



**House  
Legislative  
Analysis  
Section**

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**REVISE PROVISIONS RE: BOMBS  
AND EXPLOSIVES**

**House Bill 5506 (Substitute H-1)  
Sponsor: Rep. Clarence E. Phillips**

**House Bill 5511 (Substitute H-2)  
Sponsor: Rep. Laura M. Toy**

**Committee: Criminal Justice**

**First Analysis (1-24-02)**

***THE APPARENT PROBLEM:***

The events of September 11, when terrorists destroyed the twin towers of the World Trade Center in New York City and attacked the Pentagon, have focused attention on the vulnerability of buildings where large numbers of people gather. Michigan law currently provides for enhanced penalties for crimes committed in or directed at certain facilities, such as day care centers, public and private schools, places of worship, and colleges and universities. However, some people believe that the law would not necessarily include attacks directed at facilities that could be particularly attractive to terrorists, such as football or baseball stadiums, train or bus stations, tunnels, airports, and power plants. Further, though current law provides for strict penalties for crimes involving explosives, including the placement of fake bombs, there is no penalty for possessing a fake bomb. As part of a multi-bill package on terrorism, Legislation has been introduced to address these matters.

***THE CONTENT OF THE BILLS:***

The bills would amend Chapter 33 of the Michigan Penal Code, which deals with bombs and explosives, to make it a crime to possess a fake bomb and to add to the list of public buildings or places designated as vulnerable targets, respectively. Specifically, the bills would do the following:

House Bill 5506. Currently, under Section 204a of the penal code, a person who delivers, sends, transports, or places a device made to look like “an explosive, incendiary device, or bomb,” and who does so “with the intent to terrorize, frighten, intimidate, threaten, harass, or annoy any other person,” is guilty of a felony punishable by imprisonment for not more than five years or a fine

of not more than \$3,000, or both. House Bill 5506 would amend the code (MCL 750.204a) to also make possession of such devices a felony offense.

House Bill 5511. The penal code makes it a crime to manufacture, deliver, possess, transport, place, use, or release a variety of explosive materials; biological, chemical, or radioactive devices; and chemical irritants or devices, smoke devices, or an imitation harmful substance or device. However, if the violation is committed in or directed at a “vulnerable target” (child or day care center; health care facility or agency; building or structure open to the general public; place of religious worship; public or private school offering any grades K-12; or institution of higher learning) and the violation results in serious impairment of a body function of another individual, the violator is guilty of a separate felony punishable by imprisonment for up to twenty years. This term of imprisonment is served concurrently to the term of imprisonment for the underlying violation.

House Bill 5511 would amend the code (MCL 750.212a) to add the following to the list of “vulnerable targets”:

- a stadium;
- a transportation structure or facility open to the public, including, but not limited to, a bridge, a tunnel, a public highway, or a railroad;
- an airport [as defined in the Aeronautics Code of the State of Michigan (MCL 259.9)];
- port facilities [as defined in the Hertel-Law-T. Stopczynski Port Authority Act (MCL 120.102)]; and,

House Bills 5506 and 5511 (1-24-02)

- a public services facility (defined as any of the following facilities whether publicly or privately owned: a natural gas pipeline, refinery, or storage facility; an electric, stream, gas, telephone, power, water, or pipeline facility; or, a nuclear power plant);
- a petroleum refinery, storage facility, or pipeline; or,
- a publicly owned building.

### **BACKGROUND INFORMATION:**

Following the events of September 11, 2001, the leadership of both caucuses of the state House of Representatives and the Senate, the governor, the attorney general, the Emergency Management Division of the Department of State Police, and various other state departments began meeting to address the issue of terrorism, evaluate the state's disaster preparedness policies, and identify areas that needed reform. In addition, the attorney general began a review of the state's criminal statutes and their ability to deal with the threat of terrorist activities within the state. The multi-bill package on terrorism is a bi-partisan, bi-cameral initiative to address the concerns identified in those meetings.

### **FISCAL IMPLICATIONS:**

According to the House Fiscal Agency, House Bill 5506 would result in an indeterminate increase in state and local costs and an indeterminate increase in local revenues. To the extent that convictions were obtained that would not otherwise be possible, the bill could increase state and local correctional costs. The bill similarly could increase the amount of penal fine revenue collected; such revenues are constitutionally dedicated to local libraries.

The HFA also reports that House Bill 5511 would result in an indeterminate increase in state and local costs. By expanding the definition of "vulnerable target" to include other structures and facilities, the bill could increase state and local correctional costs, the extent of which would depend on how the bill affected the numbers of convictions obtained under the statute. (1-23-02)

### **ARGUMENTS:**

#### ***For:***

Current law criminalizes the delivery, sending, transportation, or placement of a fake bomb – a device that looks like a real explosive device or bomb

– with the intent to terrorize, frighten, and threaten others. However, the current law is silent on the possession of fake bombs, although it is a crime to possess a real bomb. House Bill 5506 would correct this oversight. Even though fake explosives are not dangerous, the intent to manipulate others through fear of harm must be dealt with seriously. Therefore, criminalizing the possession of fake explosives is good public policy.

#### ***For:***

After the attack on the World Trade Center, it became more apparent how certain buildings or structures could be attractive targets for terrorists. The World Trade Center was apparently chosen because it housed a large number of workers and visitors on a daily basis and because it housed many businesses important to the economic health of the country, such as banks, investment companies, and insurance companies.

In Michigan, current law already provides enhanced penalties for directing bombs or other explosives at certain targets, such as schools and places of worship. House Bill 5511 would expand this list to cover power plants, water facilities, telephone facilities, stadiums, bus and train stations (as well as bridges, tunnels, highways, and railroads), airports, port facilities, and publicly owned buildings. These structures and facilities are important to include as they represent places where large numbers of people gather and represent important elements of the state's infrastructure such as phone, water, power, and transportation services and many governmental buildings.

#### ***Response:***

The bill doesn't include shopping centers and many other structures or facilities that could also be attractive targets for terrorists.

#### ***Rebuttal:***

A "vulnerable target" currently includes a building or structure open to the general public. Therefore, shopping centers, the Capitol building, libraries, movie theaters, airports, and bus and train stations would already be covered under current law. Further, adding to the list of what would trigger an enhanced penalty until every building or structure imaginable was covered would defeat the purpose of the law, which was to identify specific buildings or structures that deserve special protection and attach harsher penalties as a means of discouraging anyone from carrying out an attack on those buildings or structures.

***POSITIONS:***

The office of the attorney general supports the bills.  
(1-23-02)

The office of the governor supports the concept of the  
bills. (1-22-02)

The Prosecuting Attorneys Association of Michigan  
supports the concept of the bills. (1-22-02)

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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.