



House Office Building, 9 South
Lansing, Michigan 48909
Phone: 517/373-6466

ASSESS ADMINISTRATIVE FEE ON BOND PAYEES

House Bill 5047 as introduced
First Analysis (10-25-01)

Sponsor: Rep. Glenn S. Anderson
Committee: Civil Law and the Judiciary

THE APPARENT PROBLEM:

When an accused person posts bail or bond, he or she obtains release from custody in exchange for promising to appear for court hearings in the case. (Cash, certified check, or certain securities may be deposited in lieu of bail or bond.) Should the accused fail to appear in court, the money posted will be forfeited. In the case of a person arrested on a warrant that has been issued in another jurisdiction, if the arrested person has the money to post such a bond, local police departments have found that it makes sense for them to communicate with the jurisdiction that issued the warrant, collect and process the bail or bond money, and forward it to the appropriate treasurer or clerk of the county or court that has jurisdiction over the person.

For some "cash-strapped" local police departments, however, these proceedings have caused problems, since costs for collecting and processing the money are incurred. For example, according to testimony submitted to the House Civil Law and the Judiciary Committee, the police department in the City of Allen Park arrested more than 700 people from other jurisdictions during fiscal year 2000-2001, at a cost of \$16,800. In addition, written testimony submitted by the City of Westland claims that \$23,000 was spent there during the same period for costs associated with the arrest of 899 individuals from other jurisdictions. In that city, however, the police department has, for several years, collected an additional fee of \$5 when it collects bail or bond money from those arrested on warrants issued by other jurisdictions.

The City of Livonia has also considered imposing such a fee. However, a question has been raised as to whether local law enforcement agencies do, in fact, have the legal authority to do so. The question was put before the attorney general who, in response, issued an opinion on the question. Attorney General Opinion Number 7070 (2001) states the following, in part:

"A police department is part of local government. In Michigan local units of government have no inherent powers. Rather, they have only the limited powers 'expressly conferred upon them by the Constitution of the State of Michigan, by acts of the Legislature, or necessarily implied therefrom.'" Further, "Under the common law, there is no right to collect fees in court proceedings. A fee must be authorized by a statute before a public officer or public employee may impose the fee in a court proceeding."

In response to this situation, and in line with the attorney general's opinion, legislation has been introduced that would allow local police departments to recoup some of the costs involved in recovering bonds for other jurisdictions, by establishing in statute a provision that would allow any local police department to assess an administrative fee of \$5, in addition to the bail or bond amount set by the court.

THE CONTENT OF THE BILL:

Under provisions contained in Chapter V of the Code of Criminal Procedure, unless otherwise provided by law, a person accused of a criminal offense is entitled to bail. The money is deposited with the clerk of the court (if under bond) or with the treasurer of the county, city, village, or township within which the bail or bond is to be furnished, or with the state treasurer. If the bond or bail is collected after the office hours of the treasurer or clerk, it is collected by an officer who is authorized to do so, or by the county sheriff in charge of the county jail or sheriff's office. These funds must be transferred to the proper treasurer or clerk within 48 hours.

House Bill 5047 would amend the code to allow for an administrative fee of \$5 to be assessed in addition to the bail or bond amount set by the court. Specifically, the bill states that a law enforcement agency that obtains bail or bond money from or on behalf of a person arrested pursuant to a warrant issued by a court could collect \$5 in addition to the

House Bill 5047 (10-25-01)

bail or bond money. The \$5 fee could be collected either from the person arrested or from another person on behalf of the person arrested. The fee revenue would have to be deposited promptly by the law enforcement agency into an account created for that purpose in the treasury of the law enforcement agency's governing body and used to defray the expense of receiving, depositing, and delivering bail or bond money.

MCL 765.12a

FISCAL IMPLICATIONS:

House Bill 5047 would allow a law enforcement agency that obtained bail or bond money from, or on behalf of, a person arrested under a warrant issued by a court to assess a \$5.00 administrative fee, in addition to the bail or bond money imposed. The House Fiscal Agency estimates that, based on fiscal year 2000 arrest figures, the bill would increase revenues collected by the Department of State Police (DSP) by \$160,000 to \$260,000 annually, assuming that fees were collected for all applicable arrests. (The HFA notes that it is not uncommon for the amount of bail or bond actually paid to fall short of the amount set in the warrant, and that, in such situations, presumable the \$5.00 fee would also be uncollectable.) However, since statewide arrest figures are unavailable, the increase in DSP revenues is indeterminate. The HFA also estimates that, since this fee would represent a new step in the arrest/bail/bond process, there could be administrative costs involved that would offset or reduce the revenue collected. (10-1-01)

ARGUMENTS:

For:

Typically, when a person is arrested, the police department for the jurisdiction in which the arrest warrant was issued collects bail or bond money. However, some police departments have adopted the practice of collecting and processing bail or bond money paid under warrants issued in other jurisdictions, rather than require that the prisoner be transported to the issuing jurisdiction. This is obviously more efficient, but the process also takes time away from the arresting department's other duties. For example, in written testimony presented to the House committee, the Allen Park Police Department states that it processed more than 700 arrests for other jurisdictions during fiscal year 2000-2001, and that each arrest consumed an average of one hour of work by a police officer. Based on the hourly rate for police officers, the police department estimates that the cost to taxpayers for this processing

was more than \$16,800. Similarly, the City of Westland estimates that each such arrest requires one hour of a police officer's time. In addition, the City of Westland notes that processing each bond and forwarding checks to the issuing jurisdictions also involves the use of its clerical staff. The total cost to taxpayers was approximately \$23,000 during the year 2000, according to the city. While the \$5 administrative fee that the bill permits would not recoup all the costs involved, it makes sense that arresting police departments be compensated for at least part of the costs involved in processing such cases.

Against:

The provisions of the bill are broader than the problem it purports to address. The bill would allow a police department to collect a \$5 administrative fee, in addition to the bail or bond money, for collecting and processing bail or bond money even where the underlying arrest was made in that local jurisdiction. It is not restricted to warrants from jurisdictions other than the one where the arrest was made.

Further, since, under the bill, collection of the administrative fee is discretionary, concerns could be raised that this violates the equal protection clause of the constitution. For example the fee could be imposed on resident from one city, but not on residents of another.

POSITIONS:

Representatives of the following entities submitted written testimony to the House Committee on Civil Law and the Judiciary in support of the bill:

- The Michigan Association of Chiefs of Police (MACP)
- The Allen Park Police Department
- The Wayne County Association of Chief of Police
- The City of Westland Department of Police
- The Western Wayne County Chiefs of Police Association

The Department of State Police (DSP) has no position on the bill. (10-24-01)

Analyst: R Young

■ 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.