



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

January 20, 1998

TO: Members
Joint Committee on Finance

FROM: Bob Lang, Director

SUBJECT: Senate Bill 39: Traffic Offenses at Railroad Crossings

Senate Bill 39 was introduced on January 29, 1997, and referred to the Committee on Labor, Transportation and Financial Institutions. On May 15, SB 39 was recommended for passage, as amended by SA 1, by a vote of 6-1. On May 20, the bill was referred to the Joint Committee on Finance.

SUMMARY OF BILL

Senate Bill 39 would increase the penalty for driving on or across a railroad crossing when a signal device, traffic officer or a railroad employe signals to stop or when a crossing gate or barrier is closed. A violation would become a criminal offense, rather than a civil offense, and would be punishable by a fine of up to \$1,000, instead of, under current law, a forfeiture of between \$30 and \$300.

The bill would also create a new offense for reckless endangerment while driving across a railroad crossing against a signal or gate. This offense would be punishable by a fine of between \$300 and \$1,000. (In addition, other reckless driving offenses, including causing bodily harm or great bodily harm, are given the same range of fines under the bill. SA 1 makes these fines apply only to the offense of reckless endangerment while driving across a railroad crossing against a signal or gate.) This range would be doubled if the offense occurred in a highway construction or maintenance zone. Under current law, a person who is guilty of reckless endangerment while driving may be required to forfeit between \$25 and \$200 for a first offense or may be fined between \$50 and \$500 for a second or subsequent offense within a four-year period.

The bill would allow the courts to revoke the operating privileges of a person convicted of either of these offenses for a period of six months. If a person is convicted of a second or subsequent offense within a period of five years, the courts would be required to revoke the person's operating privileges for six months. In determining the number of prior offenses, both offenses would be counted, except that violations of both arising from the same incident would be counted only once. The bill would also specify in statute that a conviction for either of these offenses would result in six demerit points on a person's operating record. Under current law, demerit points are typically established by administrative code, although there are other instances where they are established in statute. Reckless endangerment is currently assigned six demerit points and driving across a railroad crossing against a signal is currently assigned three points.

The bill would specify that 50% of the fines received by county treasurers from these railroad crossing violations would be forwarded to the state treasurer for deposit in the transportation fund. These amounts would be credited to a newly-created, SEG appropriation to supplement funding for the maintenance and installation of railroad crossing warning devices. Under current law, there are two appropriations for installation and one appropriation for maintenance. Railroads are required to maintain all signals along their tracks, but are eligible for reimbursement of up to 50% of the costs. If the maintenance appropriation is not sufficient to reimburse railroads for 50% of their costs, the reimbursement percentage is prorated accordingly. The bill does not specify how much of the money coming from fines would be applied to maintenance and how much would be applied to installation.

Under the bill, these provisions would first apply to offenses committed on the bill's effective date, but would not preclude the counting of other convictions as prior convictions for the purposes of sentencing, suspending or revoking a person's operating privilege or determining a person's eligibility to operate a commercial motor vehicle or certain other vehicles.

Senate Amendment 1

Senate Amendment 1 to SE 39 would specify that only the offense of reckless endangerment while driving across a railroad crossing against a signal or gate, and not other reckless driving offenses, would be punishable by fines of \$300 and \$1,000. The penalties for other types of reckless driving would be unchanged.

FISCAL EFFECT

Based on citation data on the current offense of crossing against a signal, DOT estimates that there would be about 300 convictions on these charges per year, and that about 25% of these would involve reckless endangerment. By making various assumptions as to the seriousness of these offenses and their associated fines, DOT estimates that fines totaling \$54,400 would be deposited in the transportation fund for expenditure on crossing device installation and maintenance. In the 1997-99 biennium, the railroad crossing maintenance program is funded at

\$2,250,000 annually and the installation program is funded at \$2,299,300 annually. Maintenance claims by railroads for reimbursement in 1996-97 totalled \$2,906,424.

It is possible that the distribution of the fines to the transportation fund could be challenged in court. Article X, Section 2 of the Wisconsin Constitution requires that the "clear proceeds" of all fines from violations of state law be deposited in the common school fund. The Supreme Court has interpreted the "clear proceeds" clause to mean the amount of the fine remaining after a deduction for the cost of prosecution. In issuing this decision, the court upheld a provision in statutes that allows counties to retain 50% of fines for motor vehicle violations (they retain 10% for other types of crimes) on the grounds that this is a reasonable estimate of the cost of prosecuting these offenses and collecting the associated fines. Since the distribution of fines for railroad crossing violations to the transportation fund is not for the purposes of prosecution or the collection of fines, a court could find that it violates the previous interpretation of the "clear proceeds" clause.

The transportation fund also receives 40% of forfeitures for violations of vehicle weight and size laws (10% is retained by the county and 50% goes to the common school fund), and this has not been challenged in court.

DOT estimates that implementing this proposal would require one-time data processing changes on the driver record file, at a cost of \$38,900. The bill would not provide any funding for implementation. Therefore, these costs would have to be absorbed by the Division of Motor Vehicles.

Prepared by: Jon Dyck

MO# LRB 50402/1

2	BURKE	Y	N	A
	DECKER	Y	N	A
	JAUCH	Y	N	A
	SHIBILSKI	Y	N	A
	COWLES	Y	N	A
1	PANZER	Y	N	A
	SCHULTZ	Y	N	A
	ROSENZWEIG	Y	N	A
	GARD	Y	N	A
	OURADA	Y	N	A
	HARSDORF	Y	N	A
	ALBERS	Y	N	A
	PORTER	Y	N	A
	KAUFERT	Y	N	A
	LINTON	Y	N	A
	COGGS	Y	N	A

AYE 16 NO 0 ABS 0

MO# Passage as amended

2	BURKE	Y	N	A
	DECKER	Y	N	A
	JAUCH	Y	N	A
	SHIBILSKI	Y	N	A
	COWLES	Y	N	A
1	PANZER	Y	N	A
	SCHULTZ	Y	N	A
	ROSENZWEIG	Y	N	A
	GARD	Y	N	A
	OURADA	Y	N	A
	HARSDORF	Y	N	A
	ALBERS	Y	N	A
	PORTER	Y	N	A
	KAUFERT	Y	N	A
	LINTON	Y	N	A
	COGGS	Y	N	A

AYE 14 NO 2 ABS 0



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January 22, 1998

TO: Senator Brian Burke
Room 202, 119 Martin Luther King, Jr. Blvd.

FROM: Bob Lang, Director

SUBJECT: Authority of Municipalities to Enact Ordinances in Conformity With Criminal Traffic Offenses

During the Finance Committee's executive session on Senate Bill 39 relating to certain traffic offenses at railroad crossings, a question was asked whether the bill's treatment of these violations as criminal offenses rather than civil offenses would impact municipalities' authority to enact ordinances in conformity with the statute. At that time, based on the treatment of certain nontraffic crimes, we answered that SB 39 would not preclude municipalities from enacting an ordinance in conformity with the railroad crossing violations. However, since the meeting, we have consulted with several attorneys familiar with traffic law on this question and have come to the opposite conclusion. It appears that one of the implications of treating railroad crossing violations as criminal offenses rather than civil offenses is that municipal ordinances would be preempted by state law and, therefore, violations could not be tried in municipal court.

Municipalities may enact ordinances prohibiting criminal behavior when the violations involve certain nontraffic crimes, such as crimes against property, but the ordinance may only impose a forfeiture and not a fine, and may not impose a jail term. Traffic offenses, however, are treated differently. With the intent of establishing uniform traffic regulations across the state, the statutes expressly prohibit municipalities from enacting or enforcing traffic regulations that are contrary to or inconsistent with state traffic laws. The question, then, is whether a municipal traffic offense can be consistent with a state traffic offense if the only difference between the two is that the municipal offense is punishable by a forfeiture and the state offense is treated as a crime and punishable by a fine. In answering this question, the Supreme Court has ruled that a municipality can only enact and enforce a traffic ordinance if the corresponding state law makes the offense punishable by a forfeiture. If the state treats a traffic offense as a crime, then the state has exclusive jurisdiction in the prosecution of that offense. Therefore, any existing or proposed municipal ordinances relating to the railroad crossing offenses in SB 39 would be preempted by state statute if the bill becomes law.

In order to permit continued local participation in the prosecution of railroad crossing offenses, it would be necessary to amend the bill. Perhaps the simplest way to do this would be to replace the fines imposed in the bill by forfeitures of the same range. This would allow the offenses to be prosecuted by the state or by municipalities that have similar ordinances. It should be noted, however, that of the civil traffic offenses that involve rules of the road, only one, fleeing a traffic officer, carries a maximum forfeiture that is as high as SB 39 would impose if it were amended this way.

If the bill were amended to impose forfeitures rather than fines, it would also need to be amended to allow the railroad crossing assessment to be collected by municipal courts.

I regret any confusion that our response at the meeting may have caused. If you have any further questions, please contact me.

BL/dls