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CIVIL FINES TO SUPPORT LIBRARIES

House Bill 4927 as introduced
Sponsor: Rep. Rick Johnson

House Bill 4928 as introduced
Sponsor: Rep. Randy Richarville

House Bill 4929 as introduced
Sponsor: Rep. Judson Gilbert II

House Bill 4930 as introduced
Sponsor: Rep. James Koetje

House Bill 4931 as introduced
Sponsor: Rep. Thomas Kelly

House Bill 4932 (Substitute H-1)
Sponsor: Rep. Kwame Kilpatrick

First Analysis (10-7-99)
Committee: Transportation

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) is 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.

Some have argued that the civil fines written under local ordinances that regulate traffic and vehicle safety also should be earmarked for county libraries.

THE CONTENT OF THE BILLS:

These bills would require that civil fines imposed by local authorities for violations of certain local laws be paid to the county treasurer and earmarked for county library (and county law library) purposes; 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; and, remove 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.

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 applied for library purposes as provided by law. The bill also would require that civil fines imposed for violation of a code or ordinance adopted by a city, township, or village be paid to the county treasurer and applied for library purposes.

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.

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 must be paid to the county treasurer and be exclusively applied to the support of public libraries and county law libraries in the same manner as provided by law for penal fines assessed and collected for a violation of the penal laws of the state.

The bill also would define “commercial vehicle” to mean that term as defined in section 7 of the Michigan Vehicle Code. Further, the bill would define “operating” to mean being in actual physical control of a vehicle regardless of whether or not 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 4830 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 unit of government could not adopt, enact, or enforce a local law that is in conflict with the act. Further, the bill specifies that a local law or a portion of a local law that imposed a criminal penalty for an act or omission that is a civil infraction under the motor carrier 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.

House Bill 4830 also would require that 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 act be paid to the county treasurer and applied exclusively for 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. 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 proceeds of a civil fine imposed by a local authority for violation of a local law regulating commercial motor vehicle equipment and substantially corresponding 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 applied exclusively for 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 bill specifies that, for purposes of the bill, “local law” would mean 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, and that those fines would be paid to the county treasurer and applied for library purposes. 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 this bill that would prohibit and fine those who drive or allow others to drive unsafe vehicles), must be paid to the county treasurer and applied for library purposes. 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:

Regarding House Bills 4927- 4931, the House Fiscal Agency notes that to the extent that fines are currently being imposed on commercial vehicles under local ordinances, revenue would be shifted from the general funds of local units of government to local libraries. No information is available as to the amount of revenue being generated under such ordinances.

Regarding House Bill 4932, the House Fiscal Agency notes that fine revenue is earmarked for local libraries, so to the extent that fines assessed were actually increased, revenue for local libraries also would increase. To the extent that local units of government are currently levying fines under local ordinances for violations similar to those in the act, revenue would be shifted from the general funds of those local units to local libraries. No information is available as to the number of individuals currently being fined under either the act or local ordinances corresponding to the act. The bill also could result in decreased local costs due to the elimination of imprisonment as an alternative for a violation of the Motor Carrier Safety Act. There is no information available as to the number of individuals currently fined or imprisoned under the act. (10-6-99)

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 all civil fine revenue that is collected be remitted to county treasurers and then used to fund county libraries.

For:

Local civil fines should be earmarked for libraries in the same way that state criminal fines are so dedicated. These bills would do that, and in doing so would send more money to county libraries. 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:

As these bills are written, they would deny local units of government the opportunity to recover the operating costs of their Municipal Ordinance Violations Bureaus. Local units of government were granted the option of setting 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 will likely reduce the level of safety on public roadways.

Against:

These bills are overly broad. If the problem is overzealous enforcement of commercial carriers in a few communities, then legislation should be written to curb that practice. Perhaps earmarking civil fines for the enforcement of the local traffic and vehicle laws that apply only to commercial carriers would enable local units of government to continue their enforcement efforts and to fund their lawfully established Municipal Ordinance Violations Bureaus, their district courts, and their magistrates.

POSITIONS:

The Association of Underground Contractors (AUC)/Heavy Equipment Construction supports the bills. (10-6-99)

The Owner-Operator Independent Drivers Association, Inc. supports the bills. (10-4-99)

The Michigan Library Association supports the bills. (10-6-99)

The Michigan Waste Industry Association supports the bills. (10-6-99)

The Michigan Trucking Association supports the bills. (10-6-99)

The Michigan Road Builders Association supports the bills. (10-6-99)

The Michigan Concrete Association supports the bills.
(10-6-99)

The Michigan Chamber of Commerce supports the bills.
(10-6-99)

A representative of the Michigan Concrete Paving Association expressed support for the bills. (10-5-99)

A representative of the Michigan Farm Bureau expressed support for the bills. (10-5-99)

The Michigan Association of Counties opposes the bills as they are currently written. (10-6-99)

The Michigan Townships Association opposes the bills.
(10-6-99)

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.