Senate Fiscal Agency
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SFA BILL ANALYSIS

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Senate Bill 1295 (Substitute S-2 as reported by the Committee of the Whole)
Senate Bill 1296 (Substitute S-2 as reported by the Committee of the Whole)
Senate Bill 1297 (Substitute S-2 as reported by the Committee of the Whole)
Sponsor: Senator Ken Sikkema (Senate Bill 1295)
Senator Dale L. Shugars (Senate Bill 1296)
Senator Bill Bullard, Jr. (Senate Bill 1297)
Committee: Judiciary

CONTENT

Senate Bills 1295 (S-2), 1296 (S-2), and 1297 (S-2) would amend, respectively, Public Act 246 of 1945 (which authorizes township boards to adopt ordinances and regulations), the Home Rule Village Act, and the General Law Village Act, to provide that the State would have an interest in any court proceeding in which a plaintiff challenged a local ordinance regulating or prohibiting public nudity. A plaintiff who challenged such an ordinance would have to serve notice of the proceeding on the Attorney General, who would have to intervene on behalf of the State. The bills provide that this would not alter the immunity from liability granted by law to a municipality or the State.

The bills specify that the State would recognize a local unit's authority to prohibit or regulate public nudity, including but not limited to the form of regulation that was upheld by the United States Supreme Court in *City of Erie* v *Pap's A.M.*, 120 S Ct 1382 (2000). The bills state that they could not be construed to limit a local unit's authority to enact an ordinance based on the Erie, Pennsylvania, ordinance that was the subject of that case.

Senate Bills 1295 (S-2) and 1297 (S-2) would amend the definition of "public nudity" in Public Act 246 of 1945 and the General Law Village Act, to refer to the knowing and intentional display of any individual's genitals or anus with less than a fully opaque covering or a female's breast with less than a fully opaque covering of the nipple, in a "public place" or for payment or promise of payment. The bills would exempt from the definition a display of nudity by a child under 12 years old; in a theatrical production, performed in a theater by a theatrical or musical company and that had serious literary, artistic, political, or scientific value; or by a model in a modeling class operated by a proprietary school licensed by the State, a tax-supported college, junior college, or university, or a private college or university from which credits were transferable to a tax-supported college, junior college, or university or to an accredited private college. Senate Bill 1296 (S-2) would add that definition to the Home Rule Village Act.

"Public place" would mean a location that was frequented by the public, or where the public was present or likely to be present, or where a person could reasonably be expected to be observed by members of the public, and would include streets, sidewalks, parks, beaches, business and commercial establishments, bottle clubs, hotels, motels, restaurants, night clubs, country clubs, cabarets, and meeting facilities used by religious, social, fraternal, or similar organizations. "Public place" would not include an enclosed, single-sex public rest room; an enclosed, single-sex functional shower, locker room facility, or dressing room facility; an enclosed motel room or hotel room designed and intended as a sleeping accommodation; a doctor's office; any portion of a hospital or similar place in which nudity or exposure was necessarily and customarily expected outside of the home and the sphere of privacy was constitutionally protected; or a family-oriented clothing-optional facility that was properly licensed by the State.
In addition, the bills would extend the authority of a township or village to adopt, by reference, provisions of certain State statutes, by including the display of sexually explicit material to a minor, as well as proposed sections of the Public Health Code and the Michigan Penal Code pertaining to the regulation of adult entertainment establishments.

The bills would take effect on June 1, 2001, and are tie-barred to each other and to House Bills 4327, 4359, 5133, and 5134.

MCL 41.181 et al. (S.B. 1295)
78.23 et al. (S.B. 1296)
66.4 et al. (S.B. 1297)

Legislative Analyst: P. Affholter

FISCAL IMPACT

Senate Bills 1293 (S-2), 1295 (S-2), 1296 (S-2), and 1297 (S-2) 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.

Date Completed: 11-28-00

Fiscal Analyst: D. Zin