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SFA

BILL ANALYSIS

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Senate Bill 1250 (as enrolled)
Senate Bill 1251 (as enrolled)
Sponsor: Senator John J. H. Schwarz, M.D.
Senate Committee: Judiciary
House Committee: Criminal Justice

PUBLIC ACT 659 of 2002
PUBLIC ACT 658 of 2002

Date Completed: 1-14-03

CONTENT

Senate Bill 1250 amends the Code of Criminal Procedure to revise the sentencing guidelines designation for a third or subsequent offense of operating a locomotive under the influence of liquor and/or a controlled substance, and include in the guidelines the felonies of operating a locomotive under the influence, or while impaired, causing death or serious impairment of a body function (as enacted by Senate Bill 1251).

The bill also revises certain procedures relating to the forfeiture of bail or bond.

Senate Bill 1251 amends the Railroad Code to revise provisions prohibiting the operation of a locomotive while under the influence of or impaired by alcohol or a controlled substance. The bill does all of the following:

- Prohibits a person from operating a locomotive in Michigan if he or she has a bodily alcohol content (BAC) of .04 gram or more per 100 milliliters of blood, 210 liters of breath, or 67 milliliters of urine (rather than prohibiting operation by a person whose blood contains .10% or more of alcohol).
- Increases criminal penalties for operating a locomotive while under the influence or while impaired (locomotive OUIL or OWI).
- Prescribes felony penalties for locomotive OUIL or OWI causing a death or serious impairment of a body function.

- **Revises the prohibition against and criminal penalty for authorizing or knowingly permitting a person to operate a locomotive while under the influence.**
- **Revises provisions pertaining to the chemical analysis of a person's alcohol level.**
- **Includes visible impairment due to the consumption of alcohol and/or a controlled substance in the Code's prohibition against operation of a locomotive OWI, and repeal a section of the Code that prohibits operation of a locomotive while impaired (MCL 462.355).**

Senate Bill 1250 was tie-barred to Senate Bill 1251; both bills take effect on April 1, 2003.

Senate Bill 1250

Train Operation

Currently, a third offense of operating a locomotive under the influence is a Class E felony against the public safety, with a statutory maximum sentence of four years' imprisonment. The bill changes the statutory maximum in the sentencing guidelines to five years' imprisonment (consistent with Senate Bill 1251).

The bill also includes in the sentencing guidelines new felonies enacted by Senate Bill 1251, as shown in Table 1.

Table 1

Violation	Felony Class	Crime Category	Statutory Maximum
Locomotive OUIL or OWI causing death	C	Person	15 Years
Locomotive OUIL or OWI causing serious impairment of a body function	E	Person	5 Years

Bail Forfeiture

Senate Bill 1250 requires a court, if bail or bond is forfeited, to set aside the forfeiture and discharge the bail or surety bond within one year from the date of the forfeiture judgment, if the defendant has been apprehended, the ends of justice have not been thwarted, and the county has been repaid its costs for apprehending the person. If the bond or bail is discharged, the court must enter an order to that effect, with a statement of the amount to be returned to the surety. These requirements do not apply, however, if the defendant was apprehended more than 56 days after the bail or bond was ordered forfeited and the surety did not fully pay the forfeiture judgment within that 56-day period.

Currently, if default is made in any recognizance (bail or bond) because the person subject to it failed to appear in court, and that default is entered on the record, the court may give the surety 20 days' notice of the default judgment. (The surety must be given an opportunity to appear in court and show cause why judgment should not be entered against the surety for the full amount of the recognizance.) Under the bill, the court must give each surety immediate notice of the default judgment, within seven days after the date of the failure to appear.

In addition, the Code provides that, in all criminal cases in which a person has entered into any recognizance for the personal appearance of another, and later desires to be relieved of that responsibility, he or she may, with or without assistance, "arrest" the accused and deliver him or her to any jail or sheriff. The bill allows such a person to

"arrest or detain" the accused. Presently, in making an arrest, the surety is entitled to the assistance of the sheriff, chief of police of any city, or any peace officer. The bill specifies that, in making the arrest or detainment, the surety is entitled to the assistance of any peace officer.

Senate Bill 1251

Drunk Operation of a Locomotive

The Code prohibits a person from operating a locomotive engine upon railroad tracks in Michigan if his or her blood contains .10% or more by weight of alcohol. The bill instead prohibits a person from operating a locomotive upon Michigan railroad tracks if he or she has a BAC of .04 gram or more per 100 milliliters of blood, per 210 liters of breath, or per 67 milliliters of urine.

Currently, operating a locomotive while under the influence or with a blood alcohol level (BAL) of .10% or more is a misdemeanor punishable by up to 90 days' imprisonment, a fine of not less than \$100 or more than \$500, or both, together with costs of the prosecution. Operating a locomotive while impaired (under the section repealed by the bill) is a misdemeanor punishable by up to 90 days' imprisonment, a maximum fine of \$300, or both, plus costs of the prosecution. In addition, as part of a sentence for either violation, the court may order the person to perform up to 12 days of community service.

Under the bill, locomotive OUIL or OWI, or operating a locomotive with a BAC of .04 gram or more is a misdemeanor punishable by up to 93 days' imprisonment, a fine of not less than \$100 or more than \$500, or both, plus costs of the prosecution. Also, the court may order up to 45 days of community service.

Currently, operating a locomotive while under the influence or with a BAL of .10% or more, within seven years of a prior conviction, is punishable by up to one year's imprisonment, a maximum fine of \$1,000, or both, plus costs of the prosecution. Under the bill, that penalty applies to operation under the influence, while impaired, or with a BAC of .04 gram (rather than a BAL of .10%), and includes a minimum fine of \$200.

Under the Code, operating a locomotive while

under the influence or with a BAL of .10% or more, within 10 years of two or more prior convictions, is punishable by up to four years' imprisonment, a maximum fine of \$2,000, or both, plus costs of the prosecution. Under the bill, the penalty is up to five years' imprisonment, a fine of not less than \$500 or more than \$5,000, or both, plus costs of the prosecution, and applies to operation under the influence, while impaired, or with a BAC of .04 gram or more.

Causing Death or Serious Impairment

Under the bill, the operation of a locomotive while under the influence, while impaired, or with a BAC of at least .04 gram that causes the death of another person is a felony punishable by up to 15 years' imprisonment, a fine of not less than \$2,500 or more than \$10,000, or both.

A violation that causes a serious impairment of a body function of another person is a felony punishable by up to five years' imprisonment, a fine of not less than \$1,000 or more than \$5,000, or both. "Serious impairment of a body function" means that term as defined in the Michigan Vehicle Code (MCL 257.58c). Under that Code, serious impairment includes, but is not limited to, one or more of the following:

- Loss of a limb, foot, hand, finger, thumb, eye, or ear or the use of a limb, foot, hand, finger, thumb, eye, or ear.
- Loss or substantial impairment of a bodily function.
- Serious visible disfigurement.
- A comatose state that lasts for more than three days.
- Measurable brain or mental impairment.
- A skull fracture or other serious bone fracture.
- Subdural hemorrhage or subdural hematoma.
- Loss of an organ.

For either offense, the sentencing court also may order the offender to perform up to 45 days of community service.

Authorizing or Permitting Operation

The Railroad Code prohibits the owner or person in charge or in control of a locomotive engine or a conductor of any train of cars,

from authorizing or knowingly permitting the locomotive to be operated upon railroad tracks in Michigan by a person who is under the influence of alcohol and/or a controlled substance. A violation is a misdemeanor punishable by up to 90 days' imprisonment, a fine of not less than \$100 or more than \$500, or both, plus costs of the prosecution. The bill includes in that provision operation of a locomotive by a person who is impaired by alcohol and/or a controlled substance or who has a BAC of .04 gram or more. The bill also increases the maximum length of imprisonment to 93 days.

Chemical Analysis

The Code provides that the amount of alcohol or presence of a controlled substance, or both, in the blood of a locomotive operator at the time alleged, as shown by chemical analysis of that person's blood, urine, or breath, is admissible into evidence in a criminal prosecution for any of the following:

- Operating a locomotive while under the influence, with a BAL of .10% or more, or while impaired, or authorizing or permitting such operation.
- Manslaughter resulting from the operation of a locomotive while the operator is alleged to have been impaired or under the influence or to have a BAL of .10% or more.

The bill refers to a BAC of .04 gram or more rather than a BAL of .10% or more. The bill also allows the admission of this chemical analysis evidence in a prosecution for murder resulting from the operation of a locomotive while impaired, under the influence, or with a BAC of .4 gram or more.

The bill revises provisions that specify presumptions arising from the amount of alcohol in a locomotive operator's blood as shown by chemical analysis. Under those provisions, it currently is presumed that the person was not under the influence if there was .07% or less by weight of alcohol in his or her blood, that he or she was impaired if there was more than .07% but less than .10% blood-alcohol, and that he or she was under the influence if there was .10% or more. Under the bill, it is presumed that the person was not under the influence or impaired if he or she had a BAC of less than .04 gram, and that the person was impaired or under the

influence if his or her BAC was .04 gram or more.

The Code provides that a sample or specimen of urine or breath may be taken and collected in a reasonable manner. Only a licensed physician, or a licensed nurse or medical technician under the direction of a physician and qualified to draw blood acting in a medical environment, at the request of a peace officer, may withdraw blood for chemical analysis of the amount of alcohol or presence of a controlled substance. Under the bill, blood may be drawn by a licensed physician or an individual operating under the delegation of a physician, as allowed under the Public Health Code (MCL 333.16215). (That Code allows a physician to delegate to a licensed or unlicensed individual who is otherwise qualified by education, training, or experience, the performance of selected acts, tasks, or functions that fall within the physician's scope of practice and will be performed under the physician's supervision.)

The Railroad Code provides that criminal or civil liability based on the withdrawal of blood and related procedures does not attach to a qualified person who withdraws or assists in the withdrawal of blood, unless the act is performed in a negligent manner. The bill extends this liability protection to the analysis of blood, and applies the protection to a licensed physician or individual operating under the delegation of a licensed physician (rather than a qualified person).

A person charged under the Code must be advised that, if he or she refuses a peace officer's request to take a chemical analysis test, one will not be given without a court order. Under the bill, the person also must be advised that the officer may seek to obtain that court order.

Under the Code, if a locomotive operator involved in an accident is transported to a medical facility and a sample of his or her blood is withdrawn, the result of a chemical analysis of that sample is admissible in a criminal prosecution for locomotive OUIL. Under the bill, that result is admissible in any civil or criminal proceeding.

If a locomotive operator involved in an accident is deceased, a sample of his or her blood must be withdrawn by the medical examiner or attending personnel of the

medical facility for the purpose of determining blood-alcohol content or the presence of a controlled substance. The results of that test must be released to the Department of State Police and the medical examiner. The bill specifies, instead, that the results must be released to a prosecuting attorney for use in a criminal prosecution.

The bill specifies that obtaining or analyzing a person's blood, breath, or urine under the Railroad Code may not be performed in a manner prohibited by the Federal Railroad Administration in the U.S. Department of Transportation.

MCL 765.26 et al. (S.B. 1250)
462.105 et al. (S.B. 1251)

BACKGROUND

The Railroad Code's prohibitions against, and penalties for, operating a locomotive while impaired or under the influence, or with a blood alcohol level of .10% or more, originally were enacted by Public Act 4 of 1986. These provisions were included in the present Railroad Code when it was recodified by Public Act 354 of 1993.

The Railroad Code's present drunk driving standard for the operation of a locomotive is similar to the Michigan Vehicle Code's drunk driving standard for operating an automobile. The Vehicle Code also contains stricter drunk driving standards for commercial truck or bus drivers.

In addition, Michigan laws prohibiting the drunk operation of a snowmobile, boat, or off-road vehicle include penalties stiffer than those presently in the Railroad Code for drunk operation of a train. These other laws and the Vehicle Code also prescribe felony penalties for causing a death or serious impairment of a body function.

In recent years, other laws covering drunk driving have been changed to measure impairment and driving under the influence by the amount of alcohol present in specific volumes of blood, breath, or urine, rather than referring only to the percentage of alcohol in the blood by weight.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

Train Operation

Senate Bills 1250 and 1251 will have an indeterminate fiscal impact on State and local government.

There are no statewide data available at this time to indicate how many offenders are convicted of a first or second offense for operating a locomotive under the influence. Under the bill, a first-time offense is punishable by incarceration in a local facility for up to 93 days rather than 90 days. A second-time offender continues to receive up to one year's imprisonment. Local units incur the cost, which varies from \$27 to \$65 per day.

According to the 1999 Department of Corrections Statistical Report, no offenders were convicted of or serving time for a third offense of locomotive OUIL. Raising the statutory maximum for this offense from four years to five increases the longest allowable minimum sentence from 32 months to 38 months. If an offender is convicted and receives the longest allowable minimum sentence, the cost to the State will increase by \$12,500, given that the average annual cost of incarceration is \$25,000.

Offenders who operate a locomotive while under the influence or impaired and cause serious impairment of a body function of another person are currently most likely to be charged with locomotive OUIL or OWI and receive up to 90 days in a local facility. Under Senate Bills 1250 and 1251, an offender may receive up to five years in a State prison. The State, rather than local units, will incur the cost of incarceration, at an average annual cost of \$25,000. If one offender is convicted of this offense and receives the longest allowable minimum sentence, it will cost the State \$79,000.

Offenders who operate a locomotive while under the influence or impaired and cause death are currently most likely to be charged with locomotive OUIL or OWI but also might be charged with manslaughter and receive up to 15 years' imprisonment. Under the bills, an offender convicted of locomotive OUIL or OWI and causing death may receive up to 15 years' imprisonment. To the extent that the bills increase the length of sentences served by

offenders for this act, by creating the new offense with a lower standard of proof than manslaughter, they may increase State costs. If one additional offender is convicted and receives the longest allowable minimum sentence, rather than receiving up to 93 days for operating a locomotive under the influence or while impaired, it will cost the State \$237,500.

The bills also may increase State and local criminal justice costs by making the blood alcohol level, used to determine whether someone is operating a locomotive under the influence or while impaired, more strict, thereby increasing the number of offenders convicted for these offenses.

In addition, the bills will benefit libraries by increasing penal fine revenues. If one offender is convicted of each of the applicable offenses, penal fine revenue will increase at least \$4,200 and may increase as much as \$15,500.

Bail Forfeiture

The bail forfeiture provisions of Senate Bill 1250 will have no fiscal impact on State or local government. Changes in Section 28(2), requiring a court to set aside forfeiture, are a reiteration of MCL 765.15(1).

Fiscal Analyst: Bethany Wicksall
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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.