

Legislative Analysis



ADVERSE POSSESSION CLAIMS BY AND AGAINST MUNICIPALITIES

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House Bill 4747 as enacted
Public Act 52 of 2016
Sponsor: Rep. Holly Hughes
House Committee: Judiciary
Senate Committee: Judiciary
Complete to 6-23-16

BRIEF SUMMARY: House Bill 4747 amends the Revised Judicature Act by simplifying the language of the statute controlling adverse possession claims by and against municipalities. Additionally, the bill clarifies that a municipality is not subject to adverse possession, laches, or periods of limitations defenses when the municipality is asserting rights to land against an individual, no matter which party brings the action.

FISCAL IMPACT: House Bill 4747 will have an indeterminate and in the aggregate, likely negligible, fiscal impact on local units of government. The bill clarifies the restrictions prohibiting adverse possession against local units of government.

THE APPARENT PROBLEM:

As statutory language on adverse possession is currently worded, courts may find that a municipality is only protected from certain claims when it is the party bringing the action. This bill seeks to remedy that issue by making clear that a municipality is not subject to these claims whether the action is brought by or against the municipality.

THE CONTENT OF THE BILL:

In its current form, the Revised Judicature Act states that even if a person has adversely possessed a piece of land for the requisite 15 years, the person may not assert that claim against the state in order to retain rights to that land. However, the person may assert that claim in order to seek equitable relief. House Bill 4747 retains that rule, while adjusting the language slightly.

The bill rewrites subsection 2 of Section 5821 of the RJA (MCL 600.5821). Most significantly, subsection 2 replaces the language that municipalities are protected from certain claims only if they are the ones bringing action; the new language states that these protections exist whenever municipalities are involved in an action.

Subsection 2 also expands upon the types of land and local units of government to which the subsection would apply. First, subsection 2 of the bill adds "easement" to the already-included public highway, street, alley, or other public ground. Additionally, subsection 2 currently applies to a "municipal corporation"; the bill adds the terms "political subdivision of this state" and "county road commission." Finally, subsection 2 expands protection for

municipalities from merely periods of limitations claims, so that it would include the following three:

- Periods of limitations—already listed in the act, this dictates that a municipality may assert its right to land at any time, regardless of how much time has passed.
- Laches—this protects a municipality from an assertion that because the municipality failed to assert its right to the land for a certain period of time, it has "slept on" or ceded that right.
- A claim for adverse possession, acquiescence, or a prescriptive easement—this protects a municipality from a claim that, by not asserting its right to the land, it has implicitly allowed the person adversely possessing it access or title to the land.

BACKGROUND INFORMATION:

The revisions to this statute were precipitated by two court cases¹ in which the court applied what it deemed to be the letter of the law, thereby reversing 100 years of convention. Until 2009, municipalities were not subject to adverse possession claims in any case. However, at that time, the Michigan Court of Appeals found that because the statutory language differed in its treatment of the state and municipalities, the legislature must have intended for municipalities to be protected from certain claims only if the municipality brought the action, and not if the action was brought by the individual.

In this bill, the legislature seeks to revise its language to conform to the original intent of the statute.

ARGUMENTS:

For:

Currently, the statute potentially rewards a bad or wrong act by allowing an individual to adversely possess land and, as long as the individual is the first to file, to assert certain claims that would otherwise be barred. Proponents say that this bill brings the statutory language in line with its original intent. No longer will a municipality be subject to different rules based on whether the action was brought by or against the municipality.

Against:

Opponents may argue that a municipality should not be subject to different rules from citizens. If one citizen may adversely possess and gain title to a piece of land from another citizen, he or she should also be able to do so against a municipality.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

¹ *Mason v City of Menominee*, 282 Mich App 525 (2009) and *Waisanen Family Trust v Township of Superior*, 305 Mich App 719 (2014)