

COURT RECORDS: REVISE POLICIES REGARDING FILING & RETENTION OF COURT RECORDS

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House Bill 4064 (with committee amendment)

Sponsor: Rep. Kurt Heise

Committee: Judiciary

Complete to 2-27-13

A REVISED SUMMARY OF HOUSE BILL 4064 AS REPORTED BY COMMITTEE

The bill would:

- update provisions of the Revised Judicature Act (MCL 600.832 et al.) regarding court records in order to conform with recent amendments to the Michigan Court Rules;
- allow courts to provide enhanced access to certain court records (that is, access through electronic means for pleadings, practice, and procedure, including case records);
- allow courts to charge a reasonable fee for reproduction, retrieval, creation, and retention of records; and
- repeal Public Act 66 of 1949, an act that deals with the disposition of files and papers relating to prosecutions.

Specifically, House Bill 4064 would amend the Revised Judicature Act to do the following:

- Delete numerous provisions pertaining to judicial records (for instance, retention of, access to, and destruction of records; offering records slated for disposal for placement in the state archives; and mediums in which a record may be produced). This includes the deletion of a provision allowing probate court records, except as otherwise provided by law, to be inspected without charge by all interested persons.

Instead, the bill would require the State Court Administrative Office (SCAO) to establish and maintain records management policies and procedures for all courts, including a records retention and disposal schedule, in accordance with Supreme Court rules, that is developed and maintained as specified in Section 5 of Public Act 271 of 1913 (the act governs the Michigan Historical Commission).

A court could assess a reasonable fee associated with the creation, reproduction, retrieval, and retention of its records, but only as prescribed by the Supreme

Court. "Record" would mean information of any kind that is recorded in any manner and that has been created by a court or filed with a court in accordance with the Supreme Court rules.

- Allow—but not require—a court to provide "enhanced access" and to charge a reasonable fee, as established by the Supreme Court, for providing that access.

"Enhanced access" would mean access to a court through electronic means for pleadings, practice, and procedure, including access to its case records as prescribed by Supreme Court rules. "Reasonable fee," as applied to enhanced access, would mean a charge calculated to enable a court to recover, over time, operating expenses directly related to enhanced access. "Operating expenses" would include, but not be limited to, a court's direct cost of creating, maintaining, processing, and upgrading access to the court through electronic means. This would include the cost of computer hardware and software, system development, employee time, and the actual cost of providing the access.

A court could provide enhanced access to another court or to a public agency in accordance with a written agreement as specified in the bill. If enhanced access were provided to another court or to a public agency under this provision, no fees could be charged.

- Repeal Public Act 66 of 1949, MCL 780.221-780.225, which pertains to the disposition of files and papers relating to prosecutions.
- Require the clerk of a probate court, rather than the probate judge or chief probate judge, to have possession of the seal, records, books, files, and papers belonging to that court. (The Michigan Court Rules place the responsibilities of keeping records with the clerk of the court.)

FISCAL IMPACT:

A fiscal analysis is in process.

POSITIONS:

Representatives of the Michigan Supreme Court and the State Court Administrative Office testified in support of the bill. (2-14-13)

The Michigan District Judges Association indicated support for the bill. (2-21-13)

The Michigan Judges Association indicated support for the bill. (2-14-13)

The Michigan Bankers Association indicated support for the bill. (2-14-13)

The Michigan Association of County Clerks indicated support for the bill. (2-14-13)

The State Bar of Michigan indicated support for the bill based on support for a similar bill introduced last session (HB 5795). (2-14-13)

A representative of the Kitch Drutchas Law Firm testified that the firm is neutral on the bill, but that fees associated with accessing and filing court records electronically can be much higher than mailing the same documents; these costs must then be passed on to clients. (2-14-13)

Pat Clawson, a legal investigator and process server who stated he is a daily user of the court system, testified in opposition to the bill due to concerns that the fees allowed by the bill to access records further blocks access to court records, especially by those who can't afford to pay such fees. (2-14-13)

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Robin Risko

■ 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.