

HOUSE BILL No. 4868

May 30, 2007, Introduced by Reps. Young, Virgil Smith, Lemmons, Byrum, Leland, Tobocman and Cheeks and referred to the Committee on Intergovernmental, Urban and Regional Affairs.

A bill to amend 1909 PA 279, entitled
"The home rule city act,"
by amending section 4q (MCL 117.4q), as added by 2003 PA 316.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 4q. (1) A city that has a population of 7,500 or more and
2 is located in any county, or a city that has a population of 3,300
3 or more and is located in a county that has a population of
4 2,000,000 or more, may establish an administrative hearings bureau
5 to adjudicate and impose sanctions for violations of the charter or
6 ordinances designated in the charter or ordinance as a blight
7 violation. The bureau may accept admissions of responsibility for
8 blight violations. Pursuant to a schedule of civil fines and costs,
9 the bureau may collect civil fines and costs for blight violations.

1 (2) The expense of the operation of an administrative hearings
2 bureau shall be borne by the city establishing the bureau.

3 (3) An administrative hearings bureau shall not have
4 jurisdiction over criminal offenses, traffic civil infractions,
5 municipal civil infractions, or state civil infractions. The bureau
6 and its hearing officers shall not have the authority to impose a
7 penalty of incarceration and may not impose a civil fine in excess
8 of \$10,000.00.

9 (4) A city that establishes an administrative hearings bureau
10 under this section shall establish by ordinance the jurisdiction of
11 the bureau for adjudicating alleged blight violations, making
12 determinations of responsibility, and imposing sanctions upon those
13 found responsible for a violation. The city may designate only a
14 violation of any of the following types of ordinances as a blight
15 violation:

16 (a) Zoning.

17 (b) Building or property maintenance.

18 (c) Solid waste and illegal dumping.

19 (d) Disease and sanitation.

20 (e) Noxious weeds.

21 (f) Vehicle abandonment, inoperative vehicles, vehicle
22 impoundment, and municipal vehicle licensing.

23 **(G) RIGHT-OF-WAY SIGNAGE. FOR PURPOSES OF THIS SUBDIVISION,**
24 **RIGHT-OF-WAY SIGNAGE VIOLATION MEANS THE PLACEMENT OF SIGNAGE IN A**
25 **RIGHT-OF-WAY WITHOUT A PROPER PERMIT FROM THE CITY.**

26 (5) To initiate a proceeding for a blight violation, the city
27 shall issue and serve upon an alleged violator a written violation

1 notice on which an authorized local official records the occurrence
2 or existence of 1 or more blight violations by the person cited and
3 which directs the named person to pay a civil fine for the
4 violation or appear at the administrative hearings bureau as
5 provided in this section. A violation notice to appear at an
6 administrative hearings bureau shall be treated as made under oath
7 if the violation alleged in the notice occurred in the presence of
8 the authorized local official signing the violation notice and if
9 the notice contains the following statement immediately above the
10 date and signature of the official: "I declare under the penalties
11 of perjury that the statements above are true to the best of my
12 information, knowledge, and belief.". An authorized local official
13 may issue a violation notice to appear if, based upon
14 investigation, the official has reasonable cause to believe that
15 the person is responsible for a blight violation and if the city
16 attorney or an assistant city attorney approves in writing the
17 issuance of the violation notice.

18 (6) If a city has a rental inspection program with which a
19 landlord must register in order to rent premises for residential
20 purposes and if a landlord of premises rented in the city for
21 residential purposes is registered with the city's rental
22 inspection program, the city shall not issue a blight violation
23 notice during an inspection of the premises unless either of the
24 following occurs:

25 (a) The landlord is given a written correction notice of the
26 violation and a reasonable opportunity to correct the circumstances
27 before a reinspection of the premises or a date specified in the

1 notice.

2 (b) The violation is a direct result of the landlord's action
3 or inaction and creates an emergency that presents an immediate
4 risk of harm to people or damage to property including, but not
5 limited to, a flooded basement or premises without heat.

6 (7) A city that does not have a rental inspection program, or
7 does not require a landlord to register as part of a rental
8 inspection program, shall not issue a blight violation notice to a
9 landlord of premises rented in the city for residential purposes
10 during an inspection of the premises unless either of the following
11 occurs:

12 (a) The landlord is given a written correction notice of the
13 violation and a reasonable opportunity to correct the circumstances
14 before a reinspection of the premises or a date specified in the
15 notice.

16 (b) The violation is a direct result of the landlord's action
17 or inaction and creates an emergency that presents an immediate
18 risk of harm to people or damage to property, including, but not
19 limited to, a flooded basement or premises without heat.

20 (8) The person named in the violation notice shall appear on
21 or before the time specified in the violation notice and may
22 respond to the allegations in the notice, as follows:

23 (a) If the alleged violator wishes to admit responsibility for
24 the blight violation, the person may do so by appearing in person,
25 by representation, or by mail. If appearance is made by
26 representation or mail, the administrative hearings bureau may
27 accept the admission as though the person personally appeared. Upon

1 acceptance of the admission, a hearing officer may order any of the
2 sanctions permitted under this section.

3 (b) If the alleged violator wishes to deny responsibility for
4 the blight violation, or admit responsibility with an explanation,
5 the person may do so by appearing in person on the date scheduled
6 for the administrative hearing for the purpose of adjudicating the
7 alleged violation.

8 (c) If the alleged violator fails to appear, a decision and
9 order of default may be entered.

10 (9) If an admission of responsibility is not made and the
11 civil fine and costs, if any, prescribed by charter or ordinance
12 for the violation are not paid at the administrative hearings
13 bureau, and the alleged violator fails to appear at a hearing
14 scheduled in accordance with this section, a final decision and
15 order of responsibility in the amount of the prescribed civil fine
16 and costs may be issued by the administrative hearings bureau.

17 (10) The city establishing an administrative hearings bureau
18 shall establish rules and procedures for an alleged violator to set
19 aside the entry of a decision and order of default.

20 (11) The ordinance establishing the bureau shall provide for
21 adjudicatory hearings by hearing officers. Each hearing officer
22 shall be an attorney licensed to practice law in this state for at
23 least 5 years. Hearing officers shall be appointed in a manner
24 consistent with the charter of the city for the appointment of
25 other municipal officers or employees and shall only be removed for
26 reasonable cause. Before conducting administrative adjudication
27 proceedings, administrative hearing officers shall successfully

1 complete a formal training program which includes all of the
2 following:

3 (a) Instruction on the rules of procedure of the
4 administrative hearings that they will conduct.

5 (b) Orientation to each subject area of the ordinance
6 violations that they will adjudicate.

7 (c) Observation of administrative hearings.

8 (d) Participation in hypothetical cases, including ruling on
9 evidence and issuing final orders.

10 (e) The importance of impartiality in the conduct of the
11 administrative hearing and adjudication of the violation.

12 (f) Instructions on the preparation of a record that is
13 adequate for judicial review.

14 (12) The authority and duties of a hearing officer shall
15 include all of the following:

16 (a) Hearing testimony and accepting evidence that is relevant
17 to the existence of the blight violation.

18 (b) Issuing subpoenas directing witnesses to appear and give
19 relevant testimony at the hearing, upon request of a party or a
20 party's attorney.

21 (c) Preserving and authenticating the record of the hearing
22 and all exhibits and evidence introduced at the hearing.

23 (d) Issuing a determination, based upon the evidence presented
24 at the hearing, whether a blight violation exists. The
25 determination shall be in writing and shall include written
26 findings of fact, a decision, and an order. The city shall have the
27 burden of establishing the responsibility of the alleged violator

1 by a preponderance of the evidence. Unless the burden is met, the
2 matter shall be dismissed. A decision and an order shall not be
3 made except upon consideration of the record as a whole or a
4 portion of the record as may be cited by any party to the
5 proceeding and as supported by and in accordance with the
6 competent, material, and substantial evidence. A decision and order
7 finding the alleged violator responsible for the violation shall
8 include the civil fine, if any, or any action with which the
9 violator must comply, or both.

10 (e) Imposing reasonable and proportionate sanctions consistent
11 with applicable ordinance provisions and assessing costs upon a
12 finding that the alleged violator is responsible for the alleged
13 violation. The maximum monetary civil fine allowed under this
14 section excludes costs of enforcement or costs imposed to secure
15 compliance with the city's ordinances and is not applicable to
16 enforce the collection of any tax imposed and collected by the
17 city.

18 (13) In addition to fines and costs imposed under subsection
19 (12), the hearing officer shall impose a justice system assessment
20 of \$10.00 for each blight violation determination. Upon payment of
21 the assessment, the city shall transmit the assessment collected to
22 the state treasury to be deposited into the justice system fund
23 created in section 181 of the revised judicature act of 1961, 1961
24 PA 236, MCL 600.181.

25 (14) A party shall be provided with the opportunity for a
26 hearing during which they may be represented by counsel, present
27 witnesses, and cross-examine witnesses. A party may request the

1 hearing officer to issue subpoenas to direct the attendance and
2 testimony of relevant witnesses and the production of relevant
3 documents. Hearings shall be scheduled with reasonable promptness,
4 except that for hearings scheduled in all nonemergency situations
5 the alleged violator if he or she requests shall have at least 14
6 days after service of process to prepare for the hearing. For
7 purposes of this subsection, "nonemergency situation" means any
8 situation that does not reasonably constitute a threat to the
9 public interest, safety, or welfare. If service is provided by
10 first-class mail, the 14-day period begins to run on the day that
11 the notice is deposited in the mail.

12 (15) In an administrative hearing under this section, the
13 rules of evidence as applied in a nonjury civil case in circuit
14 court shall be followed as far as practicable, but the hearing
15 officer may admit and give probative effect to evidence of a type
16 commonly relied upon by reasonably prudent persons in the conduct
17 of their affairs. Irrelevant, immaterial, or unduly repetitious
18 evidence may be excluded. Effect shall be given to the rules of
19 privilege recognized by law. Objections to offers of evidence may
20 be made and shall be noted in the record. Subject to these
21 requirements, the hearing officer, for the purpose of expediting
22 hearings and when the interests of the parties will not be
23 substantially prejudiced thereby, may provide in an administrative
24 hearing or by rule for submission of all or part of the evidence in
25 written form.

26 (16) Any final decision by a hearing officer that a blight
27 violation does or does not exist constitutes a final decision and

1 order for purposes of judicial review and may be enforced in the
2 same manner as a judgment entered by a court of competent
3 jurisdiction.

4 (17) A party may file an appeal within 28 days after entry of
5 the decision and order by the hearing officer. An appeal of a final
6 decision and order of an administrative hearing officer is to the
7 circuit court.

8 (18) An alleged violator who appeals a final decision and
9 order to circuit court shall post with the administrative hearings
10 bureau, at the time the appeal is taken, a bond equal to the fine
11 and costs imposed. A party who has paid the fine and costs is not
12 required to post a bond. If a party who has posted a bond fails to
13 comply with the requirements of supreme court rules for an appeal
14 to the circuit court, the appeal may be considered abandoned, and
15 the bureau may dismiss the appeal on 7 days' notice to the parties.
16 The administrative hearings bureau must promptly notify the circuit
17 court of a dismissal, and the circuit court shall dismiss the claim
18 of appeal. If the appeal is dismissed or the decision and order are
19 affirmed, the administrative hearings bureau may apply the bond to
20 the fine and costs. An appeal by the city must be asserted by the
21 city's attorney and a bond is not required.

22 (19) An appeal to circuit court shall be a review by the court
23 of the certified record provided by the administrative hearings
24 bureau. Pending appeal, and subject to the bond requirement under
25 subsection (18), the hearing officer may stay the order and any
26 sanctions or costs imposed. Once an appeal is filed, and subject to
27 the bond requirement under subsection (18), the court may stay the

1 order and any sanctions or costs imposed. The court, as
2 appropriate, may affirm, reverse, or modify the decision or order,
3 or remand the matter for further proceedings. The court shall hold
4 unlawful and set aside a decision or order of the hearing officer
5 if substantial rights of an alleged violator have been prejudiced
6 because the decision or order is any of the following:

7 (a) In violation of the constitution or a statute, charter, or
8 ordinance.

9 (b) In excess of the authority or jurisdiction of the agency
10 as conferred by statute, charter, or ordinance.

11 (c) Made upon unlawful procedure resulting in material
12 prejudice to a party.

13 (d) Not supported by competent, material, and substantial
14 evidence on the whole record.

15 (e) Arbitrary, capricious, or clearly an abuse or unwarranted
16 exercise of discretion.

17 (f) Affected by other substantial and material error of law.