



ANALYSIS

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Senate Bill 531 (Substitute S-2 as passed by the Senate) Senate Bill 532 (Substitute S-1 as passed by the Senate) Senate Bill 533 (Substitute S-1 as passed by the Senate)

Sponsor: Senator Rick Jones (S.B. 531) Senator John Proos (S.B. 532)

Senator Tonya Schuitmaker (S.B. 533)

Committee: Judiciary

Date Completed: 12-7-15

CONTENT

Senate Bills 531 would add Chapter 19A to the Revised Judicature Act to:

- -- Require a court clerk, for five years after the bill took effect, to collect an electronic filing system fee (an e-filing fee) in addition to a fee authorized or required by law for filing a civil action.
- -- Set the e-filing fee at \$25 for actions filed in the Supreme Court, Court of Appeals, Court of Claims, circuit court, and probate court; and require the fee to be \$5, \$15, or \$20 for district court actions, depending on several factors.
- -- Allow a court or court funding unit, until December 31, 2016, to continue collecting \$2.50 or \$5 for electronic filing if it were collecting the fee on September 30, 2015.
- -- Require e-filing fees to be remitted to the State Treasurer for deposit in a proposed Judicial Electronic Filing Fund, to be used as described below.
- -- Allow a court to apply to the Michigan Supreme Court for access to and use of the electronic filing system and, if allowed, require the State Court Administrative Office (SCAO) to use money from the Fund to pay the costs of technological improvements necessary for the court to operate electronic filing.
- -- Allow the Supreme Court to select a qualified vendor for the electronic filing system.
- -- Allow a court to accept automated payment of any fee being paid to the court.

Senate Bill 532 (S-1) would add Section 176 to the Revised Judicature Act:

- -- Create the "Judicial Electronic Filing Fund" in the State Treasury.
- -- Require the State Treasurer to credit to the Fund revenue from e-filing fees.
- -- Require money in the Fund to be spent to support the implementation, operation, and maintenance of a statewide electronic filing system and supporting technology.
- -- Allow the Michigan Supreme Court and the SCAO, using a competitive bidding process, to develop a system to facilitate statewide electronic filing of court documents.

<u>Senate Bill 533 (S-1)</u> would amend the Revised Judicature Act to provide that a court or court funding unit would be prohibited from charging a fee to retrieve and

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inspect a document on site, including a document that was filed electronically, but would be allowed to charge a fee to copy a document.

Senate Bill 531 (S-2) would define "electronic filing system" as a system authorized by the Supreme Court after the bill's effective date for the electronic filing of documents using a portal contracted for the by SCAO for the filing of documents in the Supreme Court, Court of Appeals, Court of Claims, circuit court, probate court, and district court.

All of the bills are tie-barred.

Senate Bills 531 (S-2) and 532 (S-1) would take effect on January 1, 2016. A more detailed description of those bills follows.

Senate Bill 531 (S-2)

E-Filing Fee

If a fee for commencing a civil action were authorized by law, in addition to that fee, the court clerk would have to collect an electronic filing system fee, as follows:

- -- \$25 for civil actions filed in the Supreme Court, Court of Appeals, Court of Claims, circuit court, and probate court.
- -- \$10 for civil actions filed in the district court, including actions for summary proceedings, except as provided below.
- -- \$20 for civil actions filed in the district court if a claim for money damages were joined with a claim for relief other than money damages.
- -- \$5 for civil actions in the Small Claims Division of district court.

("Civil action" would mean an action that is not a criminal case, a civil infraction action, or a proceeding involving a juvenile under the juvenile code.)

The clerk would have to collect the fee from the party at the time the civil action was commenced, whether or not the document commencing the action was filed electronically.

If the court waived payment of a fee for commencing a civil action because the court determined that the party was indigent or unable to pay the fee, the court also would have to waive the e-filing fee.

A party that was a governmental entity would not be required to pay an e-filing fee.

Any e-filing fee paid by a party would be a recoverable taxable cost (that is, a nonprevailing party could be ordered to reimburse the amount of the fee to the party who paid it).

An e-filing fee could not be collected later than five years after the bill's effective date.

Electronic Filing System

An e-filing fee collected would have to be remitted by the court clerk to the State Treasurer for deposit into the Judicial Electronic Filing Fund and be used to establish an electronic filing system and supporting technology, as provided in Chapter 19A.

A court could apply to the Supreme Court for access to and use of the electronic filing system. If the Supreme Court accepted the court, the SCAO would have to use money from the Fund to pay the costs of technological improvements necessary for that court to operate electronic filing.

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The Supreme Court could select a qualified vendor for the electronic filing system.

Automated Payment

A court clerk could accept automated payment of any fee being paid to the court. If the bank or other electronic commerce business charged the court or court funding unit a merchant transaction fee, the clerk could charge the person paying the fee an additional automated payment service fee as authorized by the SCAO. The amount of the service fee could not exceed the actual merchant transaction fee to be charged to the court or court funding unit for accepting an automated payment, or 3% of the automated payment, whichever was less.

("Automated payment" would mean an electronic payment method authorized by the SCAO at the direction of the Supreme Court, including payments made with credit and debit cards.)

Other Fee for Electronic Filing

Except for an automated payment service fee, and except as provided below, the e-filing fee authorized under Chapter 19A would be the only fee that could be charged to or collected in a civil action specifically for electronic filing.

If, pursuant to a Supreme Court order, a court or court funding unit were collecting a fee for electronic filing other than the e-filing fee on September 30, 2015, the court or court funding unit could continue to collect \$2.50 for filing or \$5 for filing and service, in addition to the e-filing fee, until December 31, 2016.

No Requirement to File Electronically

Nothing in Chapter 19A could be construed to require a person to file a document electronically. A court or court funding unit could not require or permit a person to file a document electronically except as directed by the Supreme Court.

Senate Bill 532 (S-1)

The Judicial Electronic Filing Fund would be created in the State Treasury. The State Treasurer would have to credit to the Fund deposits of proceeds from the collection of court fees as provided in the Act, as well as all income from investment of the Fund. The State Treasurer could invest money in the Fund in any manner authorized by law for the investment of State money, but an investment could not interfere with any apportionment, allocation, or payment of money as required by Section 176. Except as provided below, the unencumbered balance in the Fund at the end of a fiscal year would have to remain in the Fund and not revert to the General Fund.

The State Court Administrative Office would have to administer the proposed Fund. Money from the Fund would have to be spent to support the implementation, operation, and maintenance of a statewide electronic filing system and supporting technology.

Using a competitive bidding process, the Supreme Court and the SCAO could develop a statewide electronic filing system to facilitate statewide electronic filing of court documents.

The SCAO would have to be reimbursed annually from the Fund for all reasonable costs associated with the administration of Section 176, including judicial and staff training, on-site management assistance, and software development and conversion.

Proposed MCL 1985-600.1993 (S.B. 531) Proposed MCL 600.176 (S.B. 532) Proposed MCL 600.1988 (S.B. 533) Legislative Analyst: Suzanne Lowe

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FISCAL IMPACT

The bills would have no fiscal impact on local government and an indeterminate, though likely small, fiscal impact on the State. The State Court Administrative Office estimates that the cost of the statewide e-filing system would be between \$40.0 million and \$45.0 million over five years, including both the initial setup costs and ongoing costs. It is unknown what portion of the cost would be for initial setup and what portion would be needed for ongoing expenses of the system. The e-filing fees proposed by Senate Bill 531 (S-2) would be deposited into the Judicial Electronic Filing Fund in the State Treasury to be used to pay the cost of implementation, operation, and maintenance of the e-filing system. The SCAO estimates that the fees would generate approximately \$8.3 million per year, or \$41.5 million over five years. If the money in the Judicial Electronic Filing Fund were not sufficient to pay for the system, the remainder would be paid from General Fund/General Purpose revenue.

The fees could not be collected later than five years after the effective date of Senate Bill 531 (S-2). After that five-year period, the balance and earnings of the Judicial Electronic Filing Fund, if any, would be used to pay the ongoing costs of the e-filing system, and the remainder of those costs would be paid from General Fund/General Purpose revenue.

Fiscal Analyst: Ryan Bergan