

Legislative Analysis



SQUATTING: LANDLORD/OWNER REGAINING POSSESSION

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

House Bill 5069 (Substitute H-1)
House Bill 5070 (Substitute H-1)
House Bill 5071 (Substitute H-2)
Sponsor: Rep. Kurt Heise

Committee: Criminal Justice
First Analysis (11-12-13)

BRIEF SUMMARY: House Bill 5069 would relieve an owner, lessor, or licensor (or an agent thereof) from liability for damages for unlawful interference when the occupant is squatting. The bill would also allow an owner to use force to regain possession of premises occupied by a squatter.

House Bill 5070 would make it a criminal offense for a squatter to occupy a single-family, or one or both units, of a two-family dwelling.

House Bill 5071 would place the felony provision for squatting in a single or two-family dwelling within the sentencing guidelines.

FISCAL IMPACT: To the extent that the bills result in a greater number of convictions, they could increase costs on state and local correctional systems. Information is not available on the number of persons that might be convicted under these provisions. Felony convictions could result in increased costs related to state prisons, county jails, and/or state probation supervision. The average cost of prison incarceration in a state facility is roughly \$35,500 per prisoner per year, a figure that includes various fixed administrative and operational costs. State costs for parole and felony probation supervision average about \$3,000 per supervised offender per year. Any increase in penal fine revenues would increase funding for local libraries, which are the constitutionally-designated recipients of those revenues.

THE APPARENT PROBLEM:

According to media reports, squatting is on the rise and poses a real menace to real estate. This isn't the squatting of old where a person takes up residence in an abandoned shack in the woods or builds their own dwelling on another's property. Today's squatting takes several forms, but increasingly consists of a person or family moving into an empty apartment or house without the consent of the owner and without paying rent to that owner. Often the houses targeted by squatters are bank-owned foreclosures or municipally-owned houses seized for nonpayment of back taxes, but may be homes offered for sale by owners who had to relocate for a job, who moved into their new home before the old had sold, or who were selling a house inherited from a deceased relative.

In some egregious cases, families have returned from vacation to find squatters living in their homes and their possessions disposed of.

Reportedly, lawful owners are having difficulty getting the police to remove squatters under the trespass laws. Some squatters present bogus rental agreements to police or claim that they had an oral lease and had already paid months or a year in advance in case. Some squatters may actually be victims of a scam by persons appearing to be the rightful property owner and who demand cash payments for the first and last months' rent. In such cases, law enforcement seems reticent about getting in the middle of what appears to be a landlord/tenant conflict or to evict a family appearing to be victims of a scam.

The result is that lawful owners must go to court to start eviction proceedings, a process that can take many months. Reportedly, some experienced squatters who know how the process works use various tactics to slow the process. Others use this time to strip the homes of anything of value. Because a vacant home filled with squatters is unlikely to be sold, some financial institutions and even municipalities have resorted to paying squatters several thousand dollars to leave – known as "cash for keys." However, this "program" acts as an incentive for squatters to target homes owned by those entities, literally moving from one property to another just to collect the offered payment.

The solution, some believe, is to provide property owners with some self-help remedies and to make it a criminal offense to take up residence in a property without the owner's consent and without paying rent.

THE CONTENT OF THE BILLS:

House Bill 5069 would amend the landlord/tenant provisions within the Revised Judicature Act (MCL 600.2918, 600.5711, and 600.5714). The RJA establishes the rights and liabilities of landlords and tenants regarding possession of the leased premises. Currently, the use of force or threat of force by an owner (owner, lessor, or licensor or one of their agents) constitutes unlawful interference with a possessory interest and entitles the tenant to recover the actual amount of damages or \$200, whichever is greater. Under the bill, an owner would not be subject to this liability if he or she could establish that the tenant took possession of the premises by means of a forcible entry, holds possession of the premises by force after a peaceable entry, or came into possession of the premises by trespass without color of title or other possessory interest (hereinafter "squatting").

The RJA also specifies that a person may not make any entry into or upon premises unless the entry is permitted by law and, if entry is permitted by law, a person may not enter with force but only in a peaceable manner. The bill would exempt an owner from the prohibition on a forcible entry and allow that person to enter the premises if the occupant took possession by squatting.

The RJA already allows a person entitled to possession of premises to recover possession by summary proceedings if another took possession by squatting. The bill would specify that this remedy is in addition to using forcible entry to regain possession of the premises.

House Bill 5070 would add Section 553 to the Michigan Penal Code to make it a criminal offense to occupy a dwelling if the person had not, at any time during the period of occupancy, had the owner's consent for an agreed-upon consideration. This would apply to occupying a building that is a single-family dwelling or one or both units in a building that is a two-family dwelling (e.g., a duplex).

A first offense would be a misdemeanor punishable by a fine of not more than \$5,000 per dwelling unit occupied or imprisonment for not more than 180 days, or both. A second or subsequent offense would be a felony punishable a fine of not more than \$10,000 per dwelling unit occupied and/or imprisonment for not more than two years.

The bill would not apply to a guest or a family member of the owner of the property or of a tenant.

House Bill 5071 would amend the Code of Criminal Procedure (MCL 777.16bb) to specify that squatting is a Class G property crime with a two-year maximum term of imprisonment. The bill is tie-barred to House Bill 5070, which means that it cannot take effect unless House Bill 5070 is also enacted.

ARGUMENTS:

For:

The bill package would give lawful property owners some important rights in order to reclaim properties taken over by squatters who refuse to leave. House Bill 5070 would make it clear to law enforcement that squatting is illegal and should remove any hesitancy to enforce the bill and trespassing laws. House Bill 5069 would give protection to property owners from being sued for damages if they change the locks on the doors to keep the squatters out or take other means (which though not stated, would be nonviolent) to "encourage" the squatters to leave. Many property owners have suffered financial harm through lost rent, property damage, and time-consuming and expensive eviction proceedings. The bills will give property owners needed relief and send a clear message to squatters that such conduct will not be tolerated.

Against:

Some feel that the current penal laws, which include trespassing and breaking and entering, are sufficient to deter and to remove squatters. If the problem is that police are reluctant to enforce current laws, then that is a separate matter requiring a different solution. Besides, in areas where adequate housing for low-income persons is hard to find, the bills could be used disproportionately against the poor. Further, House Bill 5069 does not define what would constitute lawful "force" by an owner to remove a squatter.

POSITIONS:

A representative of the Michigan Bankers Association testified in support of the bills. (10-23-13)

The Michigan Association of Realtors indicated support for the bills. (10-30-13)

The Department of State Police indicated a neutral position on the bills. (10-23-13)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Robin Risko

■ 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.