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ADOPT 93-DAY STATUTES BY REFERENCE DESPITE CHARTER DEFINITION

**Senate Bill 831 with House committee
amendment**

Sponsor: Sen. William Van Regenmorter

**Senate Bill 832 with House committee
amendment**

Sponsor: Sen. Thaddeus G. McCotter

**Senate Bill 833 with House committee
amendment**

Sponsor: Sen. Bev Hammerstrom

**Senate Bill 834 with House committee
amendment**

Sponsor: Sen. Shirley Johnson

First Analysis (12-7-99)

**House Committee: Local Government and
Urban Policy**

Senate Committee: Judiciary

THE APPARENT PROBLEM:

Two years ago, the Michigan legislature, in a concerted effort to crack down on repeat offenders such as drunk drivers, devised a system whereby repeat offenders of certain misdemeanors could be fingerprinted for more effective tracking. Since fingerprinting is not provided for under 90-day maximum sentence offenses, sentencing for certain misdemeanor offenses was extended to 93 days.

This package of legislation (17 bills in all), customarily called the repeat offender bills, was passed in the fall of 1998, and went into effect October 1, 1999. According to committee testimony offered by the Michigan Municipal League, the bills initially passed by the legislature inadvertently left local units without the authority to extend 90-day misdemeanors to 93-days. To rectify the situation, four bills were passed in the spring of 1999, allowing local units to revise their local ordinances to provide for the same 93-day sentencing options as were provided in state law. This legislation also went into effect on October 1, 1999. See *BACKGROUND INFORMATION* below.

As local units began rewriting ordinances to meet the October 1 deadline, a new problem was uncovered by some municipal attorneys: a 90-day limit defines the maximum sentence in the charters of some home rule cities and home rule villages. Since the charter limit supercedes any ordinance that a city might pass, as of October 1, these municipalities have not been able to adequately and efficiently prosecute repeat offenders.

There are two ways to address the problem: schedule charter revision elections, although such an approach would be time-consuming and costly; or, amend state statutes to enhance the authority of home rule cities and villages under their state governing statutes, thereby giving officials the authority to enact 93-day sanctions despite their charter limits.

The problem of 90-day sanction limits was discovered as officials in local units of government contemplated adopting the new state drunk driving laws by reference. Indeed, it is customary for local units of government to adopt by reference, state statutes, codes, or rules, and then to enforce those laws as local ordinances. For example, a local unit is allowed under law to adopt the state fire, plumbing, or building codes, or the code

pertaining to hazardous chemicals. This practice enables uniform enhancement among identical or substantially similar laws at both the state and local levels of government.

Although the adoption by reference of 93-day sanctions is not possible for some local units, municipal attorneys agree that as a general matter of policy, uniform enforcement would be more easily accomplished if the officials in cities, villages, and townships could adopt portions of state statutes by reference in two new situations: in order to adopt the Michigan Vehicle Code in its entirety; and, to adopt provisions of any state statute for which the maximum period of imprisonment is 93 days.

In order to extend local authority, and to save citizens the cost of a charter revision election, some have argued that the laws governing home rule cities and villages should be amended to enhance local authority, so that irrespective of a charter limit, officials in home rule cities and villages may enact a 93-day jail sanction for ordinances for which there is a corresponding state statute with a 93-day maximum. Further, proponents of this change have argued that in order to ensure more uniform enforcement of state statutes generally, cities, villages, and townships should be able to adopt all or portions of state statutes by reference in two new situations: the Michigan Vehicle Code in its entirety; and, provisions of any state statute for which the maximum period of imprisonment is 93-days.

THE CONTENT OF THE BILLS:

Senate Bills 831 through 834 would amend various acts to authorize local units of government to adopt certain provisions of state laws and to adopt an ordinance punishable by up to 93 days' imprisonment that substantially corresponded to a provision of state law with the same penalty. The bills also would prohibit the local unit of government from enforcing any provision adopted by reference for which the maximum period of imprisonment was greater than 93 days. The bills are tied-barred to each other and to Senate Bills 855 and 856.

Senate Bill 831 would amend the Home Rule Village Act (MCL 78.23) to specify that, notwithstanding any charter provision to the contrary, a village could adopt an ordinance punishable by up to 93 days' imprisonment or a maximum fine of \$500, or both.

In addition, the act authorizes a village to adopt a plumbing code, electrical code, or building code that has been promulgated by the state, by a department, board, or other agency of the state, or by an organization or

association that is organized and conducted for the purpose of developing that code, by making reference to that code in an adopting ordinance without publishing the code in full. The bill also would authorize a village to adopt, in the same manner, a provision of any state statute for which the maximum period of imprisonment is 93 days, and/or the Michigan Vehicle Code.

Senate Bill 832 would amend Public Act 246 of 1945 which authorizes township boards to adopt ordinances, to allow a township to adopt, by reference in an adopting ordinance, a provision of any state statute for which the maximum period of imprisonment is 93 days or the Michigan Vehicle Code (MCL 41.181 et al.). The adopted state statute would have to be identified clearly in the adopting ordinance, and a statement of the statute's purpose would have to be published with the adopting ordinance or with the published summary of the adopting ordinance. Copies of the statute adopted by reference would have to be kept in the township clerk's office and be available for inspection by and distribution to the public. The township clerk also would have to file a copy of the statute with the county clerk.

The act requires the county clerk to maintain separate files for ordinances of each township in the county, and to make the files readily available to the public. The bill, instead, would require the county clerk to maintain separate files for any statute filed under the bill and to make those files readily available to the public. Finally, the county clerk may currently charge a reasonable fee for the reproduction or furnishing of a copy of an ordinance. The bill also would allow a fee for a statute filed under the bill.

Senate Bill 833 would amend the General Law Village Act (MCL 66.4) to authorize a village to adopt by reference a provision of any state statute for which the maximum period of imprisonment is 93 days and the Michigan Vehicle Code. Currently, a village may adopt by reference a plumbing code, electrical code, mechanical code, fire protection code, building code, or other code promulgated by the state, by a department, board, or other agency of the state, or by an organization or association organized or conducted for the purpose of developing a code.

Senate Bill 834 would amend the Home Rule City Act (MCL 117.3) to specify that, notwithstanding any charter provision to the contrary, a city could adopt an ordinance punishable by up to 93 days' imprisonment and/or a maximum fine of \$500, if the violation substantially corresponded to a violation of state law that was a misdemeanor punishable by imprisonment for up to 93 days.

Also, the act specifies that, whether or not provided in its charter, a city may adopt by reference in an ordinance a law, code, or rule promulgated and adopted by an authorized agency of the state pertaining to fire protection or any of certain specified codes. The bill also would authorize a city to adopt by reference a provision of any state statute for which the maximum period of imprisonment is 93 days, and the Michigan Vehicle Code.

In addition, the act requires that a city's charter provide for the annual laying and collecting of taxes in a sum, except as otherwise provided by law, not to exceed 2 percent of the "assessed value" of real and personal property in the city. Also, the governing body of a city may levy and collect taxes for municipal purposes in a sum not to exceed 1 percent of the "assessed value" of real and personal property in the city. The bill would change "assessed value" in these provisions to "taxable value" and would define "taxable value" as the value determined under Section 27a of the General Property Tax Act (MCL 211.27a).

HOUSE COMMITTEE ACTION:

Earlier during this legislative session, the House passed four bills identical to these: House Bill 5009, which is the same as Senate Bill 831; House Bill 5008, which is the same as Senate Bill 832; House Bill 5010, which is the same as Senate Bill 833; and, House Bill 5016, which is the same as Senate Bill 834). These bills currently are under consideration by the Senate Judiciary Committee.

The House Committee on Local Government and Urban Policy adopted an amendment to each of the four Senate bills that would prohibit the local unit of government from enforcing any provision adopted by reference for which the maximum period of imprisonment is greater than 93 days. According to committee testimony, this amendment has been adopted for each of the companion House bills during deliberations in the Senate Judiciary Committee.

BACKGROUND INFORMATION:

93-Day Jail Term Triggers Fingerprinting for Criminal History Records. The legislature enacted a package of laws in 1994 to provide a penalty of up to 93 days' imprisonment for certain low level offenses. The enhanced penalties were adopted, in part, because the 93-day penalty would trigger statutory fingerprinting and criminal reporting requirements.

When a person is arrested for an offense carrying a penalty exceeding 92 days, he or she is fingerprinted and the fingerprints are sent to the Criminal Records Division of the Department of State Police and the Federal Bureau of Investigation. As a result, a number of state law violations provide misdemeanor penalties of up to 93 days imprisonment, including larceny, embezzlement, receiving and concealing stolen property, and malicious destruction of property involving property worth less than \$200; domestic assault; first offenses of drunk driving and/or driving with a suspended license; and third degree retail fraud.

Although these changes have allowed for better tracking of prior offenses when the offenders are prosecuted under state law, it was noted that local units of government often adopt ordinances based on state statutes. However, jail penalties for local ordinance violations were typically limited by statute to 90 days. This created a conflict because crimes punishable by a 90-day maximum penalty did not require fingerprinting and as a result did not provide the criminal history record for the crime that would allow an increased penalty for a second or subsequent offense. Consequently, legislation was introduced to address this problem, and the bills were enacted into law as Public Acts 55, 56, 57, 58 and 59 of 1999.

Taxable Value instead of Assessed Valuation in Senate Bill 834 (S-1). The term "taxable value" is the term used in property tax statutes to implement the constitutional limit on how much property tax assessments can increase from one year to the next. That limit was added to the constitution with the passage of Proposal A on March 15, 1994, and says the assessment -- "taxable value"-- of a parcel of property cannot increase from one year to the next by more than five percent or the percentage increase in the consumer price index, whichever is less. Property taxes are now based on "taxable value" of property, which will be lower than state equalized value (SEV) where market values are rising at a rate faster than the limit. Since the passage of Proposal A, the legislature has amended many statutes to change the term "state equalized value" to "taxable value".

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, local units that adopted provisions of state laws, as specified in the bills, would minimally reduce costs associated with publishing the local ordinance. The bills would have no fiscal impact on state government. (11-30-99)

ARGUMENTS:

For:

In two ways, these bills would help to jail more repeat offenders. First, they would allow for the creation of more criminal history files, triggered by the 93-day sanction. Since fingerprints cannot be taken for prosecutions that occur under a 90-day ordinance, the state police criminal history file would not include a 90-day violation as a prior offense, and it could not, then, be included in the criminal history record where it would be used to enhance the penalty for repeat violations.

Second, permitting local units to adopt the provisions of any state statute for which the maximum period of imprisonment is 93 days would allow and perhaps encourage local communities to adopt ordinances identical or substantially similar to state statutes for retail fraud, domestic violence, malicious damage to property, and numerous theft offenses that are 93-day misdemeanors, and that carry enhanced penalties for repeat offenses, provided the first violation becomes part of the verifiable criminal history file.

For:

Permitting adoption of the Michigan Vehicle Code by reference would be advantageous for a number of reasons: it could facilitate uniform traffic rules and enforcement; ensure that recent drunk driving statutory changes are effective throughout the state; discourage a shift of prosecution from city, village, or township attorneys to the county prosecutor and county budgets; enable communities to respond more readily to ongoing changes in state traffic laws; and provide a measure of assistance to local government that the state used to provide periodically through promulgation of the Uniform Traffic Code.

Further, this legislation would make the Michigan Vehicle Code more readily available in the law enforcement community, and also subject to common interpretation. Adoption by reference allows a community to adopt a code or statute as its ordinance without having to publish the law, code, or rule in full, although the underlying code or statute must be clearly identified in the ordinance, and its purpose published. Printed copies of the law or code must be kept in the local clerk's office, and be made available for inspection and distribution to the public.

Against:

Some questioned whether these bills might encourage too vigorous enforcement of the Motor Carrier Safety Act by local law enforcement agencies, with the effect that violators of that act might be jailed for minor offenses.

Response:

These bills would allow local units of government to adopt by reference the Michigan Vehicle Code (and not

the Motor Carrier Safety Act), in order to ensure uniform enforcement of the state's drunk driving laws. The 90-day limit for sanctions that is written in some charters thwarts local officials' efforts to set uniform sanctions for locally adopted state statutes, and it impairs municipal attorneys' ability to prosecute repeat offenders.

POSITIONS:

The Michigan Municipal League supports the bills. (12-2-99)

The Department of State supports the bills. (12-2-99)

The Department of State Police supports the bills. (12-2-99)

Analyst: J. Hunault

■ 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.