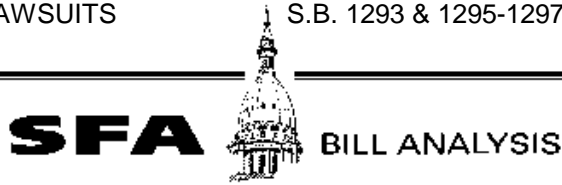

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bills 1293, 1295, 1296, and 1297 (as introduced 5-31-00)
Sponsor: Senator Thaddeus G. McCotter (Senate Bill 1293)
 Senator Ken Sikkema (Senate Bill 1295)
 Senator Dale L. Shugars (Senate Bill 1296)
 Senator Bill Bullard, Jr. (Senate Bill 1297)
Committee: Judiciary

Date Completed: 9-18-00

CONTENT

Senate Bills 1293, 1295, and 1297 would amend various acts that allow cities, townships, and general law villages to regulate public nudity, to provide that if a plaintiff challenged a local ordinance that prohibited or regulated public nudity, he or she would have to name as defendants both the local unit and the State Treasurer. Senate Bill 1296 would extend the existing and proposed public nudity provisions to home rule villages.

The bills also state that a local unit's authority to prohibit or regulate public nudity as set forth by the United States Supreme Court in *City of Erie v Pap's A.M.*, 120 S Ct 1382 (2000), would be recognized by the State. The bills specify that the authority granted in them could not be construed to limit a local unit's authority to enact an ordinance based on the ordinance of the City of Erie, Pennsylvania, that was the subject of *City of Erie v Pap's A.M.*, except for the exclusions from the definition of "public nudity" listed in the acts that the bills would amend.

Senate Bill 1293 would amend the Home Rule City Act; Senate Bill 1295 would amend Public Act 246 of 1945, which authorizes township boards to adopt ordinances and regulations to secure the public health, safety, and general welfare; Senate Bill 1296 would amend the Home Rule Village Act; and Senate Bill 1297 would amend the General Law Village Act.

Under the Home Rule City Act, Public Act 246 of 1945, and the General Law Village Act, "public nudity" means knowingly or intentionally displaying any individual's genitals or anus with less than a fully opaque covering or a female individual's breast with less than a fully opaque covering of the nipple and areola, in a public place, or for payment or promise of payment by any person including payment or promise of payment of an admission fee. (Under the bills, the definition would refer to "the knowing and intentional display...of", rather than "knowingly and intentionally displaying".)

Senate Bill 1293

The Home Rule City Act authorizes a city to regulate or prohibit, by ordinance, public nudity within the city, whether or not that power is provided in its charter. The bill specifies that a plaintiff who challenged an ordinance adopted by a city that prohibited or regulated public nudity would have to join as parties defendant the city and the State Treasurer.

The Act provides that a mother's breastfeeding of her baby does not constitute nudity. The bill, instead, would exempt from the definition of "public nudity" a woman's breastfeeding of a baby, as well as "material" as defined in Public Act 343 of 1984 and "sexually explicit visual material" as defined in Public Act 33 of 1978.

Public Act 343 defines "material" as anything tangible that is capable of being used or adapted to arouse prurient interest, whether through the medium of reading, observation, sound, or in any other manner, including but not limited to, anything printed or written, any book, magazine, newspaper, pamphlet, picture, drawing, pictorial representation, motion picture, photograph, video tape, video disk, film, transparency, slide, audiotape, audiodisk, computer tape, or any other medium used to electronically produce or reproduce images on a screen, or any mechanical, chemical, or electronic reproduction. Material includes undeveloped photographs, molds, printing plates, and other latent representational objects whether or not processing or other acts are required to make the content of the material apparent.

Public Act 33 defines "sexually explicit visual material" as a picture, photograph, drawing, sculpture, motion picture film, or similar visual representation that depicts nudity, sexual excitement, erotic fondling, sexual intercourse, or sadomasochistic abuse, or a book, magazine, or pamphlet that contains such a visual representation. An undeveloped photograph, mold, or similar visual material may be sexually explicit material notwithstanding that processing or other acts may be required to make its sexually explicit content apparent. Sexually explicit visual material includes, but is not limited to, any visual material described in this definition that is communicated, transmitted, displayed, or otherwise made available by means of the Internet or a computer, computer program, computer system, or computer network.

Senate Bill 1295

Public Act 246 of 1945 authorizes a township board to adopt ordinances regulating the public health, safety, and general welfare of persons and property, including ordinances concerning the regulation or prohibition of public nudity. The bill specifies that a plaintiff who challenged an ordinance adopted by a township board that prohibited or regulated public nudity would have to join as parties defendant the township and the State Treasurer.

The Act exempts from the definition of "public nudity" a woman's breastfeeding of a baby, "material" as defined in Public Act 343 of 1984, and "sexually explicit visual material" as defined in Public Act 33 of 1978.

Senate Bill 1296

The bill would amend the Home Rule Village Act to authorize a village to regulate or prohibit public nudity within the village, by ordinance, whether or not that power was provided in its charter. A plaintiff who challenged an ordinance adopted by a village that prohibited or regulated public nudity would have to join as parties defendant the village and the State Treasurer.

The bill would define "public nudity" as described above. The bill would exempt from the definition a mother's breastfeeding of a baby, "material" as defined in Public Act 343 of 1984, and "sexually explicit visual material" as defined in Public Act 33 of 1978.

Senate Bill 1297

The General Law Village Act authorizes a village subject to the Act to regulate or prohibit public nudity within the village. The bill specifies that a plaintiff who challenged an ordinance enacted by a village council to regulate or prohibit public nudity would have to join as parties defendant the village and the State Treasurer. The Act exempts from the definition of "public nudity" a woman's breastfeeding of a baby, "material" as defined in Public Act 343 of 1984, and "sexually explicit visual material" as defined in Public Act 33 of 1978.

MCL 117.5h (S.B. 1293)
41.181 et al. (S.B. 1295)
Proposed MCL 78.24d (S.B. 1296)
MCL 67.1 et al. (S.B. 1297)

Legislative Analyst: P. Affholter

FISCAL IMPACT

Senate Bills 1293, 1295, 1296, and 1297 would result in little to no impact on local and State government revenues. To the extent that local units would be able to reduce the number of adult entertainment establishments or reduce their activity, revenues under the single business tax, sales tax, and individual income tax could decline by an unknown amount. Because these establishments represent a very small portion of the economy, and a substantial portion of the associated economic activity escapes taxation due to the size of the affected businesses and nature of the transactions, any resulting revenue loss would be minimal and not discernible from traditional variations in tax revenues.

The four bills would create a legal responsibility for the State to become involved in lawsuits brought by plaintiffs challenging a local unit's public nudity ordinance. As a result, the State Treasurer and Attorney General could incur additional expenses if a legal challenge were filed. Similarly, by having to involve the State of Michigan in such suits, plaintiffs could be discouraged from pursuing legal actions against public nudity ordinances, thus reducing local government expenditures.

Fiscal Analyst: D. Zin