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COURT FEES: LATE PENALTIES

House Bill 4957 with committee
amendments
First Analysis (10-12-93)

Sponsor: Rep. Carl F. Gnodtke
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, now in the House Judiciary Committee, offers the framework under which courts can enter into agreements with the Department of Treasury. House Bill 4957 would provide the second element, authority for late payment penalties.

THE CONTENT OF THE BILL:

The bill would amend the Revised Judicature Act to provide for a late penalty of 20 percent of the amount owed to be assessed when a person failed to pay a penalty, fee, or costs within 56 days after the money was due. (A court would have to specify a date on which the sum was due.) A late penalty could be waived upon request by the person subject to it. The court would inform a person that the late penalty would be applied to any amount owing past the 56-day deadline, and would also inform the person of any delayed or installment payments authorized by the court. Late penalties would go into the general fund of the court's funding unit; the clerk of the court would transmit a late penalty within 30 days of receiving it.

The bill would take effect January 1, 1994, but could not do so unless Senate Bill 755 was enacted.

MCL 600.4801 and 600.4803

House Bill 4957 (10-12-93)

FISCAL IMPLICATIONS:

With regard to Senate Bills 755 and 756 (a Senate Bill analogous to House Bill 4957), 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 clear authority for courts to order late payment penalties when sums due the court went unpaid for over two months. Armed with this authority, courts could thus encourage prompt payment. And, as the bill's companion measure (Senate Bill 755) proposes to allow collection arrangements between courts and the treasury department, any late fee assessed under House Bill 4957 could be used to defray collection fees charged to the courts by the Department of Treasury. 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, the bills would improve the administration of justice and help courts and their funding units to obtain badly-needed funds.

Against:

Various criticism have been made of the bill and of the collection package in general. 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. And, to allow a court to charge a twenty percent late payment penalty raises the question 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.

POSITIONS:

The State Court Administrative Office supports the bill. (10-5-93)

The Department of Treasury supports the package. (10-5-93)

The Michigan Court Administration Association supports the bill. (10-6-93)

The Michigan District Judges Association strongly supports the bill. (10-5-93)