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BILL  ANALYSIS

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Senate Bills 35 through 39 (as introduced 1-16-13)

Sponsor: Senator Virgil Smith (S.B. 35)  
Senator Bert Johnson (S.B. 36)  
Senator Tonya Schuitmaker (S.B. 37)  
Senator Rick Jones (S.B. 38)  
Tupac A. Hunter (S.B. 39)

Committee: Judiciary

Date Completed: 2-4-13

### CONTENT

**Senate Bill 35** would amend Section 4q of the Home Rule City Act, which allows certain cities to establish an administrative hearings bureau to adjudicate blight violations, to do the following:

- Establish additional civil and criminal penalties that could be imposed on a person who committed a blight violation and failed to pay a fine and costs of \$1,000 or more.
- Exclude certain entities that become the owner of foreclosed property from the additional sanctions, under certain circumstances.
- Lower the minimum population from 2.0 million to 1.5 million for a county containing a city with a population of 3,300 or more.

**Senate Bill 36** would amend the Michigan Zoning Enabling Act to allow a city zoning ordinance to provide that a person would be ineligible for rezoning, site approval, or other zoning authorization if the person were delinquent in paying a fine or costs for a blight violation.

**Senate Bill 37** would amend the Single State Construction Code Act to allow a city to provide by ordinance that a person would be ineligible for a building permit, a certificate of use and occupancy, or a variance if the person

were delinquent in paying a fine or costs for a blight violation.

**Senate Bill 38** would amend the Revised Judicature Act to allow a city to file a garnishment action if a fine or costs were ordered for a blight violation.

**Senate Bill 39** would amend the Home Rule City Act to allow a lien against property involved in a blight violation to be enforced and discharged by the city in the same manner as liens for delinquent taxes.

The bills are described in detail below.

#### **Senate Bill 35**

Section 4q of the Home Rule City Act allows a city with a population of 7,500 or more in any county, and a city with a population of 3,300 or more in a county with a population of 2.0 million or more, to establish an administrative hearings bureau to adjudicate and impose sanctions for a blight violation. The bill would refer to a county with a population of 1.5 million or more.

A city that creates an administrative hearings bureau must establish its jurisdiction for adjudicating blight violations, making determinations of responsibility, and imposing sanctions. Only a violation of any of the following types of ordinances may be designated a blight violation:

- Zoning.
- Building or property maintenance.
- Solid waste and illegal dumping.
- Disease and sanitation.
- Noxious weeds.
- Vehicle abandonment, inoperative vehicles, vehicle impoundment, and municipal vehicle licensing.
- Right-of-way signage.
- An ordinance that is substantially the same as Sections 138 to 142 of the Housing Law (which make it illegal to maintain a dwelling as a dangerous building).

A hearing officer has the authority to impose reasonable and proportionate sanctions consistent with applicable ordinance provisions and assess costs against a person found responsible for a violation. In addition to imposing fines and costs, the hearing officer must impose a justice system assessment of \$10 for each blight violation determination. A person may appeal the decision and order of a hearing officer to the circuit court within 28 days after entry of the decision and order.

Under the bill, if the civil fine and costs imposed against a person were \$1,000 or more and the person did not pay them within 30 days after a final decision and order of the hearing officer or (upon appeal) of the circuit court, the person would be subject to the following:

- For a first violation, the person would be responsible for a State civil infraction and could be ordered to pay a maximum civil fine of \$500.
- For a second violation, the person would be guilty of a misdemeanor punishable by imprisonment for up to 93 days and a maximum fine of \$500, or both.
- For a third or subsequent violation, the person would be guilty of a misdemeanor punishable by imprisonment for up to one year and a mandatory fine of \$500.

The additional sanctions would not apply to a bank, lending institution, credit union, credit union service organization, or government enterprise that became a property owner after foreclosure or after taking a deed in lieu of foreclosure, provided that the entity complied with the property preservation guidelines established by

Fannie Mae, Freddy Mac, the U.S. Department of Veterans Affairs, the U.S. Department of Housing and Urban Development, or the U.S. Department of Agriculture. Those sanctions also would not apply to a credit union or credit union service organization that became the owner of property after foreclosure, provided that the entity gave the mayor of the city notice of a designed address for service of process regarding the property and a list of the entity's foreclosed property within that jurisdiction at least every six months.

As used in the provision for additional sanctions, the bill would define "person" as an individual, partnership, corporation, limited liability company, association, or other legal entity, including the partners or members of a firm, partnership, or association, and the officers of a corporation.

#### **Senate Bill 36**

Under the bill, a city's zoning ordinance could provide that a person would not be eligible to apply for a rezoning, site plan approval, special land use approval, planned unit development approval, variance, or other zoning authorization if the person were delinquent in paying a civil fine, costs, or a justice system assessment imposed by an administrative hearings bureau established in that city under Section 4q of the Home Rule City Act.

#### **Senate Bill 37**

The Single State Construction Code Act authorizes a governmental subdivision, by ordinance, to assume responsibility for administering and enforcing the Code and the Act within its political boundary.

Under the bill, if a city had assumed this responsibility, the city could, by ordinance, provide that a person was not eligible to apply for a building permit, a certificate of use and occupancy, or a variance to a requirement of the Code, if the person or the owner of the affected or proposed building or structure were delinquent in paying a civil fine, costs, or justice system assessment imposed by an administrative hearings bureau established in that city under Section 4q of the Home Rule City Act.

### **Senate Bill 38**

The bill would add Section 4027 to the Revised Judicature Act (RJA) to provide that, if a hearing officer ordered the payment of a civil fine or costs under Section 4q of the Home Rule City Act, and the defendant did not appeal the order within the time allowed, and if the city did not obtain a lien under Section 4r of the Home Rule City Act (which Senate Bill 39 would amend), the city could file an action for a writ of garnishment in the appropriate court. The initial papers filed would have to include a properly authenticated copy of the applicable order.

Immediately after the action was filed, the court would have to issue a writ of garnishment, which would serve in lieu of a summons and complaint in the action. The time for the defendant and an initial garnishee defendant to respond would be the same as for a response under statutes and court rules applicable to other garnishments. (A garnishee defendant is a person, such as an employer or bank, ordered to withhold funds or payments due to the defendant.)

The action could name more than one initial garnishee defendant. After an initial writ of garnishment was issued, the city could, without leave of the court, obtain subsequent writs of garnishment against the same or additional garnishee defendants.

A defendant or garnishee defendant could not raise in the action any issue that could have been appealed under Section 4q of the Home Rule City Act.

A party or the court in an action under proposed Section 4027 could not use garnishment forms adopted by the State Court Administrative Office for use in other garnishment proceedings.

Except as provided in the bill and in any rules adopted by the Supreme Court to apply to actions under Section 4027, such an action would have to proceed according to the statutes and court rules applicable to other garnishment actions.

The fees collected under Sections 2529(1)(a) and (h) and Section 8371 of the RJA would not apply to an action under

proposed Section 4027. (Section 2529(1)(a) and (h) prescribe, respectively, a \$150 circuit court filing fee and a \$15 service fee for a writ of garnishment and other writs. Section 8371 prescribes district court fees, including filing fees ranging from \$25 to \$150, depending on the amount in controversy.)

### **Senate Bill 39**

The Home Rule City Act allows a city to obtain a lien against the land, building, or structure involved in a blight violation if the defendant does not pay a civil fine or costs or an installment payment ordered by a hearing officer within 30 days after the date the payment is due. The city must record a copy of the final decision and order with the register of deeds for the county where the land, building, or structure is located. The city also must send a written notice of the lien to the owner of the land, building, or structure.

The lien may be enforced and discharged by the city in the manner prescribed by its charter, by the General Property Tax Act, or by an ordinance passed by the city's governing body. Under the bill, a lien could be enforced and discharged by the city in the manner prescribed by its charter, in the same manner as liens for delinquent taxes under the General Property Tax Act, or by an ordinance duly passed by the governing body of the city.

The bill would delete a provision under which property is not subject to forfeiture, foreclosure, and sale under the General Property Tax Act for nonpayment of a civil fine or costs or an installment ordered under Section 4q unless the property is also subject to forfeiture, foreclosure, and sale, under the General Property Tax Act, for delinquent property taxes.

The bill would prohibit a city from commencing an action to enforce a lien if the city had already begun an action for a writ of garnishment with respect to the unpaid fine, costs, or payment under Section 4027 of the RJA (as proposed by Senate Bill 38).

Senate Bill 39 is tie-barred to Senate Bill 38.

MCL 117.4q (S.B. 35)  
MCL 125.3406 (S.B. 36)  
Proposed MCL 125.1509c (S.B. 37)  
Proposed MCL 600.4027 (S.B. 38)  
MCL 117.4r (S.B. 39)

Legislative Analyst: Patrick Affholter

## **FISCAL IMPACT**

### **Senate Bill 35**

The bill would have an indeterminate fiscal impact on State and local government. Cities could see increased revenue from the collection of fines and costs for blight violations, and the State could see increased revenue resulting from the \$10-per-citation justice system assessment. Although there are no data to indicate how many offenders would be charged with the proposed misdemeanors, those convicted could be incarcerated and/or placed under community supervision, increasing costs for local units. Increased civil infraction and penal fine revenue associated with the proposed State civil infraction and the proposed misdemeanors would benefit public libraries.

### **Senate Bills 36, 37, & 39**

The bill would have no impact on State revenue and a likely negligible effect on local unit revenue. Cities' revenue could be increased slightly under the assumption that the changes would either make it more likely that certain fines or costs would be paid, or paid in a timely manner, or provide alternative options for cities to more effectively or efficiently collect a payment relating to a lien.

### **Senate Bill 38**

The bill would have a negligible fiscal impact on the local court system. Courts could see a marginal increase in caseload associated with enforcing garnishments against those who neglect payment of civil fines and costs ordered for blight violations. Cities would receive increased revenue from the collection of the fines and costs.

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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.