

# Legislative Analysis

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## **ADVERSE POSSESSION CLAIMS BY AND AGAINST MUNICIPALITIES**

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**House Bill 4747 (reported from committee as H-1)**  
**Sponsor: Rep. Holly Hughes**  
**Committee: Judiciary**  
**Complete to 11-30-15**

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

**BRIEF SUMMARY:** House Bill 4747 would amend the Revised Judicature Act by simplifying the language of the statute controlling adverse possession claims by and against municipalities. Additionally, the bill would clarify that a municipality is not subject to adverse possession, laches, or periods of limitations defenses when the municipality is asserting rights to land against an individual, no matter which party brings the action.

**FISCAL IMPACT:** House Bill 4747 would have an indeterminate and in the aggregate, likely negligible, fiscal impact on local units of government. The bill would clarify the restrictions prohibiting adverse possession against local units of government.

### ***THE APPARENT PROBLEM:***

As statutory language on adverse possession is currently worded, courts may find that a municipality is only protected from certain claims when it is the party bringing the action. This bill seeks to remedy that issue by making clear that a municipality is not subject to these claims whether the action is brought by or against the municipality.

### ***THE CONTENT OF THE BILL:***

In its current form, the Revised Judicature Act states that even if a person has adversely possessed a piece of land for the requisite 15 years, the person may not assert that claim against the state in order to retain rights to that land. However, the person may assert that claim in order to seek equitable relief. House Bill 4747 retains that rule, while adjusting the language slightly.

The bill would rewrite subsection 2 of Section 5821 of the RJA. Most significantly, subsection 2 replaces the language that municipalities are protected from certain claims only if they are the ones bringing action; the new language states that these protections exist whenever municipalities are involved in an action.

Subsection 2 also expands upon the types of land and local units of government to which the subsection would apply. First, subsection 2 of the bill adds "easement" to the already-included public highway, street, alley, or other public ground. Additionally, subsection 2 adds "political subdivision of this state" to the "municipal corporations" already listed in the statute. Finally, subsection 2 expands protection for municipalities from merely periods of limitations claims, so that it would include the following three:

- Periods of limitations—already listed in the act, this dictates that a municipality may assert its right to land at any time, regardless of how much time has passed.
- Laches—this protects municipalities from an assertion that because the municipality failed to assert its right to the land for a certain period of time, it has "slept on" or ceded that right.
- A claim for adverse possession, acquiescence, or a prescriptive easement—this protects municipalities from a claim that, by not asserting its right to the land, it has implicitly allowed the person adversely possessing it access or title to the land.

MCL 600.5821

### ***BACKGROUND INFORMATION:***

The revisions to this statute were precipitated by two 2009 court cases in which the court applied what it deemed to be the letter of the law, thereby reversing 100 years of convention. Until 2009, municipalities were not subject to adverse possession claims in any case. However, at that time the Michigan Court of Appeals found that because the statutory language differed in its treatment of the state and municipalities, the legislature must have intended for municipalities to be protected from certain claims only if the municipality brought the action, and not if the action was brought by the individual.

In this bill, the legislature seeks to revise its language to conform to the original intent of the statute.

### ***ARGUMENTS:***

#### ***For:***

Currently, the statute potentially rewards a bad or wrong act by allowing an individual to adversely possess land and, as long as the individual is the first to file, to assert certain claims that would otherwise be barred.

Proponents say that his bill brings the statutory language in line with its original intent. No longer will a municipality be subject to different rules based on whether the action was brought by or against the municipality.

#### ***Against:***

Opponents may argue that a municipality should not be subject to different rules from citizens. If one citizen may adversely possess and gain title to a piece of land from another citizen, he or she should also be able to do so against a municipality.

### ***POSITIONS:***

Representatives of the Michigan Municipal League testified in support of the bill. (10-27-15)

Representatives of the Michigan Association of Municipal Attorneys testified in support of the bill. (10-27-15)

A representative of the Michigan Townships Association spoke in support of the bill. (10-27-15)

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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.