

PNEUMATIC GUN: REGULATION BY LOCAL GOVERNMENT

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Senate Bill 85 (reported by House Committee w/o amendment)
Sponsor: Sen. Dave Hildenbrand
House Committee: Judiciary
Senate Committee: Judiciary
Complete to 4-22-15

Analysis available at
<http://www.legislature.mi.gov>

BRIEF SUMMARY: The bill would amend Public Act 319 of 1990, which prohibits local units of government from taxing or regulating the ownership of pistols or other firearms, to do the following:

- ❖ Extend the authority of the act to include pneumatic guns.
- ❖ Define the terms "firearm" and "pneumatic gun."
- ❖ Expand current provisions regarding the authority of local units of government over pistols or firearms to include pneumatic guns.
- ❖ Allow a local government to require a minor be under parental supervision when using a pneumatic gun (unless the minor has permission to do so on private land).
- ❖ Allow a local government to prohibit brandishing a pneumatic gun.
- ❖ Allow a city or charter township to prohibit the discharge of a pneumatic gun in heavily populated areas.

FISCAL IMPACT: Senate Bill 85 would not have a significant fiscal impact on the state or local units of government.

THE APPARENT PROBLEM:

Under Michigan law, air-guns (also known as "pneumatic guns") are treated like firearms, even though most states either treat them as toys or don't regulate them at all. In addition, the definition of "firearm" in various Michigan statutes differ from one other and also from federal law. Last year a package of Senate and House bills intended to align the treatment of pneumatic guns and definition of "firearm" with federal law were introduced. Though several Senate bills did reach the governor, the House bills did not make it through the process before the Legislature ended its two-year cycle. The governor then vetoed the bills that had reached his desk on the grounds the package was incomplete. The bills have been reintroduced this session and some have already passed the House (see ***Background Information*** below).

Senate Bill 85 deals with the authority of local governments to regulate, or not regulate, firearms and handguns. In general, state law preempts local governments from enacting local ordinances that would restrict the ownership, registration, purchase, sale, transfer, transportation, or possessions of pistols, firearms, and ammunition. Apparently, the restriction was placed in statute more than two decades ago to prevent a patchwork quilt of local gun laws that could be confusing for the public and make such things as hunting

difficult. In particular, since pneumatic guns would no longer fall within the definition of "firearm," Senate Bill 85 addresses the authority of local governments to regulate these types of guns.

THE CONTENT OF THE BILL:

The bill, which amends Public Act 319 of 1990, would take effect 90 days after enactment. A detailed description of the bill follows.

Definitions

"Firearm" would mean any weapon that will, is designed to, or may readily be converted to, expel a projectile by action of an explosive. "Pneumatic gun" means any implement, designed as a gun, that will expel a BB or pellet by spring, gas, or air. Pneumatic gun includes a paintball gun that expels by pneumatic pressure plastic balls filled with pain for the purpose of marking the point of impact.

Regulation by local governments

Currently, the act prohibits a local unit of government (defined as a city, village, township, or county) from imposing special taxation on, enacting or enforcing any ordinance or regulation pertaining to, or regulating in any other manner, the ownership, registration, purchase, sale, transfer, transportation, or possession of pistols, or other firearms, ammunition for pistols or other firearms, or components of pistols or other firearms, except as allowed by federal law or Michigan law. Senate Bill 85 would apply this provision also to pneumatic guns.

The act allows a local unit of government to prohibit or regulate conduct with a pistol or other firearm that is a criminal offense under state law or the transportation, carrying, or possession of pistols and other firearms by employees of a local government in the course of employment with that local government. The bill would apply these provisions to a pneumatic gun, as well.

The bill would also allow a local unit of government to require, within its jurisdiction, that an individual below the age of 16 who is in possession of a pneumatic gun be under the supervision of a parent, guardian, or an individual 18 years of age or older. An ordinance could not, however, regulate possession of a pneumatic gun on or within private property if the individual below the age of 16 is authorized by a parent or guardian and the property owner or legal possessor to possess the pneumatic gun.

The local unit of government could also prohibit an individual from pointing, waving about, or displaying a pneumatic gun in a threatening manner with the intent to induce fear in another individual (brandishing).

Regulation by a city or charter township

A city or charter township could prohibit the discharge of pneumatic guns in any area within its jurisdiction that is so heavily populated as to make that conduct dangerous to the inhabitants of the area. However, an ordinance could not prohibit the discharge of

pneumatic guns at authorized target ranges, on other property where firearms may be discharged, or on or within private property with the permission of the owner or possessor of that property if conducted with reasonable care to prevent a projectile from crossing the bounds of the property.

MCL 123.1101 et al.

HOUSE COMMITTEE ACTION:

The committee did not make any changes to the Senate-passed version of the bill.

BACKGROUND INFORMATION:

Senate Bill 85 is part of a larger package of bills to align the definition of "firearm" in various state statutes with each other and with federal law and to no longer treat pneumatic guns and pellet guns as firearms. House Bills 4151-4156 have passed the House and are pending Senate floor action. See the analysis of those bills at:

<http://www.legislature.mi.gov/documents/2015-2016/billanalysis/House/pdf/2015-HLA-4151-BC81FBB9.pdf>

ARGUMENTS:

For:

Air-guns and pellet guns are growing in popularity among youth and adults for use in hunting small game, teaching hunting and gun safety, and for playing airsoft games. The guns fire small, plastic BBs that are non-lethal, though knowledgeable observers say that eye protection should be worn at all times when operating or when near such guns as the pellets can cause serious eye damage.

Senate Bill 85 is a companion bill to a multi-bill package that has already passed the House and that aligns Michigan law regarding pneumatic guns with the federal definition, thus no longer treating pneumatic guns as firearms, with some exceptions. Specifically, now that pneumatic guns will no longer be considered to be firearms, it is important to expand what is known as the "local preemption law" to include pneumatic guns. Currently, local governments are prohibited from regulating the use, sale, possession, and so on of pneumatic guns since they are still treated as firearms. The bill will simply continue the preemption once pneumatic guns are no longer defined to be firearms.

However, Senate Bill 85 will allow local governments to prohibit brandishing a pneumatic gun and to require parental or adult supervision when children 15 and younger are using them. Cities and charter townships would also have the authority to prohibit the discharge of a pneumatic gun in heavily populated areas in which use of the guns would be dangerous to the inhabitants. Cities and charter townships could not prohibit the discharge of pneumatic guns on or within private property, at target ranges, or on other property where firearms are allowed to be discharged.

Against:

Some feel that Senate Bill 85, by continuing to prohibit local governments from regulating where, how, and by whom pneumatic guns may be used, could result in unnecessary injuries to others. For instance, the bill package is likely to increase ownership of pneumatic guns by adults and children. In the heat of play, it is conceivable that safety rules could be forgotten and the guns pointed in the direction of passers-by or nearby homes, resulting in injuries to other persons. The noise of the guns could also be a problem in some neighborhoods. However, only cities and charter townships would be allowed to restrict the discharge of the guns to certain less populated areas within their jurisdictions. General law townships feel they should at least have the same authority to decide where within their jurisdictions the discharge of pneumatic guns would not pose a threat to public safety. As some general law townships have populations approaching 80,000 residents, it doesn't make sense to exclude them.

In addition, though all local governments could prohibit brandishing a pneumatic gun in public, it would be nearly impossible to enforce as described in the bill. That is because the brandishing prohibition would apply only to conduct *intended* to induce fear, not conduct that *actually* induced, or was likely to induce, fear in another person.

Though touted as toys, some still have concerns that removing current regulations on pneumatic guns could have unintended consequences such as injuries to others, felons being able to lawfully buy and use pneumatic guns, and kids and adults being shot by law enforcement officers who mistake the "toy" guns for real ones. Several deaths, including recently a 12-year-old Ohio boy, have already occurred when officers opened fire on persons believed to be holding lethal weapons rather than airsoft guns. Some believe that at the least, Senate Bill 85 should allow local governments to require that pneumatic guns have the distinctive markings or devices (e.g., an orange plastic tip) required under federal law so that law enforcement officers and members of the public can be assured that the person is not carrying a lethal firearm.

Response:

According to committee testimony, granting only cities and charter townships the ability to restrict areas where pneumatic guns could be discharged was done explicitly because general law townships govern most of the geographic area of the state and the concern was that to allow them to enact discharge ordinances could eliminate all recreational hunting across the state.

Rebuttal:

Most hunters use firearms traditionally used in hunting, not pneumatic guns. Even if all general law townships were able to enact local discharge ordinances, since the bill restricts such ordinances to heavily populated areas within the local government's jurisdiction, and since the bill only applies to the discharge of pneumatic guns, expanding such authority to all townships is likely to have little to no impact on recreational hunting.

POSITIONS:

A representative of the National Rifle Association testified in support of the bill. (4-21-15)

A representative of the Michigan Air Gun Alliance testified in support of the bill. (4-14-15)

Michigan Coalition of Responsible Gun Owners indicated support for the bill. (4-14-15)

Michigan Open Carry indicated support for the bill. (4-14-15)

A representative of the Michigan Townships Association testified in opposition to the bill. (4-14-15)

The Michigan Municipal League indicated opposition to the bill. (4-14-15)

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.