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POPULATION THRESHOLD: DETROIT

**House Bill 4868 as enrolled
Public Act 173 of 2001
Sponsor: Rep. Triette Reeves**

**House Bill 4872 as enrolled
Public Act 244 of 2001
Sponsor: Rep. Mike Kowall**

**House Committee: Local Government
and Urban Policy
Senate Committee: Local, Urban and
State Affairs**

Second Analysis (4-10-02)

THE APPARENT PROBLEM:

Since 1850, Michigan has taken different approaches in addressing the needs of various locales in the state. Originally, local issues were addressed through the passage of local and special laws. This practice proved to be neither effective nor efficient, and in 1908, the newly adopted Constitution of the State of Michigan provided that the legislature could not pass a local or special act in any case where a general act could be applicable. This provision was later incorporated into the 1963 Constitution. However, it still remained that certain areas had unique needs or problems due to differing situations and circumstances, such as size or location. One way to address such needs but still operate within the constitutional provision of keeping legislation general in scope was through the use of population classifications.

One of the population classifications often used through the years in Michigan statutes classifies "a city with a population of more than 1,000,000". This is generally accepted as a reference to the City of Detroit, since it has been the only city in the state to reach the one million mark in population. In recent years, however, the city has seen a steady decline in population. The U.S. Census Bureau in its Census 2000 data has recently confirmed this population decrease. Detroit, which had 1.85 million people in 1950 and 1.03 million people in 1990, slipped to a population of 951,270 in 2000.

In light of the change in the population numbers for Detroit, it has been suggested that the population

classification that has applied to Detroit be changed from 1,000,000 to 750,000. Legislation has been offered to amend some of the statutes with the one million population classification.

THE CONTENT OF THE BILLS:

A number of statutes contain references to "a city with a population of more than 1,000,000"; this is understood to refer to the City of Detroit. The bills would amend two of these acts to change this population threshold to 750,000.

House Bill 4868 would amend the Home Rule City Act (MCL 117.5i and 117.35a) to change the population threshold in provisions allowing the city to finance the provision of certain services by special assessment, and allowing the issuance of general obligation bonds.

House Bill 4872 would amend the Hertel-Law-T. Stopczynski Port Authority Act (MCL 120.105) to change the population threshold in a provision specifying the membership of the Wayne County port authority, where certain members are to be appointed by the mayor of the City of Detroit, and certain members are to be appointed by members of the county board of commissioners residing outside the city. The bill would also change the county's population threshold from 2 million to 1.5 million.

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In addition, the bill would specify that to the extent not protected by the immunity conferred under the governmental immunity act (MCL 691.1401 et al.), a member of the authority appointed under Section 5 of the port authority act who exercised the powers contained in the act in good faith would be immune from civil or administrative liability arising from that conduct, unless the conduct constituted gross negligence or willful and wanton misconduct.

BACKGROUND INFORMATION:

According to the 2000 Census data released by the U.S. Census Bureau, Detroit is the largest city in the state with a population of 951,270 (a 7.5 percent decrease from 1,027,974 in 1990). Seven other Michigan cities have a population of over 100,000 people: Grand Rapids with 197,800 (a 4.6 percent increase), Warren with 138,247 (a 4.6 percent decrease), Flint with 124,943 (an 11.2 percent decrease), Sterling Heights with 124,471 (a 5.7 percent increase), Lansing with 119,128 (a 6.4 percent decrease), Ann Arbor with 114,024 (a 4.0 percent increase), and Livonia with 100,545 people (a 0.3 percent decrease). Detroit was the only one of the ten most populous cities in the U. S. to fall below the one million population level.

FISCAL IMPLICATIONS:

The House Fiscal Agency reports that House Bill 4868 would have no fiscal impact on state or local units of governments. (6-25-01) The Senate Fiscal Agency reports that House Bill 4872 would also have no state or local fiscal impact. (11-7-01)

ARGUMENTS:

For:

It has been a long-standing practice in Michigan and many other states to craft legislation applicable to certain locales based on population classifications. When a law or a provision of law was meant to apply to the City of Detroit, it was often referenced as applying to "a city with a population of more than 1,000,000." (Of course, if any other city within the state were to reach the one million-population mark, these provisions would apply to that city, also.) Unfortunately, Detroit's population has been in a fifty-year decline, from a high in 1950 of 1.85 million, to now below the one million mark. Therefore, it is necessary to amend statutes with the one million-population reference. The population changes would not make any substantive changes to

current law; they would simply allow the laws to continue to apply to the City of Detroit.

Response:

Port authorities already enjoy immunity from civil liability under the governmental immunity statute. Yet, House Bill 4872 contains a provision that specifies that a member of a port authority who exercised powers according to the port authority act in good faith would be immune from civil or administrative liability unless the conduct constituted gross negligence or willful and wanton misconduct. It is unclear how this language would alter the current status of governmental immunity for a port authority.

(Note: The first time that a similar provision appeared in statute specifying that a person or entity would be administratively immune - in addition to any civil immunity that applied under the governmental immunity statute - was in 1998. Public Acts 496 and 497 of 1998 amended the Public Health Code and the Mental Health Code, respectively, to require access to medical records and mental health information as part of an investigation of alleged child abuse or neglect. It should be noted that health and mental health facilities and health and mental health professionals are licensed by the state. Therefore, they are subject to administrative sanctions by their respective licensing entities for failure to comply with state laws or departmental regulations. Confidentiality laws protect the communications between doctors and psychologists and their patients and between mental health counselors and their clients. The enactment of these two laws, therefore, provided protection from administrative sanctions for a licensed facility or professional who granted access to privileged records in good faith under these acts' provisions.

Public Act 260 of 2001 included a similar provision in a bill amending the redevelopment of shopping areas act. Under P.A. 260, a city or village that approves a business improvement within its boundaries is immune from civil or administrative liability arising from any actions of that business improvement zone to the extent not protected by the immunity conferred by the governmental immunity statute.

It could be argued that conferring administrative immunity to entities or individuals who are subject to license sanctions by an administrative agency, as Public Acts 496 and 497 do, appears to be a different use of the phrase "administrative liability" than that used in Public Act 260 of 2001 and House Bill 4872. Therefore, it remains unclear how, or if, this term would affect the status of the immunity currently

conferred to cities and villages and to port authorities by the governmental immunity statute.)

Against:

Some people are concerned that these bills could have an effect on the distribution of revenue sharing funds.

Response:

The bills would have no effect on revenue sharing. Public Act 532 of 1998 amended the State Revenue Sharing Act to 1) freeze payments to a city with a population of 750,000 for the period of October 1, 1998 through June 30, 2007, at certain levels; 2) place in statute a new formula, phased in over 8½ years, that weights equally three components, including unit type and population, taxable property value per capita, and yield equalization; and 3) effectively sunset the statutory revenue sharing formula after June 30, 2007. (For more information, see the House Legislative Analysis Section's analysis on House Bill 5989 dated 12-15-98.)

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■ 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.