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BILL ANALYSIS

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Senate Bill 1250 (as reported without amendment)  
 Senate Bill 1251 (Substitute S-1 as reported by the Committee of the Whole)  
 Sponsor: Senator John J. H. Schwarz, M.D.  
 Committee: Judiciary

**CONTENT**

Senate Bill 1250 would amend the Code of Criminal Procedure to revise the sentencing guidelines designation for a third or subsequent offense of operating a locomotive under the influence (OUIL), and include in the guidelines operating a locomotive under the influence, or while impaired (OWI), causing death or serious impairment of a body function. The bill is tied to Senate Bill 1251.

Presently, an OUIL third offense is a Class E felony against the public safety, with a statutory maximum sentence of four years' imprisonment. Senate Bill 1250 would change the statutory maximum in the guidelines to five years, and would include in the guidelines new felonies proposed by Senate Bill 1251, as shown below.

| Violation  | Felony Class | Crime Category | Statutory Maximum |
|--|--------------|----------------|-------------------|
| Operating a locomotive under the influence or while impaired causing death                                 | C            | Person         | 15 Years          |
| Operating a locomotive under the influence or while impaired causing serious impairment of a body function | E            | Person         | 5 Years           |

Senate Bill 1251 (S-1) would amend the Railroad Code to increase penalties for the operation of a locomotive while under the influence of or impaired by alcohol or a controlled substance; prescribe felony penalties for OUIL or OWI causing a death or serious impairment of a body function; prohibit a person from operating a locomotive in Michigan if he or she had a bodily alcohol content (BAC) of .04 gram or more per 100 milliliters of blood, 210 liters of breath, or 67 milliliters of urine; and increase the maximum penalty for authorizing or permitting a person to operate a locomotive while under the influence from 90 to 93 days' imprisonment.

Currently, OUIL or operating a locomotive with a blood alcohol level 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. An OWI offense is a misdemeanor punishable by up to 90 days, and/or \$300, plus costs of the prosecution. As part of a sentence for either violation, the court may order up to 12 days of community service. Under the bill, OUIL, OWI, or operating with a BAC of .04 gram or more would be 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 could order up to 45 days of community service.

Currently, a violation 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 would include a minimum fine of \$200. Under the Code, a violation within 10 years of two or more prior convictions is punishable by up to four years and/or \$2,000, plus costs of the prosecution. Under the bill, the penalty would be up to five years' imprisonment, a fine of not less than \$500 or more than \$5,000, or both, plus costs of the prosecution.

Committing OUIL or OWI or operating with a BAC of at least .04 gram and causing the death of another person would be 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 caused a serious impairment of a body function of another person would be punishable by up to five years' imprisonment, a fine of not less than \$1,000 or more than \$5,000, or both.

MCL 769.36 & 777.14m (S.B. 1250)  
462.105 et al. (S.B. 1251)

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

The bills would 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. A first-time offense would be punishable by incarceration in a local facility for up to 93 days rather than 90 days. A second-time offender would still 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. Raising the statutory maximum from four to five years would increase the longest allowable minimum sentence from 32 to 38 months. If an offender were convicted and received the longest allowable minimum sentence, it would increase the cost to the State by \$12,500, given that the average annual cost of incarceration is \$25,000.

Offenders who operate a locomotive while under the influence and cause serious impairment of body function of another person are currently most likely to be charged with OUIL and receive up to 90 days in a local facility. Under the bills, an offender would receive up to five years in a State prison. The State, rather than local units, would incur the cost of incarceration. If one offender were convicted and received the longest allowable minimum sentence, it would cost the State \$79,000.

Offenders who operate a locomotive while under the influence and cause death are currently most likely to be charged with OUIL, but also might be charged with manslaughter and sentenced to up to 15 years' imprisonment. Under the bills, an offender would be convicted of OUIL and causing death and would receive up to 15 years' imprisonment. To the extent that the bills would increase the length of sentences served for this act, by creating the new offense with a lower standard of proof than manslaughter, they could increase State costs. If one additional offender were convicted and received the longest allowable minimum sentence, rather than receiving up to 93 days for OUIL, it would cost the State \$237,500.

The bills also could 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, more strict, thereby increasing the number of offenders convicted of these offenses.

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

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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.