

SENATE BILL No. 35

January 16, 2013, Introduced by Senators SMITH and BIEDA and referred to the Committee on Judiciary.

A bill to amend 1909 PA 279, entitled "The home rule city act," by amending section 4q (MCL 117.4q), as amended by 2008 PA 51.

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~~ **1,500,000** or more, may establish an administrative
5 hearings bureau to adjudicate and impose sanctions for violations
6 of the charter or ordinances designated in the charter or ordinance
7 as a blight violation. The bureau may accept admissions of
8 responsibility for blight violations. Pursuant to a schedule of
9 civil fines and costs, the bureau may collect civil fines and costs
10 for blight violations.

11 (2) The expense of the operation of an administrative hearings

1 bureau shall be borne by the city establishing the bureau.

2 (3) An administrative hearings bureau shall not have
3 jurisdiction over criminal offenses, traffic civil infractions,
4 municipal civil infractions, or state civil infractions. The bureau
5 and its hearing officers shall not have the authority to impose a
6 penalty of incarceration and may not impose a civil fine in excess
7 of \$10,000.00. This section does not authorize a proceeding against
8 a foreclosing governmental unit as defined under section 78 of the
9 general property tax act, 1893 PA 206, MCL 211.78, or an authority
10 created under the land bank fast track act, 2003 PA 258, MCL
11 124.751 to 124.774. The city may waive a fine for a blight
12 violation at an owner-occupied dwelling for a first time offender
13 of a blight ordinance, if the offender has corrected the
14 circumstances for the violation.

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

22 (a) Zoning.

23 (b) Building or property maintenance.

24 (c) Solid waste and illegal dumping.

25 (d) Disease and sanitation.

26 (e) Noxious weeds.

27 (f) Vehicle abandonment, inoperative vehicles, vehicle

1 impoundment, and municipal vehicle licensing.

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

5 (h) An ordinance that is substantially the same as sections
6 138 to 142 of the housing law of Michigan, 1917 PA 167, MCL 125.538
7 to 125.542.

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

27 (6) If a city has a rental inspection program with which a

1 landlord must register in order to rent premises for residential
2 purposes and if a landlord of premises rented in the city for
3 residential purposes is registered with the city's rental
4 inspection program, the city shall not issue a blight violation
5 notice during an inspection of the premises unless either of the
6 following occurs:

7 (a) The landlord is given a written correction notice of the
8 violation and a reasonable opportunity to correct the circumstances
9 before a reinspection of the premises or a date specified in the
10 notice.

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

15 (7) A city that does not have a rental inspection program, or
16 does not require a landlord to register as part of a rental
17 inspection program, shall not issue a blight violation notice to a
18 landlord of premises rented in the city for residential purposes
19 during an inspection of the premises unless either of the following
20 occurs:

21 (a) The landlord is given a written correction notice of the
22 violation and a reasonable opportunity to correct the circumstances
23 before a reinspection of the premises or a date specified in the
24 notice.

25 (b) The violation is a direct result of the landlord's action
26 or inaction and creates an emergency that presents an immediate
27 risk of harm to people or damage to property, including, but not

1 limited to, a flooded basement or premises without heat.

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

5 (a) If the alleged violator wishes to admit responsibility for
6 the blight violation, the person may do so by appearing in person,
7 by representation, or by mail. If appearance is made by
8 representation or mail, the administrative hearings bureau may
9 accept the admission as though the person personally appeared. Upon
10 acceptance of the admission, a hearing officer may order any of the
11 sanctions permitted under this section.

12 (b) If the alleged violator wishes to deny responsibility for
13 the blight violation, or admit responsibility with an explanation,
14 the person may do so by appearing in person on the date scheduled
15 for the administrative hearing for the purpose of adjudicating the
16 alleged violation.

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

19 (9) If an admission of responsibility is not made and the
20 civil fine and costs, if any, prescribed by charter or ordinance
21 for the violation are not paid at the administrative hearings
22 bureau, and the alleged violator fails to appear at a hearing
23 scheduled in accordance with this section, a final decision and
24 order of responsibility in the amount of the prescribed civil fine
25 and costs may be issued by the administrative hearings bureau.

26 (10) The city establishing an administrative hearings bureau
27 shall establish rules and procedures for an alleged violator to set

1 aside the entry of a decision and order of default.

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

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

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

16 (c) Observation of administrative hearings.

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

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

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

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

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

27 (b) Issuing subpoenas directing witnesses to appear and give

1 relevant testimony at the hearing, upon request of a party or a
2 party's attorney.

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

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

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

27 (13) In addition to fines and costs imposed under subsection

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

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

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

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

8 (16) Any final decision by a hearing officer that a blight
9 violation does or does not exist constitutes a final decision and
10 order for purposes of judicial review and may be enforced in the
11 same manner as a judgment entered by a court of competent
12 jurisdiction.

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

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

1 affirmed, the administrative hearings bureau may apply the bond to
2 the fine and costs. An appeal by the city must be asserted by the
3 city's attorney and a bond is not required.

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

16 (a) In violation of the constitution or a statute, charter, or
17 ordinance.

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

20 (c) Made upon unlawful procedure resulting in material
21 prejudice to a party.

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

24 (e) Arbitrary, capricious, or clearly an abuse or unwarranted
25 exercise of discretion.

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

27 (20) EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (21), IF THE

1 CIVIL FINE AND COSTS IMPOSED AGAINST A PERSON UNDER THIS SECTION
2 ARE \$1,000.00 OR MORE AND THE PERSON DOES NOT PAY THE CIVIL FINE
3 AND COSTS IMPOSED WITHIN 30 DAYS AFTER A FINAL DECISION AND ORDER
4 OF THE HEARING OFFICER OR OF THE CIRCUIT COURT UNDER THIS SECTION,
5 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) THE SANCTIONS SET FORTH IN SUBSECTION (20) DO NOT APPLY
16 TO A BANK, LENDING INSTITUTION, CREDIT UNION, CREDIT UNION SERVICE
17 ORGANIZATION, OR GOVERNMENT ENTERPRISE THAT HAS BECOME THE OWNER OF
18 A PROPERTY AFTER FORECLOSURE OR AFTER TAKING A DEED IN LIEU OF
19 FORECLOSURE, PROVIDED THAT THE ENTITY COMPLIES WITH THE PROPERTY
20 PRESERVATION GUIDELINES ESTABLISHED BY FANNIE MAE, FREDDIE MAC, THE
21 UNITED STATES DEPARTMENT OF VETERANS AFFAIRS, THE UNITED STATES
22 DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, OR THE UNITED STATES
23 DEPARTMENT OF AGRICULTURE. THE SANCTIONS SET FORTH IN SUBSECTION
24 (20) DO NOT APPLY TO A CREDIT UNION OR CREDIT UNION SERVICE
25 ORGANIZATION THAT HAS BECOME THE OWNER OF A PROPERTY AFTER
26 FORECLOSURE, PROVIDED THAT THE ENTITY PROVIDES THE MAYOR OF THE
27 CITY WITH NOTICE OF A DESIGNATED ADDRESS FOR SERVICE OF PROCESS

1 REGARDING THE PROPERTIES AND A LIST OF THE ENTITY'S FORECLOSED
2 PROPERTIES WITHIN THAT JURISDICTION NOT LESS THAN ONCE EVERY 6
3 MONTHS.

4 (22) AS USED IN SUBSECTION (20), "PERSON" MEANS AN INDIVIDUAL,
5 PARTNERSHIP, CORPORATION, LIMITED LIABILITY COMPANY, ASSOCIATION,
6 OR OTHER LEGAL ENTITY. PERSON INCLUDES THE PARTNERS OR MEMBERS OF A
7 FIRM, A PARTNERSHIP, OR AN ASSOCIATION AND THE OFFICERS OF A
8 CORPORATION.