

DEPOSITS WITH TREASURERS AS ALTERNATIVE TO POSTING BOND OR BAIL

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House Bill 6228 with committee amendments
Sponsor: Rep. Jim Koetje
Committee: Local Government and Urban Policy
First Analysis (10-21-04)

BRIEF SUMMARY: The bill would 1) allow local treasurers who hold cash or securities in lieu of bond or bail to charge a fee for handling and servicing a deposit of the funds; and 2) eliminate the provision that bail or bond can be furnished by depositing cash or securities with the state treasurer.

FISCAL IMPACT: The bill would reduce costs for both the state and local units of government. By excusing the state treasurer from having to accept a bond in a civil case, the bill would relieve the state of the potential costs attendant on such a responsibility. By authorizing local units of government to charge fees equal to their administrative costs under the bill, the bill would relieve local treasurers of the burden of those costs.

THE APPARENT PROBLEM:

When a defendant in a court case must post bail or bond with the court, he or she customarily completes that transaction with local government officials, and often utilizes the services of a private bail bond company.

However, in 1961 the legislature enacted a law to allow people involved in court cases to place cash or securities with the state treasurer, in lieu of posting bail or bond with the court. The law does not allow the Department of Treasury to charge a fee for the service, although it does specify that the individual is entitled to earn interest on the cash or securities placed with the treasurer. From a litigant's perspective, this option is preferable to paying a fee to a private sector bail bond company and receiving no interest. Nonetheless, according to a spokesman for the Department of Treasury, in more than 40-years no one ever asked the state treasurer to hold cash or securities in lieu of posting bond or bail with the court.

Then, in late 2003, an attorney contacted the state treasurer on behalf of his client and asked that the treasury hold \$1 million in securities as bond in a court case. Since the treasury department did not have either an accounting protocol or investment structures in place to do this, officials at the department declined. The attorney then began litigation to force the department to accept the bond. Officials at the department fear that if the litigation is successful, the treasury could become 'a no-cost, interest-bearing bail bond agency of choice' for many litigants.

Legislation has been introduced to amend the law and eliminate the requirement that the state treasurer accept cash and securities in lieu of bond or bail posted with the court.

THE CONTENT OF THE BILL:

House Bill 6228 would amend the Revised Judicature Act 1) to allow local treasurers who hold cash or securities in lieu of bond or bail to charge a fee in an amount not to exceed the expenses incurred for handling and servicing a deposit of the funds; and 2) to eliminate the provision that bail or bond can be furnished, in any case, by depositing cash or securities with the state treasurer.

Currently under the law, bond or bail can be furnished to local treasurers of counties, cities, villages, or townships by depositing cash or securities with the appropriate jurisdiction's treasurer in the county where the bond or bail is furnished. The bill would retain this provision, and allow treasurers to charge a fee approved by the legislative body of the local government, in order to cover the expenses incurred when depositing the funds. The law also says that bond or bail can be furnished, in any case, by depositing cash or securities with the state treasurer. The bill would eliminate this provision.

MCL 600.2631

ARGUMENTS:

For:

If this legislation is not enacted, officials at the Department of Treasury fear that the treasury could become 'a no-cost, interest-bearing bail bond agency of choice' for many litigants. That would require hiring new staff, developing new accounting protocols and investment structures, and assuming new collection duties (since not all people who post bail show for trial). This new series of services would be costly to the taxpayers, and also duplicate existing arrangements in the courts and offices of local government where litigants customarily post their bond or bail.

For:

The bill would allow local elected officials to set a fee that covers the costs of their cash and security deposits that are offered by litigants in lieu of bail and bond transactions. The fee would be limited to an amount equal to the costs incurred in handling and servicing the deposits.

POSITIONS:

The Department of Treasury supports the bill. (9-29-04)

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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.