



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 4942 (as reported without amendment)
Sponsor: Representative Tracey Yokich
House Committee: Judiciary and Civil Rights
Senate Committee: Judiciary

Date Completed: 5-1-96

RATIONALE

The fees that may be charged by various court officers for various services are prescribed in the Revised Judicature Act (RJA). Public Act 133 of 1994 amended the RJA to increase the fees for service of process out of all of the trial courts, which had remained unchanged since 1982. The fees that sheriffs' departments are authorized to collect for posting notices on property for foreclosure sales, and for serving notice of a person claiming title under a tax deed were not increased, however, and have remained unchanged since enactment of the RJA. (The RJA was enacted in 1961 and took effect in 1963.) Some people believe that those fees should be increased to compensate sheriffs' departments more adequately for the expenses incurred in carrying out these responsibilities.

CONTENT

The bill would amend the Revised Judicature Act to increase certain fees that a county sheriff is authorized to charge for various actions performed, and add one of those fees to the amount owed when a mortgagor redeems premises that have been foreclosed upon and sold.

The fees for posting notices on property for foreclosure sales, and for serving notice of a person claiming title under a tax deed, in person and by mail, would be increased from \$10 to \$14. Those fees would be increased to \$15 on October 1, 1996, and to \$16 on October 1, 1997. The bill would retain a sheriff's authorization to charge mileage in addition to those fees. The bill also would raise from \$10 to \$50 the allowable fee for selling lands on the foreclosure of a mortgage by advertisement, executing a deed to the purchaser, and for all services required on the sale.

In addition, the RJA provides for a mortgagor's redemption of premises that have been foreclosed upon and sold if, within applicable time limits, the mortgagor or his or her heirs, executors, or administrators pay to the purchaser, or to the register of deeds to be deposited for the purchaser's benefit, the amount bid for the property, with interest, and an additional \$3 fee for the care and custody of the redemption, if payment is made to the register of deeds. The bill would add to the required redemption payment the sheriff's fee for selling lands on the foreclosure, executing a deed, and services required on the sale.

MCL 600.2558 & 600.3240

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

The fees for service of civil process were changed in 1994, enacting a long-overdue increase of process servers' fees, which are paid by attorneys and their clients. These fees had not been increased since 1982. Similar kinds of sheriffs' fees, however, have not been raised since the Revised Judicature Act was enacted, even though the paperwork necessary to complete a sheriff's mortgage foreclosure sale has increased since then, as have sheriffs' premiums for liability insurance, their public official bonds, and inflation. The bill's proposed increases would bring sheriffs' fees in line with the recently enacted increase in process servers' fees, and would allow Michigan sheriffs to recoup related costs for the paperwork and staff hours involved in processing foreclosure sales. The increases would not directly affect the

general public, since only those who request the service of tax notices and posting of foreclosure notices or who initiate a foreclosure process pay these fees.

When handling the sale on a mortgage foreclosure, sheriffs' departments are responsible for holding an auction, executing a deed to the buyer, determining the amounts due to the lender and mortgagor, and executing the distribution of those proceeds. When the \$10 fee was established by the RJA, most foreclosure auctions reportedly ended with the lending institution as the only bidder and the paperwork was relatively simple. In recent years, however, many investors apparently have entered mortgage foreclosure auctions, and "overbidding" (which greatly increases the amount of paperwork involved) has become common. In Macomb County, for example, there reportedly have been bids that exceeded the amount owed to the lender by over \$60,000, and there have been instances of five overbids at a single auction. Sheriffs' departments not only are responsible for holding auctions and keeping bidders in line, but also must process the paperwork and disburse the proceeds. Deeds must be changed to reflect the new owners, a determination has to be made as to the disbursement of the proceeds collected at the auction, and checks must be made to the lender and to the mortgagor, who is entitled to surplus funds. Apparently, other lienholders sometimes file claims to a surplus, which means that a check must be sent to the circuit court for a case to be opened and for a judge to decide who is entitled to the surplus funds. The increase in the amount of work that sheriffs' departments must do evidently is no longer sufficiently compensated by the current \$10 fees. In order to compensate sheriffs more equitably, the bill's reasonable fee increases are much needed and long overdue.

Legislative Analyst: P. Affholter

FISCAL IMPACT

The bill would have no fiscal impact on State government, but it would mean additional funds for county sheriffs' departments. The new revenue would be used to offset the increased costs to sheriffs' departments for holding foreclosure sales as well as processing claims.

Fiscal Analyst: M. Bain

H9596\S4942A

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.