



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 245 (Substitute S-1 as reported)
Senate Bill 246 (Substitute S-1 as reported)
Sponsor: Senator Ed McBroom (S.B. 245)
 Senator Adam Hollier (S.B. 246)
Committee: Oversight

CONTENT

Senate Bills 245 (S-1) and 246 (S-1) 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 that its position was substantially justifiable, except in certain cases in which costs and fees could be awarded only if the position of the State or agency were frivolous.

The bills also would delete provisions that limit an attorney or agent fee to \$75 per hour, absent special circumstances; and provisions 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 246 (S-1) also would exclude Parole Board hearings from provisions of the APA governing contested cases; and make several changes regarding contested case procedures.

The bills are tie-barred.

MCL 600.2421b-600.2421e (S.B. 245)
24.271 et al. (S.B. 246)

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

Senate Bill 245 (S-1) would have an indeterminate, but likely negative, fiscal impact on the State and no fiscal impact on local government. The bill would broaden the potential liability exposure of the State for costs and fees in cases in which the State is not the prevailing party. The amount of State payments in cases in which it is not the prevailing party as well as fees and costs vary from year to year. For fiscal year (FY) 2016-17, the State paid \$17.1 million for nine judgments and \$74.1 million of 59 settlements, but in FY 2008-09, for example, payments by the State for judgments and settlements totaled \$11.8 million. Although the bill would not directly affect settlements, it is likely that future settlements would take the changes proposed in the bill into consideration.

Senate Bill 246 (S-1) would have an indeterminate fiscal impact on State government and no fiscal impact on local government units. The magnitude of the fiscal impact on the State would depend upon the number of contested cases in which an agency is not the prevailing party and the amount of costs and fees assessed.

There were approximately 83,753 cases closed by the Michigan Administrative Hearing System in FY 2018-19, but there are no data on the number of cases in which the State was not the prevailing party.

The elimination of the \$75 per hour rate limit on attorney fees could result in increased costs for State agencies. The cost is indeterminate and would depend on the actual hourly rate charged.

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