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CIVIL FINES TO SUPPORT LIBRARIES

**House Bill 4927 as passed by the House
Sponsor: Rep. Rick Johnson**

**House Bill 4928 as passed by the House
Sponsor: Rep. Randy Richardville**

**House Bill 4929 as passed by the House
Sponsor: Rep. Judson Gilbert II**

**House Bill 4930 as passed by the House
Sponsor: Rep. James Koetje**

**House Bill 4931 as passed by the House
Sponsor: Rep. Thomas Kelly**

**House Bill 4932 as passed by the House
Sponsor: Rep. Kwame Kilpatrick**

**Second Analysis (11-15-99)
Committee: Transportation**

House Bills 4927-4932 (11-15-99)

THE APPARENT PROBLEM:

Since the first state constitution, the Michigan Constitution of 1835, and in all subsequent state constitutions (those adopted in 1850, 1908, and 1963), there has been a section in the article concerning education to specify that the proceeds of all fines assessed in the counties for any breach of the penal laws shall be exclusively applied for the support of libraries. Consequently, fines imposed by the courts throughout the state for violations of the penal code are collected by all units of government in which courts are located, and then remitted to the county treasurers. The county treasurers, in turn, must use the fine revenue to operate the county's library or law library.

Until 1979, violations of the Michigan Vehicle Code were included in the penal code as criminal offenses. However, the legislature decriminalized violations of the vehicle code when it adopted Public Act 510 of 1978 (a statute that went into effect on August 1, 1979). When violations of the vehicle code were decriminalized, and civil fines replaced criminal penalties, the new statute specified that "a civil fine which is ordered under section 907 for a violation of this act or other state statute shall be exclusively applied to the support of public libraries and county law libraries in the same manner as is provided by law

for penal fines assessed and collected for violation of a penal law of the state." The statute further specified that this earmarking was "intended to maintain a source of revenue for public libraries which previously received penal fines for misdemeanor violations of this act which are now civil infractions"(MCL 257.909). With this language, the new statute directed that fines collected for violations of the vehicle code, despite the decriminalization of the code's penalties, should continue to be remitted by the courts to county treasurers and be used by them as revenue for the operation of county libraries. And as is also true of penal fines, only civil fines written under state statute are directed to county libraries, and not the court's costs, fees, and assessments (if any).

In 1994, the Michigan legislature adopted 15 bills to allow local units of government to establish a Municipal Ordinance Violations Bureau. (See *BACKGROUND INFORMATION* below.) Since that time it has become the practice for local units of government to adopt state statutes by reference as local ordinances, and to write citations for civil infractions and assess civil fines under their local ordinances in a manner that allows the local unit of government to retain the civil fine revenue (that is to say, all civil

finer, court costs, fees, and any assessments) for the local unit's general fund.

Truckers and commercial motor carriers have testified that since 1994 when the legislature passed the bills to allow local units of government to create Municipal Ordinance Violations Bureaus, and to adopt by reference the Michigan Vehicle Code in order better to enforce the state's traffic laws, the number of violations written against commercial vehicles has increased so substantially as to constitute deliberate harassment. According to reports from the commercial carriers, overzealous enforcement seems designed to provide a new revenue source for municipalities, rather than to protect the roads or the public.

The commercial carriers also point out that when the local municipal violations bureaus write citations under their own ordinances (having adopted as their own ordinances the substantially similar state statutes), the money collected can be retained by the local unit of government rather than be remitted to the county treasurer for use by county libraries. They note that were the local violation written as a civil infraction under state statute instead of as a civil infraction under a local ordinance, the fine portion of the penalty (but not court costs, fees, or assessments) would be remitted to county treasurers to fund the operations of county libraries. In this way, civil fines under statute are treated in the same manner as penal fines.

Last year, penal fines (but not the court costs, fees, or assessments) levied for violations of the penal or criminal code provided libraries with \$30 million. Depending on a library's size (there are six categories ranging from category one serving populations of less than 4000 people, to category six serving more than 50,000 people), penal fine revenue can constitute from 90 percent (category one) to 8 percent (category six) of a library's revenue. The Michigan Library Association estimates that several thousand dollars have been foregone by county libraries because civil fines written under local ordinances have been retained by local units of government.

To curb overzealous local enforcement of the motor carrier laws and to increase funding for libraries, some have argued that the civil fines written under local ordinances that regulate traffic and vehicle safety, and the revenue collected from civil fines imposed on those who operate commercial vehicles, should be earmarked for road repair, libraries, and local courts. Specifically, they argue the revenue should be paid to the county treasurer and then allocated 30 percent for road repair and road maintenance, 40 percent for county libraries,

and 30 percent to the court in which the political subdivision is located.

THE CONTENT OF THE BILLS:

The bills would require that civil fine revenue imposed by local authorities for violations of local laws regulating traffic and vehicle safety generally, and commercial vehicles in particular, be paid to the county treasurer and allocated as follows: a) 30 percent to the city, village, or county for repair and maintenance on local roads (and if the citation were issued under a township ordinance, the county would be required to allocate the funds for repair and maintenance on local roads within that township); b) 40 percent to the jurisdiction in which the citation was issued for library purposes as provided by law; and c) 30 percent to the court funding unit in which the political subdivision is located. Further, four of the six bills also would specify that this subsection would not apply to a civil fine ordered for a violation of a code or ordinance of a political subdivision of this state served by a municipal court. (House Bills 4927 and 4929 do not contain the municipal court fine revenue exemption.)

Further, the bills would allow a garbage or refuse hauler that exceeds the weight limitations to operate on a local highway if the local authority with jurisdiction over that highway adopts an ordinance or resolution to allow such movement. In addition, the bills would eliminate the possibility of imprisonment while increasing the monetary fine for some violations of the Motor Carrier Safety Act. The six bills are tie-barred to each other so that none can become law unless all are enacted. A brief explanation of each bill follows.

House Bill 4927 would amend the Revised Judicature Act (MCL 600.8379) to require that a civil fine imposed upon a person operating a commercial vehicle for violation of a provision of a code or an ordinance of a political subdivision of the state that substantially corresponds to a provision of the Michigan Vehicle Code be paid to the county treasurer and allocated as follows: a) 30 percent to the city, village, or county for repair and maintenance on local roads (and if the citation were issued under a township ordinance, the county would be required to allocate the funds for repair and maintenance on local roads within that township); b) 40 percent to the jurisdiction in which the citation was issued for library purposes as provided by law; and c) 30 percent to the court funding unit in which the political subdivision is located. The bill also would require that civil fines imposed on one who operates a commercial vehicle for violation of a code or

ordinance adopted by a city, township, or village be paid to the county treasurer and allocated in the same manner.

Under House Bill 4927, “commercial vehicle” would be defined to include a motor vehicle used for the transportation of passengers for hire or constructed or used for transportation of goods, wares, or merchandise and a motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load on the vehicle independently or any part of the weight of a vehicle or load so drawn. Further, the bill would define “operating” to mean being in actual physical control of a vehicle regardless of whether the person is licensed under the Michigan Vehicle Code as an operator or chauffeur. Finally, the bill would define “person” to mean every natural person, partnership, association, or corporation and their legal successors.

House Bill 4928 would amend the Michigan Vehicle Code (MCL 257.909) to require that a civil fine ordered under section 907 of the code (which concerns civil infractions; penalties; civil fines and costs), or other state statute, or for a violation of a code or an ordinance of a political subdivision of the state substantially corresponding to a provision of the vehicle code, be exclusively applied to the support of public libraries and county law libraries in the same manner as is provided by law for penal fines assessed and collected for violation of a penal law of the state.

Further, under the bill a civil fine ordered for a violation of a code or ordinance of a political subdivision of the state regulating commercial motor vehicles and substantially corresponding to a provision of the vehicle code would be allocated as follows: a) 30 percent to the city, village, or county for repair and maintenance on local roads (and if the citation were issued under a township ordinance, the county would be required to allocate the funds for repair and maintenance on local roads within that township); b) 40 percent to the jurisdiction in which the citation was issued for library purposes as provided by law; and c) 30 percent to the court funding unit in which the political subdivision is located. House Bill 4928 also would specify that this subsection would not apply to a civil fine ordered for a violation of a code or ordinance of a political subdivision of this state served by a municipal court.

Under current law, libraries receive the revenue from civil fines that are collected for a violation of the code or other state statute, and not for violations under similar local ordinances. Current law specifies that this

subsection is intended to maintain a source of revenue for public libraries which previously received penal fines for misdemeanor violations of the code that are now civil infractions.

House Bill 4929 would amend Public Act 62 of 1956 (MCL 257.955), the act that authorizes a city, township, or village to adopt the uniform traffic code by reference, to specify that a civil fine imposed on a person operating a commercial vehicle for a violation of a code or ordinance adopted by a city, township, or village be allocated as follows: a) 30 percent to the city, village, or county for repair and maintenance on local roads (and if the citation were issued under a township ordinance, the county would be required to allocate the funds for repair and maintenance on local roads within that township); b) 40 percent to the jurisdiction in which the citation was issued for library purposes as provided by law; and c) 30 percent to the court funding unit in which the political subdivision is located.

In addition, House Bill 4929 specifies that the bill would not take effect unless House Bills 4927, 4928, 4930, 4931, and 4932 also were enacted.

House Bill 4930 would amend the Motor Carrier Act (MCL 479.18) to require that Article V (which concerns the policy of the state, exemptions, limitations, general regulations and procedures governing motor carriers) would be applicable and uniform throughout the state and in all political subdivisions and local units of government in the state, and that a local law or a portion of a local law that imposes a criminal penalty for an act or omission that is a civil infraction under the Motor Carrier Act, or that imposes a criminal penalty or civil sanction in excess of that prescribed in the act, would be in conflict with the act and would be void to the extent of the conflict.

Further, the bill would require that except for a civil infraction action in a municipal court, proceeds of a civil fine imposed by a local unit of government for violation of a local law regulating for-hire motor vehicles and corresponding to the Motor Carrier Act would be paid to the county treasurer and be allocated as follows: a) 30 percent to the city, village, or county for repair and maintenance on local roads (and if the citation were issued under a township ordinance, the county would be required to allocate the funds for repair and maintenance on local roads within that township); b) 40 percent to the jurisdiction in which the citation was issued for library purposes as provided by law; and c) 30 percent to the court funding unit in which the political subdivision is located.

In addition, the bill specifies that it would not take effect unless House Bills 4928, 4929, 4931, and 4932 also were enacted. Finally, the bill specifies that, for purposes of the bill, “local law” would include a local charter provision, ordinance, rule, or regulation.

House Bill 4931 would amend the Michigan Vehicle Code (MCL 257.605 and 257.716) to require that except for a civil infraction action in a municipal court, proceeds of a civil fine imposed by a local authority for violation of a local law regulating commercial motor vehicle equipment and corresponding to sections to sections 683 to 725a (which concern, among other things, the regulation of equipment; inspections; penalties for the operation of unsafe vehicles; load restrictions; weight and length restrictions; and special permits for nonconformance) would be paid to the county treasurer and be allocated as follows: a) 30 percent to the city, village, or county for repair and maintenance on local roads (and if the citation were issued under a township ordinance, the county would be required to allocate the funds for repair and maintenance on local roads within that township); b) 40 percent to the jurisdiction in which the citation was issued for library purposes as provided by law; and c) 30 percent to the court funding unit in which the political subdivision is located. The bill also specifies that, for purposes of the bill, “local law” would include a local charter provision, ordinance, rule, or regulation.

House Bill 4931 also would allow a garbage or refuse hauler that exceeds the weight limitations in the code to be operated on a highway over which a local authority has jurisdiction if the local authority adopts an ordinance or resolution allowing such movement and issues a permit allowing it, as provided in section 725 (which concerns special permits for non-conforming vehicles).

House Bill 4932 would amend the Motor Carrier Safety Act (MCL 480.17, 480.17b, 480.17c, and 480.21) to specify that a misdemeanor would be punishable by a fine of not more than \$250 for each violation, where currently those guilty of a misdemeanor may be punished by imprisonment for not more than 90 days or a fine of not more than \$100, or both. Further, the bill specifies that any driver, owner, user, lessor, or lessee of any bus, truck, truck tractor, trailer, or certain other motor vehicles who requires or permits operation of a vehicle with a serious safety defect would be subject to a civil fine of not more than \$300 for each violation. A fine ordered to be paid by the district court would be paid to the country treasurer and applied for library purposes as provided by law. A fine ordered to be paid

by the district court would be paid to the county treasurer and applied for library purposes as provided by law. A fine ordered to be paid by a municipal court would be paid to the treasurer of the political subdivision whose ordinance was violated.

The bill also would require that the fine for operating a vehicle with a serious safety defect that is ordered to be paid under an ordinance or resolution adopted by a township, city, village, or county that is consistent with section 7b (the portion of the act that prohibits driving or allowing others to drive unsafe vehicles) be allocated as follows: a) 30 percent to the city, village, or county for repair and maintenance on local roads (and if the citation were issued under a township ordinance, the county would be required to allocate the funds for repair and maintenance on local roads within that township); b) 40 percent to the jurisdiction in which the citation was issued for library purposes as provided by law; and c) 30 percent to the court funding unit in which the political subdivision is located. The bill also specifies that, for purposes of the bill, “local law” would include a local charter provision, ordinance, rule, or regulation.

Finally, the bill also specifies that the fine for a violation of the provision requiring that a package being transported be marked or labeled under parts 100 to 180 of title 49 of the code of federal regulations, 49 C. F. R (which governs the transport of hazardous materials) would be not more than \$500 for each violation. Currently such violations are punishable by a fine of not more than \$500, or by imprisonment for not more than 90 days, or both.

BACKGROUND INFORMATION:

Municipal Ordinance Violations Bureaus. In 1994, the legislature enacted a 15-bill package to give local units of government the option of creating a municipal ordinance violations bureau and of bringing civil, rather than criminal, actions against people who violate local ordinances--similar to the way in which traffic violations were then already handled, following decriminalization of the Michigan Vehicle Code in 1978. Under those bills enacted in 1994, a bureau’s operating expenses had to be borne by the local unit of government, and its personnel had to be employees of the local unit. Further, local courts were required to establish a schedule of civil fines and costs that would be imposed for municipal civil infractions within the district or city and to post it publicly, and the costs a court ordered could not be less than \$5 or more than \$100 and would have to be payable to the local unit’s general fund.

According to the House Legislative Analysis Section's analysis of the package dated 11-4-93, the 15 bills were enacted into law as Public Acts 12 through 26 of 1994. At that time, according to the analysis, the various statutes that provided for the incorporation of cities, villages, townships, and counties generally treated violations of municipal ordinances as misdemeanors, and local officials traditionally sought criminal penalties for these violations. A person who violated a local ordinance was either issued a ticket ordering him or her to appear in court for an arraignment, or was arrested if the violation was witnessed by a law enforcement officer or a warrant had been issued. If the person pled guilty to the violation, he or she could be fined, sentenced to a term of imprisonment, or both, and the conviction was recorded on the person's record. If the person pled not guilty, a trial was scheduled, and he or she usually needed to retain an attorney. Generally, a violation of a local ordinance was punishable by a fine of up to \$500, imprisonment for up to 90 days, or both.

According to the analysis, this process of handling ordinance violations made it difficult to enforce the ordinances and to punish violators. Reportedly, the courts were not particularly well disposed to finding a person guilty of a criminal action for violating an ordinance concerning, for example, sign posting, fence construction, littering or snow removal. Further, people facing criminal charges were more likely to obtain legal counsel and fight the charges in court, thus making the process time-consuming, burdensome and expensive for both the alleged violator and the local unit of government. It was suggested, therefore, that local units of government be given the option of creating a municipal ordinance violations bureau and bringing civil, rather than criminal, actions against people who violated local ordinances.

FISCAL IMPLICATIONS:

The House Fiscal Agency notes that House Bills 4927 to 4932, as passed by the House, would amend a number of acts to alter the distribution of fine revenue assessed for commercial vehicle violations under local ordinances. Currently, such revenue is distributed to the local court funding unit and/or the local government whose ordinance was violated, depending on whether the local government funds a court. Under these bills, the distribution would be as follows: 30 percent to the local unit of government whose ordinance was violated for road repair, 40 percent for library purposes, and 30 percent to the local court funding unit.

These bills would shift revenue between the various local entities involved. Revenue for libraries would increase, and revenue for the local unit whose ordinance was violated would decrease. The local court funding unit (assuming the funding unit is not the same as the unit whose ordinance was violated) would likely experience a net decrease in revenue. No information is available as to the amount of fine revenue being generated under the applicable ordinances.

The bills may also have an impact on the distribution method of library revenue, depending on how that provision is interpreted. Under the statute, penal and civil fine revenue earmarked for libraries is forwarded to the county treasurer for distribution to county law libraries (based on statutory parameters) and local libraries (based on a per capita formula). The language contained in House Bills 4927 to 4932 states that the revenue is to be allocated to the jurisdiction in which the citation was issued for library purposes as provided by law. Allocation to a specific jurisdiction, however, is a contradiction of current law.

House Bill 4932 would also increase the maximum fine from \$100 to \$250 and remove the possibility of imprisonment for the violation of the Motor Carrier Safety Act. It is unknown how many individuals are currently prosecuted under that act. (11-15-99)

ARGUMENTS:

For:

According to testimony, since 1994 when the legislature passed bills to allow local units of government to create Municipal Ordinance Violations Bureaus, and to adopt by reference the Michigan Vehicle Code in order better to enforce the state's traffic laws, the number of violations written against commercial vehicles has increased so substantially as to constitute deliberate harassment. It is alleged that overzealous enforcement is designed to provide a new revenue source for municipalities, rather than to protect the roads or the public. What's more, especially egregious examples of excessive enforcement have been reported by truckers doing business in some of the

communities located in southeastern Michigan. For example, during committee deliberations, a spokesman for the trucking industry testified that since the Home Rule City Statute was amended in 1994 to permit local units to adopt by reference the state Motor Vehicle Code's graduated axle weight fine schedule, local jurisdictions can now write violations when heavy

vehicles exceed those weight restrictions, and then assess fines that sometimes amount to more than \$10,000. Further, there is a report of enforcement officers stationing themselves outside of a sand and gravel pit or mine, stopping every truck exiting the facility for a vigorous inspection, hoping to cite the vehicle as overweight. Fines of this size and enforcement of this sort should be curbed, and one way to accomplish that is to eliminate a local unit of government's incentive to collect fines, by requiring that civil fine revenue that is collected be remitted to county treasurers and then allocated for specific purposes: road repair, county libraries, and local courts.

For:

As a matter of policy, local civil fines should be earmarked for libraries in the same way that state criminal fines are so dedicated. These bills would accomplish that end, although they also would earmark some revenue for road repair and maintenance, as well as for court operations. Last year, penal fines (but not the court costs, fees, or assessments) levied for violations of the penal or criminal code provided libraries with \$30 million. Depending on a library's size (there are six categories with category one serving populations of less than 4,000 people, and category six serving populations of more than 50,000 people), penal fine revenue can constitute from 90 percent (for a small category one library) to 8 percent (for a large category six library) of a library's revenue. The civil fines written under local ordinances also should be earmarked for county libraries. However, under current law they are not. Instead, if a local unit of government adopts a state statute by reference and writes violations under a substantially similar local ordinance, the local unit can keep the fine revenue, as well as the revenue from court costs, fees, and assessments. As a result, the Michigan Library Association estimates that several thousand dollars in citation revenue have been foregone by libraries in Michigan. The association bases its estimate on reports by commercial motor carriers concerning the fines they pay for violations. These revenues belong with libraries, and not in the general funds of the local units of government.

Against:

Local units of government were granted the option to set up local violations bureaus by Public Acts 12 through 26 of 1994. Under those fifteen laws, violations of local laws are decriminalized, and local units of government are given the authority to adopt

state statutes by reference, and then to write the violations of them as violations of local ordinances. Further, these laws give local units the option of setting up violations

bureaus, in order to help state law enforcement agencies enforce the state's vehicle safety and traffic laws. To deny local units the opportunity to recover their costs for traffic enforcement and for the operation of their local district courts and magistrates likely will reduce the level of safety on public roadways.

Against:

These bills would penalize local courts by reducing their funding substantially. As the bills were originally written, they would have denied local units of government the opportunity to recover the operating costs of their Municipal Ordinance Violations Bureaus and local courts since they would have earmarked all civil fine revenue for county libraries. Despite the fact that the bills were amended during the House floor debate, so that in their current form they would allow local units to apply a portion of the civil infraction revenue they collect to operate local courts, the bills also would allocate 70 percent of the money, the vast majority of it, to road repair and county libraries.

Under current law, local courts collect 66 percent of the civil fine revenue and apply that money to court operations, while the local units of government collect the remaining 33 percent and sometimes also apply the revenue to court operations. As these bills were amended on the House floor, the courts' percentage of the fine revenue would decrease from 66 percent to 30 percent, while the local units' percentage would decrease from 33 percent to 30 percent and be earmarked for road repair. This substantial reduction in local court funding will reduce the ability of the courts to enforce the laws, and make roadways more unsafe.

Response:

As they have been amended, these bills no longer penalize courts excessively. They will curb overzealous enforcement of the trucking laws by local law enforcement officials because the fine revenue collected will be earmarked for three purposes. By allocating the civil fine revenue collected for violations of the local traffic and vehicle laws following the 30-40-30 formula, local units of government can continue to repair and maintain their roads with 30 percent of the revenue, fund county libraries with 40 percent of the revenue, and fund their lawfully established Municipal Ordinance Violations Bureaus, their district courts, and their magistrates with 30 percent of the revenue.

POSITIONS:

The Association of Underground Contractors (AUC)/Heavy Equipment Construction supports the bills. (11-3-99)

The Michigan Waste Industry Association supports the bills. (11-4-99)

The Michigan Road Builders Association supports the bills. (11-4-99)

The Michigan Chamber of Commerce supports the bills. (11-3-99)

The Michigan Concrete Paving Association support the bills. (11-3-99)

The Michigan Farm Bureau supports the bills. (11-3-99)

The Michigan Association of Counties opposes the bills as they are currently written. (11-3-99)

The Michigan Townships Association opposes the bills. (11-3-99)

The Michigan Library Association opposes the bills as amended on the House floor. (11-15-99)

Analyst: J. Hunault

■ 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.