

HOUSE BILL NO. 5650

December 15, 2021, Introduced by Reps. Young, Aiyash, Cavanagh, Pohutsky, Brenda Carter, Damoose, Tyrone Carter, Brabec, Tate, Whitsett, Scott and Yancey and referred to the Committee on Local Government and Municipal Finance.

A bill to amend 1909 PA 279, entitled
"The home rule city act,"
by amending section 4q (MCL 117.4q), as amended by 2013 PA 188.

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 1,500,000 or more, may establish an administrative hearings bureau
5 to adjudicate and impose sanctions for violations of the charter or

ordinances designated in the charter or ordinance as a blight violation. The bureau may accept admissions of responsibility for blight violations. Pursuant to a schedule of civil fines and costs, the bureau may collect civil fines and costs for blight violations.

(2) The expense of ~~the operation of~~ **operating** an administrative hearings bureau ~~shall be~~ **is** borne by the city establishing the bureau.

(3) An administrative hearings bureau ~~shall~~ **does** not have jurisdiction over criminal offenses, traffic civil infractions, municipal civil infractions, or state civil infractions. The bureau and its hearing officers ~~shall~~ **do** not have the authority to impose a penalty of incarceration and may not impose a civil fine in excess of \$10,000.00. This section does not authorize a proceeding against a foreclosing governmental unit as **that term is** defined under section 78 of the general property tax act, 1893 PA 206, MCL 211.78, or an authority created under the land bank fast track act, 2003 PA 258, MCL 124.751 to 124.774. The city may waive a fine for a blight violation at an owner-occupied dwelling for a first time offender of a blight ordinance, if the offender has corrected the circumstances for the violation.

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

(a) Zoning.

(b) Building or property maintenance.

1 (c) Solid waste and illegal dumping.

2 (d) Disease and sanitation.

3 (e) Noxious weeds.

4 (f) Vehicle abandonment, inoperative vehicles, vehicle
5 impoundment, and municipal vehicle licensing.

6 (g) Right-of-way signage. For purposes of this subdivision,
7 right-of-way signage violation means the placement of signage in a
8 right-of-way without a proper permit from the city.

9 (h) An ordinance that is substantially the same as sections
10 138 to 142 of the housing law of Michigan, 1917 PA 167, MCL 125.538
11 to 125.542.

12 (5) To initiate a proceeding for a blight violation, the city
13 shall issue and serve upon an alleged violator a written violation
14 notice on which an authorized local official records the occurrence
15 or existence of 1 or more blight violations by the person cited and
16 ~~which-that~~ directs the named person to pay a civil fine for the
17 violation or appear at the administrative hearings bureau as
18 provided in this section. **The city must serve the written violation**
19 **notice on the alleged violator personally or by first-class mail.**
20 **In addition, the city may, but is not required to, also serve the**
21 **written violation notice on the alleged violator by email or by**
22 **posting on the city's website. If the city serves the written**
23 **violation notice on the alleged violator by email, the email must**
24 **include a request read receipt to confirm the time and date the**
25 **email notice was opened.** A violation notice to appear at an
26 administrative hearings bureau ~~shall-must~~ be treated as made under
27 oath if the violation alleged in the notice occurred in the
28 presence of the authorized local official signing the violation
29 notice and if the notice contains the following statement

1 immediately above the date and signature of the official: "I
2 declare under the penalties of perjury that the statements above
3 are true to the best of my information, knowledge, and belief.". An
4 authorized local official may issue a violation notice to appear
5 if, based upon investigation, the official has reasonable cause to
6 believe that the person is responsible for a blight violation and
7 if the city attorney or an assistant city attorney approves in
8 writing ~~the issuance of~~ **issuing** the violation notice.

9 (6) If a city has a rental inspection program with which a
10 landlord must register in order to rent premises for residential
11 purposes and if a landlord of premises rented in the city for
12 residential purposes is registered with the city's rental
13 inspection program, the city shall not issue a blight violation
14 notice during an inspection of the premises unless either of the
15 following occurs:

16 (a) The landlord is given a written correction notice of the
17 violation and a reasonable opportunity to correct the circumstances
18 before a reinspection of the premises or a date specified in the
19 notice.

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

24 (7) A city that does not have a rental inspection program, or
25 does not require a landlord to register as part of a rental
26 inspection program, shall not issue a blight violation notice to a
27 landlord of premises rented in the city for residential purposes
28 during an inspection of the premises unless either of the following
29 occurs:

1 (a) The landlord is given a written correction notice of the
2 violation and a reasonable opportunity to correct the circumstances
3 before a reinspection of the premises or a date specified in the
4 notice.

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

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

12 (a) If the alleged violator wishes to admit responsibility for
13 the blight violation, the person may do so by appearing in person,
14 by representation, or by mail. If appearance is made by
15 representation or mail, the administrative hearings bureau may
16 accept the admission as though the person personally appeared. Upon
17 acceptance of the admission, a hearing officer may order any of the
18 sanctions permitted under this section.

19 (b) If the alleged violator wishes to deny responsibility for
20 the blight violation, or admit responsibility with an explanation,
21 the person may do so by appearing in person on the date scheduled
22 for the administrative hearing for the purpose of adjudicating the
23 alleged violation.

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

26 (9) If an admission of responsibility is not made and the
27 civil fine and costs, if any, prescribed by charter or ordinance
28 for the violation are not paid at the administrative hearings
29 bureau, and the alleged violator fails to appear at a hearing

1 scheduled in accordance with this section, a final decision and
2 order of responsibility in the amount of the prescribed civil fine
3 and costs may be issued by the administrative hearings bureau.

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

7 (11) The ordinance establishing the bureau ~~shall~~**must** provide
8 for adjudicatory hearings by hearing officers. Each hearing officer
9 ~~shall~~**must** be an attorney licensed to practice law in this state
10 for at least 5 years. Hearing officers ~~shall~~**must** be appointed in a
11 manner consistent with the charter of the city for the appointment
12 of other municipal officers or employees and ~~shall~~**must** only be
13 removed for reasonable cause. Before conducting administrative
14 adjudication proceedings, administrative hearing officers ~~shall~~
15 **must** successfully complete a formal training program ~~which~~**that**
16 includes all of the following:

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

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

21 (c) Observation of administrative hearings.

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

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

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

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

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

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

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

8 (d) Issuing a determination, based upon the evidence presented
9 at the hearing, whether a blight violation exists. The
10 determination ~~shall-must~~ be in writing and ~~shall-must~~ include
11 written findings of fact, a decision, and an order. The city ~~shall~~
12 ~~have~~-has the burden of establishing the responsibility of the
13 alleged violator by a preponderance of the evidence. Unless the
14 burden is met, the matter ~~shall-must~~ be dismissed. A decision and
15 an order ~~shall-must~~ not be made except upon consideration of the
16 record as a whole or a portion of the record as may be cited by any
17 party to the proceeding and as supported by and in accordance with
18 the competent, material, and substantial evidence. A decision and
19 order finding the alleged violator responsible for the violation
20 ~~shall-must~~ include the civil fine, if any, or any action with which
21 the violator must comply, or both.

22 (e) Imposing reasonable and proportionate sanctions consistent
23 with applicable ordinance provisions and assessing costs upon a
24 finding that the alleged violator is responsible for the alleged
25 violation. The maximum monetary civil fine allowed under this
26 section excludes costs of enforcement or costs imposed to secure
27 compliance with the city's ordinances and is not applicable to
28 enforce the collection of any tax imposed and collected by the
29 city.

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

8 (14) A party ~~shall~~**must** be provided with the opportunity for a
9 hearing during which ~~they~~**the party** may be represented by counsel,
10 present witnesses, and cross-examine witnesses. A party may request
11 the hearing officer to issue subpoenas to direct the attendance and
12 testimony of relevant witnesses and the production of relevant
13 documents. Hearings ~~shall~~**must** be scheduled with reasonable
14 promptness, except that for hearings scheduled in all nonemergency
15 situations the alleged violator, if he or she requests, shall have
16 at least 14 days after service of process to prepare for the
17 hearing. For purposes of this subsection, "nonemergency situation"
18 means any situation that does not reasonably constitute a threat to
19 the public interest, safety, or welfare. If service is provided by
20 first-class mail, the 14-day period begins to run on the day that
21 the notice is deposited in the mail.

22 (15) In an administrative hearing under this section, the
23 rules of evidence as applied in a nonjury civil case in circuit
24 court ~~shall~~**must** be followed as far as practicable, but the hearing
25 officer may admit and give probative effect to evidence of a type
26 commonly relied upon by reasonably prudent persons in the conduct
27 of their affairs. Irrelevant, immaterial, or unduly repetitious
28 evidence may be excluded. Effect ~~shall~~**must** be given to the rules
29 of privilege recognized by law. Objections to offers of evidence

1 may be made and ~~shall~~**must** be noted in the record. Subject to these
2 requirements, the hearing officer, for the purpose of expediting
3 hearings and when the interests of the parties will not be
4 substantially prejudiced, ~~thereby,~~ may provide in an administrative
5 hearing or by rule for submission of all or part of the evidence in
6 written form.

7 (16) Any final decision by a hearing officer that a blight
8 violation does or does not exist constitutes a final decision and
9 order for purposes of judicial review and may be enforced in the
10 same manner as a judgment entered by a court of competent
11 jurisdiction. **The period of limitations for an enforcement action**
12 **founded upon a final decision and order is the same as a judgment**
13 **rendered in a court of record of this state as provided under**
14 **section 5809(3) of the revised judicature act of 1961, 1961 PA 236,**
15 **MCL 600.5809.**

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

20 (18) An alleged violator who appeals a final decision and
21 order to circuit court shall post with the administrative hearings
22 bureau, at the time the appeal is taken, a bond equal to the fine
23 and costs imposed. A party who has paid the fine and costs is not
24 required to post a bond. If a party who has posted a bond fails to
25 comply with the requirements of supreme court rules for an appeal
26 to the circuit court, the appeal may be considered abandoned, and
27 the bureau may dismiss the appeal on 7 days' notice to the parties.
28 The administrative hearings bureau must promptly notify the circuit
29 court of a dismissal, and the circuit court shall dismiss the claim

1 of appeal. If the appeal is dismissed or the decision and order are
2 affirmed, the administrative hearings bureau may apply the bond to
3 the fine and costs. An appeal by the city must be asserted by the
4 city's attorney and a bond is not required.

5 (19) An appeal to circuit court ~~shall~~**must** be a review by the
6 court of the certified record provided by the administrative
7 hearings bureau. Pending appeal, and subject to the bond
8 requirement under subsection (18), the hearing officer may stay the
9 order and any sanctions or costs imposed. Once an appeal is filed,
10 and subject to the bond requirement under subsection (18), the
11 court may stay the order and any sanctions or costs imposed. The
12 court, as appropriate, may affirm, reverse, or modify the decision
13 or order, or remand the matter for further proceedings. The court
14 shall hold unlawful and set aside a decision or order of the
15 hearing officer if substantial rights of an alleged violator have
16 been prejudiced because the decision or order is any of the
17 following:

18 (a) In violation of the constitution or a statute, charter, or
19 ordinance.

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

22 (c) Made upon unlawful procedure resulting in material
23 prejudice to a party.

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

26 (e) Arbitrary, capricious, or clearly an abuse or unwarranted
27 exercise of discretion.

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

29 (20) Except as otherwise provided in subsection (21) or (22),

1 if the civil fine and costs imposed against a person under this
2 section are \$1,000.00 or more and the person does not pay the civil
3 fine and costs imposed within 30 days after a final decision and
4 order of the hearing officer or of the circuit court under this
5 section, the person is subject to the following:

6 (a) For a first violation, the person is responsible for a
7 state civil infraction and may be ordered to pay a civil fine of
8 not more than \$500.00.

9 (b) For a second violation, the person is guilty of a
10 misdemeanor punishable by imprisonment for not more than 93 days or
11 a fine of not more than \$500.00, or both.

12 (c) For a third or subsequent violation, the person is guilty
13 of a misdemeanor and may be imprisoned for not more than 1 year and
14 shall be fined \$500.00.

15 (21) Subsection (20) does not apply to any of the following
16 that becomes the owner of a property after foreclosure or after
17 taking a deed in lieu of foreclosure:

18 (a) A government-sponsored enterprise. As used in this
19 subdivision, "government-sponsored enterprise" means that term as
20 defined in 2 USC 622(8), or the Michigan state housing development
21 authority created under the state housing development authority act
22 of 1966, 1966 PA 346, MCL 125.1401 to 125.1499c.

23 (b) A financial institution. As used in this subdivision,
24 "financial institution" means that term as defined in section 4(c)
25 of the Michigan strategic fund act, 1984 PA 270, MCL 125.2004.

26 (c) A mortgage servicer, as that term is defined in section 1a
27 of the mortgage brokers, lenders, and servicers licensing act, 1987
28 PA 173, MCL 445.1651a, that is subject to the mortgage brokers,
29 lenders, and servicers licensing act, 1987 PA 173, MCL 445.1651 to

1 445.1684.

2 (d) A credit union service organization that is organized
3 under the laws of this state or the United States.

4 (22) Subsection (20) does not apply to the owner of a property
5 if, at the time the civil fine and costs are imposed against the
6 owner, the owner had filed a principal residence exemption
7 affidavit as provided under section 7cc of the general property tax
8 act, 1893 PA 206, MCL 211.7cc, certifying that the property is
9 owned and occupied as a principal residence by that owner.

10 (23) An entity described in subsection (21) that becomes the
11 owner of a property after foreclosure or after taking a deed in
12 lieu of foreclosure shall adhere to all ordinances relating to
13 vacant property or blight violations adopted by the city that
14 established an administrative hearings bureau under this section.

15 (24) As used in subsection (20), "person" means an individual,
16 partnership, corporation, limited liability company, association,
17 or other legal entity. Person includes the partners or members of a
18 firm, a partnership, or an association and the officers of a
19 corporation.