

# Legislative Analysis

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## **REVISE ABANDONED VEHICLES PROCEDURES; ESTABLISH "BOAT LIFT" PROCEDURES**

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**House Bill 4839 as enrolled**  
**Public Act 539 of 2008**  
**Sponsor: Rep. Barbara Farrah**  
**House Committee: Transportation**  
**Senate Committee: Transportation**

### **Second Analysis (1-22-09)**

**BRIEF SUMMARY:** The bill would amend the Michigan Vehicle Code to clarify a number of the procedures used to deal with abandoned vehicles, and to establish procedures allowing marina owners and watercraft dealers to operate "boat lifts" on local streets.

**FISCAL IMPACT:** House Bill 4839 would have no fiscal impact on the State of Michigan or its local units of government.

### **THE APPARENT PROBLEM:**

Under the Michigan Vehicle Code, if a vehicle remains on public or private property long enough for law enforcement officials to consider it abandoned, the police determine if the vehicle has been reported stolen, and put a written notice on it. The notice includes the date and time the vehicle may be removed, to be stored at the owner's expense or scrapped. If the vehicle is not removed within 24 hours after the notice is posted, it is considered abandoned and the police agency can have the vehicle taken into custody, generally transported by towing companies.

Abandoned vehicles present a pesky problem for law enforcement, and the Legislature has responded in several ways. In 2000, Public Act 306 was enacted to reduce from 48 hours to 24 hours the time period an owner had to remove a vehicle on a state trunk line highway before it is considered abandoned. Additionally, that act required the Southeast Michigan Council of Governments (SEMCOG) to conduct a statewide study in cooperation with the Michigan Department of Transportation and the Department of State Police to evaluate the impact of the reduction, and to consider further reducing the time period. The study revealed that statewide, vehicle abandonment and its negative effects were a significant problem.

In the City of Detroit alone, approximately 60,000 cars were abandoned over the course of one year. Further, according to the 2001 study, in 1999, nearly 21,000 parked cars were hit on roadways in Michigan. Twelve of the accidents resulted in fatalities; almost 1,400 caused injuries; and 19,500 resulted in property damage. The study noted Federal Highway Administration estimates that cars parked at the side of the road (abandoned or otherwise) can reduce traffic flow by 25 percent during peak travel times. What's more,

abandoned vehicles provide opportunities for crimes, such as vandalism, arson, and theft. Finally, abandoned vehicles pose environmental hazards since they contain motor oil and other pollutants.

In 2004, the Legislature enacted Public Acts 493 (HB 5364) and 495, (HB 4231) in an effort to address the problem in a comprehensive way. Those acts, among other things, required that all roadways (not just state trunk-lines) be free of parked vehicles within 24 hours; prescribed a series of civil fines of not less than \$100 for abandoning vehicles (to help cover the costs of removing them incurred by the Secretary of State and local governments); streamlined the process for removing and reclaiming vehicles (including the creation of an online database that owners can use to locate vehicles that have been removed as abandoned); required sellers of vehicles to take certain actions upon sale in order to avoid future liability if the vehicle was later abandoned; and better ensured that towing companies would recover their costs for removing and storing vehicles by requiring vehicle owners to bear some of the costs that had customarily been incurred by the state and local units of government.

According to committee testimony, the laws already enacted have had a significant and positive impact on the problem. However, some changes to the law have been recommended by a work group comprising representatives of the Towing Association, the Michigan State Police, and the Secretary of State.

In addition, during legislative debate on the bill, amendments were added to allow marina owners and watercraft dealers to operate "boat lifts" on local roads, and establish a dispute resolution process when township officials disagree about imposing travel restrictions on roads that serve as borders between townships.

### ***THE CONTENT OF THE BILL:***

House Bill 4839 would amend the Michigan Vehicle Code to clarify a number of the procedures used in order to deal with abandoned vehicles, and to establish procedures allowing marina owners and watercraft dealers to operate "boat lifts" on local streets.

#### Abandoned Vehicles

\*\* The bill specifies that a "dealer" for the purposes of this act would *not* include a person who has received a vehicle under Section 252g (3)(a) for the purpose of selling that vehicle to a dealer licensed under the act. [Under MCL 257.252g(3)(a), if there are no bidders on a vehicle, a police agency or the custodian of the vehicle may either turn the vehicle over to the towing firm or the vehicle custodian to satisfy charges against the vehicle, or obtain title to the vehicle.]

\*\* The law specifies when the Secretary of State may disclose personal information contained in a record maintained under the act. Among those provisions, the Secretary of State may disclose personal information for use in providing notice to the owner of an abandoned, towed, or impounded vehicle. House Bill 4839 would retain this provision,

and add "or for use by the custodian of a vehicle that is considered abandoned, for the sole purpose of disposing of that vehicle."

\*\* The law specifies that the owner of a vehicle may contest the fact that the vehicle is considered abandoned or the reasonableness of the towing fees and daily storage fees by requesting a hearing. House Bill 4839 would retain this provision, and also require the owner to post a bond equal to \$40 plus the amount of the accrued towing and storage fees.

\*\* Currently, a private property owner can have an abandoned vehicle taken into custody by contacting a local towing agency. House Bill 4839 would retain this provision, and specify that "a local towing agency is considered a towing agency whose storage lot is located within 15 miles from the border of the local unit of government having jurisdiction over the abandoned vehicle."

\*\* Currently under the law, before removing a vehicle from private property, a towing agency must notify the police agency having jurisdiction over the vehicle that it is being removed. House Bill 4839 would retain this provision, but clarify that the towing agency must "provide reasonable notice by telephone, or otherwise" to the police agency. Under the bill, "verification by the police agency of compliance with this section is not necessary and is not a predicate to the entrance of the vehicle into the law enforcement information network."

\*\* Currently under the law, an owner may contest the fact that the vehicle is abandoned or, the reasonableness of the towing and daily storage fees, by requesting a hearing. A hearing request is made by filing a petition with the court specified in the notice within 20 days after receiving the notice. An owner who requests a hearing can obtain release of the vehicle by posting with the court a \$40 towing and storage bond, plus the accrued towing and storage fees. Or, instead of the bond, the owner of a vehicle who requests a hearing can obtain release of the vehicle by paying a \$40 fee to the court, plus the towing and storage fees. House Bill 4839 specifies that an owner requesting a hearing but *not* taking possession of the vehicle must post with the court a towing and storage bond in an amount equal to \$40, plus the accrued towing and storage fees.

\*\* The law allows a police agency (or a governmental agency designated by the police) 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 of the vehicle in a number of circumstances stated in the act. House Bill 4839 would retain this provision, but change it in two ways. First, removing the vehicle would be done at the expense of the "last titled" owner (rather than the "registered" owner). Second, removal of the vehicle at the "last titled" owner's expense would be allowable "if the vehicle has been involved in a traffic crash and cannot be safely operated from the scene of the crash."

\*\* Currently, when a police agency authorizes the removal of a vehicle, they must check to determine if the vehicle has been reported stolen, and then follow the procedures set out in the law. House Bill 4839 would retain those provisions, but require that the check to determine if the vehicle had been reported stolen take place "prior to authorizing the

removal of the vehicle." In addition, unless the vehicle had been reported stolen, had to be seized to provide evidence of a crime, or was involved in a traffic crash and inoperable, the police agency would be required to enter the vehicle into the Law Enforcement Information Network as abandoned not less than seven days after authorizing the removal. Further, a vehicle impounded for the reasons noted above would first have to be released by the police agency that authorized the removal prior to the towing agency or custodian releasing the vehicle to the vehicle owner.

Finally, not less than 20 days but not more than 30 days after a vehicle had been released, the towing agency or custodian would be required to notify the police agency to enter the vehicle as abandoned, and the police agency would then be required to follow the procedures set forth in the act, if the impounded vehicle had not been redeemed.

\*\* The law currently specifies that district and municipal courts have jurisdiction to determine if a police agency, towing agency or custodian or private property owner have acted properly in reporting or processing an abandoned vehicle. House Bill 4839 would retain this provision, and also specify that the remedies under Sections 252 through 254 of the act would be exclusive remedies for the disposition of abandoned vehicles.

\*\* Currently under the law, a person can file a petition in court if a vehicle has been taken into custody improperly. The law requires that the court (1) schedule a hearing within 30 days to determine whether the police agency acted properly, and (2) notify the owner, towing service, custodian of the vehicle, and the police agency of the time and place of the hearing. House Bill 4839 would expand the scope of the hearing to say that the hearing would be held to determine if the "police agency, towing agency or custodian, or private property owner" acted properly. Further, the bill would retain the notice provision, but require that a private property owner be given notice if the vehicle had been removed from private property. Finally, at the hearing, the police agency, towing agency or custodian, or, if the vehicle had been removed from private property then the private property owner, would have the burden of showing, by a preponderance of the evidence, that it had complied with the requirements of the act in reporting or processing the abandoned vehicle.

\*\* After a hearing is held, a court must make a decision that includes one or more of the responses specified in the law. House Bill 4839 would retain those provisions, but add five additional options for the court to consider, as follows: (1) find that the towing fees and daily storage fees were unreasonable and 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; (2) find that the owner of the real property complied with the provisions of the act; (3) find that the owner of the real property did not comply, and issue an order requiring the owner of the real property to reimburse the last titled owner of the vehicle for the accrued towing and storage charges; (4) find that the towing agency did not comply with the procedures established for the proper removal and reporting of an abandoned vehicle, and then after making that finding, issue an order directing that the vehicle immediately be released to the owner and that the towing agency be responsible for the accrued towing and storage charges, and additionally, order that any fee or bond

posted by the owner be returned to the owner; and (5) find that the towing agency did comply with the procedures established for the proper removal and reporting of an abandoned vehicle.

\*\* The law provides for, and describes in some detail, a public sale for abandoned vehicles, undertaken by the police agency (or the agency's designee) or the custodian of the vehicle (or the custodian's designee). House Bill 4839 would change this provision so that the public sale would be under the control of the police agency, but add: "However, a police agency may designate the custodian of the vehicle or a third party to conduct the auction." Currently under the law, the public notice of an abandoned vehicle sale 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 for sale, while stating the time, date, and location of the sale. Under House Bill 4839 would retain this provision.

\*\* House Bill 4839 would require that upon disposition of a vehicle, the police or towing agency or the custodian provide to the Secretary of State and to the police agency (if the police agency did not conduct the sale), the disposition of each vehicle, and the name of the agency that disposed of it. Following that notice, the police agency would cancel the entry in the Law Enforcement Information Network.

\*\* The bill specifies that not less than 25 days after the date of notice, if the police agency did not provide a copy of the bill of sale for the abandoned vehicle, then the towing agency or custodian or police agency designee could obtain an original of the bill of sale by submitting an application to the Secretary of State.

\*\* Under the law, an owner or lessor of private property must post a notice that meets a number of requirements before authorizing the towing or removal of vehicles from that property. That notice must be prominently displayed at "a point of entry" for vehicular access to the property. House Bill 4839 would require instead that the notice be prominently displayed at "each point of entry."

\*\* Finally, the law specifies that Section 252k—a section requiring warning signs about towing of vehicles on private property—does not apply to real property that is obviously part of a single- or dual-family residence; or to an instance when notice is personally given to the owner or other legally entitled person in control of a vehicle that the area where the vehicle is parked is reserved and that the vehicle is subject to towing or removal. House Bill 4839 would retain these two exemptions and add a third: Section 252k would not apply to a vehicle removed from private property under Section 252d, a section which allows the immediate removal of vehicles from public or private property.

\*\* Currently the law specifies the manner in which a unit of government disburses the proceeds from their sale of forfeited vehicles. Under the law, those who are paid are listed in priority order, beginning with the first: paying any outstanding security interest of a secured party who did not have prior knowledge of or consent to the commission of the violation, and continuing through the eighth: to the units of government substantially

involved in effecting the forfeiture. House Bill 4839 would retain, but revise and reorder the list of priorities. Under the bill, the number of priorities would increase from eight to nine, and the new fourth priority would be to "pay any outstanding accrued towing and storage fees."

### Boat Lifts

In addition, House Bill 4839 would define "boat lift" to 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 the boat from water or a storage space using a sling and hoisting mechanism. A boat lift shall 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 does not include a boat trailer designed for normal or routine transportation of a watercraft.

Under the bill, "boat lifts" would be exempt from the registration and certificate of title provisions of the Michigan Vehicle Code. However, House Bill 4839 also allows the Secretary of State to issue a registration plate (upon application and payment of the proper fee) to an individual, partnership, corporation, or association that in the ordinary course of business has occasion to legally pick up or deliver a commercial motor vehicle being driven to a facility to undergo aftermarket modification, or to repair or service a vehicle, or to people defined as watercraft dealers (under Part 801 of the Natural Resources and Environmental Protection Act) or to 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. A registration plate issued under this subsection would be used to move the vehicle or trailer.

Currently under the law, certain over-sized and overweight vehicles are allowed to be driven or moved on a highway despite size, weight, and load restrictions. Those vehicles include fire apparatus, an implement of husbandry, wreckers with disabled vehicles and or trailers, and vehicles having been issued special use permits. House Bill 4839 would retain these exceptions, and also add "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."

The bill specifies that a person may 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 under a multiple trip permit issued on an annual basis. The operation or movement of the boat lift or trailer must minimize the interruption of traffic flow. Further, it must 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 may be operated, driven, 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 or from transporting a vessel. Under the bill, a boat lift cannot be

operated on limited access highways. A person moving or operating a boat lift or oversized hydraulic boat trailer must follow all traffic regulations, and must ensure that the route selected has adequate power and utility wire height clearance.

### Dispute Mediation between Counties and Townships

Currently under the law, local authorities and county road commissions can set rules for roadways within their jurisdiction (excepting state trunk-lines), and assess penalties when those rules are broken. Among the travel limitations they can impose are those concerning overweight and commercial vehicles. The bill would retain these provisions. Further, the bill puts in place a dispute mediation provision, if two townships disagree about restrictions.

In particular, House Bill 4839 specifies that if a township had established any prohibition or limitation on any county primary road that an adjoining township determined diverted traffic onto a border highway or street shared by the townships, then the adjoining township could submit a written objection to the county road commission, along with a copy to the township that established the prohibition, on or before March 1, 2009, or 60 days after the township approved the limitation that diverted traffic onto the border highway. The county road commission would be required to investigate the objection, and the adjoining townships would have to cooperate with that investigation, as well as to negotiate in good faith to resolve the objection. If the objection was not resolved, the county road commission would have the authority to either approve or void the restriction that was the subject of the objection within 60 days. The county road commission's decision would be final. [Under the bill, "county primary road" is defined to mean a highway or street designed as a county primary road under Public Act 51 of 1951.]

MCL 257.11 et al

### ***ARGUMENTS:***

#### ***For:***

Under laws enacted in 2000 and 2004, the problem of abandoned vehicles along Michigan roadways has been significantly ameliorated. Now, abandoned vehicles can be towed if they are left unattended along roadways for more than 24 hours, and procedures have been put in place to streamline the disposition of those vehicles through public sale. Nonetheless, a workgroup comprising representatives from the Michigan Towing Association, the Michigan State Police, and the Office of the Secretary of State have convened over the past year to consider changes to the law that better ensure more efficient law enforcement operations, and more adequate payment for tow truck operators who often serve as custodians of the abandoned vehicles.

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■ 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.