



Senate Fiscal Agency
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BILL ANALYSIS

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Senate Bill 189 (Substitute S-2 as reported by the Committee of the Whole)
Senate Bill 190 (Substitute S-2 as reported by the Committee of the Whole)
Senate Bill 866 (Substitute S-1 as reported by the Committee of the Whole)
Sponsor: Senator Tom Casperson (S.B. 189 & 886)
 Senator Dave Robertson (S.B. 190)
Committee: Elections and Government Reform

CONTENT

Senate Bills 189 (S-2) and 190 (S-2) would amend the Revised Judicature Act (RJA) and the Administrative Procedures Act (APA), respectively, to require the court in a civil action or the presiding officer in a contested case to award costs and fees to a prevailing party against the State or a State agency, unless the State or agency demonstrated by clear and convincing evidence that its position was substantially justifiable, subject to certain exceptions.

Currently, under the RJA, a court that conducts a civil action brought by or against the State, except a civil infraction action, must award to a prevailing party other than the State the costs and fees incurred by the party in connection with the action, if the court finds that the position of the State was frivolous. The APA requires the presiding officer who conducts a contested case to award to a prevailing party, other than an agency, the costs and fees incurred by the party in connection with the case, if the presiding officer finds that the position of the agency was frivolous.

Under the bills, the current requirements would apply only in the following types of actions or proceedings:

- An action or proceeding involving illegal gambling and a licensee under the Michigan Liquor Control Code, to which the Liquor Control Commission was a party.
- An action or proceeding to which the Department of Health and Human Services was a party that related to the child abuse and neglect central registry.
- An action or licensing proceeding related to the summary suspension of a license under the APA (if an agency finds that the public health, safety, or welfare requires emergency action).

Unless one of those exceptions applied, the court or presiding officer would have to award costs and fees to a prevailing party unless the State or agency demonstrated by clear and convincing evidence that its position was substantially justifiable.

The bills also would delete provisions under which an attorney or agent fee may not be awarded at a rate of more than \$75 per hour, absent special circumstances. In addition, Senate Bill 189 (S-2) would delete a provision under which costs and fees may not be awarded to a party whose net worth or number of employees exceeds a certain level.

Senate Bill 886 (S-1) would amend the Administrative Procedures Act to exclude Parole Board hearings from Chapter 4 of the Act, which governs contested cases procedures, and from Chapter 8, which governs the awarding of costs and fees in contested cases. The bill also

would amend the definition of "party" in Chapter 8 to delete language excludes a person whose net worth or number of employees exceeds a certain level

In addition, regarding contested case procedures, the bill specifies that a contested case would be commenced by giving notice of a hearing, and indicates when notice would be properly served. The bill also would extend to a presiding officer provisions that permit or require an agency to order a rehearing.

All of the bills are tie-barred. Each bill would take effect 90 days after enactment.

MCL 600.2421b-600.2421e (S.B. 189)
24.323 (S.B. 190)
24.271 et al. (S.B. 886)

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

Senate Bills 189 (S-2) and 190 (S-2) would have an indeterminate impact on State government and no impact on local government. The bills would increase potential liability exposure of the State for costs and fees in cases in which the State is not the prevailing party.

While Section 2421e of the Revised Judicature Act and Section 126 of the Administrative Procedures Act require the Department of Technology, Management, and Budget (DTMB) to report annually to the Legislature regarding the amount of costs and fees paid by the State during the preceding fiscal year, no report has been provided by the DTMB. The Department of Licensing and Regulatory Affairs reports that there were approximately 93,882 cases in the Michigan Administrative Hearing System in FY 2013-14. However, there are no summary data on the number of cases in which the State was not the prevailing party. Also, no summary data are available regarding court cases that could be affected by the proposed changes. Future liability will depend on the number of civil actions and contested cases in which the State is not the prevailing party and the amount of costs and fees assessed.

Senate Bill 866 (S-1) would have no fiscal impact on State or local government.

Date Completed: 5-26-16

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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.