

Legislative Analysis



ZONING VIOLATIONS

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House Bills 5294-5296 (Substitutes H-1)

Sponsor: Rep. Joe Hune

Committee: Government Operations

First Analysis (11-28-05)

BRIEF SUMMARY: The bills would amend the local zoning authorizing acts to provide a 10-day grace period for violating zoning ordinances and set the maximum fine for a violation.

FISCAL IMPACT: To the extent that smaller fines are imposed, the bills could result in a modest revenue reduction to local governments.

THE APPARENT PROBLEM:

Recently, a property owner in the city of East Lansing was assessed more than \$56,000 in penalties for violating the city's rental housing licensing requirement. The local district court imposed the minimum civil fine of \$250 for each of the 215 days the house was used as a rental property without a license, plus other additional costs. (The city later reached an agreement with the property owner and reduced the fine to \$10,000.) Some believe that that the original penalty was grossly excessive and a case of government run amok. The various local zoning authorizing acts provide local governments with broad discretion in enacting local zoning ordinances, including setting penalties for a violation. Some people believe that similar situations could be avoided if the amount of the penalties imposed by local governments for certain zoning violations was limited in statute and violators were given a grace period during which a violation could be remedied.

THE CONTENT OF THE BILLS:

The bills would amend the local zoning authorizing acts to provide a 10-day grace period for violating zoning ordinances and set the maximum fine for a violation. House Bill 5294 would amend the City and Village Zoning Act (MCL 125.587), House Bill 5295 would amend the County Zoning Act (MCL 125.225), and House Bill 5296 would amend the Township Zoning Act (MCL 125.294).

Specifically, each of the bills provides that an individual would not be liable for a violation of zoning ordinance occurring before the 11th day after the person receives written notice of the violation. The notice would have to describe the violation and inform the individual of the grace period. The notice would have to be delivered in person or by registered mail, return receipt requested.

Additionally, the total fine for violating a zoning ordinance concerning property used as a dwelling or vacant property to be used as a dwelling would be up to \$250 for each day of violation or up to three percent of the property's state equalized value (SEV), whichever is less. The maximum criminal penalty would be \$500.

ARGUMENTS:

For:

The various local zoning authorizing acts provide local governments with wide discretion in setting penalties for zoning violations. Critics say that the situation in East Lansing that prompted these bills shows that such discretion can lead to an abuse of governmental authority. The East Lansing property owner was assessed a fine of more than \$56,000 on a house with a mortgage of \$84,000. That fine, prior to being reduced by the city, effectively amounted to a governmental taking of private property. Some people believe that the grace period and fine limits required by the bills provide local governments with sufficient enforcement tools while protecting property owners from overly harsh penalties for zoning violations. The grace period provides property owners with notice of a violation: this is particularly important, as many property owners otherwise may accrue substantial penalties while unwittingly violating an ordinance. Further, the grace period provides property owners with sufficient time to remedy a problem before fines may be assessed. This may encourage property owners to remedy a violation, as they may be financially unable to do so after the fine has been imposed.

Response:

The bills are largely introduced because of one rather extraordinary situation arising in the City of East Lansing. It is not clear why legislation affecting the entire state is needed, as there was no testimony in committee about similar situations occurring elsewhere in the state. Moreover, it does not seem that the bills are correcting a problem with the law. In its final order, the district court found that the conduct of the property owners was "cavalier" and "particularly egregious," and amounted "to an attempt to commit a fraud against the City of East Lansing and its citizens and taxpayers." While some may be taken aback at the initial cost of the fine (notwithstanding the fact that the city agreed to lower that amount), it seems that the fine was entirely appropriate, particularly given the findings of the court.

Against:

The bills drastically cut into the ability of local governments to enforce zoning ordinances that concern dwellings. Generally, the penalties imposed for zoning violations aren't designed to raise revenue, but are an important financial incentive for people to comply with the law. By and large, zoning ordinances are developed by local communities as a means of protecting property owners and property values from uses of property that could lower values, cause environmental damage, or have other adverse impacts. Local ordinances are developed by local residents and represent the community's standards for permissible property uses. Property owners who fail to comply with these ordinances, notwithstanding a community's repeated attempts at enforcement, often do so well aware of the consequences, including the possible imposition of fines.

Ultimately, local communities want compliance with their zoning ordinances, and often use the mere possibility of a rather large fine to encourage compliance. Communities will often reduce a fine once a property owner complies with an ordinance. However, under the bill, local governments largely lose their ability to enforce a zoning violation, particularly in situations where the violation occurs for an extended period of time.

The bill places imposes a maximum fine of \$250 per day of violation or three percent of the property's state equalized value, whichever is less. As an example, a house with a SEV of \$75,000 could have a maximum fine assessed against it of \$2,250. At a fine of \$250 per day, the fine would reach \$2,250 on the ninth day. (That is, the ninth day following the 10-day grace period). For violations beyond that day, no fine would be assessed. How, then, would the community enforce its ordinance, other than through costly court action?

The grace period provided under the bills is also problematic, as it effectively prohibits the community from enforcing its zoning ordinance during that time. If a property owner is violating a zoning ordinance, neighboring property owners want that violation remedied immediately, not in 10 days, particularly if that violation adversely impacts the health and safety of neighboring residents.

POSITIONS:

The Michigan Association of Home Builders indicated that is supports the bills. (11-1-05)

The Michigan Realtors Association indicated that it supports the bills. (11-1-05)

The Michigan Municipal League opposes the bills. (11-8-05)

The Michigan Townships Association opposes the bills. (11-8-05)

The Michigan Association of Counties opposes the bills. (11-8-05)

A representative of the City of Lansing testified in opposition to the bills. (11-1-05)

Ottawa County indicated that it opposes the bills. (11-1-05)

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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.