

Legislative Analysis



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PENALTIES FOR BLIGHT VIOLATIONS

Senate Bill 35 (reported from committee as Substitute H-1)

Sponsor: Sen. Virgil Smith

Senate Bill 36 (reported as Substitute H-1)

Sponsor: Sen. Bert Johnson

Senate Bill 37 (reported as Substitute H-1)

Sponsor: Sen. Tonya Schuitmaker

Senate Bill 38 (reported as Substitute S-1)

Sponsor: Sen. Rick Jones

Senate Bill 39 (reported without amendment)

Sponsor: Sen. Tupac A. Hunter

House Committee: Local Government

Senate Committee: Judiciary

First Analysis (11-12-13)

BRIEF SUMMARY: The bills would increase the penalties that may be imposed by local officials on property owners when blighted property violations are ignored and fines are not paid.

FISCAL IMPACT: The bills create new misdemeanors and civil infractions. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues. There also could be an increase in local correctional costs, the cost of local incarceration in a county jail and local misdemeanor probation supervision varies by jurisdiction.

The incentives in the bills also could result in blight-related fines being paid that are not currently being paid.

THE APPARENT PROBLEM:

The Home Rule City Act allows cities that meet certain population criteria to designate particular infractions as blight violations and to establish an administrative hearings bureau to adjudicate the violations and impose sanctions. These provisions and related legislation were enacted in 2003 to give Detroit and other eligible cities a way to expedite the enforcement of zoning and building code violations, and the cleanup of parcels with piles of rubbish, tall weeds, and abandoned cars.

Establishing an administrative hearings bureau allows a city to remove these cases from the court system, impose civil fines for blight violations, and obtain a lien against property if a fine is not paid.

Reportedly, however, people continue to commit blight violations and fail to pay fines, without consequences. It has been suggested that the law should include criminal penalties for these offenders, and cities should be authorized to take additional measures, such as the denial of building permits, in order to improve enforcement.

To that end, legislation has been introduced to increase penalties for those who allow blight to destroy our communities.

THE CONTENT OF THE BILLS:

The bills would amend various acts to increase the penalties that may be imposed by local officials on property owners when blighted property violations are ignored and fines are not paid. A more detailed description of each bill follows.

Senate Bill 35 (Substitute H-1) would amend Section 4q of the Home Rule City Act (MCL 117.4q), which allows certain cities to establish an administrative hearings bureau to adjudicate blight violations, to do the following:

- Establish additional civil and criminal penalties that could be imposed on a person who committed a blight violation and failed to pay a fine and costs of \$1,000 or more.
- Exclude certain entities that become the owner of foreclosed property from the additional sanctions, under certain circumstances.
- Lower the minimum population threshold from 2 million to 1.5 million for a county containing a city with a population of 3,300 or more.

Population Change

More specifically, Section 4q allows a city with a population of 7,500 or more in any county, and a city with a population of 3,300 or more in a county with a population of 2 million or more, to establish an administrative hearings bureau to adjudicate and impose sanctions for a blight violation. Senate Bill 35 would retain these provisions, but refer, instead, to a county with a population of 1.5 million or more.

New Penalties

A city that creates an administrative hearings bureau must establish its jurisdiction for adjudicating certain blight violations. A hearing officer may impose reasonable and proportionate sanctions consistent with applicable ordinance provisions and assess certain costs against a person found responsible for a violation. Under the bill, if the civil fine and costs imposed were \$1,000 or more and the person did not pay within 30 days after a final decision (and order) of the hearing officer or (upon appeal) of the circuit court, the person would be subject to the following:

- For a first violation, the person would be responsible for a state civil infraction and could be ordered to pay a maximum civil fine of \$500.
- For a second violation, the person would be guilty of a misdemeanor punishable by imprisonment for up to 93 days and a maximum fine of \$500, or both.
- For a third or subsequent violation, the person would be guilty of a misdemeanor punishable by imprisonment for up to one year and a mandatory fine of \$500.

Foreclosure-related Provisions

Finally, Senate Bill 35 (H-1) requires that an owner of a property after foreclosure, or after taking a deed in lieu of foreclosure, must adhere to all ordinances relating to vacant property or blight violations adopted by the city that established the administrative hearings bureau.

Senate Bill 36 (H-1) would amend the Michigan Zoning Enabling Act (MCL 125.3406) to do the following:

- Allow a city zoning ordinance to provide that a person would be ineligible for rezoning, site approval, or other zoning authorization if the person were delinquent in paying a fine or costs for a blight violation. (However, this prohibition would not apply to a zoning authorization if the authorization would correct, in whole or in part, the blight violation that was the subject of the delinquent payment).
- Exclude certain entities that become the owner of foreclosed property from the bill's ineligibility for zoning or site approval restrictions.

Senate Bill 37 (H-1) would amend the Single State Construction Code Act (MCL 125.1501 et al) to do the following:

- Allow a city to provide by ordinance that a person would be ineligible for a building permit, a certificate of use and occupancy, or a variance if the person were delinquent in paying a fine or costs for a blight violation. (However, this prohibition would not apply to a building permit if the work authorized under the building permit would correct, in whole or in part, the blight violation that was the subject of the delinquent payment).
- Exclude certain entities that become the owner of foreclosed property from the bill's ineligibility for a building permit, certificate of use and occupancy, or variance.

Senate Bill 38 (S-1) would amend the Revised Judicature Act (MCL 600.101 et al) to allow a city to file a garnishment action if a fine or costs were ordered for a blight violation.

Senate Bill 39 would amend the Home Rule City Act (MCL 117.4r) to allow a lien against property involved in a blight violation to be enforced and discharged by the city in the same manner as liens for delinquent taxes.

The additional sanctions under Senate Bill 35 (H-1), and a zoning ordinance adopted under Senate Bill 36 (H-1) or 37 (H-1), would not apply to any of the following that become the owner of a property after foreclosure or after taking a deed in lieu of foreclosure:

- A government-sponsored enterprise or the Michigan State Housing Development Authority.
- A financial institution.
- A mortgage servicer that is subject to the Mortgage Brokers, Lenders, and Servicers Licensing Act.
- A credit union service organization organized under Michigan or U.S. law.

"Government-sponsored enterprise" would mean that term as defined in federal law (2 USC 622(8), which refers to a corporate entity created by U.S. law that has a federal charter; is privately owned; is under the direction of a board of directors, a majority of which is elected by private owners; and is a financial institution with the power to make loans or loan guarantees for limited purposes).

HOUSE COMMITTEE ACTION:

The members of the House Local Government Committee adopted three amendments, one amendment each for Senate Bills 35, 36, and 37. The amendments are as follows:

First, Senate Bill 35 (H-1) was amended to require that an owner of a property after foreclosure, or after taking a deed in lieu of foreclosure, must adhere to all ordinances relating to vacant property or blight violations adopted by the city that established the administrative hearings bureau.

Second, Senate Bill 36 (H-1) was amended to stipulate that the prohibition against authorizing a new land use zone to owners who owed the city blight violation fines or costs would not apply if that authorization would correct, in whole or in part, the blight violation that was the subject of the delinquent payment.

Third, Senate Bill 37 (H-1) was amended to stipulate that the prohibition against authorizing a new building permit for an owner in arrears on blight fines and costs would not apply to a building permit if the work authorized under the building permit would correct, in whole or in part, the blight violation that was the subject of the delinquent payment.

ARGUMENTS:

For:

Despite the legislation enacted 2003, Detroit and other cities still are struggling to clean up their communities. In many places, parcels are full of junked cars, rubbish, hazardous waste, or tall, noxious weeds; houses and other structures are dilapidated; snow and ice are allowed to accumulate on sidewalks; and building uses are changed without the

proper permits. These conditions can pose health and safety hazards to individuals and wildlife, lower property values, provide venues for criminal activity, and discourage families and businesses from locating in the area.

The original blight violation legislation was designed to provide a fair, expeditious, and cost-effective method to adjudicate these infractions outside of the court system. A decade later, however, more aggressive measures are needed to hold scofflaw property owners accountable. Evidently, many violators simply ignore blight assessments without consequences, and property owners continue to disregard their obligations to maintain their structures and land.

This package of legislation would provide strong enforcement mechanisms to compel compliance by those who refuse to abide by the law. Specifically, the bills would streamline the lien process to assure the payment of judgments against noncompliant owners; enable cities to easily use the garnishment process to collect unpaid fines; authorize cities to deny zoning requests and building permits for owners responsible for blight; and, for violators with at least \$1,000 in unpaid fines and costs, make repeat violations a misdemeanor punishable by imprisonment. Together, these measures would address significant weaknesses in the current blight enforcement process.

Against:

Governmental agencies, financial institutions, and mortgage servicers should not be exempt from the sanctions proposed by Senate Bills 35 (H-1), 36 (H-1), and 37 (H-1). Critics say that many blight problems are the result of the failure by banks to maintain foreclosed-on and empty homes. These entities should be subject to the same rules and penalties that apply to private property owners.

Against:

By criminalizing the nonpayment of blight assessments of \$1,000 or more, Senate Bill 35 would have an unfair and disproportionate impact on low-income individuals who cannot afford to maintain their homes or to pay steep fines quickly. This population would be at the greatest risk of incurring criminal penalties. In addition, the actions of overzealous code enforcement officials could result in excessive fines against homeowners.

Against:

The Civil Procedure & Courts Committee of the State Bar of Michigan raised concerns about Senate Bill 38 (H-1). This bill would allow a city to seek a writ of garnishment, and would compel a court to issue the writ, based on the order of an administrative hearing officer. Other statutory approaches to garnishment rely on court procedures and judgments, which offer due process protections.

Response: Section 4q of the Home Rule City Act allows a party to appeal a hearing officer's order to the circuit court. The proposed garnishment provisions would apply only if the defendant did not appeal the order within the time allowed.

POSITIONS:

The City of Detroit supports the bills. (5-23-13)

The Detroit Regional Chamber of Commerce supports the bills. (5-16-13)

The Michigan Historic Preservation Network supports the bills. (5-16-13)

The Michigan Credit Union League supports the bills. (10-31-13)

The Michigan State Housing Development Authority (MSHDA) supports the bills. (10-31-13)

The Michigan Bankers Association supports the bills. (10-31-13)

The Rental Property Owners Association of Michigan opposes the bills. (5-23-13)

The City of Jackson opposes the bills. (5-16-13)

The Association of Realtors is neutral on the bills. (5-23-13)

The Michigan District Judges Association is neutral on the bills. (5-23-13)

The Michigan Municipal League is neutral on the bills. (10-31-13)

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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.