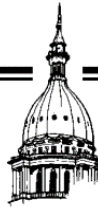




Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 35 (Substitute S-3 as passed by the Senate)
Senate Bill 36 (Substitute S-3 as passed by the Senate)
Senate Bill 37 (Substitute S-3 as passed by the Senate)
Senate Bill 38 (Substitute S-1 as passed by the Senate)
Senate Bill 39 (as passed by the Senate)
Sponsor: Senator Virgil Smith (S.B. 35)
 Senator Bert Johnson (S.B. 36)
 Senator Tonya Schuitmaker (S.B. 37)
 Senator Rick Jones (S.B. 38)
 Senator Tupac A. Hunter (S.B. 39)

Committee: Judiciary

Date Completed: 9-12-13

RATIONALE

The Home Rule City Act allows cities that meet certain population criteria to designate particular infractions as blight violations, and 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, for example. 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.

CONTENT

Senate Bill 35 (S-3) would amend the Home Rule City Act to establish increased civil fines and new 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 within 30 days.

The bill also would lower a population threshold in the eligibility criteria for a city to establish an administrative hearings bureau.

Senate Bill 36 (S-3) would amend the Michigan Zoning Enabling Act to 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.

Senate Bill 37 (S-3) would amend the Single State Construction Code Act to 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.

Senate Bill 38 (S-1) would amend the Revised Judicature Act 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 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; and delete a requirement that the property also be subject to forfeiture, foreclosure, and sale for delinquent taxes under the General Property Tax Act.

The additional sanctions under Senate Bill 35 (S-3), and a zoning ordinance adopted under Senate Bill 36 (S-3) or 37 (S-3), would not apply to any of the following that become the owner of property after foreclosure or after taking a deed in lieu of foreclosure: a government-sponsored enterprise, financial institution, mortgage servicer, or credit union service organization.

All of the bills are described in more detail below.

Senate Bill 35 (S-3)

Population Criteria

Section 4q of the Home Rule City Act 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 2.0 million or more, to establish an administrative hearings bureau to adjudicate and impose sanctions for a blight violation.

The bill would refer to a county with a population of 1.5 million or more (i.e., Wayne County).

Additional Sanctions

A city that creates an administrative hearings bureau must establish its jurisdiction for adjudicating blight violations, making determinations of responsibility, and imposing sanctions. Only a violation of any of the following types of ordinances may be designated a blight violation:

- Zoning.
- Building or property maintenance.
- Solid waste and illegal dumping.
- Disease and sanitation.
- Noxious weeds.
- Vehicle abandonment, inoperative vehicles, vehicle impoundment, and municipal vehicle licensing.
- Right-of-way signage.
- An ordinance that is substantially the same as Sections 138 to 142 of the Housing Law (which make it illegal to maintain a dwelling as a dangerous building).

A hearing officer has the authority to impose reasonable and proportionate sanctions consistent with applicable ordinance provisions and assess costs against a person found responsible for a violation. A hearing officer may not order a civil fine of more than \$10,000 and may not impose incarceration. In addition to ordering fines and costs, the hearing officer must impose a justice system assessment of \$10 for each blight violation determination. A person may appeal the decision and order of a hearing officer to the circuit court within 28 days after entry of the decision and order.

Under the bill, if the civil fine and costs imposed against a person were \$1,000 or more and the person did not pay them 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.

As used in these provisions, the bill would define "person" as an individual, partnership, corporation, limited liability company, association, or other legal entity, including the partners or members of a firm, partnership, or association, and the officers of a corporation.

Exclusions

The additional sanctions proposed by the bill would not apply to any of the following that became the owner of property after foreclosure or after taking a deed in lieu of foreclosure:

- A government-sponsored enterprise.
- A financial institution.
- A mortgage servicer that is subject to the Mortgage Brokers, Lenders, and Servicers Licensing Act.
- A credit union service organization that is organized under the laws of Michigan or the United States.

"Government-sponsored enterprise" would mean that term as defined in Federal law (2 USC 622(8)) or the Michigan State Housing Development Authority. (The definition in 2 USC 622(8) 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.)

"Financial institution" would mean that term as defined in the Michigan Strategic Fund Act (i.e., a State or nationally chartered bank or a State or federally chartered savings and loan association, savings bank, or credit union whose deposits are insured by an agency of the U.S. government and that maintains a principal office or branch office in Michigan under the laws of this State or the United States).

Senate Bill 36 (S-3)

Under the bill, a city's zoning ordinance could provide that a person would not be eligible to apply for a rezoning, site plan approval, special land use approval, planned unit development approval, variance, or other zoning authorization if the person were delinquent in paying a civil fine, costs, or a justice system assessment imposed by an administrative hearings bureau established in that city under Section 4q of the Home Rule City Act.

This ordinance provision would not apply to an applicant for a zoning authorization if the applicant became the owner of the property by foreclosure or by taking a deed in lieu of foreclosure and the applicant were one of the following: a government-sponsored enterprise; a financial institution; a mortgage servicer subject to the Mortgage Brokers, Lenders, and Servicers Licensing Act; or a credit union service organization organized under the laws of Michigan or the United States. ("Government-sponsored enterprise" and "financial institution" would have the same definitions as proposed by Senate Bill 35 (S-3).)

Senate Bill 37 (S-3)

The Single State Construction Code Act authorizes a governmental subdivision, by ordinance, to assume responsibility for administering and enforcing the Code and the Act within its political boundary.

Under the bill, a city that had assumed this responsibility could, by ordinance, provide that a person would not be eligible to apply for a building permit, a certificate of use and occupancy, or a variance to a requirement of the Code, if the person or the owner of the affected or proposed building or structure were delinquent in paying a civil fine, costs, or justice system assessment

imposed by an administrative hearings bureau established in that city under Section 4q of the Home Rule City Act.

An ordinance adopted under this provision would not apply to an applicant that became the owner of the property by foreclosure or by taking a deed in lieu of foreclosure, if the applicant were one of the following: a government-sponsored enterprise; a financial institution; a mortgage servicer subject to the Mortgage Brokers, Lenders, and Servicers Licensing Act; or a credit union service organization organized under the laws of Michigan or the United States. ("Government-sponsored enterprise" and "financial institution" would have the same definitions as in Senate Bill 35 (S-3).)

Senate Bill 38 (S-1)

The bill would add Section 4027 to the Revised Judicature Act to allow a city to file an action for a writ of garnishment in the appropriate court, if a hearing officer ordered the payment of a civil fine or costs under Section 4q of the Home Rule City Act, and the defendant did not appeal the order within the time allowed, and if the city had not obtained a lien under Section 4r of the Home Rule City Act (the section that Senate Bill 39 would amend). The initial papers filed would have to include a properly authenticated copy of the applicable order.

Immediately after the action was filed, the court would have to issue a writ of garnishment, which would serve in lieu of a summons and complaint in the action. The time for the defendant and an initial garnishee defendant to respond would be the same as for a response under statutes and court rules applicable to other garnishments. (A garnishee defendant is a person, such as an employer or bank, ordered to withhold funds or payments due to the defendant.)

The action could name more than one initial garnishee defendant. After an initial writ of garnishment was issued, the city could obtain subsequent writs of garnishment against the same or additional garnishee defendants, without leave of the court.

A defendant or garnishee defendant could not raise in the action any issue that could have been appealed under Section 4q of the Home Rule City Act.

Except as provided in proposed Section 4027 and in any rules adopted by the Supreme Court to apply to an action under the section, the action would have to proceed according to the statutes and court rules applicable to other garnishment actions.

Senate Bill 39

The Home Rule City Act allows a city to obtain a lien against the land, building, or structure involved in a blight violation if the defendant does not pay a civil fine or costs or an installment payment ordered by a hearing officer within 30 days after the date the payment is due. The city must record a copy of the final decision and order with the register of deeds for the county where the land, building, or structure is located. The city also must send a written notice of the lien to the owner of the land, building, or structure.

The city may enforce and discharge the lien in the manner prescribed by its charter, by the General Property Tax Act, or by an ordinance passed by the city's governing body. Under the bill, the city could enforce and discharge the lien in the manner prescribed by its charter or by an ordinance passed by the governing body of the city, or in the same manner as liens for delinquent taxes are enforced and discharged under the General Property Tax Act.

Currently, property is not subject to forfeiture, foreclosure, and sale under the General Property Tax Act for nonpayment of a civil fine or costs or an installment ordered under Section 4q of the Home Rule City Act unless the property is also subject to forfeiture, foreclosure, and sale under the General Property Tax Act for delinquent property taxes. The bill would delete this provision.

The bill would prohibit a city from commencing an action to enforce a lien if the city had already begun an action for a writ of garnishment with respect to the unpaid fine, costs, or payment under Section 4027 of the Revised Judicial Act.

Senate Bill 39 is tie-barred to Senate Bill 38.

MCL 117.4q (S.B. 35)
MCL 125.3406 (S.B. 36)
Proposed MCL 125.1509c (S.B. 37)
Proposed MCL 600.4027 (S.B. 38)
MCL 117.4r (S.B. 39)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

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.

Opposing Argument

Governmental agencies, financial institutions, and mortgage servicers should not be exempt from the sanctions proposed by Senate Bills 35 (S-3), 36 (S-3), and 37 (S-3). Many blight problems are the result of banks' failure to maintain foreclosed, empty homes. These entities should be subject to the same rules and penalties that apply to private property owners.

Opposing Argument

By criminalizing the nonpayment of blight assessments of \$1,000 or more, Senate Bill 35 (S-3) 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.

Opposing Argument

The Civil Procedure & Courts Committee of the State Bar of Michigan raised concerns about Senate Bill 38 (S-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.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

Senate Bill 35 (S-3)

The bill would have an indeterminate fiscal impact on State and local government. Cities could see increased revenue from the collection of fines and costs for blight violations, and the State could see increased revenue resulting from the \$10-per-citation justice system assessment. Although there are no data to indicate how many offenders would be charged with the proposed misdemeanors, those convicted could be incarcerated and/or placed under community supervision, increasing costs for local units. Increased civil infraction and penal fine revenue associated with the proposed State civil infraction and the proposed misdemeanors would benefit public libraries.

Senate Bills 36 (S-3), 37 (S-3), and 39

The bills would have no impact on State revenue and a likely negligible effect on local unit revenue. Cities' revenue could be increased slightly under the assumption that the changes would either make it more likely that certain fines or costs would be paid, or paid in a timely manner, or provide alternative options for cities to more effectively or efficiently collect a payment relating to a lien.

Senate Bill 38 (S-1)

The bill would have a negligible fiscal impact on the local court system. Courts could see a marginal increase in caseload associated with enforcing garnishments against those who neglected to pay civil fines and costs ordered for blight violations. Cities would receive increased revenue from the collection of the fines and costs.

Fiscal Analyst: Dan O'Connor
David Zin

A1314\35a

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.