



BILL ANALYSIS

Senate Fiscal Agency

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Senate Bill 867 (as passed by the Senate)
Sponsor: Senator Doug Carl
Committee: Human Resources and Senior Citizens

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RATIONALE

Although the Department of Social Services (DSS) has a procedure to recover overpayments of public assistance from both current and former recipients, the Department apparently does not have the legal authority to recoup from former recipients. This void was pointed out by the Michigan Court of Appeals in an August 1989 decision (Powers v DSS, 179 Mich App 416). According to the Court, since Federal regulations require the DSS to recoup overpayments made to current recipients of public assistance, the Department may do so under its internal policies, even though those policies are not rules promulgated under the Administrative Procedures Act. In regard to former recipients, however, Federal regulations merely direct that recovery be made "by appropriate action under State law". Thus, internal DSS policies are not sufficient to grant the Department the necessary authority to recoup overpayments from persons no longer receiving public assistance. Since there are currently about 36,000 inactive public assistance cases with overpayment balances, and the present total of unrecouped overpayments to former recipients exceeds \$50,000,000, it has been suggested that the DSS should be given the statutory authority to recover this money.

assistance recipient, to bring an action to recover the overpayment in a court of competent jurisdiction. The DSS could waive recovery from a former recipient, however, if the cost of recovery were equal to or greater than the amount of the overpayment, although this provision would not apply if the overpayment were the result of the recipient's fraud. The procedures for recovering overpayments, and the determination of costs of recovery, would have to be consistent with Federal law and regulations.

"Overpayment" would mean a payment of public assistance made to a public assistance recipient in excess of that to which he or she was entitled, or a payment made to a person who was ineligible under the Act to receive that payment.

Proposed MCL 400.60b

FISCAL IMPACT

Although the Department of Social Services already has a recoupment procedure, Senate Bill 867 would give the Department statutory authority, in the case of an overpayment made to an individual no longer on assistance, to recoup the overpayment, in court if necessary. Currently, the Department annually recoups approximately \$1.9 million gross (\$1.1 million GF/GP) from former clients. Given that the current total of unrecouped overpayments to clients no longer on assistance is over \$50,000,000, Senate Bill 867 should result in GF/GP savings to the State.

CONTENT

The bill would amend the Social Welfare Act to require the Department of Social Services to take all necessary steps to recover an overpayment made to a public assistance recipient. The bill also would authorize the DSS, if necessary to recover an overpayment from a person who was no longer a public

## ARGUMENTS

### Supporting Argument

The bill would conform to Federal regulations by requiring the DSS to recover overpayments to public assistance recipients, and giving the Department the necessary legal authority to recover from former recipients. The DSS would not be mandated to recover from former recipients in all cases, however, if recoupment would not be cost-effective. In addition, the Department would not always have to file suit against former recipients, since a repayment agreement often can be worked out with the individual. If a former recipient did not voluntarily reimburse the State, however, the bill would give the DSS a legal base for pursuing recovery. Given the \$50 million in outstanding overpayments to former recipients, and the millions of dollars collected from them each year, the DSS should be allowed to take all the steps necessary to continue recovering this money.

### Opposing Argument

According to the DSS, the bill would increase the workload of already overburdened government agencies and Department staff, and there is no guarantee that the system would be cost-effective. A substantial amount of work would be required to develop a centrally automated system, including identifying the criteria for determining which cases would be appropriate for referral for recoupment, establishing a process to refer appropriate cases and handle collections, and developing a method for reporting, tracking, and monitoring those cases.

The DSS also reports that its Office of Inspector General is nearing completion on a project under which the Department of Treasury will serve as the collection agent for outstanding DSS debts due to fraud. A pilot in Wayne County is planned for implementation before the end of the year, with statewide implementation to follow. If the project is successful, expansion to other types of overpayment will be explored.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.