Legislative Analysis

HOUSE FISCAL AGENCY
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BLIGHT VIOLATIONS

House Bill 5216 as enrolled
Public Act 316 of 2003
Sponsor: Rep. Steve Tobocman

House Bill 5217 as enrolled
Public Act 317 of 2003
Sponsor: Rep. Bill McConico

House Bill 5218 as enrolled
Public Act 318 of 2003
Sponsor: Rep. Ken Daniels

House Bill 5219 as enrolled
Public Act 319 of 2003
Sponsor: Rep. Jim Howell

House Bill 5220 as enrolled
Public Act 320 of 2003
Sponsor: Rep. Edward Gaffney

House Bill 5224 as enrolled
Public Act 321 of 2003
Sponsor: Rep. Morris Hood III

House Committee: Judiciary
Senate Committee: Judiciary

Second Analysis (9-1-04)

BRIEF SUMMARY: The bills would amend various acts to allow some cities to adopt blight ordinances, provide civil fines and sanctions for blight violations, and establish an administrative hearings bureau to adjudicate and impose sanctions for those violations.

FISCAL IMPACT: The bills would have an indeterminate impact on local units of government and the judiciary; depending on how cities opted to utilize the legislation, the bills could reduce district court caseload burdens and increase municipal administrative costs and civil fine revenues. In addition, presumably, quality of life violations otherwise would be adjudicated as municipal civil infractions, and each municipal civil infraction is subject to a $10 state assessment that, together with other civil infraction and civil filing fee revenues, supports a variety of justice-related programs through the state justice system fund. Thus, depending on the extent to which municipalities opted to adjudicate violations as quality of life violations, the legislation would affect revenues that otherwise would accrue to the state justice system fund.

THE APPARENT PROBLEM:

Legislation in the mid-1990s established a procedure for initiating, adjudicating, and imposing sanctions for ordinance violations designated by a city, village, township, or county as "municipal civil infractions". Primarily, the types of infractions that may be designated as municipal civil infractions are related to zoning and building code violations, noxious weeds, and related ordinances. (The legislation specifically excluded certain violations relating to drunk driving, drug use, and other crimes from being

designated as municipal civil infractions.) It was believed at the time that the municipal civil infraction system would enable local governments to expedite enforcement of building code violations and clean up properties with junked cars, tall weeds, and piles of rubbish.

Almost a decade later, some communities are still struggling with backlogs of months or years before an ordinance violation has a hearing in municipal or district court. With many district courts overwhelmed by serious criminal cases, municipal civil infractions often are given low priority. In Detroit, the 36th District Court has limited the amount of time set aside to hear such cases to one judge three afternoons a week. Further, the low civil penalties ($500 maximum on fines) are not sufficient to stop chronic violators from illegal dumping that pollutes streams, lakes, groundwater, and property. More than eyesores, these dilapidated properties, buildings with code violations, and dump sites pose serious health threats to residents and wildlife and discourage new residents and businesses from relocating in the area.

As Detroit and other urban areas have struggled to clean up their communities, Chicago has initiated an intriguing approach that appears to be successful. In 1997 the city established the Department of Administrative Hearings, the first such system in the nation. According to information supplied on the department's web site, the department hears cases "involving some form of public disorder, blight or nuisance that may directly impact the public health, safety, welfare and quality-of-life" in the community. Seen as a way to hear ordinance violation cases in a fair, expedient, and cost-effective manner, attorneys serving as administrative law officers preside over 400,000 cases a year.

Detroit is scheduled to host several upcoming national events such as the 2004 Ryder Cup, 2005 Major League Baseball All-Star Game, 2006 Superbowl, and 2009 Men's NCAA Basketball Final Four, and has the opportunity to use such events to enhance its reputation and revitalize its economy (as well as the state's) by attracting businesses, new residents, and tourists. However, the condition of many of Detroit's neighborhoods currently acts as a disincentive for investors and families. Detroit, as well as many of Michigan's other urban centers, would like to use the Chicago model to create administrative hearings bureaus that could more effectively deal with ordinance violations than the current system of municipal civil infraction violations that must be heard before a state court. Legislation has been introduced to allow those cities organized under the Home Rule City Act to establish administrative hearings bureaus that would have the authority to issue violations and impose sanctions for certain types of ordinance violations, mainly those infractions contributing to blight.

THE CONTENT OF THE BILLS:

The bills would amend various acts to allow some cities to adopt blight ordinances, provide civil fines and sanctions for blight violations, and establish an administrative hearings bureau to adjudicate and impose sanctions for those violations.

House Bill 5216 would amend the Home Rule City Act (MCL 117.4l and 117.4q) to allow the legislative body of a city whether or not authorized by the city charter, to adopt an ordinance designating a violation of the ordinance as a blight violation. A violation of any of the following types of ordinances could be designated as a blight violation: zoning; building or property maintenance; solid waste and illegal dumping; noxious weeds; disease and sanitation; and vehicle abandonment, inoperative vehicles, vehicle impoundment, and municipal vehicle licensing. However, an ordinance could not designate a violation as both a municipal civil infraction and a blight violation.

Exclusions. If an ordinance could be designated a civil infraction under the Michigan Vehicle Code, the uniform traffic code, or provisions that allow for control of traffic in parking areas, it could not be designated as a blight violation. Similarly, the act currently prohibits a city ordinance from making an act or omission a municipal civil infraction if such an act or omission constitutes a crime under several listed statutes. Under the bill, this provision would also apply to a blight violation.

Administrative hearings bureau. A city with a population of at least 7,500 (or a city with a population of 3,300 or more located in a county that has a population of at least 2 million) could establish an administrative hearings bureau to process blight violations. Under the bill, an administrative hearings bureau could adjudicate or impose sanctions for blight violations, as well as accept admissions of responsibility for blight violations and collect civil fines and costs; the specific jurisdiction to do these activities would have to be established by city ordinance. A bureau would not have jurisdiction over criminal offenses, traffic civil infractions, or municipal or state civil infractions. A bureau and its hearing officers could not impose a penalty of incarceration or a civil fine of more than $10,000. The expense of operating an administrative hearings bureau would have to be borne by the city that established it.

Blight violation proceeding. Detailed provisions pertaining to a blight violation proceeding are contained in the bill, but, in general, the city would issue and serve a written violation notice signed by an authorized local official. The alleged violator could either pay the fine listed on the notice or appear before the administrative hearings bureau to admit responsibility, admit responsibility with explanation, or deny responsibility. Failure to admit responsibility, pay the fine and costs, and appear at a scheduled hearing would result in issuance of a final decision by the administrative hearings bureau. A city would have to establish rules and procedures to set aside the entry of a decision and order of default.

Further, some cities have a rental inspection program and require landlords to register in order to rent a premises for residential use; others have a program but do not require registration as a condition for renting, and some cities do not have a rental inspection program at all. Regardless of the status of a rental inspection program, a city could not issue a blight violation notice to a landlord of premises rented in that city for residential purposes during an inspection unless either of the following occurred:

- The landlord was given a written correction notice of the violation and a reasonable opportunity to correct the circumstances before a reinspection was conducted or before a date specified in the notice.
- The violation was a direct result of an action or inaction of the landlord which created an emergency presenting an immediate risk of harm to people or damage to property, including, but not limited to, a flooded basement or premises without heat.

<u>Hearings and appeals</u>. Details regarding hearings are contained in the bill, but, generally speaking, a party would have to be provided the opportunity for a hearing during which he or she could be represented by counsel, present witnesses, and cross-examine witnesses. The rules of evidence as applied in a nonjury civil case in circuit court would be allowed as far as practicable, but the hearing officer could admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. Irrelevant, immaterial, or unduly repetitious evidence could be excluded. Effect would have to be given to the rules of privilege recognized by law. Objections to offers of evidence could be made and would have to be noted in the record. Under specified conditions, a hearings officer could provide for - in an administrative hearing or by rule - submission of all or part of the evidence in written form.

A final decision by a hearing officer would constitute a final decision and order for purposes of judicial review and could be enforced in the same manner as a judgment entered by a court of competent jurisdiction. A party could file an appeal with the circuit court within 28 days after entry of the decision and order. Such an appeal would be a review by the court of the certified record provided by the administrative hearings bureau. An alleged violator who appealed a final decision would have to post a bond equal to the fine and costs imposed, if payment of the fines and costs had not yet been made. Failure to comply with requirements for an appeal to the circuit court could result in the appeal being considered abandoned; the bureau could then dismiss the appeal with appropriate notice to the parties and the circuit court (which would have to dismiss the claim of appeal). Whether the appeal was dismissed or the decision and order affirmed, the bond could be applied to the fine and costs. An appeal by the city would have to be asserted by the city's attorney and a bond would not be required.

Pending appeal, the hearing officer could stay the order and any sanctions or costs imposed; after an appeal was filed, the court could do so. The court could affirm, reverse, or modify the decision or order, or could remand the matter for further proceedings. Under certain circumstances, the court would have to hold a hearing officer's decision or order unlawful and set it aside if substantial rights of an alleged violator had been prejudiced.

<u>Hearing officers</u>. The ordinance that established a city's administrative hearings bureau would have to provide that adjudicatory hearings be conducted by hearing officers. A hearing officer would have to be an attorney who had been licensed to practice law in the state for at least five years, be appointed according to a city's charter, and complete the training program prescribed in the bill. Duties would include hearing testimony and

accepting relevant evidence; issuing subpoenas; preserving and authenticating the hearing record and all exhibits and evidence introduced at the hearing; issuing written determinations as to whether or not a blight violation existed; and imposing reasonable and proportionate sanctions consistent with applicable ordinance provisions and assessing costs upon persons determined to be responsible for a blight violation.

Justice system assessment. In addition to fines and costs imposed under the bill, the hearing officer would have to impose a justice system assessment of $10 for each blight violation determination. The city would have to transmit the assessment collected to the state treasury to be deposited into the Justice System Fund created in Section 181 of the Revised Judicature Act.

House Bill 5217 would add a new section to the Home Rule City Act (MCL 117.4r) to allow a city to obtain a lien against property involved in a quality of life violation if a defendant did not pay a civil fine or costs or an installment payment as ordered by a hearing officer under the provisions of House Bill 5216 within 30 days after the date on which payment was due. Procedures for instituting the lien are outlined in the bill. Though the lien could be enforced and discharged by a city according to its charter, the General Property Tax Act, or by a local ordinance, it would not be subject to sale for nonpayment of a civil fine or costs imposed under the provisions of House Bill 5216 unless the property was also subject to sale under statutory provisions for forfeiture, foreclosure, and sale for delinquent property taxes. With the exception of a few stated situations, the lien would have priority over any other liens on the property.

A city could institute court action to collect the judgment imposed under the bill for a quality of life violation; the lien would not be invalidated or waived by any attempt by the city to collect the judgment. A lien under the bill would be restricted to ten years after a copy of the order imposing a fine, costs, or both was recorded, unless within that time an action to enforce the lien had been commenced. Means authorized for the enforcement of a court judgment under Chapters 40 or 60 of the Revised Judicature Act could be utilized to collect on a default in the payment of costs or fines.

House Bill 5218 would also amend the Home Rule City Act (MCL 117.29). The bill would specify that, under the provisions of House Bill 5216, a city could provide for an administrative hearings bureau to adjudicate alleged violations of ordinances and impose sanctions consistent with the act.

House Bill 5219 would amend the Revised Judicature Act (MCL 600.8313) to specify that Section 8313 would not apply to an ordinance violation designated a blight violation by a political subdivision that established an administrative hearings bureau under statutory provisions to adjudicate and impose sanctions for blight violations.

(Section 8313 specifies that violations of criminal law are to be prosecuted in the district court by the prosecuting attorney; violations of ordinances that are misdemeanors or not designated as civil infractions are to be prosecuted in the district court by the attorney for the municipality whose ordinance was violated; and, if the violation is a civil infraction,

the prosecuting attorney or attorney for the municipality must appear in court only in those civil infraction actions that are contested before a judge of the district court in a formal hearing as provided in Section 8721 or 8821 of the act or Section 747 of the Michigan Vehicle Code.)

House Bill 5220 would amend the City and Village Zoning Act (MCL 125.587). Currently, a building erected, altered, razed, or converted, or a use carried on in violation of a local ordinance or regulation adopted under the act is a nuisance per se. A court has to order the nuisance abated, and the owner or agent in charge of the building or land is liable for maintaining a nuisance per se. The legislative body in the ordinance adopted under the act has to designate the proper officials whose duty it is to administer and enforce the ordinance. The officials must also impose a penalty for the violation or designate the violation as a municipal civil infraction and impose a civil fine for that violation.

Under the bill, the local officials would have to impose a penalty for the violation, designate it a municipal civil infraction and impose a civil fine, or, for cities only, designate the violation as a blight violation and impose a civil fine or other legal sanction if the city established an administrative hearings bureau under statutory provisions to adjudicate and impose sanctions for blight violations.

House Bill 5224 would amend Public Act 359 of 1941 (MCL 247.64), which regulates the control of noxious weeds, to allow a city that established an administrative hearings bureau to designate the refusal to destroy noxious weeds as a blight violation. Any fine imposed would be a civil fine. (Currently, under the act, a property owner who refuses to destroy noxious weeds is subject to a fine of not more than $100. Revenue from such fines becomes a part of a municipality's "noxious weed control fund". A municipality can designate the refusal to destroy noxious weeds as a municipal civil infraction, in which case the fine is a civil fine. This provision would not be changed.)

ARGUMENTS:

For:

In essence, the bill package would allow some cities, those organized under the Home Rule City Act, to establish administrative hearings bureaus to adjudicate infractions relating to blight. Currently, such cases must be heard in state courts. Due to case overloads, these civil infractions are often deemed to be low priority, meaning that months or years may pass before a case gets adjudicated. The result is that many polluters are never held responsible for the blighted and unsanitary conditions they cause.

It is important to note that the bills would not create new infractions or penalties. Rather, the bills would create a new way to adjudicate certain types of civil infractions. The administrative hearings bureaus would only have authority over ordinance violations related to zoning, building or property maintenance, solid waste and illegal dumping (which can include hazardous waste materials), disease and sanitation, noxious weeds, and abandoned or junked vehicles. The belief is that bureaus staffed by specially trained

attorneys will be more efficient at adjudicating these types of ordinance violations, collecting fines, and seeing that the properties are cleaned up. Though cities would bear the burden of funding the bureaus, the bills' provisions allowing the cities to retain any fines collected by the bureaus should help to offset these costs.

Swifter enforcement should result in cleaner, safer communities conducive to attracting businesses and new residents (indeed, Detroit was one of only three major metro areas experiencing a migration of young educated residents out of the city as reported by the latest U.S. census information). Welcomed by business leaders and residents alike, the bills should be a win-win for all large cities in the state experiencing difficulties in resolving blighted conditions.

Against:

Some have voiced concerns over a city's potential to use the authority granted to the administrative hearings bureaus to "pad" the city coffers when city funds run low by too aggressively seeking out so-called "violators". Perhaps if cities could be ordered to pay the costs for a party who prevailed on appeal, it would minimize or eliminate any incentive to institute violations proceedings without proper support.

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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.