

Legislative Analysis



TRESPASSING AT A KEY FACILITY

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Senate Bill 685 (Substitute H-1)

Senate Bill 686 (Substitute H-1)

Sponsor: Sen. Patricia L. Birkholz

House Committee: Judiciary

Senate Committee: Judiciary

First Analysis (12-12-05)

BRIEF SUMMARY: The bills would prohibit trespassing on the premises of a "key facility" (such as a chemical plant, refinery, power generating plant, and water treatment plant.)

FISCAL IMPACT: The bills would have an indeterminate fiscal impact on the state and local units of government. Any increase in the numbers or length of sentences to county jails could increase costs for affected counties. Increases in sentences that included felony probation would increase state costs; the cost of parole and probation supervision is roughly \$2,000 per offender per year. Any increase in the number or length of sentences to prison would increase state costs of incarceration, which currently average about \$29,000 per offender per year. Increases in collections of penal fine revenue could benefit local libraries, which are the constitutionally-designated recipients of such revenues.

THE APPARENT PROBLEM:

After the terrorist attacks of September 11, 2001, many new laws were enacted to prohibit various acts of terrorism and to strengthen criminal penalties for acts that jeopardized the safety of the public. For example, some of the changes in law increased penalties for placing explosive devices in areas where people congregated, such as shopping malls, train and bus stations, and sports stadiums.

Recently, it has come to the attention of some that the general penalty in law for trespassing (up to 90 days in jail and/or a fine of up to \$50) is not sufficient to deter or to punish trespassing on the grounds of structures or facilities that are part of the state's key infrastructure; for example, power plants, cell phone towers, and hazardous waste facilities. As a 90-day misdemeanor, an offense would not even trigger statutory fingerprinting or records retention provisions—procedures necessary for tracking repeat offenders and for checking the national criminal database. Some people believe that the potential threat to public safety from sabotage or an attack on sensitive structures or facilities warrants tougher penalties for trespassing.

THE CONTENT OF THE BILLS:

The bills would prohibit the trespassing on the premises of a key facility, define "key facility," establish penalties and exemptions, and place the maximum term of

imprisonment in the sentencing guidelines portion of law. The bills would take effect April 15, 2006. A more detailed description of each bill follows.

Senate Bill 686 would add a new section to the Michigan Penal Code (750.552c) to prohibit a person – intentionally or without authority or permission – from entering or remaining in or upon premises or a structure belonging to another that was a "key facility" if the key facility were 1) completely enclosed by a physical barrier of any kind, including a significant water barrier that prevented pedestrian access; and 2) posted in a conspicuous manner against entry. A violation would be a felony punishable by imprisonment for not more than four years and/or a fine of not more than \$2,500.

The minimum letter height on the sign against entry would have to be one inch. Each posting sign would have to be not less than 50 square inches and be spaced so that a person could observe not less than one sign at any point of entry upon the property. Furthermore, the bill would not apply to and could not be construed to prevent a lawful assembly or a peaceful and orderly petition for the redress of grievances, including, an employer/employee labor dispute.

"Key facility" would be defined to mean one or more of the following:

- A chemical manufacturing facility.
- A refinery.
- An electric utility facility. This would include a power plant, power generation facility peaker, electric transmission facility, electric station or substation, or any other facility used to support the generation, transmission, or distribution of electricity. It would not include electric transmission land or right-of-way that was not completely enclosed, posted, and maintained by the electric utility.
- A water intake structure or water treatment facility.
- A pipeline natural gas utility facility, including an age station, compressor station, orderization facility, main line valve, natural gas storage facility, or any other facility used to support the acquisition, transmission, distribution, or storage of natural gas. It would not include gas transmission property that was not completely enclosed, posted, and maintained by the natural gas utility.
- Gasoline, propane, liquid natural gas (LNG), or other fuel terminal or storage facility.
- A transportation facility, including a port, railroad switching yard, or trucking terminal.
- A pulp or paper manufacturing facility.
- A pharmaceutical manufacturing facility.
- A hazardous waste storage, treatment, or disposal facility.
- A telecommunication facility, including a central office or cellular telephone tower site.
- A facility substantially similar to a facility, structure, or station listed above or a resource required to submit a risk management plan under a section of the federal Clean Air Act [42 USC 7412(r)].

Senate Bill 685 would amend the Code of Criminal Procedure (MCL 777.16y) to specify that trespass upon a key facility would be a Class F felony against the public safety with a maximum term of imprisonment of four years.

HOUSE COMMITTEE ACTION:

The H-1 substitute adopted for Senate Bill 686 added an effective date and replaced two of the facilities contained in the definition of "key facility" (electrical power generation or electrical transmission or distribution facility and pipeline transmission compressor station) with electric utility facility and natural gas utility facility, respectively. The substitute adopted for Senate Bill 685 corrected the citation for the provision added by Senate Bill 686 and added an effective date.

ARGUMENTS:

For:

If a refinery, power station, phone tower, railroad switching yard, etc. were attacked or sabotaged, it could seriously affect services to the public and could result in significant threats to public safety. Since a person planning such action may be apprehended before he or she can carry out the act to the fullest, it is important to equip prosecutors with the tools necessary for adequate prosecution. Senate Bill 686 would create a new section of law that would specifically apply only to key facilities or critical infrastructures. Instead of a minor misdemeanor charge that doesn't even allow law enforcement personnel to track subsequent trespassing incidents, the bill would make it a felony to trespass upon the grounds of certain facilities. To protect members of the public who don't intend malice but simply have wandered onto the property of a key facility, the bill would apply the tougher penalty only to those properties that were completely enclosed from public access and that were adequately posted.

POSITIONS:

A representative of the Michigan Chemistry Council testified in support of the bills. (12-9-05)

A representative of the Michigan State Police indicated support for the bills. (12-9-05)

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