

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA



BILL ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 4927 (as reported without amendment)
House Bill 4928 (Substitute H-1 as reported without amendment)
House Bills 4929, 4930, and 4931 (as reported without amendment)
House Bill 4932 (Substitute H-1 as reported without amendment)
Sponsor: Representative Rick Johnson (H.B. 4927)
Representative Randy Richardville (H.B. 4928)
Representative Judson Gilbert II (H.B. 4929)
Representative James Koetje (H.B. 4930)
Representative Thomas Kelly (H.B. 4931)
Representative Kwame Kilpatrick (H.B. 4932)
House Committee: Transportation
Senate Committee: Transportation and Tourism

Date Completed: 3-31-00

RATIONALE

Reportedly, some local units of government are overzealously enforcing motor carrier laws in order to generate funding for the local governments. It has been suggested that this practice is a result of statutory changes that provided for civil, rather than criminal, penalties for a number of violations. Under Article VIII, Section 9 of the State Constitution, all fines assessed and collected for violations of the penal laws must be used exclusively for the support of public libraries and county law libraries. In 1978, legislation decriminalized traffic offenses and, for the first time, provided for civil infractions. This legislation also added a section to the Michigan Vehicle Code stating that civil fines ordered under the Code "...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 this state (MCL 257.909).

In 1994, a package of legislation amended the Revised Judicature Act and a number of statutes governing local ordinances, to provide for the enforcement and adjudication of "municipal civil infractions", and allow local units to create municipal ordinance violations bureaus. Although neither this legislation nor other State statutes address the disposition of revenue collected for local violations, this revenue traditionally has not been considered penal fine revenue for the purposes of the constitutional dedication of penal fines to libraries. Therefore, fines collected for ordinance violations need not be used for public library purposes, even if penalties also are provided for the same offenses by

State statute.

Some people claim that libraries are losing money because local units may keep for their own use civil fines resulting from violations of local ordinances. To address this contention, and discourage overly aggressive enforcement of motor carrier laws, it has been suggested that civil fines imposed on commercial vehicle operators for violations of ordinances governing vehicle operations and equipment, should be allocated specifically to public libraries, court operations, and road maintenance.

CONTENT

The bills would amend various statutes pertaining to the operation of commercial motor vehicles, to require that civil fines imposed on commercial vehicle operators for violations of local ordinances on vehicle operation and equipment be paid to a county treasurer and allocated as follows: 40% to the jurisdiction in which the citation had been issued for library purposes as provided by law; 30% to the court funding unit in which the political subdivision was located; and, 30% to the city, village, or county for repair and maintenance on local roads. If the citation were issued under a township ordinance, the county would have to allocate the funds for repair and maintenance on local roads within that township. In addition, House Bills 4928 (H-1), 4930, and 4931 specify that the proposed allocation would not apply to a civil fine ordered for a violation of a code or ordinance of

a political subdivision served by a municipal court. The bills are tie-barred to each other.

A more detailed description of the bills follows.

House Bill 4927

The bill would amend the Revised Judicature Act to require that a civil fine imposed on a person operating a commercial vehicle for violating a provision of a code or an ordinance of a political subdivision of the State that substantially corresponded to a provision of the Michigan Vehicle Code, would have to be paid to the county treasurer and allocated as described above. The allocation also would apply to a civil fine imposed on a person operating a commercial vehicle for violating a provision of a code or an ordinance adopted by a city, township, or village by reference to a uniform traffic code (MCL 257.951).

("Commercial vehicle" would include a motor vehicle used for transporting passengers for hire or constructed or used for transporting goods, wares, or merchandise and a motor vehicle designed and used for drawing other vehicles and not constructed so as to carry any load on the vehicle independently or any part of the weight of a vehicle or load. "Operating" would mean being in actual physical control of a vehicle regardless of whether the person was licensed as an operator or chauffeur under the Vehicle Code. "Person" would mean every natural person, partnership, association, or corporation and its legal successors.)

House Bill 4928 (H-1)

The bill would amend the Michigan Vehicle Code to provide that 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 Code would have to be allocated as described above.

Currently, a civil fine that is ordered under the Code's provisions on civil infractions (MCL 257.907) for a violation of the Code or other State statute must be applied exclusively 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 State penal law. Under the bill, this requirement also would apply to a violation of a code or an ordinance of a political subdivision of the State regulating commercial motor vehicles and substantially corresponding to a provision of the Code, except as provided in the bill for political subdivisions served by municipal courts.

House Bill 4929

The bill would amend Public Act 62 of 1956, which authorizes the Director of the Department of State Police to promulgate a uniform traffic code and authorizes a city, township, or village to adopt the code by reference, to require that a civil fine imposed upon a person operating a commercial vehicle for a violation of a code or ordinance adopted by a city, township, or village be allocated as described above.

House Bill 4930

The bill would amend Article V of the Motor Carrier Act to specify that the chapter would be applicable and uniform throughout the State and in all political subdivisions and local units of government in the State. A local government could not adopt, enact, or enforce a local law that conflicted with the Act. (Article V contains general regulations and procedures, and specifies penalties.)

The bill also provides that a local law (a local charter provision, ordinance, rule, or regulation) or a portion of a local law that imposed a criminal penalty for an act or omission that was a civil infraction under the Act, or that imposed 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.

Except for civil infraction actions in a municipal court, proceeds of a civil fine imposed by a local government for violation of a local law regulating for-hire motor vehicles and corresponding to the Act would have to be paid to the county treasurer and allocated in the percentages described above.

House Bill 4931

The bill would amend the Michigan Vehicle Code to require that, except for civil infraction actions in a municipal court, proceeds of a civil fine imposed by a local authority for violation of a local law (a local charter provision, ordinance, rule, or regulation) regulating commercial motor vehicle equipment and substantially corresponding to the Code's provisions on equipment, inspection of vehicles, size, weight, and load (MCL 257.683-257.725a) be paid to the county treasurer and allocated as provided above.

A garbage or refuse hauler that exceeded the weight limitations in Chapter 6 of the Code could be operated on a highway over which a local authority had jurisdiction if the local authority adopted an ordinance or resolution allowing this movement, and issued a permit allowing this movement as provided by the Code for special permits for nonconforming vehicles (MCL 257.725).

House Bill 4932 (H-1)

Under the Motor Carrier Safety Act, a driver, or operator who violates the Act or a rule promulgated under it, or an owner or user of a bus, truck, truck tractor, or trailer, or certain other motor vehicles or an officer or agent of any individual, partnership, corporation, or association or its lessees or receivers appointed by a court that is the owner or user of a vehicle, who requires or permits the driver or operator to operate or drive a bus, truck, truck tractor, or trailer, or certain other motor vehicles in violation of the Act or rule, is guilty of a misdemeanor that is punishable by imprisonment for up to 90 days and/or a fine of up to \$100. The bill specifies instead that a violator would be responsible for a civil infraction and could be ordered to pay a fine of up to \$250 for each violation.

Currently, a driver, operator, owner, or user of a motor vehicle specified above, or another person described above, who requires or permits the driver or operator to operate a vehicle with a serious safety defect is subject to a fine of up to \$300 for each violation. The bill would refer to a "civil fine" of up to \$300. The bill would add that a fine ordered to be paid by the district court under this provision would have to 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 have to be paid to the treasurer of the political subdivision

whose ordinance was violated.

In addition, the fine for operating a vehicle with a serious safety defect ordered to be paid under an ordinance or resolution adopted by a township, city, village, or county that was consistent with the Act would have to be allocated according to the percentages described above.

The Act also specifies that a violation of a rule or the Act's provisions requiring that a package being transported be marked or labeled under Parts 100-180 of the Code of Federal Regulations (which govern the transport of hazardous materials), upon conviction, is punishable by a fine of up to \$500 for each violation and/or imprisonment for up to 90 days. The bill would delete the provision for imprisonment.

MCL 600.8379 (H.B. 4927)

MCL 257.909 (H.B. 4928)

Proposed MCL 257.955 (H.B. 4929)

MCL 479.18 (H.B. 4930)

MCL 257.605 & 257.716 (H.B. 4931)

MCL 480.17 et al. (H.B. 4932)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Penal fines are dedicated in the State Constitution for the support of the State's 388 public libraries. More than one-half of the public libraries in the State receive over 50% of their income from penal fines, according to the Michigan Library Association. In 1999, statewide income from penal fines was nearly \$30 million, or more than double the \$14.7 million that libraries received in State appropriations. Income from civil and penal fines is critical to the survival of more than half of Michigan's public libraries. Legislation enacted in 1994, however, may have a significant impact on penal fine funding for libraries as local governments chose to create municipal ordinance violations bureaus and bring civil, rather than criminal, actions against people who violate local ordinances. Under the bills, when local governments collected civil fines imposed for violations of ordinances on commercial vehicle operation and equipment, they would have to use a portion of those funds for library purposes. Thus, the bills would help protect a source of libraries' funding.

Response: Fine revenue collected for local ordinance violations has never been dedicated to public libraries--regardless of whether a violation was civil or criminal. The constitutional dedication of penal fine revenue to libraries applies, and has always applied, only to violations of State laws.

According to a 1943 opinion of the Michigan Supreme Court, this issue was settled in 1877 "by *Fennell v. Common Council of Bay City...*, wherein we held that fines collected for violations of a city ordinance were not received under the 'penal laws' of the State within the meaning of that phrase as used in the constitutional provision then in effect (*Delta County v City of Gladstone*, 305 Mich 50). In addition, this is reflected in the Revised Judicature Act, which provides, "...A fine imposed for a violation of a *penal law of this state*...shall be paid to the county treasurer and applied for library purposes as provided by law" [emphasis added] (MCL 600.8379).

In other words, the decriminalization of traffic laws, and the creation of civil infractions and municipal civil infractions have no bearing on the revenue generated for public libraries from fines collected for civil or criminal ordinance violations. By specifically diverting fine revenue that local governments presently have the authority to allocate, however, the bills could discourage local units from enforcing motor carrier regulations under either State or local laws. This means that, rather than increasing libraries' revenue, the bills could jeopardize money that libraries currently receive due to the enforcement of State motor carrier laws.

Supporting Argument

The number of violations written against commercial motor vehicles apparently has increased substantially. Because local governments may retain the fines generated from these violations and use the revenue as they wish, some local governments reportedly have been overzealous in enforcing motor carrier laws in order to generate more local revenue. By requiring that local civil fines for commercial vehicle operation and equipment violations be allocated for libraries, court operations, and road repair and maintenance, the bills would curb excessive enforcement.

Response: Claims that the trucking industry is being harassed and local police agencies are issuing citations merely to generate local revenue are without merit. When police pull over a suspicious truck, officers are empowered to conduct vehicle inspections, which at times turn up multiple violations for defective equipment, excess weight, improper logbook entries, and other infractions of commercial motor vehicle regulations. Many trucking companies that maintain their equipment and hire qualified drivers use the State's roadways without incident. Trucking companies that put on the road trucks with defective equipment or other motor carrier violations, however, should be held accountable. If some communities are overly aggressive in enforcement, then legislation should deal directly with enforcement issues in those communities, instead of penalizing the vast majority of communities that are reasonably enforcing these laws.

Opposing Argument

Public libraries actually benefit from the local enforcement of motor carrier laws. Tickets issued by local police are written under local ordinances with three exceptions: violations involving jurisdictional issues (when violations occur near municipal borders); violations for which penalties are greater under State law; and violations that are not covered by local ordinances. In the case of motor carrier regulations, it is likely that tickets will be written under State law, not local ordinances, because communities have not been able to enact the Motor Carrier Act or the Motor Carrier Safety Act by reference. That is, local units might have ordinances corresponding to certain provisions of the statute, but not the entire Act. Thus, when a local police officer stops a truck, the officer might write a ticket for two violations of the State law and one violation of the ordinance. As a result, the traffic stop produces revenue for libraries from local enforcement of State law.

Moreover, the numbers show that penal fine revenue for libraries actually has increased, not decreased, in recent years. During the last decade, the amount that public libraries received from penal fines steadily increased from about \$22 million in 1990 to nearly \$28.5 million in 1999. The data clearly refute claims that recent changes in the law have had a negative impact on libraries' revenue.

Opposing Argument

The bills represent a total departure from the historical and present method of distributing fines for ordinance violations. This could result in substantial costs to courts for installing software packages that would account for the receipt and distribution of fine revenue. Reportedly, the changes necessary to implement these bills would cost approximately \$70,000 to \$90,000 for each of the 25-or-so court computer systems, and take from six to 12 months to accomplish. Furthermore, these computer changes would not automate the initial determinations that local court clerks would have to make for each violation: whether the violation was written under State or local law; whether the violation involved a commercial motor vehicle; whether the vehicle was a garbage hauler; and, if the vehicle were a garbage hauler, whether the violation involved a weight restriction, or whether a local ordinance or resolution allowed garbage haulers to be overweight. (Also, since tickets do not specify the type of truck involved in a violation, it is questionable whether garbage haulers could be identified.) The bills would quadruple the complexity of fine distribution and create an administrative nightmare.

Opposing Argument

If there has been an increase in local enforcement of motor carrier regulations, it is because 1994

legislation lifted the cap on the amount of fines that local units may collect for certain ordinance violations. Generally, ordinance violations are subject to a \$500 maximum fine, but this does not apply to violations that are designated civil infractions for violations of the Michigan Vehicle Code, Public Act 62 of 1956 (which provides for the Uniform Traffic Code), or Public Act 235 of 1969 (which contains parking regulations), or to violations that are designated as municipal civil infractions. While local units might have had little incentive to enforce certain regulations in the past, it now may be worthwhile for them to do so. If there are legitimate complaints about the amount of fines being levied, then legislation should address the level of fines set by statute.

Also, since localities are able to keep increased fine revenues, many local governments have invested their resources along with the fine revenue to pay for increased enforcement of commercial carrier regulations. By diverting local fine revenue, the bills would limit the ability of local governments to recover a portion of their cost in providing this enforcement. Consequently, enforcement efforts would be reduced dramatically, if not eliminated entirely, in many communities. Significant reductions in safety inspections would seriously erode public safety on the State's highways. In addition, reductions in truck weight inspections would result in greater damage to the roads, in direct conflict with current road repair efforts, and would result in higher costs to the taxpayers.

Response: If regulation of the commercial trucking industry is vital to public safety, then local governments should be enforcing commercial vehicle regulations regardless of whether they receive the fine revenue. Furthermore, many local governments have received increases in State revenue sharing funds that could be applied to these enforcement costs.

Legislative Analyst: L. Arasim
S. Lowe

FISCAL IMPACT

The bills would have an indeterminate impact on local units of government regarding the change in distribution of fine revenue for certain local ordinance violations and administrative costs associated with allocating fine revenue. The following table lists annual fine revenue allocated to public libraries and county law libraries from violations of State penal laws and civil infractions.

The portion of that revenue related to State law violations by persons operating a commercial motor vehicle is not known. No Statewide information on distribution of local revenue that would be affected by the bill (for local ordinance violations) is available.

History of Penal Fine Revenue for Libraries

	Public Libraries	County Law Libraries	Total
1990	\$ 21,802,755	\$ 353,749	\$ 22,156,504
1991	23,403,841	369,752	23,773,593
1992	23,823,224	369,346	24,192,570
1993	22,961,848	375,407	23,337,255
1994	23,090,420	378,141	23,468,561
1995	24,021,695	375,552	24,397,247
1996	25,289,478	372,947	25,662,425
1997	27,038,996	371,888	27,410,884
1998	28,408,495	372,469	28,780,964
1999	28,433,474	377,413	28,810,887

In addition, the provision in House Bill 4930 that would void portions of local laws that are in conflict with the State Motor Carrier Act would have an indeterminate impact on local units of government. Under House Bill 4932 (H-1), changing violations from misdemeanors to civil infractions would result in reduced enforcement costs, depending on the number of violations.

Fiscal Analyst: B. Bowerman

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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.