



**House  
Legislative  
Analysis  
Section**

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**REVISE PROVISIONS RE: BOMBS,  
EXPLOSIVES, AND VULNERABLE  
TARGETS**

**House Bill 5506 as enrolled  
Public Act 134 of 2002  
Sponsor: Rep. Clarence E. Philips**

**House Bill 5511 as enrolled  
Public Act 140 of 2002  
Sponsor: Rep. Laura M. Toy**

**Senate Bill 940 as enrolled  
Public Act 116 of 2002  
Sponsor: Sen. Walter H. North**

**House Committee: Criminal Justice  
Senate Committee: Judiciary**

**Second Analysis (8-15-02)**

***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. The bills would take effect April

22, 2002. 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 and Senate Bill 940. These two bills, which are tie-barred to each other, would amend the same section of law, Section 212a of the Michigan Penal Code (MCL 750.212a). Chapter 33 of the penal code, entitled “Explosives and Bombs, and Harmful Devices”, 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

House Bills 5506, 5511 and Senate Bill 940 (8-15-02)

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.

Senate Bill 940 would amend the code 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,
- a public services provider (defined as any of the following services providers: a natural gas company subject to the jurisdiction of the federal Energy Regulatory Commission; an electric, steam, gas, telephone, power, water, or pipeline company; a nuclear reactor; or a nuclear waste storage facility).

House Bill 5511, which was signed into law after Senate Bill 940, became the prevailing law. House Bill 5511 would make similar, albeit different, changes to the list of “vulnerable targets”. Under the House bill, the list of “vulnerable targets” would be amended to include the following (differences from Senate Bill 940 are in italics):

- 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 259.2 and MCL 259.9*)];
- port facilities [as defined in the Hertel-Law-T. Stopczynski Port Authority Act (MCL 120.102)];
- a public services *facility* (defined as any of the following *facilities whether publicly or privately owned: a natural gas refinery, natural gas storage facility, or natural gas pipeline*; an electric, steam,

gas, telephone, power, water, or pipeline *facility*; or, *nuclear power plant, nuclear reactor facility, or nuclear waste storage facility*);

- *a petroleum refinery, storage facility, or pipeline;*
- *a vehicle, locomotive or railroad car, aircraft, or watercraft used to provide transportation services to the public or to provide for the movement of goods in commerce; or,*
- *a building, structure, or other facility owned or operated by the federal government, by this state, or by a political subdivision or any other instrumentality of this state or of a local unit of government.*

In addition, House Bill 5511 would remove the element of the crime that required that a violation result in a person’s death or in the serious impairment of a victim’s body function. This would mean that a person who violated a provision of Chapter 33, and in so doing targeted a structure or facility designated as a vulnerable target, would be guilty of a separate felony punishable by imprisonment for not more than 20 years, whether or not another individual was killed or injured in the commission of the crime.

Further, where current law specifies that a term of imprisonment imposed under this section must be served concurrently to the term of imprisonment imposed for the underlying violation, House Bill 5511 would instead allow a court the discretion to order the term of imprisonment to be served consecutively to that for the underlying violation. Lastly, the bill would not prohibit an individual from being charged with, convicted of, or punished for any other violation of law committed by that individual while violating this section.

### **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. On March 29, 2002, the governor signed the following

30 bills into law: House Bills 4037, 5041, 5270, 5295, 5349, 5495, 5496, 5501, 5506, 5507, 5509, 5511-5513, and 5520, and Senate Bills 730, 930, 936, 939, 940, 942, 943, 946, 948, 949, 994-997, and 1005.

### **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. (1-23-02)

The Senate Fiscal Agency reports that House Bill 5511 would increase costs to state government to the extent that the bill could increase the number of offenders convicted of committing a crime in or directed at a vulnerable target by adding to the definition of “vulnerable target”. The bill could also increase state costs by allowing the sentences to be served consecutively rather than concurrently. An offender would receive up to 20 years’ imprisonment in a state facility. The state would incur the costs at an annual average of \$25,000. (3-5-02)

Regarding Senate Bill 940, according to the House Fiscal Agency, 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. (2-27-02)

### **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. Senate Bill 940, along with House Bill 5511, would expand this list to cover sports stadiums, power plants, water facilities, telephone facilities, stadiums, bus and train stations (as well as bridges, tunnels, highways, and railroads), airports, port facilities, and buildings or structures owned or operated by federal, state, or local governments. 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. Further, under House Bill 5511, a court would not be restricted to order a term of imprisonment for setting off an explosion in or at a vulnerable target to be served at the same time as a sentence for the underlying crime of using explosives or other harmful devices, but could order that the sentences be served consecutively. Perhaps more importantly, a person could be prosecuted for a violation regardless of whether another individual was killed or severely injured. This is important because some of the named structures and facilities may be able to be destroyed or crippled without harming a person, yet could result in a negative impact on the economy or a sector of commerce. It is important to have laws on the books that will act as an appropriate deterrent to acts of terrorism, as well as providing penalties to adequately punish such acts.

#### ***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.

***Against:***

Previously to enactment of House Bill 5511, the application of the additional 20-year felony provided in Section 212a of the penal code was contingent upon the crime being committed in or directed at a vulnerable target plus that another individual was killed or suffered a “serious impairment of a body function.” The bill removed this provision, allowing for the enhanced penalty to be applied regardless of the death or injury to another. However, the bill did not remove the definition of “serious impairment of a body function” from Section 212a. It seems awkward and confusing to keep a definition of a term in a section of law when all reference to that term has been eliminated.

Analyst: S. Stutzky

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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.