



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL ANALYSIS



Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bills 685 and 686 (as enrolled)
Sponsor: Senator Patricia L. Birkholz
Senate Committee: Judiciary
House Committee: Judiciary

PUBLIC ACTS 304 and 305 of 2005

Date Completed: 4-4-06

RATIONALE

After the September 11, 2001, terrorist attacks on the World Trade Center in New York City and the Pentagon in the metropolitan Washington, D.C. area, new laws were enacted on the Federal and State levels to prohibit various acts of terrorism and strengthen criminal penalties for acts that could widely jeopardize public safety. Since the attacks, the protection of various types of facilities related to manufacturing, transportation, utilities, communication, and hazardous waste has been a major concern among many. It was suggested that the general penalty under Michigan law for trespassing (up to 30 days' imprisonment and/or a maximum fine of \$50 (MCL 750.552)) is insufficient to deter people from entering or staying upon the property of those types of facilities.

enclosed by a physical barrier of any kind, including a significant water barrier that prevents pedestrian access. The facility also must be conspicuously posted against entry, with signage as required under the bill. A violation is a felony punishable by up to four years' imprisonment, a maximum fine of \$2,500, or both.

The bill specifies that it does not prohibit and may not be construed to prevent lawful assembly or a peaceful and orderly petition for the redress of grievances, including a labor dispute between an employer and its employees.

"Key facility" means one or more of the following:

CONTENT

Senate Bills 685 and 686 amend the Code of Criminal Procedure and the Michigan Penal Code, respectively, to prohibit and provide a felony penalty for trespassing on a "key facility", and include that offense in the sentencing guidelines.

The bills take effect on April 15, 2006. Senate Bill 685 was tie-barred to Senate Bill 686.

Senate Bill 686

The bill prohibits a person, intentionally or without authority or permission, from entering or remaining in or upon premises or a structure belonging to another that is a key facility, if the key facility is completely

- A chemical manufacturing facility.
- A refinery.
- An electric utility facility, including a power plant, a power generation facility peaker, an electric transmission facility, an electric station or substation, or any other facility used to support the generation, transmission, or distribution of electricity.
- A water intake structure or water treatment facility.
- A 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.
- 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 telecommunications facility, including a central office or cellular telephone tower site.

("Electric utility facility" and "natural gas utility facility" do not include electric transmission land or right-of-way, or gas transmission pipeline property, that is not completely enclosed, posted, and maintained by the electric or natural gas utility.)

"Key facility" also includes 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)). (That section requires facilities at which regulated substances are present in certain quantities to prepare and implement a risk management plan to detect and prevent or minimize accidental releases of those substances and to provide a prompt emergency response to any releases in order to protect human health and the environment.)

Senate Bill 685

The bill includes trespass upon a key facility in the sentencing guidelines. Under the bill, the offense is a Class F felony against the public safety, with a statutory maximum sentence of four years' imprisonment.

MCL 777.16y (S.B. 685)
750.552c (S.B. 686)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Since the September 11, 2001, terrorist attacks, protecting key facilities such as power and water plants, transportation centers, chemical or pharmaceutical manufacturing facilities, and communication facilities has been a homeland security priority. Current Michigan law, however,

does not include enhanced penalties for trespassing at these key facilities, so a violator is subject only to the State's general trespass sanctions: a maximum of 30 days in the county jail and/or a fine of up to \$50. By establishing a felony penalty, Senate Bill 686 will provide a more effective deterrent to trespassing at a key facility and a more appropriate punishment for someone who enters upon the property of one of those facilities for the purpose of interfering with, damaging, or destroying the facility. The bill's penalty of up to four years' imprisonment and/or a maximum fine of \$2,500 is similar to the penalty for trespassing upon the property of a State correctional facility (MCL 750.522b).

In addition, Senate Bill 686 includes protections against an inadvertent violation and infringement upon the right to assemble. In order for a person to be subject to the felony penalty, the key facility must be completely enclosed by a physical barrier and be conspicuously posted against entry. Also, the bill states that it does not prevent lawful assembly or a peaceful and orderly petition for the redress of grievances, such as for a labor dispute between an employer and employees.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills will have an indeterminate fiscal impact on State and local government. There are no data to indicate how many offenders will be convicted of trespassing upon a key facility. Under these bills, an offender convicted of the Class F felony will receive a sentencing guidelines minimum sentence range of 0-3 months to 17-30 months. Local governments incur the cost of incarceration in local facilities, which varies by county. The State incurs the cost of felony probation at an annual average cost of \$2,000, as well as the cost of incarceration in a State facility at an average annual cost of \$30,000. Public libraries will benefit from any additional penal fine revenue raised.

Fiscal Analyst: Lindsay Hollander

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.