

TAXABLE COSTS IN SUMMARY PROCEEDINGS

House Bill 4726 as passed by the House Second Analysis (6-10-02)

Sponsor: Rep. Ruth Ann Jamnick
Committee: Civil Law and the Judiciary

THE APPARENT PROBLEM:

The Revised Judicature Act (RJA) awards “taxable costs” to the prevailing party in a civil action, as well as allowing the award of such costs in “summary proceedings” (landlord-tenant proceedings and land contract forfeitures). Last session, Public Act 226 of 1999 amended the Revised Judicature Act to increase the amount of taxable costs awarded to successful parties in general civil actions, including statutory attorney fees, from \$30 to \$150 if a trial is involved and from \$15 to \$75 if there is a default. Legislation has been introduced to similarly increase taxable costs in summary proceedings.

THE CONTENT OF THE BILL:

Civil actions to recover possession of real property (as in landlord-tenant disputes and in land contract forfeitures) are governed by Chapter 57, “Summary Proceedings to Recover Possession of Premises,” of the Revised Judicature Act. In proceedings under Chapter 57, costs may be allowed in the same amounts as are provided by law in other civil actions in the same court, except that certain “sundry” costs do not apply. In addition, a court may also allow as taxable costs certain additional amounts, including costs for a motion that results in dismissal or judgement (up to \$20), for a judgment taken by default (up to \$15), for the trial of a claim for possession only (up to \$20), for the trial of a claim for damages only (up to \$20), and for a trial including both a claim for possession and a claim for money judgment (up to \$30). The bill would amend this provision to increase allowable costs for a motion that results in dismissal or judgment, or for a judgment taken by default or consent, to \$75, and for a trial of a claim for possession only or for damages only, or for both a claim for possession and a claim for money judgment, to \$150.

MCL 600.5759

BACKGROUND INFORMATION:

Public Act 226 of 1999. The act amended the Revised Judicature Act (RJA) to increase the statutory attorney fee for a trial or default judgment in civil actions. The RJA sets certain amounts to be “allowed as costs in addition to other costs unless the court directs otherwise” in all civil actions and special proceedings in the circuit court. (Elsewhere in statute, the district court and municipal courts are allowed to assess the same costs as circuit courts.) These amounts are generally interpreted as costs to be paid to the prevailing party’s attorney by the losing party. Before the 1999 legislation, these amounts included \$20 for the proceeding before trial or for motions that result in dismissal or judgement; \$30 for the trial of the action or proceedings; and \$15 in all actions where judgment is taken by default or upon *cognovit* (that is, upon the defendant’s confession). Public Act 226 of 1999 raised these amounts for the first time since 1963 (when the Revised Judicature Act took effect) as follows: from \$15 to \$75 for a default judgment, and from \$30 to \$150 for a trial. (The \$15 for a “cognovit” judgment was left at \$15, though the term “cognovit” was replaced with “confession of judgment.”)

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

The bill would implement long overdue increases in additional statutory costs that could be awarded to the prevailing party in summary proceedings (as when a landlord seeks to evict someone who hasn’t paid their rent), which traditionally have been understood as going toward the prevailing party’s attorney costs. At the same time, the bill also would bring these allowable costs in summary proceedings in line with the recently increased taxable costs in civil actions. Until Public Act 226 of 1999, the taxable costs in civil proceedings had not been increased since 1963,

when the Revised Judicature Act took effect. The allowance of taxable costs in summary proceedings was added nearly ten years later, by Public Act 120 of 1972, and these costs, too, have not been increased since that time.

Currently, the RJA allows as costs in addition to other costs in summary proceedings, \$15 for default judgments, \$20 for motions resulting in dismissal, and \$20 to \$30 for trials. Inflation since 1972 has made these additional allowable costs woefully out of date and the bill would increase them to more reasonably reflect the effect of inflation over the years since 1972.

Moreover, when the Revised Judicature Act was amended last session to increase five-fold the amounts that “shall” be allowed in all civil actions, the section in the RJA regarding the same costs in summary proceedings was not amended. The bill would do this now, simply increasing to the same amounts as currently hold for civil actions the allowable taxable costs for summary proceedings, and putting into place parity between taxable costs in summary proceedings and in other civil proceedings.

Against:

Summary proceedings are different enough, and have such potentially serious consequences for tenants (namely, eviction and possible homelessness), that the taxable costs for such proceedings should be lower than those for general civil cases. Thus the argument that the bill is needed to provide parity to last session’s five-fold increase in taxable costs for general civil proceedings is not applicable.

Typically, summary proceedings are eviction proceedings, in which landlords or land owners move to evict tenants or the buyer in a land contract because of the failure of the tenant to pay rent or the party in the land contract to make monthly payments. Thus, by their very nature, summary proceedings threaten people’s ability to remain in their homes, and pose a serious threat to the well being of these families, many of whom include children. If people already are having difficulty in paying for housing under either circumstance (that is, as a renter or under a land contract), then surely increasing the taxable costs in such cases will only result in more people losing their homes and, possibly, in an increase in homelessness at a time when affordable housing is extraordinarily scarce. According to one source, there are about 450,000 households in Michigan with income under 30 percent of their area’s median income, with 80 percent of these households paying more than 30 percent of their net income (which is

the standard definition of affordable housing) for their housing. Thus it is not surprising that these families struggle, sometimes unsuccessfully, to pay their rent, and that eviction proceedings are brought against them. But it seems counterintuitive, if not unjust, to respond to this problem by raising the taxable costs to tenants in eviction proceeding, which will only make it harder for these families to pay these taxable costs on top of back rent. The bill would cause more hardship for poor people already struggling to pay for the basic necessities of life, including housing, and increase their risk of homelessness once they were evicted. Moreover, as a 1982 court decision held (in *Tenney v Springer*, 121 Mich App47), the summary proceedings statute is remedial in nature and should be construed liberally.

Moreover, even if the allowable taxable costs in summary proceedings may need to be raised, surely they don’t need to be increased five-fold, especially given the brief amount of time involved in most of these cases. As the term “summary proceedings” indicates, these kinds of landlord-tenant cases generally take much less court time than general civil actions, and the fact that the taxable costs for summary proceedings are set forth in a section of the Revised Judicature Act from those for general civil proceedings appears to recognize this difference. For example, most default cases reportedly are handled in ten minutes or less, and even in contested cases the so-called “trial” typically involves only a few minutes of testimony from the landlord and questions to the tenant by the court. The speed with which most summary proceedings move also means lesser legal costs to the landlord than would be true in general civil cases, so the taxable costs – which traditionally are applied to the landlord’s attorney costs – should be less in summary proceedings than in general civil cases.

Opponents of the bill also expressed concern that the bill would increase the incentive for unscrupulous landlords to obtain default judgments by circumventing the requirements for proper service of the summons and complaint or by misleading tenants about the need to attend court hearings. And in situation where landlords had failed to keep their legal obligations to maintain their premises in reasonable repair, the bill could have the effect of deterring tenants from legitimately withholding rent until repairs were made or from asserting repair-based defenses or counterclaims in eviction proceedings. For example, the court might decide that a tenant was in fact entitled to a rent abatement because the landlord had failed to keep the premises in reasonable repair, and yet might still decide that

the rent abatement nevertheless was less than the rent owed to the landlord. (According to one source, many judges are reluctant to award rent abatements despite evidence of a breach of the landlord's repair obligations because in deciding rent abatement they may apply the wrong standard – "habitability" – rather than the proper standard, which is "reasonable repair.") Thus the bill could result in tenants deciding not to pursue rent abatement claims, which could contribute not only to their homes being less livable but to a general deterioration in rental housing stock and to the neighborhood in general.

Given all of the potentially negative effects of the bill, it should not be advanced without amending it to at least lower the proposed cost increases.

Response:

While it is true that affordable housing is in extremely short supply, should public policy be that private landlords should bear the costs of this problem? Shouldn't affordable housing be a priority, instead, of the state and federal governments? While privatization of government functions may be desirable in many contexts, surely this kind of "privatization" is not. Moreover, while summary proceedings generally may move quickly in court, some of them reportedly can be as complex and expensive to pursue as other general civil actions, the taxable costs for which legislation last session increased to the amounts proposed in the bill. Finally, it needs to be pointed out that whereas the taxable costs in general civil proceedings are required, in summary proceedings they are permissive only and at the discretion of the court. That is, the bill merely would increase the maximum allowable taxable costs; a judge could choose to impose lower (or even no) taxable costs in a summary proceeding.

POSITIONS:

The Michigan Rental Property Owners Association indicated support for the bill. (6-19-01)

The Michigan Advocacy Project opposes the bill. (6-28-01)

The Center for Civil Justice opposes the bill. (6-28-01)

Analyst: S. Ekstrom/D. Martens

■ 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.