

Legislative Analysis



PROCEDURE FOR CIVIL ACTIONS TO ENFORCE HEADLEE AMENDMENT

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5800 (with anticipated amendments)
Sponsor: Rep. Deb Kennedy
Committee: Judiciary

Complete to 5-4-10

A SUMMARY OF HOUSE BILL 5800 (WITH ANTICIPATED AMENDMENTS)

The bill would amend the Revised Judicature Act to rewrite provisions that deal with the procedure for taxpayer lawsuits brought under Section 32 of Article IX of the State Constitution. These are lawsuits, generally speaking, to enforce the so-called Headlee Amendment. These include lawsuits arguing that the state has failed to adequately fund an activity or service required of local governments by state law.

Under House Bill 5800, taxpayers would file an action with the state Court of Appeals. (Currently, these actions can be brought with the Court of Appeals or at the appropriate Circuit Court.) The bill would create the position of special master for assisting the Court of Appeals in carrying out its responsibilities in these cases. The special master would be appointed by the state Supreme Court.

The bill is expected to be tie-barred to House Bill 5797, which would create a new act that, among other things, establishes a fiscal note process to be conducted by a Local Government Mandate Panel, in order to determine if new legislation would require of local units any new or increased level of activities and services and, if so, the costs that would be imposed on local units as a result. Local units would not have to provide a new activity or service or an increased level of activity or service unless the state had prepared and published a fiscal note and provided for the funding of necessary costs to the local unit.

Under House Bill 5800, an action seeking money damages for the state's failure to adequately fund a state-required activity or service would have to be begun within one year after the cause of action accrues. An action seeking a declaratory judgment could be begun at any time that Sections 25 to 31 of Article IX of the constitution are being violated as alleged in the complaint. (Currently, actions must be commenced within one year of the cause of action.)

Under the bill, as now, the applicable unit of government would be named as defendant in an action. The court could not require the taxpayer to state allegations in the complaint with any greater specificity or particularity than is required of a plaintiff generally in a civil suit or to attach to the complaint any document or thing that would not be required generally to be attached to a complaint in a civil action.

Required Filings

The taxpayer would have to file all of the following with the clerk of the Court of Appeals: (1) five copies of the complaint, one of which must be signed, with the complaint to include a statement as to whether the taxpayer believes that the action raises factual questions that will require resolution by the court; (2) proof that a copy of the complaint and any other documents filed with the court were served on every named defendant and the Office of the Attorney General; and (3) the entry fee.

The defendant would have to file the following with the clerk within 21 days after the complaint has been served: (1) five copies of the answer to the complaint, one of which must be signed, with the complaint to include a statement as to whether the defendant believes that the action raises factual questions that will require resolution by the court; and (2) proof that a copy of the answer and any other documents filed with the court were served on every named party.

Chief Judge Assigns a Panel

After an answer has been filed, the chief judge must promptly assign a panel of the court to begin proceedings in the action. A panel to which the action is assigned could refer the action to a special master to conduct pretrial proceedings and a trial to receive evidence and arguments of law and to issue a written report for the court that contains findings of fact and conclusions of law. The special master must conduct the proceedings as expeditiously as due consideration of the facts and issues of law requires.

If a panel determines the issues framed in the pleadings only present questions of law, the panel could elect not to refer the action to the special master.

Subsequently, the Appeals Court panel would establish and notify the parties of a schedule for filing briefs in response to the special master's report or based on the issues framed in the pleadings, as applicable, and for oral argument.

Special Master Appointed by Supreme Court

The bill would create the position of special master for assisting the Court of Appeals in carrying out its responsibilities in these cases. The special master would be appointed by the state Supreme Court and continue in office at the pleasure of the court. The Supreme Court would establish the qualifications for the post, which would have to include that the individual be an attorney who has experience in the operations of local governments that would enable the special master to assist the Court of Appeals in expeditiously and meaningfully processing taxpayers' claims.

Case a Priority Matter

The Court of Appeals would have to process an action to a decision as rapidly as possible, consistent with achieving justice and assuring the enforcement of the intent of the state's voters. The court would have to give the action priority over other nonemergency matters pending before the court.

Burden of Proof on State

In these actions, the state or the responsible department or agency of the state has the burden of proving compliance with Sections 25 to 31 of Article IX of the State Constitution. Compliance would not be presumed but would have to be established through evidence introduced by the state or the responsible department or agency.

Local Units Held Harmless During Lawsuit

Section 8 of the 2010 act to implement Section 29 of Article IX (found in proposed House Bill 5797), which says affected local units could not be penalized for failing to comply with the state requirement, would apply if the activity or service required is the subject of an action under this bill and, within six months after the action is filed, the Court of Appeals has not adjudicated both of the following questions: (1) whether, based on claims asserted in the complaint, the activity or service is required by state law within the meaning of Section 29, Article IX; and (2) if so, whether the Legislature has appropriated and disbursed sufficient funding necessary to pay the affected local units of government for any increased necessary costs of the required activities and services.

If the Court of Appeals or, on appeal, the Supreme Court adjudicates in an action under the bill that the state has not met its funding obligation, affected local units could not be penalized for failing to comply with the state requirement until the Legislature (1) appropriates and disburses sufficient funding to meet its responsibilities to the affected local units; (2) eliminates or rescinds the requirement; or (3) changes or modifies the requirement to reduce the cost of providing the activity or service and provides sufficient funding for the modified requirement.

Taxpayer Appeal of Adverse Adjudication

A taxpayer could appeal an adverse adjudication by the Appeals Court to the Supreme Court. The Supreme Court would have to make a rapid decision on the application for leave to appeal and give the application priority over other nonemergency matters pending before the court. While an application or appeal is pending, the court could stay the obligation of local units to comply with the required activity or service pending final adjudication.

Constitutional Language

Article 29, Section IX of the State Constitution says:

The state is hereby prohibited from reducing the state financed proportion of the necessary costs of any existing activity or service required of units of local government by state law. A new activity or service or an increase in the level of any activity or service beyond that required by existing law shall not be required by the legislature or any state agency of units of Local Government, unless a state appropriation is made and disbursed to pay the unit of Local Government for any necessary increased costs. The provision of this section shall not apply to costs incurred pursuant to Article VI, Section 18 [judges' salaries].

FISCAL IMPACT:

House Bill 5800 would have an indeterminate fiscal impact on state and local government, including the Judiciary. Under the provisions of the bill, an action seeking money damages for the state's failure to adequately fund a state-required activity or service would have to be commenced within the Court of Appeals. Under current law, the action can be brought in the appropriate circuit court as well. This provision would presumably increase the caseload in the Court of Appeals while, at the same time, decrease the caseload in the circuit courts throughout the state. The degree to which either court is affected is unknown. Therefore a fiscal impact related to this provision of the bill is indeterminate, but will be positive for the circuit courts and negative for the Court of Appeals. The bill would also create the new position of special master. It is not known to what extent this position would be funded at this current time.

In these actions, the state, as a defendant, would carry the burden of proving compliance with Sections 25 to 31 of Article IX of the State Constitution. Under this provision, the state or the defendant unit of government would realize increased costs associated with having the burden of proof. Costs could come in the form of increased defense costs and increased expenditures to local governments for failing to overcome the burden of proof.

Local units of government would presumably experience a positive fiscal impact under the provisions of the bill. The local unit of government would not be required to comply with the activity or service required while it is the subject of an action under the bill. Also, since the state carries the burden of proof, the local units of government would seemingly realize more appropriations from state government or be required to do fewer services that were not fully compensated by the state government providing them with less of a fiscal burden.

Legislative Analyst: Chris Couch
Fiscal Analyst: Ben Gielczyk

■ 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.