

Legislative Analysis



LAWSUITS CHALLENGING ADOPTED BUDGETS OF COUNTY GOVERNMENT

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House Bill 4704 (Substitute H-1)
Sponsor: Rep. Peter Pettalia
Committee: Judiciary

Complete to 5-30-13

A SUMMARY OF HOUSE BILL 4704 AS REPORTED BY COMMITTEE 5-23-13

The bill would amend the Uniform Budgeting and Accounting Act to specify who can bring lawsuits about levels of funding in a county's general appropriations act and lawsuits about the administration, execution, and enforcement of a general appropriation act.

Under the statute, a **general appropriations act** means the budget as adopted by the local legislative body or as otherwise given legal effect under a charter.

The bill contains language asserting that a general appropriations act, including any amendment to that act, "is presumed to fund those activities of a county mandated by law at a serviceable level."

The bill would specify the following:

Suits against the legislative body

- An elected official who heads a branch of county government or the chief judge of a court funded by a county has standing to bring suit against a legislative body of that county concerning a general appropriations act, including any challenge to serviceable levels of funding for that branch of county government or that court. (The bill would not apply to courts of the third district, as they are funded by the city in which they are located and not by the county.)
- If a court and the legislative body of a county are involved in mediation, before the chief judge of that court brings a suit against the legislative body, a mediator would have to certify in writing that the parties were unable to resolve the issues by mediation.
- A court hearing a suit must consider the financial ability of the county to pay when considering any challenge as to serviceable levels of funding.

Suits against the chief administrative officer

- The administration, execution, and enforcement of a general appropriations act approved by a legislative body of a county are powers exclusively vested in the chief administrative officer of that county.
- No duties could be delegated to the chief administrative officer that diminish any charter or statutory responsibilities of an elected or appointed official, *including, but not limited to, the charter responsibility of a legislative body to approve the making of contracts by the local unit.* (Italics denote new language added by the bill.)
- An elected official who heads a branch of county government or the chief judge of a court funded by a county has standing to bring suit against the chief administrative officer of that county concerning an action relating to the administration, execution, and enforcement of a general appropriations act for that branch of county government or that court.
- If a court and the chief administrative officer of a county are involved in mediation, before the chief judge of a court brings a suit on its own behalf against the chief administrative officer of the county, a mediator would have to certify in writing that the parties were unable to resolve the issues by mediation.

Suits described above could only be brought in the Michigan Court of Appeals (COA) within 60 days—or 90 days if already involved in mediation—after (1) the adoption of a general appropriations act; or (2) an amendment to a general appropriations act or an action relating to the administration, execution, and enforcement of that general appropriations act, if the amendment or action is a basis for the suit.

The jurisdiction of the COA over a suit brought by a court against a chief administrative officer or the legislative body of a county is exclusive and that jurisdiction or any judicial duties inherent in that jurisdiction could not be transferred to any other court. The COA could request the state Supreme Court to assign a retired judge under provisions of the Revised Judicature Act to assist the COA by resolving discovery issues, reviewing the evidence, making proposed findings of fact and conclusions of law, and performing any other necessary related judicial duties.

Unless an action brought under these provisions is timely preserved for review by the Court of Appeals, litigation on any issue as to a general appropriations act, or an amendment to that act, or an action relating to the administration, execution, and enforcement of that act, is barred.

The pendency of a claim in a suit described in the bill would not constitute a basis for expenditure of funds by any department or branch of the local unit, or a court funded by the county, in excess of that authorized by a general appropriations act, including an amendment to that act.

The bill specifies that if any portion of the two new sections added by the bill or the application of the sections to any circumstance is found invalid by a court, the invalidity would not affect the remaining portions of application of the sections that could be given effect without the invalid portion or applications. The provisions of the proposed sections are severable.

The provisions added by the bill would be retroactive and effective to cases and matters pending on or initiated after the bill's effective date.

Under the Uniform Budgeting and Accounting Act, the term "chief administrative officer" applies to the village manager or president; the township manager or supervisor; the city manager or mayor; a school superintendent; a person designated by the board of a charter school; and an elected county executive, appointed county manager, county controller, or person designated by the county commissioners, depending on county organization.

"Legislative body" applies to the council, commission, or other entity vested with the legislative power of a village or city; the board of education of a local school district or intermediate school district; or township board, county board of commissioners, or board of county road commissioners.

MCL 141.436 and 141.438

FISCAL IMPACT:

The bill would have an indeterminate impact on counties. If a portion of a county's general appropriations act is successfully challenged in court, counties and county-funded courts would have their finances indeterminately affected by this bill.

The Court of Appeals may see higher costs due to an increase in caseloads as a result of counties or court administrators filing claims under the bill. Funds for Court of Appeals operations costs, as well as Court of Appeals' judges salaries, are appropriated through the state's Judiciary budget from the state General Fund. Any filing or motion fees paid to the Court of Appeals would be appropriated through the state's Judiciary budget. In FY 2012-13, these filing and motion fees are used to partially fund Swift and Sure Sanctions program grants.

POSITIONS:

A representative of the Michigan Association of Counties testified in support (5-16-13) of the bill.

Representatives of the County of Wayne and Wayne County Commission testified in support of the bill. (5-16-13)

The Michigan Judges Association submitted written testimony opposing the bill (5-15-13).

A representative of the State Bar of Michigan indicated opposition to the bill based on opposition to the predecessor bill, House Bill 5076 of last session. (5-16-13)

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■ 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.