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House Bill 5197 (as passed by the House)
House Bill 5198 (as passed by the House)
Sponsor: Representative Matt Maddock
House Committee: Local Government and Municipal Finance
Ways and Means
Senate Committee: Local Government

Date Completed: 9-24-20

CONTENT

House Bill 5197 would amend the Records Reproduction Act to allow a municipality to reproduce a construction document in an electronic or digital file format and dispose of the original if it did not pertain to a historic site and other conditions were met.

House Bill 5198 would amend the Michigan Penal Code to require that document disposal comply with the requirements proposed under House Bill 5197.

House Bill 5197 and 5198 are tie-barred.

House Bill 5197

The bill would allow a municipality to reproduce, in any electronic or digital file format, a construction document that was or had been presented to a building official or department of that municipality if all the following conditions were met:

- The electronic or digital file format used by the municipality captured the entire construction document.
- The accuracy of the document to be reproduced was confirmed by a building official of that municipality, the planning commissions of that municipality, or a signed affidavit from the individual who created the document.
- The electronic or digital file of the document was in a format easily accessible and publicly available at the clerk's office and on the municipality's website.
- In addition to the file format used by the municipality, the document also was reproduced in a portable document format (PDF) or another widely used secure electronic format.
- A physical copy of the document was available from the clerk of the municipality, or his or her designee, for a reasonable fee.
- A redundant copy of the document was kept at a bonded third-party digital storage vendor.

"Construction document" would include the specifications, bid documents, instructions to bidders, contract, bonds, drawings, blueprints, permits, site plans, change work orders, or stop work orders for a construction project. "Bonded third-party storage vendor" would mean a business that provides digital storage and that maintains liability insurance against negligence with a minimum policy limit of \$500,000 per occurrence.

If a municipality electronically or digitally reproduced a construction document, the original document could be disposed of or destroyed as authorized under Section 11 of the Michigan History Center Act. If the original document were for or involved a historic site, the original document would have to be retained by the municipality and could not be disposed of or destroyed.

(Section 11 of the Michigan History Center Act pertains to the collection of records from public offices and records retention schedule and disposal. Under the Act, the directing authority of each State, county, multicounty, school, or municipal agency, department, board, commissions, or institution of government must present to the Archives of Michigan a certified schedule governing disposal of, or certified list or description of, the records that are useless and of no value to the government agency and to its duties to the public. The Archives must inspect and requisition records that it deems valuable. Afterward, the directing authority of the agency, department, board, commission, or institution must submit the records retention schedule governing the disposal of the records to the State Administrative Board, which must approve or disapprove of the disposal schedule and order the destruction of the valueless records.)

"Historic site" would mean any building recognized under Federal or State law as being a historic site, including any historic site listed on the State Register of Historic Sites that is maintained under the Governor John B. Swainson Michigan Historical Markers Act.

House Bill 5198

Under the Penal Code, all official books, papers, or records created by or received in any office or agency of the State or its political subdivisions are public property. All of these books, papers, or records must be disposed of only as provided in Section 11 of the Michigan History Center Act and Sections 2137 and 2138 of the Revised Judicature Act (which pertain to the certification of copied documents for use in evidence). The bill also would require the materials described above to be disposed of Section 2a of the Records Reproduction Act (proposed under House Bill 5197) for disposal compliance.

A person may not willfully carry away, mutilate, or destroy books, papers, or records and may not retain or continue to hold possession of those books, papers, records, or their parts, and refuse to deliver them to the proper officer having charge of the office to which those items belong upon demand being made by that officer or the Michigan History Center. A person who violates this prohibition is guilty of a misdemeanor punishable by up to two years' imprisonment or a maximum fine of \$1,000. The bill would remove the term "person" and replace it with "individual".

MCL 24.401 et al. (H.B. 5197)
750.491 (H.B. 5198)

Legislative Analyst: Dana Adams

FISCAL IMPACT

House Bill 5197

The bill would have no fiscal impact on the State. It would have an indeterminate fiscal impact on local units of government, but since the provisions of the bill would be permissive, they likely would be used only by local units that determined them to be beneficial. To the extent that digital conversion and storage costs were lower than physical storage costs, local governments would see a positive fiscal impact. The cost of physically reproducing documents upon request could be recouped by charging a reasonable fee.

House Bill 5198

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Ryan Bergan
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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.