



**House
Legislative
Analysis
Section**

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SPECIAL NEEDS ADOPTIONS: EXPENSES

**House Bill 6191 (Substitute H-2)
First Analysis (11-27-90)**

**Sponsor: Rep. Perry Bullard
Committee: Judiciary**

THE APPARENT PROBLEM:

Many children in need of adoption are difficult to place because of various factors, such as age, health, or ethnic background. These children, often called children with "special needs," can sometimes be placed if prospective adoptive parents can receive assistance with the expenses of caring for the child, and state law does provide for an adoption subsidy for such adoptions. There is no complementary provision for payment of the one-time costs associated with adoption of a child with special needs, but recent changes in federal law have mandated such payment. As part of the 1986 federal tax reforms, a deduction for the expenses associated with adopting a child with special needs was replaced with a requirement for states to make payments for the nonrecurring adoption expenses incurred by the adopting parents. The final rule to implement this requirement was published and took effect December 14, 1988. The federal rule says that "when State statutes must be amended in order to reimburse parents for nonrecurring expenses in the adoption of eligible children, legislation must be enacted before the close of the second general session following publication of the final rule and must apply retroactively to January 1, 1987." Legislation to provide for payment of the one-time costs of adopting a child with special needs has been proposed.

THE CONTENT OF THE BILL:

The bill would amend the Social Welfare Act to provide for state payment of up to \$2,000 of nonrecurring expenses directly related to the adoption of a "special needs" child. A child with special needs would be one for whom the Office of Children and Youth Services (OCYS) determined all of the following: the child could not or should not be returned to the parents' home; because of ethnic background, age, medical condition, handicap, or other factor specified by the bill, the child could not be placed with adoptive parents without an adoption subsidy under existing provisions for adoption subsidies; and a reasonable but unsuccessful effort had been made to place the child with appropriate adoptive parents without providing an adoption subsidy (this effort would not be required when it would be against the best interests of the child because of factors such as the existence of significant emotional ties with prospective adoptive parents while in their care as a foster child).

The bill would require the OCYS to enter into an agreement with adoptive parents for the payment of nonrecurring adoption expenses incurred by or on behalf of the adoptive parents. The agreement could be a separate document or part of an agreement for payment of an adoption subsidy under existing provisions for such subsidies. The office would make payment according to the terms of the agreement. Except for eligible adoptions made before or shortly after the bill took effect, the agreement would have to be signed at or before entry of an order of adoption under the adoption code. Claims for payment would have to be made within two years after the order of adoption.

Recent adoptions that preceded the bill's enactment would be eligible for payment under the bill, if the order of adoption was entered between January 1, 1987 and June 15, 1989, or if the order was entered between January 1, 1986 and January 1, 1987 and the expenses were paid after that time. The adoptive parents would have to enter into an agreement with the OCYS and file a claim for payment within six months after the bill took effect. In addition, for adoptions occurring between June 15, 1989 and six months after the bill's effective date, adoptive parents seeking payment under the bill would have to enter into an agreement and file a claim for payment within two years after entry of the order of adoption.

The office would take all actions necessary and appropriate to notify potential claimants under the bill.

MCL 400.115G

FISCAL IMPLICATIONS:

According to the Department of Social Services (DSS), the annual cost of the bill, excluding the cost of retroactive payment provisions, would probably be no more than \$150,000 per year. The cost of reimbursing for adoptions occurring before the bill's effective date is estimated to be between \$375,000 and \$750,000. (Federal matching funds would cover half of the cost of the bill.) Federal penalties for failure to comply with reimbursement requirements could mean the loss of federal funding for adoption and foster care programs; for adoption programs, this figure is about \$12 million per year. (11-20-90)

ARGUMENTS:

For:

Consistent with federal requirements, the bill would provide for government assistance with the nonrecurring costs of adopting a child with special needs. Such costs ordinarily would include the rather high costs of home studies and attorneys fees, in addition to court costs and expenses of medical or psychiatric examinations. However, in Michigan, increased costs created by the bill are expected to be minimal; the DSS notes that attorneys are not necessary in this state and that most of the children involved would be state wards for whom the state would be paying the costs of home studies anyway. In addition, the federal rule provides for federal reimbursement for half of state expenditures, with the amount being paid to adoptive parents for any one adoption being limited to \$2,000. Eligible expenses are expected to be no more than \$100 to \$200 per child (assuming the child was a state ward), a figure that represents little burden for the state, but could be otherwise for the prospective adoptive parent. While annual costs under the bill would be minimal, potential benefits are substantial: the bill could help in the adoption of more hard-to-place children into permanent and loving homes, and it should meet federal requirements for

reimbursement of the nonrecurring costs of special needs adoptions. To fail to meet those requirements would be to risk stiff penalties of the loss of federal funding for adoption and foster care programs, funding which is running about \$12 million per year for adoption programs alone.

Against:

The DSS estimates that the cost of implementing reimbursement to adoptive parents retroactively as provided by the bill could be \$350,000 to \$750,000, prior to receipt of federal matching funds. While the federal rule does basically require reimbursements retroactive to January 1, 1987, it appears that federal regulators are not enthusiastically enforcing the retroactivity requirement. With the rule itself dating only to December 14, 1988, there is some question whether the state should commit itself to reimbursing expenses paid prior to that date. Certainly, retroactive application would do little to further the goal of encouraging the adoption of children with special needs: retroactive payment would apply in situations where the adoption had already occurred.

There may be adequate time to resolve the matter. While many are concerned that the federal deadline for enactment is the end of this year, which would be the end of the second "regular" session after the final rule, the deadline for Michigan arguably is two years later, because the federal rule allows until the end of the second "general" session following the date of the final rule's publication of December 14, 1988. Reports are that federal regulators agree with the latter interpretation, and consider Michigan to have another two years to enact legislation.

Response: The proposal to postpone action may not sufficiently consider another problem of timing raised by the final federal rule. The rule says that individuals seeking retroactive reimbursement must file a claim with the state agency within two years of the effective date of the rule, making the deadline for claims December 14, 1990. While federal regulators appear flexible on this matter, any plan to postpone action should accommodate future claims from adoptive parents who might otherwise have filed by the 1990 deadline.

POSITIONS:

The Children's Charter of the Courts of Michigan supports the bill. (11-16-90)

The Michigan Federation of Private Child and Family Agencies supports the bill. (11-20-90)

The Michigan Foster and Adoptive Parent Association supports the concept of the bill. (11-16-90)

The North American Council on Adoptable Children supports government funding of the nonrecurring costs of special needs adoptions. (11-19-90)

The Department of Social Services supports the concept of the bill, but does not support retroactive payment dating to prior to enactment of the federal requirement, and does not support enactment of the legislation in the current session. (11-20-90)