

# Legislative Analysis

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## SERVICE OF PROCESS FEES

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**House Bill 4899 as enrolled**  
**Public Act 283 of 2003**  
**Sponsor: Rep. Larry Julian**

**House Committee: Criminal Justice**  
**Senate Committee: Judiciary**  
**Second Analysis (7-29-04)**

**BRIEF SUMMARY:** The bill would amend the Revised Judicature Act to revise the schedule of fees for process served out of state courts and to set a mileage limit for reimbursement of traveling fees.

**FISCAL IMPACT:** The bill would have no fiscal impact on the state or local units of government, because costs for service of process are generally borne by the litigants. Sheriff's departments serving process could, however, see increased revenue.

### **THE APPARENT PROBLEM:**

Generally, process in civil actions may be served by any legally competent adult, but if a matter involves a writ (other than a garnishment writ) requiring the seizure of property or the arrest of a person, process may be served only by a sheriff, deputy, or court officer. The Revised Judicature Act sets the fees that process servers may charge; those fees were last raised by Public Act 133 of 1994, which provided for a modest increase in that year followed by a \$1 increase in each of the three subsequent years. The fees have therefore been unchanged since 1997. Process servers point out that the cost of living has increased significantly since then, and seek inflationary adjustments to their fee.

### **THE CONTENT OF THE BILL:**

The bill would amend the Revised Judicature Act to revise the schedule of fees for process served out of state courts and to set a mileage limit for reimbursement of traveling fees. Currently, a sheriff or officer serving process is entitled to traveling fees. Mileage is computed from the county seat of the county in which service was made to the place of service. Instead, the bill would specify that a person authorized by the act or supreme court rule to serve process or a paper issued by or filed with a court within Michigan would be entitled to traveling fees from the place where the court that issued or filed the process or paper was located to the place of service. However, the bill would also limit the reimbursement to no more than 75 miles each way. The bill would also make a number of nonsubstantive, technical changes to update and clarify language in the act.

Primarily, the bill would revise the schedule of fees, which currently are for service out of "circuit court, the probate court, the district court, or any municipal court", and would

make them apply to process or papers served out of *a court in the state*. The current fee schedule is described in the table below:

<b>Type of Service</b>	<b>Current Fee</b>
Personal service - summons and complaint in civil action (per defendant)	\$16 + mileage
Personal service - affidavit of account and statement (per defendant)	\$16 + mileage
Garnishment summons and affidavit (for each garnishee and defendant)	\$13 + mileage
Seizure and delivery of goods in a case of claim and delivery	\$30 + mileage + reasonable expenses
Receiving and filing a defendant's bond in a case of claim and delivery	\$2
Order to show cause	\$16 + mileage
Subpoena on discovery	\$16 + mileage
Writ, affidavit, bond in a case of attachment	\$16 + mileage
Property seizure in attachment case	\$30 + mileage + reasonable expenses
Levy under writ of execution	\$30 + mileage + reasonable expenses
Levy under writ of execution - additional fee as a result of satisfaction of judgment prior to sale	7% of the first \$5,000 in receipts + 3% of receipts exceeding the first \$5,000
Sale on levy in case of execution or mechanics lien	\$16 + mileage
Writ for restitution or premises (eviction)	\$30 + mileage + reasonable expenses
Subpoena directed to a witness (including judgment debtor)	\$16 + mileage
Civil bench warrant or body execution	\$30 + mileage + \$13/hour for executing the warrant

The bill's proposed fee schedule would apply to process or papers served out of *a court in the state* as follows:

<b>Type of Service</b>	<b>Proposed Fee</b>
Personal service - summons and complaint in a civil action (per defendant)	\$18 + mileage
Personal service - affidavit and account (per defendant)	\$18 + mileage
Request for and writ of garnishment (per garnishee and defendant)	\$15 + mileage
Personal service - order to seize goods subject to claim and delivery action.	\$32 + mileage + reasonable expenses
Receiving and filing a bond from and on behalf of a defendant in a claim and delivery action.	\$12
Order to show cause (per person served)	\$18 + mileage

Subpoena on discovery (per person served)	\$18 + mileage
Levying under or serving an order for the seizure of property	\$32 + mileage + reasonable expenses
Order for seizure of property if issued in an action in which a judgment against the owner of the property, and if satisfied prior to the sale or settlement between parties.	7% of the first \$5,000 in payments or settlement amounts + 3% of payments or settlements exceeding the first \$5,000
Sale of property seized under an order for the seizure of property	7% of the first \$5,000 in receipts + 3% of receipts exceeding the first \$5,000
Each notice of sale under an order for the seizure of property or construction lien posted in a public place in the city or township	\$18 + mileage
Order of eviction or writ for the restitution of premises (per defendant)	\$32 + mileage + reasonable expenses
Subpoena directed to a witness, including a judgment debtor.	\$18 + mileage
Civil bench warrant or body execution.	\$32 + mileage + a reasonable hourly fee for time involved in executing the warrant
Service by mail	\$5 + actual cost of postage

Mileage reimbursement. The RJA provides that mileage reimbursement is equal to the rate set by the civil service commission for employees in the classified civil service system. Currently the rate is 36 cents. The bill would provide that the allowable mileage would be 1.5 times the rate allowed by the civil service commission (54 cents for 2003). In addition, under current provisions, the mileage is computed differently, depending on the court and the location of the service. Under the bill, the mileage would be calculated by the shortest distance from the place where the court that issued or filed the process was located to the place of service.

Further, the RJA provides that a person who serves process is entitled to receive a \$10 fee (in addition to the appropriate fee above) for each process that has an incorrect address. The bill would add that the person would also be entitled to receive a reimbursement for mileage.

Cost-of-living increase. The bill would add a “cost-of-living” provision that would increase fees by \$1 on October 1 in 2004, 2005, and 2006.

Miscellaneous. Under the bill, an “order of seizure of property” would include a writ of attachment and a writ of execution, including, though not limited to, execution in a claim and delivery action on property other than the property that is the subject of the claim and delivery action.

The bill would take effect January 1, 2004.

MCL 600.2555 and 600.255

## ***ARGUMENTS:***

### ***For:***

The bill would enact a long-overdue increase of process servers' fees and reimbursement rates for mileage. Those fees, which are paid by attorneys and their clients, have not been increased since 1997. Inflation has taken its toll, especially when the price of gas is considered. The bill would simply make the adjustments necessary to counteract the results on inflation on the fees. The cost-of-living increases would prevent the need to revisit the statute in the near future by building in modest additional increases each year through 2006. Under the bill, process servers, whose jobs are often tedious and sometimes dangerous, would again be able to receive fair compensation for their efforts.

### ***Against:***

Even though the fees are paid by the attorneys and their clients in a civil case, the fact that the fees are set by statute may lead to a perception that the state is once again increasing burdens for taxpayers. More to the point, by increasing the cost of service of process, the bill would increase the cost of justice for litigants.

### ***Response:***

Increases are modest, amounting to about \$2 in most cases; it is difficult to see how any given increase would act to deny a wronged party access to the courts. Moreover, indigent civil litigants and parties in domestic disputes can receive assistance from legal aid.

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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.