BRUCE A. TIMMONS

The Honorable Graham Filler, Chair, House Committee on Judiciary
Members of the House Committee on Judiciary

March 8, 2022

Statement Regarding **HB 5509** – Objection to Use of Civil Fine Revenue

HBs 5501, 5508, and 5509 – concerning enforcement action against those who pass school buses that have stopped to pick up or let off students – would divert money away from libraries and court funding units **to school districts** operating the buses that are equipped with a stop-arm camera system that records those who fail to stop and pass a school bus in violation of statute or ordinance. (SBs 374, 376, and 377 are identical counterparts.)

I am not raising objections to enforcing the prohibition on passing a school bus when letting students on or off. But I do object to the **precedent established by diverting civil fine money away from libraries, court-funding units, and law enforcement** (that basically get the 1/3 of local fines and costs for ordinance violations).

Since term limits began after 1998 and as pre-term-limit memories fade into the distance, the Michigan Legislature has developed an unfortunate pattern of "discovering" a pool of money (restricted or dedicated revenue) created for one purpose and deciding to grab, divert, steal, or redirect a portion of that money (choose your preferred characterization) to serve an entirely different objective, irrespective of the origin, purpose, and history of that revenue – and without much thought as to who loses and what precedent it may set. That is why I have concerns over new precedents that will be what the current incumbents remember, not why the original restricted revenue was created and for a specific use with restrictions.

HB 5509 fits this pattern. Why is that a problem here?

Article VIII, Sec. 9, of the Michigan Constitution provides:

§ 9 Public libraries, fines.

Sec. 9. The legislature shall provide by law for the establishment and support of public libraries which shall be available to all residents of the state under regulations adopted by the governing bodies thereof. All fines assessed and collected in the several counties, townships, and cities for any breach of the penal laws shall be exclusively applied to the support of such public libraries, and county law libraries as provided by law. [Formerly Const. 1908, Art. XI, § 14, I believe added by amendment by voters.]

The premise behind penal finds going to libraries is that neither courts/judge nor entities directly invested in prosecution of a case should benefit from fines imposed on a person convicted of a crime – in other words, no incentive to convict. This provision is buttressed by Art VI, Sec. 17 that prohibits judges from being paid by fees of the office.

In 1976-78, the proposal to decriminalize minor traffic offenses ran into a major obstacle of opposition by librarians throughout the state who feared decriminalization would cause a significant loss of revenue which Libraries were constitutionally capturing under Constitution, **Art VIII, Sec. 9** (penal fines). While **MCL 257.909** is not a constitutional provision, its addition – while never claimed to be a guarantee like Art. VIII. Sec. 9 – facilitated passage of the traffic civil infraction system per 1978 PA 510.

This is how the **original MCL 257.909** was worded (emphasis added) and observed for 24 years until 2000 PA 34 (and for most purposes still):

"Sec. 909. (1) 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.

(2) Subsection (1) is 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.".

That provision honored the premise behind penal fines going to libraries. Note a parallel provision under RJA, Chap 88, MCL 600.8831,regarding state civil infractions.

The Legislature did not tamper with the premise of civil fines for traffic civil infractions going to libraries for 24 years until 2000 PA 94 (HB 4928) when none of the new crop of legislators knew (or cared) about why civil infraction fines went to libraries. As enacted, PA 94 diverted and continues to divert 70% of civil fines for commercial motor vehicle civil infraction away from libraries.

These are the provisions (and precedent) in **HB 5509** to which I object:

First, Amendment to **MCL 257.682**, new subsection (5), page 3, lines 13-15, which reads:

(5) Notwithstanding any provision of law to the contrary, a
14 fine imposed and paid under subsection (1) may be paid to the
15 school district that operates the school bus.

Second, Amendment to **MCL 257.909**, new subsections (3) and (4), page 10, lines 4-10, which read:

4 (3) A civil fine ordered for a violation of section 682 may be
5 distributed to the school district that operates the school bus as
6 provided in that section.
7 (4) A civil fine ordered for a violation of a code or
8 ordinance of a local authority that substantially corresponds to
9 section 682 may be distributed to the school district that operates
10 the school bus as provided in that section.

Besides the diversion of revenue in HB 5509, the distribution of traffic civil infraction civil fines to school districts poses unique difficulties for the district court. School districts do not align with county and city lines and many school districts cross county and city boundary lines, so a district court district not only would have to set up new software for distribution of the civil fine money but for multiple school districts for this same type of revenue. Different audit trails also result. (How will the school district be identified to court and clerk?)

Other bills have also been introduced this Session to divert civil infraction civil fines revenue (and even costs) away from libraries and court-funding units – and all violate the premise that financial support for governmental agencies depend upon a conviction. They are:

- HB 4535,recently passed by the House, would divert state civil infraction civil fines for a recreational snowmobile trail improvement 'subaccount'. HB 4536 amends 600.9931.
- HB 5750 (same as SB 874), including amendment to MCL 257.909, would divert all traffic civil infraction civil fine money for a violation of an automated speed enforcement system to be paid to MDOT and deposited into the "work zone safety fund".
- HB 4084 (sanctions for dumping), as introduced, would have directed civil fine money to a local community group or municipal, county, or state that performs clean-up or remediation but passed the House without affecting SCI civil fine revenue.

Precedents of the sort now being proposed have a history of mushrooming out of control and compromising the primary purpose of the revenue – with the loss of revenue to other governmental entities that no one replaces, with consequences of its own. I highly doubt that libraries are over-funded (nor courts). Today it is perhaps a trickle – tomorrow a cascade?

The bills noted above are just one aspect I have seen that divert restricted revenue in "new directions" since term limits kicked in – to the erosion of money (not replaced) for the original purpose. [Of 5 "Headlee funds" I covered, all 5 have been compromised by statue or had bills introduced to do so.]

Respectfully,

Bruce A. Timmons

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ADDENDUM Regarding **HB 5509** and its Amendments to **MCL 257.907**

Old Adage: **If it is worth doing, it is worth doing right** – even if we are talking about drafting and not substantive issues. **MCL 257.907**, which HB 5509 would amend, was last amended by 2020 PA 382 (EHB 5853), effective October 1, 2021.

I commended at the time (and now) the LSB drafter's initiative to break up the exceptions to the default $100 civil fine for traffic civil infractions into subdivisions arranged by Vehicle Code section numbers in place of the hodgepodge of references that had no discernible pattern.

Unfortunately HB 5853 (S-1) contained several inaccuracies (or a bad precedent as noted under **D** below) that merit corrections that should be included in a substitute to HB 5509 if that bill is to be reported from committee. As a former bill drafter (LSB 1981-82), that bothers me.

These are the changes I recommend and the reasons for them:

A. There has been the consistent LSB drafting of civil infraction violations in the Vehicle Code for 42 years. Unless a higher or different civil fine is specified, the designation of "civil infraction" is sufficient and the level of civil fine has not been included, being covered by the default maximum of $100 under Sec. **907(2)(a)**. Sec. **907(2)(b) to (n)** list the exceptions but **two** Vehicle Code exceptions are missing, both of which have flat civil fines and should be added to Subsection (2) for a complete list of exceptions:

Vehicle Code Sec. 252a(1):

"(1) A person shall not abandon a vehicle in this state. It is presumed that the last titled owner of the vehicle is responsible for abandoning the vehicle unless the person provides a record of the sale as that term is defined in section 240. A person who violates this subsection and who fails to redeem the vehicle before disposition of the vehicle under section 252g is responsible for a civil infraction and **shall be ordered to pay a civil fine of $50.00.".**

Vehicle Code Sec. 653a(2):

"(2) Except as provided in this subsection and subsections (3) and (4), a person who violates this section is guilty of a misdemeanor punishable by a fine of not more than $500.00 or imprisonment for not more than 90 days, or both. Beginning 60 days after the effective date of the amendatory act that amended this subsection, except as provided in subsections (3) and (4), a person who violates this section is responsible for a civil infraction and **shall be ordered to pay a civil fine of $400.00."**.

B. There is an aberration, if not ambiguity, with regard to **Sec. 602b** in Sec. **907(2)(h)**:

Vehicle Code Sec. 602b(6): provides:

"(6) An individual who violates this section is responsible for a civil infraction and shall be ordered to pay a civil fine as follows:

(a) For a first violation, $100.00.

(b) For a second or subsequent violation, $200.00.".

Those are flat civil fines. Those flat civil fines were mimicked in Sec. 907(2) prior to 2020 PA 382, but current law now provides that the civil fine for a first violation "must not be more than $100.00" (implying or allowing discretion in contradiction to **Sec. 602b(6)**). Then it states "$200" for a second or subsequent "offense". Is that intended as an implied 'not more than' or a flat civil fine – to me that is ambiguous. Which "law" do you want the court to follow – flat or discretion**?** Clarifying the civil fines in Sec, 907(2)(h) for a flat civil fine for first and subsequent would eliminate the ambiguity and be four-square with the civil fines specified in **Sec, 602b(6).** HB 5509 would cure this defect. [Other bills this Session would also cure this aberration, but others do not.]

C. But there is also another problem: – for 42 years we have intentionally not referred to civil infraction violations as "**offenses**". That term is the typical jargon for criminal violations, not civil. We have tried as much as possible to not mix criminal and civil terminology lest it be argued that civil infractions are just another form of crime.

Two different changes are required to be accurate:

Sec. 602b(6) itself uses the term "violation" (noted above). Both references to "offense" in **Sec, 907(2)(h),** page 5, line 9, are wrong. There is no other similar misuse of "offense" in Sec, 907. In Sec. **907(2)(h)**, page 20, line 20, "**offense**" should be replaced by "**violation**" in both places – to be consistent with Sec. 602b(6) itself and long-standing avoidance of "offense" for civil infractions.

D. Since most traffic violations were decriminalized to "civil infractions" on Aug 1, 1979, per 1978 PA 510, and in the intervening 42 years, imposition of the civil fine has been **totally discretionary** from no amount up to a maximum of $100. Sec. 907(2)(a) prior to 2020 PA 382, provided: "Except as otherwise provided, for a civil infraction under this act or ... [local ordinance] ..., the judge or district court magistrate **may** order the person to pay a civil fine of not more than $100.00 and costs as provided in subsection (4).".

But 2020 PA 382 amended **MCL 257.907(2)(A)** to provide for the default civil fine for traffic civil infractions (HB 5509, page 4, lines 14-17) to be ordered this way: "the person **shall be ordered** to pay a civil fine of not more than $100.00". [Emphasis added.]

Why was that changed? What does it mean? Are judges to treat it as discretionary anyway, or is that phrase intended to pressure judges into imposing some level of civil fine when they would not otherwise do so? I believe that change was ill-advised and should be reversed.

HB 5509, page 4, line 16, should be amended to change "**shall**" to "**may**".

Note: A search of the Michigan Vehicle Code before passage of 2020 HB 5853 showed not a single instance of the use of the phrase "shall be ordered to pay not more than". In fact, a search of the entire MCL database did not reveal a single phrase like that.

(Under current law: IF a civil fine is ordered, the court "shall" impose "costs" under Sec. 907(4), page 6, but those "costs" may be waived. If any fines or costs are imposed, the court "shall" order the justice system assessment of $40 under Sec.907(12), page 8. But the civil fine is "may".)

E. HB 5509 itself is inconsistent in the use of "person" and (page 5, line 28) "individual". May I assume that vehicles owned by corporations are exempt from costs under 907(3)?

F. LSB has a new policy that thousands of the term "shall" in the Michigan Compiled Laws should be changed to "must" and many bills this Session include that change – even if directly-related MCL sections are not being amended and will continue to say "shall". HB 5509, page 4, line 16, retains "shall" whereas SB 874, HB 4984, HB 5750, and HB 5773 replace "shall" with "must" in the same sentence. Just noting.

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