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## COURT FEES: COLLECTION

Senate Bill 755 with House committee  
amendments  
First Analysis (10-21-93)

Sponsor: Senator Harry Gast  
Senate Committee: Judiciary  
House Committee: Judiciary

### ***THE APPARENT PROBLEM:***

A persistent problem for courts across the state has been that of getting people who owe them money to pay. Reliable data on the amount past due has been difficult to assemble, largely because court recordkeeping in such matters varies widely from court to court. (One two-year-old survey suggests that only one-quarter of the courts can even estimate the current total of their unpaid judgments.) However, at least one rough estimate, put together by the Department of Management and Budget in 1990, has conservatively placed the statewide sum at about \$15 million. One estimate that was put together for Washtenaw County put its figure at \$600,000 owed in misdemeanor and civil infraction cases, most of which was represented by civil infractions.

While some may find it puzzling that the courts, which wield substantial power, cannot manage to collect the fines and fees owed them, various circumstances combine to make collections difficult. For one thing, few, if any, courts have the resources to devote to collection efforts, particularly when the amount owed by any one person may be small. Generally, enforcement is limited to the issuance of a bench warrant, which typically means that the offender will be arrested if stopped for another reason, such as a traffic violation. Although the court may find a payer to be in contempt and order him or her jailed, the exercise of this option can easily cost more than the amount owed. Jail crowding and the need to incarcerate serious offenders also contribute to making jailing an impractical enforcement mechanism.

Problems with court collections go beyond mere financial concerns, however. Jurists have pointed out that when people fail to pay what society says they owe for their offenses, respect for the justice system is diminished and its credibility tarnished; more to the point, lawbreakers are not held

accountable for their actions. What is needed, many say, is a method for courts to economically and effectively collect what is owed them. To this end, legislation has been developed that would enable courts to arrange with the Department of Treasury to collect court fines and fees through intercepting tax refunds, and that would enable courts to encourage prompt payment (as well as recoup anticipated treasury fees) through the imposition of late fees. The two complementary elements--treasury collection and late fees--have been proposed under separate bills. Senate Bill 755 offers the framework under which courts can enter into agreements with the Department of Treasury. (The second element, authority for late payment penalties, would be provided by House Bill 4957.)

### ***THE CONTENT OF THE BILL:***

The bill would create a new public act to authorize a court and its funding unit to enter into an agreement with the Department of Treasury that assigned past-due fees and fines to the state for collection by the department. The money would have to have been due for at least 180 days, and would include fees (including reinstatement fees), fines, forfeitures, various penalties and costs, and late penalties assessed under House Bill 4957.

The agreement would have to provide for: furnishing of information needed by the department to collect the money; accounting, settlement, and transmission of money collected; and, collection of a fee by the department to recoup collection costs. The department's fee would be calculated and collected as is done with the fees charged to other state agencies for the same collection services.

The department would secure collection and payment in the manner provided under existing law, including the interception of tax refunds and other

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payments due from the state to the delinquent payer.

When the court received money collected by the department, it would, after deducting the department's fee, distribute the remainder as required by law. The order of priority in offsetting tax refunds would be the order of priority set forth by existing law.

The bill would take effect January 1, 1994, and expire January 1, 1998. It could not take effect unless House Bill 4957 were enacted.

### ***HOUSE COMMITTEE ACTION:***

The House Judiciary Committee adopted amendments that provided for a "sunset" of January 1, 1998, and tie-barred the bill to House Bill 4957.

### ***FISCAL IMPLICATIONS:***

With regard to the Senate version of the bill, the Senate Fiscal Agency reported that "the actual revenues that would be collected cannot be determined because the program would be voluntary and many local courts have acknowledged that currently they do not have systems in place to keep track of what they are collecting versus what they are not collecting." The Senate Fiscal Agency also noted that "a study conducted by the Department of Management and Budget based on data from audit reports, indicates that uncollected revenues are at least \$14 million." (9-30-93)

### ***ARGUMENTS:***

#### ***For:***

The bill would provide the means for courts to have the state treasury department collect past-due court fees and fines. It seems fairly certain that such collection efforts would be fruitful: when a sample of a few hundred delinquent payers from two district courts was checked against treasury records, about 45 percent were matched with taxpayer records; in virtually all of those cases, the person's refund was more than the amount owed the court. Together with House Bill 4957, the bill would improve the administration of justice and help courts and their funding units to obtain badly-needed funds.

#### ***Against:***

Various concerns have been raised about the proposal. For one thing, estimates on the amount that might be collected through tax refund intercepts may be overly rosy, as taxpayers could easily adjust their withholding so as not to get a refund. Further, as arrangements between courts and the treasury department would be voluntary, whether a person's court debt would be subject to treasury collection would vary from court to court, thus undermining the constitutional concept of one court of justice. And, questions have arisen over what the proper priority should be for distribution of collected money, and whether the legislation would conflict with that priority; payment of court fees could come ahead of payment of family support. Finally, to allow a court to charge a twenty percent late payment penalty (as House Bill 4957 would do) raises the question of whether that penalty would simply be a money-maker for the courts.

#### ***Response:***

Treasury department collection tools are not limited to the intercepting of tax refunds; the treasury department generally is able to identify where a person works, making wage garnishment a possibility. In addition, the late fee would not be a money-maker for the courts: if the prospect of the penalty fails to guarantee prompt payment, the imposition of the penalty will help to cover the treasury department's collection fee plus the additional processing costs for courts. Finally, statute (MCL 205.30a) already sets the order of priority for distribution of money collected through the interception of tax refunds; first comes satisfaction of any state tax liability, then any other known liability of the taxpayer to the state (which includes family support arrearages in AFDC cases and presumably would include collections under the bill), followed by other family support arrearages, garnishments, and federal tax liabilities.

### ***POSITIONS:***

The State Court Administrative Office supports the bill. (10-19-93)

The Department of Treasury supports the bill. (10-19-93)

The Michigan Court Administrators Association supports the bill. (10-19-93)

**The Michigan District Judges Association strongly supports the bill. (10-19-93)**

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