

Senate Fiscal Agency
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SFA**BILL ANALYSIS**

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House Bill 5008 (Substitute S-1 as reported)
House Bill 5009 (Substitute S-1 as reported)
House Bill 5010 (Substitute S-1 as reported)
House Bill 5016 (Substitute S-1 as reported)
Sponsor: Representative Larry Julian (House Bill 5008)
Representative Ruth Jamnick (House Bill 5009)
Representative Sue Tabor (House Bill 5010)
Representative Michael Bishop (House Bill 5016)
House Committee: Local Government and Urban Policy
Senate Committee: Judiciary

Date Completed: 12-7-99

RATIONALE

In the 1997-98 legislative session, the Michigan Legislature passed a number of measures designed to crack down on repeat drunk drivers and those who repeatedly drive without a license or while a driver's license is suspended. This legislation includes a system whereby offenders who repeatedly commit certain misdemeanors must be fingerprinted, for the purpose of effective tracking. Since fingerprinting is not required for offenses subject to a 90-day maximum sentence, the sentence for certain misdemeanors was extended to 93 days. That legislation, which was passed in the fall of 1998 and went into effect October 1, 1999, inadvertently left local units without the authority to extend their substantially similar 90-day local ordinance misdemeanors to 93 days. To rectify that situation, subsequent legislation was passed in the spring of 1999, allowing local units to revise their ordinances to provide for the same 93-day maximum penalties that were provided in State law. This legislation also took effect on October 1, 1999.

As local units began rewriting ordinances to meet the October 1 effective date, a new problem was uncovered by some municipal attorneys: There is a 90-day maximum sentence limit in the charters of some home rule cities and home rule villages. Since this charter limit supercedes any ordinance that a local unit might pass, these municipalities have not been able to prosecute repeat offenders as envisioned by the original repeat offender legislation.

Some people believe that, in order to extend local authority while saving citizens the time and cost of conducting a charter revision election, the law governing municipalities should be amended so that, irrespective of a charter limit, local officials could enact 93-day jail sanctions for ordinances for which there is a corresponding State statute. Further, proponents of this change claim that, in order to ensure more uniform enforcement of State statutes generally, local units should be authorized to adopt

by reference the Michigan Vehicle Code as well as provisions of any State statute for which the maximum period of imprisonment is 93 days.

CONTENT

The bills would amend various acts to authorize local units of government to adopt by reference a provision of State law that is punishable by up to 93 days' imprisonment or the Michigan Vehicle Code. The bills would prohibit local units from enforcing any provision adopted by reference for which the maximum period of imprisonment is greater than 93 days.

House Bill 5008 (S-1)

The bill would amend Public Act 246 of 1945, which authorizes township boards to adopt ordinances and regulations for the public health, safety, and general welfare, to authorize a township to adopt a provision of any State statute for which the maximum period of imprisonment is 93 days' imprisonment or the Michigan Vehicle Code, by reference in an adopting ordinance. The adopted State statute would have to be identified clearly in the adopting ordinance.

If an ordinance adopted by reference a provision of State statute punishable by up to 93 days' imprisonment or the Michigan Vehicle Code, a statement of the purpose of the statute would have to be published with the adopting ordinance or with the summary of the adopting ordinance published as required under the Act. Copies of the statute adopted by the township 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 would have to include in the publication the designation of a location in the township where a copy of the statute could be inspected or obtained.

The Act provides that, within one week after publication of an ordinance as required under the Act, the township clerk must record the ordinance in a book of ordinances kept for that purpose; record the date of the passage of the ordinance, the names of the board members voting, and how each member voted; and file an attested copy of the ordinance with the county clerk. The bill specifies that, if an ordinance adopted by reference a provision of any State statute, the township clerk also would have to file a copy of that 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. In addition, the county clerk may charge a reasonable fee for the reproduction or furnishing of a copy of an ordinance. The bill also would refer to a statute filed under the bill.

House Bill 5009 (S-1)

The bill would amend the Home Rule Village Act to specify that, notwithstanding any charter provision to the contrary, a village 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.

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 would add to that provision the authority for a village to adopt, in the same manner, a provision of any State statute for which the maximum period of imprisonment is 93 days' imprisonment or the Michigan Vehicle Code.

House Bill 5010 (S-1)

The General Law Village Act authorizes a village to 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. The bill would add authority 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.

House Bill 5016 (S-1)

The bill would amend the Home Rule City Act 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 adopting 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 would add to that provision the authority for a city to adopt, in the same manner, a provision of any State statute for which the maximum period of imprisonment is 93 days' imprisonment or 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% 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% 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).

MCL 41.181 et al. (H.B. 5008)

78.23 (H.B. 5009)

66.4 (H.B. 5010)

117.3 (H.B. 5016)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The bills would help to jail additional repeat offenders by facilitating the creation of more criminal history files, triggered by the 93-day sanction. Since fingerprints are not required to be taken when a person is arrested for violating a 90-day ordinance, the State Police criminal history files may not include a 90-day violation as a prior offense, and it then could not be included in the offender's criminal history records where it would be used to enhance the penalty for repeat violations. The bills would allow for more local ordinance penalties to meet the 93-day standard.

In addition, 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 with identical or substantially similar penalties to those in 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.

Supporting Argument

Allowing local units to adopt the Michigan Vehicle Code by reference would be advantageous for a number of reasons. It could facilitate uniform traffic rules and enforcement statewide; 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; and enable communities to respond more readily to ongoing changes in State traffic laws.

In addition, this legislation would make the Michigan Vehicle Code more readily available in the law enforcement community, as well as subject to common interpretation. Adoption by reference allows a municipality 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. Although not required to be published in full in the ordinance, printed copies of an adopted code must be kept in the local clerk's office and be made available for inspection and distribution to the public.

Further, although the Vehicle Code includes some violations with penalties that are greater than 93 days' imprisonment, the bills would protect against overzealous local enforcement by prohibiting local units from enforcing any provision adopted by reference for which the maximum period of imprisonment is greater than 93 days.

Supporting Argument

In addition to addressing the 93-day penalty/fingerprinting issue, House Bill 5016 (S-1) would update language in the Home Rule City Act relative to a city's authority to lay and collect property taxes. The term "taxable value" is used in property tax statutes to reflect the constitutional limit on property tax assessment increases from year-to-year. That limit was added to the State Constitution with the passage of Proposal A in 1994, and holds that the assessment on a parcel of property can increase annually only by the lesser of 5% or the rate of inflation, until the property is sold. When sold, the

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property is assessed at its State equalized valuation (SEV), a measure of the parcel's true cash value. This means, then, that property taxes are now based on the "taxable value" of property instead of the "assessed value" until the property is sold. Since the passage of Proposal A, the Legislature has amended many statutes to change the term "assessed value" to "taxable value". House Bill 5016 (S-1) would make that change in the Home Rule City Act, bringing cities' statutory taxing authorization into conformity with the State Constitution, the General Property Tax Act, and current assessment practices.

Legislative Analyst: P. Affholter

FISCAL IMPACT

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.

Fiscal Analyst: R. Ross