

Legislative Analysis



ALLOW MUNICIPALITY TO ENACT ORDINANCE ON "SUPERDRUNK" DRIVING VIOLATIONS

Mary Ann Cleary, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4920 as introduced
Sponsor: Rep. Paul Scott

House Bill 4921 as introduced
Sponsor: Rep. Kurt Heise

House Bill 4923 as introduced
Sponsor: Rep. Bob Constan

House Bill 4922 as introduced
Sponsor: Rep. John Walsh

House Bill 4924 as introduced
Sponsor: Rep. Paul Muxlow

Committee: Judiciary
First Analysis (10-4-11)

BRIEF SUMMARY: The bills would authorize local governments to adopt by local ordinance a provision of the Michigan Vehicle Code pertaining to driving with a BAC (blood alcohol content) of .17 grams or more (sometimes referred to as "high BAC" or "superdrunk").

FISCAL IMPACT: The bills would result in a fiscal impact on state and local government as discussed in more detail later in the analysis.

THE APPARENT PROBLEM:

Public Acts 461 and 462 of 2008 created harsher penalties for a person convicted of driving with a bodily alcohol content (BAC) of 0.17 grams or higher. Referred to as "superdrunk" or "high BAC" violations, the offenders are more likely to suffer from substance abuse addictions. They also are responsible for most of the alcohol-related injuries and fatalities, more likely to drive on a suspended license, and more likely to be repeat offenders. The 2008 legislation attempted to get at the underlying alcohol addiction by requiring treatment programs and the use of ignition interlock devices even for a first offense, as well as increasing the fines and jail time and lengthening the mandatory term of license suspension for a superdrunk, or high BAC, conviction. The provisions of Public Acts 461 and 462 took effect on October 31, 2010.

What was overlooked at the time was that the increase in the maximum term of imprisonment meant that local drunk driving ordinances would no longer apply to an offense with a BAC of 0.17 grams or higher. The problem is that local governments have authority to enact a criminal ordinance, or to adopt by reference and enforce a corresponding state law, if the maximum term of imprisonment is 93 days. The 2008 legislation increased the maximum jail term for a high BAC offense from 93 days to 180 days, preventing local law enforcement officers from writing tickets under a local ordinance. The result is that local governments are losing fine revenue that previously had been coming to them. Reportedly, some officers are choosing to cite a high BAC offense at a lower level so to write a ticket under the local ordinance. Since this defeats

the purpose of creating stiffer penalties for driving with a more dangerous BAC level, some feel that the law should be amended to provide locals the ability to adopt local ordinances for super drunk driving offenses.

THE CONTENT OF THE BILLS:

Currently, by charter, villages, townships, and cities may adopt by reference the Michigan Vehicle Code, but are prohibited from enforcing any provision of the code for which the maximum term of imprisonment is greater than 93 days. These bills would provide an exception for an "operating while intoxicated" offense that carries a penalty of up to 180 days' imprisonment.

House Bills 4920-4924 would amend various acts to allow local governments to adopt by reference and enforce Section 625(1)(c) of the Michigan Vehicle Code (MCL 257.625), which includes in the definition of "operating while intoxicated" a person who "has an alcohol content of 0.17 grams or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine." The local ordinance would have to provide that a violation would be a misdemeanor punishable by one or more of the following, which is identical to the punishment provided in the vehicle code for a violation of Section 625(1)(c):

- Community service for not more than 360 hours.
- Imprisonment for not more than 180 days.
- A fine of not less than \$200 or more than \$700.

(Generally speaking, the punishment enforceable under a local ordinance is limited to a fine of \$500 or less, imprisonment for not more than 90 days, or both. Municipalities may also adopt by reference a provision of state statute in a local ordinance substantially corresponding to that statute as long as the maximum term of imprisonment for a violation does not exceed 93 days. Municipalities may also adopt by reference in entirety certain statutes, such as laws regulating the building trades and the Michigan Vehicle Code; however, the local government may not enforce any provision of an adopted law for which the maximum term of imprisonment exceeds 93 days.)

House Bill 4920 would amend the Home Rule City Act (MCL 117.3 and 117.4i).

House Bill 4921 would amend the Charter Township Act (MCL 42.21).

House Bill 4922 would amend Public Act 246 of 1945, which pertains to township boards (MCL 41.181 and 41.184).

House Bill 4923 would amend the General Law Village Act (MCL 66.2 and 66.4).

House Bill 4924 would amend the Home Rule Village Act (MCL 78.23 and 78.24).

FISCAL INFORMATION:

The bill package would not have a direct effect on state revenues. To the extent that local units of government choose to exercise this new authority under the bills, it could impact the distribution of fine revenue.

Currently, fine revenues from the state statute are distributed to libraries. Under a local ordinance, one-third of a fine would be distributed to the political subdivision whose ordinance was violated, with the remaining amount distributed to the court funding unit. Court costs, currently distributed exclusively to the court funding unit, would now have one-third of funds given to the political subdivision whose ordinance was violated, and the remaining two-thirds would be distributed to the court funding unit. The exact amount of revenue lost by libraries or gained by local governments would depend on how many districts adopt this permitted ordinance, as well as how many of these cases are prosecuted in those districts.

Local governments that adopt these ordinances may face some indeterminate costs as well, as administrative and prosecutorial procedures may vary depending on whether the court was prosecuting a state statute or local ordinance.

ARGUMENTS:

For:

The bill package is not creating new policy; it is simply restoring the ability of local governments to enforce drunk driving ordinances involving a high BAC offense. Prior to the enactment of the superdrunk legislation last year, the maximum term of imprisonment was 93 days for any BAC level of 0.08 grams or higher for a first offense or a second offense within seven years. In changing the penalty for levels of 0.17 grams and higher, the new law inadvertently prevented law enforcement officers from writing tickets for high BAC violations under local ordinances. The result has been two-fold: local units are losing much needed revenue to fund their operations at a time when other revenue streams are drying up and in order to keep that revenue, some officers have resorted to writing tickets for lower offenses. As some of the penalties created by the 2008 legislation were intended to get at the underlying alcohol addiction of this population and stop the cycle of repeat offenses, this practice of citing an offender for a lower violation defeats the purpose of the new law.

POSITIONS:

A representative of the Michigan Township Association testified in support of the bills. (9-22-11)

The Michigan Municipal League indicated support for the bills. (9-22-11)

LifeSafer, an ignition interlock manufacturer, and the Michigan Ignition Interlock Provider Association (MIIPA) indicated support for the bill. (9-22-11)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Erik Jonasson

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