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BILL ANALYSIS

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House Bill 4839 (Substitute S-3 as reported)
Sponsor: Representative Barbara Farrah
House Committee: Transportation
Senate Committee: Transportation

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RATIONALE

Abandoned vehicles pose significant challenges for local governments and law enforcement agencies. Vehicles left beside a road or highway can be a safety hazard, slowing the flow of traffic and increasing the risk of accidents. Abandoned vehicles also are considered unsightly and can be the target of crime such as theft, vandalism, or arson. Older vehicles also may leak oil or other fluids that can contaminate the ground or nearby waterways.

Under the Michigan Vehicle Code, if a vehicle is abandoned on public property, the local law enforcement agency may put a written notice on the vehicle indicating that it may be taken into custody and scrapped or stored at the owner's expense if not removed. If the vehicle is not removed, the law enforcement agency may have the vehicle towed. If a vehicle is abandoned on private property, the property owner may have the vehicle removed, and the towing company must notify the police. In either case, in order to reclaim the vehicle, the owner must pay an abandoned vehicle fee as well as accrued towing and storage fees. An abandoned vehicle that is not reclaimed may be sold at auction or scrapped.

The Code's provisions for the removal and processing of abandoned vehicles last underwent a significant revision in 2004, under Public Acts 293 and 295 of 2004. Since that time, towing agencies and others have noticed some inconsistencies and procedural difficulties with the law. It has been suggested that the amendments be enacted to clarify statutory provisions,

improve consumer protections, and simplify the process.

In a separate matter, it has been suggested that owners of marinas should be allowed to transport boats short distances for storage or repair without having to obtain a wide load permit or being subject to the height and weight restrictions in the Code.

CONTENT

The bill would amend the Michigan Vehicle Code to revise the procedures for removing and disposing of abandoned vehicles. Among other things, the bill would do the following:

- **Require the owner of a vehicle that was considered abandoned and was taken into custody by a police agency, to post a bond when requesting a hearing to contest the fact that the vehicle was abandoned or the towing and storage charges.**
- **Require the court to determine whether a towing agency or private property owner had acted properly.**
- **Provide that a towing agency or private property owner would have the burden of showing that it had complied with the Code.**
- **Require a local towing agency's storage lot to be located within 15 miles of the local unit of government with jurisdiction over an abandoned vehicle.**
- **Require a police agency to enter a vehicle into the Law Enforcement**

Information Network as abandoned at least seven days after authorizing the removal of the vehicle, unless it was believed to have been stolen, used in committing a crime, or involved in a crash.

- **Permit a newspaper notification for a sale of abandoned vehicles to omit the description of the vehicles if it included a website address where a description could be found.**

The bill also would do the following:

- **Permit the Secretary of State (SOS) to issue a registration plate to the owner of a marina for the purpose of moving or delivering a vessel or trailer under certain circumstances.**
- **Exempt from the Code's registration and certificate of title requirements a boat lift used to transport vessels between a marina or a body of water and a place of inland storage.**
- **Exempt from the Code's size and weight restrictions a boat lift or oversized hydraulic boat trailer owned and operated by a marina or watercraft dealer and used exclusively in a commercial boat storage operation.**
- **Permit a person to move or operate a boat lift of any width or an oversized hydraulic boat trailer owned and operated by a marina or watercraft dealer without obtaining a wide load permit under the Code.**

The bill is described in detail below.

Abandoned Vehicle; Removal from Public Property

The Code prohibits a person from abandoning a vehicle in the State. "Abandoned vehicle" means a vehicle that has remained on private property without the consent of the owner, or one that has remained on public property for at least 48 hours, or on a State trunk line highway as follows:

- If a valid registration plate is affixed to the vehicle, for at least 18 hours.
- If a valid registration plate is not affixed to the vehicle.

If a vehicle has remained on public property for the period of time described, a police

agency with jurisdiction over the vehicle must determine whether it has been reported stolen and may affix to the vehicle a written notice stating, among other things, the date and time the vehicle may be taken into custody and stored at the owner's expense or scrapped if the vehicle is not removed.

If a vehicle is considered abandoned and taken into custody under those provisions, the owner may contest the fact that the vehicle is abandoned or the reasonableness of the towing fees and daily storage fees, by requesting a hearing.

Under the bill, in addition to requesting a hearing, the owner would have to post a bond equal to \$40 plus the amount of the accrued towing and storage fees.

Immediate Vehicle Removal

Under certain circumstances, the Code permits a police agency to provide for the immediate removal of a vehicle from public or private property to a place of safekeeping at the expense of the registered owner. Under the bill, the removal would be at the expense of the last-titled owner.

In addition to the circumstances currently listed, the bill would permit immediate removal if the vehicle had been involved in a traffic crash and could not be operated safely from the scene of the crash.

Under the Code, a police agency that authorizes the removal of a vehicle under those provisions must determine if the vehicle has been reported stolen. The bill would require the agency to do so before authorizing the removal of the vehicle.

The bill also would require a police agency to enter the vehicle into the Law Enforcement Information Network (LEIN) as abandoned at least seven days after authorizing the removal. This would not apply to vehicles impounded under the following circumstances:

- There was reasonable cause to believe that the vehicle or any part of the vehicle was stolen.
- The vehicle had to be seized to preserve evidence of a crime, or there was reasonable cause to believe that the

vehicle was used in the commission of a crime.

- The vehicle had been involved in a traffic crash and could not be operated safely from the scene of the crash.

A vehicle impounded under one of those three conditions would have to be released by the police agency that authorized the removal before the towing agency or custodian could release the vehicle to its owner. Not less than 20 days or more than 30 days after the vehicle had been released, the towing agency or custodian would have to notify the police agency to enter the vehicle as abandoned, and the police agency would have to follow the procedures set forth in the Code for abandoned vehicles, if the impounded vehicle had not been redeemed.

Removal from Private Property

Under the Code, if a vehicle has remained on private property without the property owner's consent, the property owner may have the vehicle taken into custody as an abandoned vehicle by contacting a local towing agency.

Before removing the vehicle from private property, the towing agency must notify a police agency with jurisdiction over the vehicle that it is being removed. The bill would require the agency to provide reasonable notice to the police agency, by telephone or otherwise.

The Code requires the police agency to determine if the vehicle has been reported stolen and have it entered into LEIN as an abandoned vehicle.

Under the bill, verification by the police agency of compliance with these provisions would not be necessary and would not be a predicate to the entry of the vehicle into LEIN.

The bill specifies that a local towing agency would be considered a towing agency if its storage lot were located within 15 miles from the border of the local unit of government having jurisdiction over the abandoned vehicle.

As provided for a vehicle removed from public property, a vehicle owner may request a hearing to contest the vehicle's

being considered abandoned or the reasonableness of fees. An owner who requests a hearing may obtain release of the vehicle by paying to the court a fee of \$40 plus the towing and storage fees. Under the bill, an owner requesting a hearing but not taking possession of the vehicle would have to post with the court a towing and storage bond in an amount equal to \$40 plus the accrued towing and storage fees.

Hearing

The Code gives the district court and a municipal court jurisdiction to determine if a police agency has acted properly in processing a vehicle. Under the bill, those courts also would have jurisdiction to determine if a towing agency or custodian or a private property owner had acted properly in reporting or processing a vehicle.

The bill provides that the remedies under Sections 252 through 254 (which deal with abandoned and stolen vehicles) would be the exclusive remedies for the disposition of abandoned vehicles.

Once a petition is filed by the owner of a vehicle contesting the fact that the vehicle is considered abandoned or the reasonableness of the towing fees and daily storage fees, the court must schedule a hearing within 30 days for the purpose of determining whether the police agency acted properly.

The court also must notify the owner, towing service, custodian of the vehicle, and police agency of the time and place of the hearing. Under the bill, if the vehicle were removed from private property, the court also would have to notify the private property owner.

At the hearing, the police agency has the burden of showing that it has complied with the requirements of the Code in processing the abandoned or removed vehicle. Under the bill, the towing agency or custodian or, if the vehicle were removed from private property, the private property owner would have the burden of showing that it had complied with the requirements of the Code in reporting or processing the abandoned or removed vehicle.

The court may make a decision that includes one or more specific findings, including that the towing fees and daily storage fees were

unreasonable. The court then may issue an order directing an appropriate reduction. The bill would permit the court to issue an order directing the towing agency or custodian of the vehicle to provide the last-titled owner of the vehicle with an appropriate reduction or refund.

Under the bill, the court also could find that the owner of the real property complied with the provisions of Section 252k or 252l. (Those sections require the property owner or lessor to post notice at each vehicular access point that unauthorized vehicles will be towed at the owner's expense, unless the property is part of a single- or dual-family residence, or unless notice has been given personally to the owner or operator of the vehicle.) The court also could find that the owner of the real property did not comply with those sections. The court then could issue an order requiring the property owner to reimburse the last-titled owner of the vehicle for the accrued towing and storage charges.

In addition, the court could find that the towing agency did not comply with the procedures established for the proper removal and reporting of an abandoned vehicle removed under Section 252a(10), 252b, or 252d. The court then would have to issue an order directing that the vehicle immediately be released to the owner and that the towing agency was responsible for the accrued towing and storage charges. The court also would have to order any fee or bond posted by the owner to be returned to the owner. Alternatively, the court could find that the towing agency did comply with the procedures established for the proper removal and reporting of an abandoned vehicle removed under Section 252a(10), 252b, or 252d.

(Section 252a(10) deals with the removal of a vehicle from private property. Section 252b deals with the removal of unregistered abandoned scrap vehicles. Section 252d authorizes a police agency or its designee immediately to remove a vehicle from public or private property under certain conditions.)

Sale & Disposition

A public sale of a vehicle that has been determined to be abandoned or has been removed under the Code, and its contents,

must be conducted under the control of the police agency or its designee or the custodian of the vehicle or the custodian's designee. The bill instead would require the auction to be conducted under the control of the police agency, although a police agency could designate the custodian of the vehicle or a third party to conduct the auction.

The Code requires a sale to be held at least five days after public notice of the sale has been published, except as otherwise provided. The public notice must be published at least once in a newspaper having a general circulation within the county in which the vehicle was abandoned, and must give a description of the vehicle and state the time, date, and location of the sale.

Under the bill, the notice could omit the vehicle description if it included a website address where a description of the vehicle could be found. The bill also would require the notice to be titled, "Notice of Public Auction of Abandoned Vehicles".

Upon disposition of the vehicle, the police agency must provide the Secretary of State with the vehicle's disposition and the name of the agency that disposed of it. Under the bill, the police agency, towing agency, or custodian would have to give that information to the SOS and to the police agency, if it did not conduct the sale.

At least 25 days after the date of notice required for an abandoned vehicle, if the police agency did not give a copy of the bill of sale by the police agency for the abandoned vehicle to the towing agency or custodian or police agency's designee, the towing agency or custodian or designee could obtain an original of the bill of sale by submitting an application to the SOS in a form he or she determined.

Forfeited Vehicle

Under the Code, the judgment of sentence for committing certain violations may include forfeiture of the vehicle if the defendant owns it in whole or in part, or return of the vehicle if the defendant leases it.

If a vehicle is forfeited under that provision, the unit of government that seized the

vehicle must sell it and dispose of the proceeds in the following priority:

- Pay any outstanding security interest of a secured party who did not have prior knowledge of or consent to the commission of the violation.
- Pay the equity interest of a co-owner who did not have prior knowledge of or consent to the commission of the violation.
- Satisfy any order of restitution entered in the prosecution for the violation.
- Pay the claim of each person who shows that he or she is a victim of the violation to the extent that the claim is not covered by an order of restitution.
- Pay any outstanding lien against the property that has been imposed by a governmental unit.
- Pay the proper expenses of the proceedings for forfeiture and sale.

The court must distribute the remaining balance to the unit or units of government substantially involved in the forfeiture.

The bill would require the proceeds to be used to pay any outstanding accrued towing and storage fees, after satisfying any order of restitution and before paying a victim's claim.

Confidential Records

Personal information in a record maintained under the Code may not be disclosed unless the person requesting the information furnishes proof of identity and certifies that the information will be used for a permissible purpose under the Code. The purposes permitted include disclosure for use in providing notice to the owner of an abandoned, towed, or impounded vehicle. The bill also would include disclosure for use by the custodian of an abandoned vehicle.

Boat Lifts & Trailers

Under the Code, upon application and payment of the proper fee, the SOS may issue a registration plate to a person who in the ordinary course of business has occasion to pick up or deliver a vehicle not required to be titled, allowing the person to pick up or deliver a commercial motor vehicle being driven to a facility to undergo aftermarket modification, or to repair or service a vehicle. Also, upon application and payment

of the proper fee, the SOS may issue a registration plate to a watercraft dealer for the purpose of delivering a vessel or trailer to a customer or to and from a boat show or exposition.

The bill would not amend these provisions, but would repeat the language regarding a commercial motor vehicle and would allow the SOS, upon application and payment of the proper fee, to issue a registration plate to a watercraft dealer or the owner of a marina for the purpose of delivering a vessel or trailer to a purchaser, to transport a vessel between a body of water and a place of storage, to transport a vessel or trailer to and from a boat show or exposition, to repair, service, or store a vessel or trailer, or to return a vessel or trailer to the customer after repair, service, or storage.

The Code makes exceptions to its size, weight, and load restrictions for certain vehicles and combinations of vehicles. The bill would add an exception for a boat lift or oversized hydraulic boat trailer owned and operated by a marina or watercraft dealer used exclusively in a commercial boat storage operation and incidentally moved upon a highway.

(The Code also makes an exception to those limits for an implement of husbandry incidentally moved upon a highway. The bill would retain that exception but would remove the reference to incidental movement on a highway.)

In addition, a boat lift used for transporting vessels between a marina or a body of water and a place of inland storage would not be subject to the Code's registration and certificate of title provisions.

The bill would permit a person to move or operate a boat lift of any width or an oversized hydraulic boat trailer owned and operated by a marina or watercraft dealer in a commercial boat storage operation on a highway without obtaining a special permit for an excessively wide vehicle or load as required under the Code. The operation or movement of the boat lift or trailer would have to minimize the interruption of traffic flow. It would have to be used exclusively to transport a boat between a place of storage and a marina or in and around a marina. A boat lift or oversized hydraulic boat trailer could be operated, drawn, or towed on a

street or highway only when transporting a vessel between a body of water and a place of storage or when traveling empty to and from transporting a vessel. A person could not operate or move a boat lift or oversized hydraulic boat trailer to the left of the center of the roadway from a half hour after sunset to a half hour before sunrise, under the conditions specified in Section 639 of the Code, or at any time visibility was substantially diminished due to weather conditions. (Section 639 prohibits a vehicle from being operated on the left side of a roadway under particular conditions.) A boat lift could not be operated on limited access highways. A person moving or operating a boat lift or oversized hydraulic boat trailer would have to follow all traffic regulations and ensure that the route selected had adequate power and utility wire height clearance.

"Boat lift" would mean a vehicle owned and operated by a marina or watercraft dealer in a commercial boat storage operation with a framework designed to surround or straddle a boat and lift it from water or a storage space using a sling and hoisting mechanism. A boat lift would have to be specifically designed for and used exclusively to transport a boat between a place of storage and a marina or in and around a marina. "Boat lift" would not include a water trailer designed for normal or routine transportation of a watercraft.

MCL 257.11 et al.

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

The bill would provide additional protections for vehicle owners in several ways, including revisions to the hearing process. Current law permits a vehicle owner to contest the vehicle's being considered abandoned or the appropriateness of towing fees or storage charges, providing a neutral way to settle disputes between towers and vehicle owners. The bill also would permit the court to determine whether the proper procedures were followed by towing agencies and private property owners, who would have the burden of proving that they complied with the Code. If the court found that the

tower or the property owner did not comply with the Code, it could order that the vehicle owner be paid restitution. These provisions would help prevent unfair practices by property owners or towers, and would close gaps in the current law.

In addition, the bill would require a towed vehicle to be stored within 15 miles of the municipality having jurisdiction over the removal of the vehicle. This provision would ensure that a vehicle owner was able to recover his or her vehicle with a minimum of inconvenience, and would minimize towing fees.

If a vehicle were involved in a traffic accident and could not be driven from the scene, the bill would permit it to be removed immediately without requiring the 24-hour notice that otherwise would be required under the Code. This provision would align the Code with current practice, allowing the quick removal of vehicles to restore normal traffic flow.

The bill also would clarify some of the procedures for handling vehicles that were believed to have been stolen or could have been involved in the commission of a crime. Under the bill, a vehicle impounded for either of those reasons would have to be released by the police agency before it was released to the owner. If the owner did not claim the vehicle, then it would be entered as an abandoned vehicle. These provisions would help provide due process, ensuring that vehicles that were part of a criminal investigation were not improperly released from custody. In addition, these provisions would keep vehicles that were involved in an accident and subsequently towed from being improperly designated as abandoned.

In addition, the bill would allow a tower to obtain a vehicle owner's name and address for collection purposes. The Code currently permits a towing agency to take actions to collect its fees, and the bill would give the agency access to the information necessary to contact the vehicle owner.

These and other amendments would improve the process of removing, storing, and disposing of abandoned vehicles, ensuring that towing agencies were able to recover costs while protecting the rights of vehicle owners.

Supporting Argument

The bill would provide exemptions for marina owners transporting boats short distances between the water and storage or repair facilities. Because of the high cost of waterfront property, many marinas have inland storage locations. When boats are removed from the water for winter storage or for repairs, they must be transported on public roads using boat lifts. When carrying a large watercraft, these vehicles may violate certain size, width, and weight restrictions. By exempting boat lifts and hydraulic trailers from those requirements, the bill would allow marina owners to transport boats back and forth from the water without having to obtain a special permit.

Legislative Analyst: Curtis Walker

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: Bruce Baker
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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.