reports are sent to the county clerk. The board is prohibited from issuing a license unless it receives a report from the state police and the FBI indicating that the comparisons of the fingerprints do not show that the applicant was convicted of or confined for a felony during the eight years preceding the application. A temporary permit for a period of not more than 30 days may be issued while waiting for the comparison reports. The Department of State Police retains the fingerprint cards.

Upon receiving the application and the fingerprint reports, the board notifies the applicant of the time and date of the board's meeting at which the applicant is to appear. At the meeting, the board reviews the application and the fingerprint report, and interviews the applicant. After the applicant's qualifications are reviewed and the interview is completed, the board votes on the request. A majority is required for approval. Restrictions as the board deems necessary may be placed upon the license. There are generally three types of licenses: target, range, and hunting permits allowing the licensee to carry pistol to and from shooting sites; home, bank, and business permits allowing the licensee to carry a pistol during the course of employment; and general carry permits allowing a licensee to carry a pistol without restrictions or with only limited restrictions.

A licensing board is prohibited from issuing a license to anyone who: is under the age of 18, is not a United States citizen, or has resided in the state for less than six months. In addition, the applicant cannot have been convicted of a felony in Michigan or elsewhere during the preceding eight years, or be subject to an order or disposition entered into the Law Enforcement Information Network (LEIN) system for any of the following:

** involuntary commitment under the Mental Health Code,

** a finding of legal incapacity under the Revised Probate Code,

** a domestic violence or anti-stalking restraining order,

** a condition of bail that prohibits handgun ownership, or

** a finding of not guilty by reason of insanity.

In addition, the board must find that the applicant has good reason to fear injury to his or her person or property, or has other proper reasons for having a license to carry a concealed weapon, and is a suitable person to have such a license.

The current fee for a license is \$10, which is paid only if the license is approved. Three dollars go to the state treasurer, while the other seven dollars go to the county's general fund. A license is valid for three years and can be renewed by filing a new application and paying the \$10 fee.

After receiving a license, the licensee is required to carry his or her license on his or her person while carrying a concealed weapon and must show the license to a police officer at the officer's request. The license itself contains identifying information, including a thumb print of the licensee and a list of any carrying restrictions. A pistol carried in violation of the act is subject to seizure and forfeiture.

A license may be revoked by the board upon notification from a magistrate that the license holder has been convicted of violating any provision of the license, or has been convicted of a felony. The board may also revoke a license when it determines that the reasons for granting the license have ceased to exist or that the license holder is unfit to carry a concealed pistol. A license may not be revoked without a written complaint and hearing by the board with at least seven days' notice to the licensee by personal service or registered mail to his or her last known address.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bills would increase state expenses at an indeterminate rate. The requirement that the Department of State Police

perform drug testing of applicants will cause an indeterminate increase in expenses. Each toxicology test costs the department \$400; the amount of the increase would depend upon the number of applicants. In addition, the requirement that the department create and maintain a database will also increase costs. The costs for fingerprint checks will be offset by the fee requirement.

The local fiscal impact of the bills is indeterminate, but will likely increase costs. Costs to local units of government may be offset by the fee structure, but this would depend upon the fee levels established and on investigative resources. In addition, the appeals process provided in the bills could increase costs. (6-24-98)

ARGUMENTS:

For:

The bills are needed to eliminate the current arbitrary and capricious system of issuing concealed weapon licenses. Under the current system, approval of an application for a permit can often depend on who you know on the gun board rather than any objective grounds. Many supporters of the bill claim that in some counties the applications of deserving people have been rejected for no good reason, while the applications of former police officers and judges or others with close ties to the members of the gun board are routinely granted. In addition, applicants are required to bear the burden of showing that they should be granted a license and most people whose applications are denied are never told why the application was not approved, nor are they given an opportunity to contest the board's decision. This process is entirely different from any other licensing process and should be changed to place the burden on the government rather than the citizen and to create a more uniform, and therefore more fair, basis for deciding who should be granted a license.

The bills will assure that every Michigan citizen has the same equal, fair, and impartial opportunity to obtain a CCW permit. Law-abiding citizens would know before applying what criteria they needed to meet in order to receive a license. If the license was denied, citizens would have the right to know why it was denied and could appeal the denial and have a court hear and decide whether or not the application should have been approved. As with all other licenses, the government would have the burden of proving that its denial of the license was for a valid reason. The bills are a vast improvement over the current process, creating a system that is objective and uniform throughout the state, placing the burden of proof on

the government, giving citizens fair warning about the criteria to be met, and allowing citizens due process and a right to appeal the decision of the board.

For:

It is well established that the government cannot guarantee the safety of its citizens. Therefore, responsible citizens should take steps to provide for their own protection. However, the current system for granting citizens concealed weapons licenses interferes with the ability of most law abiding citizens to do this. One of the best means of self protection is to own a gun, and an even better means is to carry a gun on one's person. While a gun in the home can be used to deter, scare off, or, if necessary, wound or kill intruders, it is of little help when a person is away from homes. Without a CCW permit, people are forced to put themselves at risk whenever they leave their homes. However, allowing more honest citizens to carry guns benefits not only those citizens who are armed but also serves to protect those who choose not to carry a gun. Criminals are less likely to engage in criminal activity where the risk has increased that the intended victim might have a gun.

According to some studies, confrontations with criminals where the would-be victim has a gun are more likely to end with would-be attacker fleeing than with shots being fired. Further, those who resist attempted robberies or rape with a gun are half as likely as their unarmed counterparts to be injured.

In 1996 only nine states allowed their citizens to carry concealed weapons. Currently, though, there are 31 states that allow citizens to carry concealed weapons. Many of these states have seen their crime rates drop significantly during this time period. According to a University of Chicago study, concealed handgun laws reduced murder by 8.5 percent and severe assault by 7 percent from 1977 to 1992.

Response:

The University of Chicago study fails to take into account that, of the states included in the study, only Florida had a significant drop in its crime rate. Furthermore, the study also fails to note that overall crime rates have dropped during the time period of the study. Finally, conclusions drawn by the study are contradicted by the fact that during the same time period murder rates also fell dramatically in places with very strict concealed carry laws, like Boston, New York, and Los Angeles.

Against:

The bills attempt to fix a system that isn't broken. The reason there are different standards from one county to another is because the need is different from one county to another. The current system allows for local

control over who gets to carry a concealed weapon in that county. Worse, the bills, although ameliorated by some training requirements and other restrictions, will make Michigan a "shall issue" state. The gun boards will be required to issue a concealed pistol license to anyone who meets the criteria set forth in the bill. The current requirement that a person seeking a license show some need for the license is far safer for everyone and serves to limit the possession of such licenses to those who can prove a degree of need.

The proliferation of gun ownership will also, in spite of the training requirements, increase the risk of accidental shootings. Although the 12-hour training requirement would be an improvement if those provisions stood alone, it should be noted that members of the police force receive years of firearms training and accidents still happen; imagine the potential for increased accidents with large numbers of persons carrying concealed weapons who have only the required 12 hours of training.

Furthermore, if enacted, the bills will simply lead to proliferation of guns on the streets, and an "old west" mentality where every argument is "solved" by the use of a gun. According to studies in Texas, where laws similar to those proposed in the bills have already been enacted, out of the 151,433 people who were issued concealed weapon licenses, 946 were arrested -- 263 for felonies. Of the 683 misdemeanor arrests, 194 were weapons-related charges and 215 were for driving while intoxicated. Family violence was involved in 42 of the arrests -- one for murder, one for attempted murder and seven for aggravated assault with a deadly weapon. The experiences in Texas and no doubt in other states clearly show that requiring the issuance of a CCW license increases the risk that licensees will not only include law abiding citizens.

Response:

The Texas study fails to take into account a number of factors. First, of the 946 arrests, nearly 30 percent resulted in dropped charges or acquittals. Second, 20 percent of the weapons-related offenses for which license holders were arrested were for failure to have their license in their possession. Therefore, the numbers are somewhat exaggerated; a better comparison would have been to look at the number of convictions. Furthermore, many of the more severe

crimes cited did not involve the use of a weapon, nor did many of the crimes involve activities that could be realistically described as an abuse of the privileges of the license. Therefore, most of the criminal activity described really has no bearing on Texas' concealed weapon licensing policy.

Rebuttal:

To dismiss the findings of the report as irrelevant, because the crimes committed by the possessors of CCW licenses have not as yet been random shootings or other gun violence, is illogical. The crimes are significant when weighing the reasonableness of adopting a "shall issue" policy for providing concealed weapons licenses. Supporters of more liberal policies for carrying concealed weapons often support their arguments by asserting that all they wish to do is allow law abiding citizens to carry guns. Unfortunately, the Texas study shows that without further precautions, "shall issue" laws result in a fairly large number of not-so-law-abiding citizens being given licenses. Even though none of these less-than-law-abiding licensees has gone on a rampage with his or her concealed weapon, the fact remains that clearly the "shall issue" process allows for concealed weapons licenses to be put into the hands of people who do not obey the laws, thus putting the general public at greater risk.

Response:

Even so, the results of the study, when taken in context, show that the criminal activity of persons with concealed weapons permits is an extremely small portion of the overall number of crimes committed. For example, of the 1,477 murders, only six involved concealed weapons holders; of 8,376 forcible rapes, only 18 were committed by CCW licensees; and of 80,613 aggravated assaults, only 234 were committed by CCW licensees.

Against:

The bills, as they currently stand, present an extremely costly proposition and have potential Headlee implications for the state. The required drug testing alone would cost \$400 per applicant (more when the costs of taking a blood sample and transporting it are factored in); these costs alone are already far in excess of the application fee.

The "shall issue" provisions, along with the de novo standard of review, would require the gun board to prove to the district court that the license was properly denied. Proving the propriety of the board's decision at a de novo hearing would certainly involve more time and expense for prosecutors, district courts, and local police than is required under the current system

and, without funding from the state, would impose an unfunded mandate in violation of the provisions of Article 9, Section 29 of the state constitution. In addition, several other provisions also create unfunded mandates, although to a lesser extent -- for example, the requirements that the local police and sheriff departments distribute "concealed weapon application kits", that the board immediately give unsuccessful applicants a written explanation of the denial, and that the board retain copies of all applications. These provisions require new activities or increase the level of activity for the local units of government without providing an appropriation.

POSITIONS:

The Michigan Rifle and Pistol Association supports the bills. (6-29-98)

The Michigan Coalition for Responsible Gun Owners supports the bills. (6-29-98)

The Law Enforcement Alliance of America supports the bills. (6-29-98)

The National Rifle Association generally supports the bills, but opposes the drug testing provisions and the "three strikes" provisions. (6-29-98)

The Michigan United Conservation Clubs supports the bills. (6-26-98)

The Michigan Municipal League does not support the bills. (6-26-98)

The League of Women Voters of Michigan opposes the bills. (6-26-98)

The Michigan State Medical Society opposes the bills. (6-26-98)

The Prosecuting Attorneys Association of Michigan opposes the "shall issue" provisions of House Bill 5551. (6-24-98)

The Department of State Police opposes the "shall issue" provisions of House Bill 5551. (6-26-98)

The Detroit Regional Chamber of Commerce opposes the "shall issue" provisions of House Bill 5551. (6-26-98)

The Michigan Police Legislative Coalition opposes the "shall issue" provisions of House Bill 5551 but supports many other concepts suggested in the other bills. (6-26-98)

Analyst: W. Flory

■ 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.