

REVISION OF ELECTRONIC FILING RULES AND FEES FOR COURT RECORDS; ELECTRONIC FILING FUND

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House Bill 5028 as enrolled
Public Act 230 of 2015
Sponsor: Rep. Klint Kesto

House Bill 5029 as enrolled
Public Act 231 of 2015
Sponsor: Rep. Kurt Heise

House Bill 5030 as enrolled
Public Act 232 of 2015
Sponsor: Rep. Amanda Price

Senate Bill 532 as enrolled
Public Act 234 of 2015
Sponsor: Sen. John Proos

Senate Bill 531 as enrolled
Public Act 233 of 2015
Sponsor: Sen. Rick Jones

Senate Bill 533 as enrolled
Public Act 235 of 2015
Sponsor: Sen. Tonya Schuitmaker

House Committee: Judiciary
Senate Committee: Judiciary
Revised 12-29-15

BRIEF SUMMARY: These bills would create an electronic filing (e-filing) system, assign e-filing fees for various courts, and create a Judicial Electronic Filing Fund, into which fees will be deposited, with the fund to be used for the creation and maintenance of the e-filing system.

FISCAL IMPACT: The bills would have an indeterminate, though likely small, fiscal impact on the state and no fiscal impact on local units of government. The State Court Administrative Office (SCAO) estimates that the cost of the statewide e-filing system would be between \$40.0 million and \$45.0 million over five years, including initial start-up costs, ongoing operational costs, and costs to maintain the system. The proposed e-filing fees would be deposited into the Judicial Electronic Filing Fund in the state Treasury to be used to pay the costs of implementation, operation, and maintenance of the e-filing system. SCAO estimates that fees would generate approximately \$8.3 million per year, or \$41.5 million over five years. If fee revenue in the Judicial Electronic Filing Fund was insufficient to cover the costs of the system, General Fund/General Purpose would be used to cover the difference. Also, under the legislation, fees could not be collected later than five years after the effective date of the bill. After the five-year period, the balance and earnings of the Judicial Electronic Filing Fund would be used to pay the ongoing costs of the e-filing system. If costs exceed the amount available from the fund, General Fund/General Purpose revenue would be used.

THE APPARENT PROBLEM:

For many years, Michigan's electronic filing capabilities have lagged far behind those of the federal court system. The Judicial Conference of the United States approved the first U.S. database for electronic records, the Public Access to Court Electronic Records (PACER) system, in 1988. PACER, along with the Case Management/Electronic Case Files (CM/ECF) system, which began in the late 1990s, has fundamentally changed how federal courts and the judges, lawyers and staff who work in them, perform their jobs.

Meanwhile, only a few counties in Michigan have set up independent e-filing systems. The current filing system, which consists largely of making paper copies, delivering those documents to the various parties, cataloguing those documents, and filing and storing those documents, is slow, inefficient, and outdated for the twenty-first century. The proposed statewide system would be an expansion of pilot e-filing programs currently in place in Wayne, Oakland, Macomb and Ottawa counties, as well as the 13th Circuit Court in the Grand Traverse County area.

THE CONTENT OF THE BILL:

Each of the bills would amend the Revised Judicature Act (MCL 600.101-600.9947). The House bills add a new Chapter 19A: Electronic Access to Courts. The Senate bills further develop the specifics of the Electronic Filing Fund and allow the public to view e-filed documents on-site free of charge. The House bills and Senate Bills 531, 532, and 533 are all tie-barred together, meaning none could take effect unless all are enacted.

All of the provisions outlined in these six bills would take effect January 1, 2016. The electronic filing system fee would begin to be assessed March 1, 2016.

House Bill 5028

This bill defines relevant terms, including:

- *Court funding unit*: the system of government which operates the fund for each type of court. The applicable county will facilitate the fund for circuit and probate courts, the district funding unit as defined in Section 8104 for district courts, and the state for the Supreme Court, Court of Appeals and Court of Claims.
- *Electronic filing system*: the way in which individuals can electronically file documents in all Michigan state courts.

House Bill 5029

Whether or not a civil action is filed electronically, the following additional electronic filing fees apply, beginning March 1, 2016:

- \$25 in the Supreme Court, Court of Appeals, Court of Claims, circuit court, and probate court;
- \$20 in district court if a claim for relief is both monetary and nonmonetary;
- \$5 in small claims court; and
- \$10 in district court if the preceding two instances do not apply, including actions for summary proceedings.

If the fee for filing the civil action is waived because the court finds the filer to be indigent or unable to pay, the electronic filing fee is also waived. Government entities are not required to pay electronic filing fees. If the bank processing the electronic filing fee charges a merchant transaction fee, the court may pass this additional fee along to the filer, but it may not exceed the amount charged by the bank or 3% of the automated payment, whichever is less. These are the only fees that may be charged for electronic filing. If a court is currently collecting an additional electronic filing fee, it may continue to collect \$2.50 for filing *or* service and \$5 for filing *and* service until December 31, 2016.

House Bill 5030

This bill would specify that any electronic system fee collected would have to be remitted by the court clerk to the state treasurer for deposit into the Judicial Electronic Filing Fund (JEFF) created in SB 532, and must be used to fund the creation and maintenance of the electronic filing system and supporting technology.

The three Senate bills, which are tie-barred to each other as well as to all three House bills, develop the Judicial Electronic Filing Fund further and, importantly, allow the public to view electronically-filed documents on site free of charge.

Senate Bill 531

This bill specifies how a court applies for, and receives access to and funding for, the e-filing system. If a court wishes to access and use the e-filing system, it may apply to the Supreme Court, which will pay for that court's technological improvements out of the new Judicial Electronic Filing Fund. This bill also clarifies that filers are not required to use the e-filing system. The fees are recoverable taxable costs, and may not be collected after February 28, 2021.

Senate Bill 532

This bill creates the Judicial Electronic Filing Fund and spells out its administration. The state treasurer must collect and deposit revenue from electronic filing fees into the fund, as well as invest that money in any way authorized for investment of state funds. The money remaining in the fund at the end of the fiscal year remains in the fund and does not revert to the General Fund. The State Court Administrative Office (SCAO) is charged with administering the fund, using the money collected to implement, operate, and maintain the electronic filing system, and will be reimbursed its costs by the fund. The SCAO and the Supreme Court is authorized to contract with a company to create this system through a competitive bidding process.

Senate Bill 533

This bill provides that the public may retrieve and view both manually- and electronically-filed documents on site, and must only pay if they choose to copy those documents.

Changes in Enrolled Version of Bills:

The enrolled version of the bills contain two changes from, both of which are minor. First, House Bill 5029 will continue to take effect January 1, 2016, but the amended version provides that the electronic filing system fee will be assessed beginning two months later, on March 1, 2016. Second, whereas the earlier version of Senate Bill 531 stated that the fee may not be assessed "later than 5 years after the effective date of the amendatory act

that added this chapter", the amended version states that the fee may not be collected "after February 28, 2021." As that date is 5 years after the beginning date for fee assessment, it has the same effect.

ARGUMENTS:

For:

Proponents argue that a statewide e-filing system would modernize the Michigan court system and provide efficiency and cost benefits.

Efficiency: Under this bill, rather than rushing to the court to submit documents before a 5pm deadline, a lawyer would be able to file from a home computer by midnight with the touch of a button. Court clerks would also see a substantial drop in paperwork, and would not need to categorize and store mountains of paper documents. Multiple parties could have access to documents at the same time, without the inconvenience of making and transporting hard copies.

Cost: Proponents also argue that this system would cut down on filing costs for the courts. Texas, which converted its 254 counties to a statewide e-filing system over the course of three years (2012-2015), has seen a 95% reduction in costs. The Chief Judge of the highest court in New York estimated in 2012 that their conversion to e-filing would save their state more than \$300 million a year.

Against:

No one testified or voted against these bills in committee, but some parties expressed reservations about portions of the bill's implementation. These concerns follow:

- Because these fees will apply to all e-filers, users in counties that have already paid to create e-filing systems are, in essence, subsidizing the creation of systems in counties which have not yet done so.
- Access to public documents: Michigan courts have historically been very transparent, allowing the public to walk into any circuit or district court clerk's office to read court documents free of charge. There is a concern that the new electronic system will either be less accessible to the public, or charge a fee for access to these documents. (Senate Bill 533 partially addresses this concern).
- Inefficiency of multiple fees: An alternative intended to simplify the gathering and transmission of fees by court clerks was also raised. Under this plan, rather than levying an additional e-filing fee in addition to the existing fees, the legislature would raise existing fees and amend MCL 600.171 to accommodate the share intended for the new Judicial Electronic Filing Fund.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.