



House Office Building, 9 South
Lansing, Michigan 48909
Phone: 517/373-6466

EVICTIONS: INCREASE ALLOWABLE COSTS

House Bill 4871 (Substitute H-2)
First Analysis (12-10-03)

Sponsor: Rep. Ruth Ann Jamnick
Committee: Judiciary

THE APPARENT PROBLEM:

The Revised Judicature Act (RJA) awards “taxable costs” to the prevailing party in a civil action, as well as allowing the award of such costs in “summary proceedings” (landlord-tenant proceedings and land contract forfeitures). Though the statutory attorney fees for general civil actions were increased by Public Act 226 of 1999, the maximum allowable attorney fees for summary proceedings have remained at the same levels as when enacted in 1972. House Bill 4726 of the 2001-2002 legislative session would have increased these fees but, though passed by the House, failed to see Senate committee action. Legislation has been introduced once again to increase taxable costs in summary proceedings.

THE CONTENT OF THE BILL:

House Bill 4871 would amend Chapter 57 of the Revised Judicature Act, entitled “Summary Proceedings to Recover Possession of Premises” (MCL 600.5759). In civil proceedings, costs are often awarded to the prevailing party. In summary proceedings, which are simpler and quicker than general civil actions, the allowable costs may not exceed the amount specified in statute. The bill would increase these maximum amounts allowable as taxable costs as follows:

- For a motion that results in dismissal or judgment, up to \$75 (increased from \$20).
- For a judgment taken by default or, as added by the bill, consent, up to \$75 (increased from \$15).
- For the trial of a claim for possession only or a trial of a claim for a money judgment, up to \$150 (increased from \$20).
- For a trial of a claim including both a claim for possession and a claim for a money judgment, up to \$150 (increased from \$30).

The bill would take effect July 1, 2004.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have an indeterminate impact on the state and local units of government. Any impact would depend on the extent to which the state or local units were involved as parties in the affected actions. (12-8-03)

ARGUMENTS:

For:

The bill would implement long overdue increases in additional statutory costs that could be awarded to the prevailing party in summary proceedings (as when a landlord seeks to evict someone who hasn’t paid the rent), which traditionally have been understood as going toward the prevailing party’s attorney costs. At the same time, the bill also would bring these allowable costs in summary proceedings in line with the recently increased taxable costs in civil actions. The maximum amount that could be imposed for these fees in summary proceedings has not been increased since their adoption in 1972. Inflation since 1972 has made these additional allowable costs woefully out of date and the bill would increase them to more reasonably reflect the effect of inflation over the years since 1972.

The bill would simply increase the allowable taxable costs for summary proceedings to the same amounts as currently hold for civil actions, thereby putting into place parity between taxable costs in summary proceedings and in other civil proceedings.

Against:

Summary proceedings are different enough, and have such potentially serious consequences for tenants (namely, eviction and possible homelessness), that the taxable costs for such proceedings should be lower than those for general civil cases. They are shorter in time frame (sometimes lasting only minutes), rely more on forms (meaning that instead of lengthy briefs, blanks can be filled in and the caption added to a boilerplate form), and generally do not involve a jury. Thus the argument that the bill is

House Bill 4871 (12-10-03)

needed to provide parity to the increase in taxable costs for general civil proceedings is not applicable.

Typically, summary proceedings are eviction proceedings, in which landlords or land owners move to evict tenants or the buyer in a land contract because of the failure of the tenant to pay rent or the party in the land contract to make monthly payments. Thus, by their very nature, summary proceedings threaten people's ability to remain in their homes, and pose a serious threat to the well being of these families, many of whom include children. According to one source, there are about 550,000 households in Michigan with incomes below \$15,000, with more than 80 percent of these households paying more than 30 percent of their net income (which is the standard definition of affordable housing) for their housing. It is not surprising, therefore, that these families struggle, sometimes unsuccessfully, to pay their rents and that eviction proceedings are brought against them. But it seems counterintuitive, if not unjust, to respond to this problem by raising the taxable costs to tenants in eviction proceeding, which will only make it harder for these families to pay these taxable costs on top of back rent. The bill would cause more hardship for poor people already struggling to pay for the basic necessities of life, including housing, and increase their risk of homelessness once they were evicted. Moreover, as a 1982 court decision held in *Tenney v Springer*, 121 Mich App 47, the summary proceedings statute is remedial in nature (meaning that the purpose of summary proceedings is to avoid evictions) and should be construed liberally.

Response:

While summary proceedings generally may move quickly in court, some of them reportedly can be as complex and expensive to pursue as other general civil actions, the taxable costs for which were increased last session to the amounts proposed in the bill. Further, eviction proceedings are not limited to situations in which a poor family falls behind in rent payments. Evictions occur for a variety of reasons, including a breach of the lease by the tenant and illegal activity on the premises (such as illegally making, selling, or using controlled substances). Why should a property owner bear the financial burden to oust a tenant that may be putting community members in danger or a tenant that is, by his or her actions, damaging the property? Finally, it needs to be pointed out that whereas the taxable costs in general civil proceedings are required, in summary proceedings they are permissive only and at the discretion of the court. That is, the bill merely would increase the maximum allowable taxable costs; a judge could choose to impose lower (or even no) taxable costs in a summary proceeding.

Against:

Even if the allowable taxable costs in summary proceedings may need to be raised, surely they don't need to be increased five-fold, especially given the brief amount of time involved in most of these cases. As the term "summary proceedings" indicates, these kinds of landlord-tenant cases generally take much less court time than general civil actions, and the fact that the taxable costs for summary proceedings are set forth in a section of the Revised Judicature Act separate from those for general civil proceedings appears to recognize this difference. For example, most default cases reportedly are handled in ten minutes or less, and even in contested cases the so-called "trial" typically involves only a few minutes of testimony from the landlord and questions to the tenant by the court. The speed with which most summary proceedings move also means lower legal costs to the landlord than would be true in general civil cases, so the taxable costs – which traditionally are applied to the landlord's attorney costs – should be less in summary proceedings than in general civil cases.

Opponents of the bill also expressed concern that the bill would increase the incentive for unscrupulous landlords to obtain default judgments by circumventing the requirements for proper service of the summons and complaint or by misleading tenants about the need to attend court hearings. And in situations where landlords had failed to keep their legal obligations to maintain their premises in reasonable repair, the bill could have the effect of deterring tenants from legitimately withholding rent until repairs were made or from asserting repair-based defenses or counterclaims in eviction proceedings. For example, the court might decide that a tenant was in fact entitled to a rent abatement because the landlord had failed to keep the premises in reasonable repair, and yet might still decide that the rent abatement nevertheless was less than the rent owed to the landlord. (According to one source, many judges are reluctant to award rent abatements despite evidence of a breach of the landlord's repair obligations. This may be due to a tendency by judges, in deciding rent abatement, to use the wrong standard – "habitability" – rather than the proper standard, which is "reasonable repair.") Thus the bill could result in tenants deciding not to pursue rent abatement claims, which could contribute not only to their homes being less livable but to a general deterioration in rental housing stock and to the neighborhood in general.

Given all of the potentially negative effects of the bill, it should not be advanced without amending it to at least lower the proposed cost increases.

POSITIONS:

Representatives of the Rental Property Association of Michigan testified in support of the bill. (12-9-03)

A representative of the Property Management Association of Michigan indicated support for the bill. (12-9-03)

The Michigan Poverty Law Program is neutral on the bill. (12-3-03)

The Michigan Advocacy Project opposes the bill. (12-9-03)

Analyst: S. Stutzky

■ 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.