



**House  
Legislative  
Analysis  
Section**

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**ADMIN. HEARINGS: REMOVE SUNSET DATE**

**House Bill 4229 as introduced**  
**First Analysis (2-28-89)**

**RECEIVED**

**APR 17 1989**

**Sponsor: Rep. Debbie Stabenow** *Mich. State Law Librarian*  
**Committee: Economic Development and Energy**

***THE APPARENT PROBLEM:***

Public Acts 196 and 197 of 1984 amended the Administrative Procedures Act (APA) and the Revised Judicature Act (RJA), respectively, to provide that, in contested cases under the APA, and in civil actions involving the state, the state is liable for costs and fees incurred by the other party if that party prevails and the state's position can be shown to be frivolous. Both the acts provided a sunset date for this provision of September 30, 1987. Public Act 203 of 1988, however, removed the sunset from the RJA, and some propose amending the APA to do the same.

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

House Bill 5003 would eliminate the September 30, 1987, sunset date of Public Act 196.

MCL 24.328

***BACKGROUND INFORMATION:***

Public Acts 196 and 197 of 1984 were enacted to correct a general perception, widely held in the business community, that government agencies were often too zealous in regulating and that many of their actions amounted to little more than harassment and nitpicking. A governmental action against an individual or a business under the APA, or in a civil action before the courts, could be very expensive to the other party even if that party prevailed. Some claimed that small businesses had been ruined by the cost of responding to government proceedings, while large businesses usually maintained staffs of attorneys to routinely contest government actions against them and were able to bear the cost. The problem was recognized by the federal government by the passage of the Equal Access to Justice Act which took effect October 1, 1981.

The APA provisions do not apply to worker's compensation cases, unemployment compensation cases, Department of Social Services public assistance hearings, or secretary of state hearings regarding driver's licenses. The act does not affect a state agency when it is acting in its role of hearing or adjudicating a case, when its action is required at the instigation of a party with a private interest in the matter or by law at the request of another person, or when its role in the case is so minor as to make liability for costs unreasonable. Further, the act requires the director of the Department of Management and Budget to report annually to the legislature on the cost of implementing the 1984 legislation.

***FISCAL IMPLICATIONS:***

Fiscal information is not available.

***ARGUMENTS:***

***For:***

Public Act 196 of 1984 provides an insurance policy for individuals and small businesses. The danger of financial ruin resulting from frivolous government actions is

obviated. More importantly, the act originally intended to deter government officials from ever initiating frivolous actions. Without this protection, a government official has nothing to lose by bringing even the most baseless action, although he or she may have something to gain professionally. With the act, however, a regulator has to consider the merits of an action very carefully before beginning it. Public Act 203 of 1988 struck the sunset date for the provision as it pertained to the RJA, and this bill would do the same for the APA.

***Against:***

Deterrence is certainly the primary effect of this bill, but it is not clear that this is a desirable feature. The bill may well have a serious chilling effect on government regulation. Unless one believes that government regulators are malicious or incompetent, it must be assumed that they carry out their duties with the intent of enforcing the laws and administrative rules of the state. If a particular provision of law is obnoxious to businesses, the proper solution would be to examine and amend the specific law, not to threaten state agencies with financial retribution for attempting to enforce the law.

***Response:*** The bill only insists on justice; it does not promise retribution. A person or a business which has been subject to a civil or administrative proceeding has already been penalized, even if that person or business prevails. When there is legitimate dispute as to the facts, the state agency will be in no danger of bearing the other party's costs even if the state should lose the case. The standard that must be met before costs can be ordered paid is one of frivolity. The action would have to be entirely without merit, and if such were the case the payment of costs would be simply justice.

***POSITIONS:***

The Small Business Association of Michigan supports the bill. (2-22-89)

The National Federation of Independent Business supports the bill. (2-22-89)

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