

Legislative Analysis



PROCESS SERVER AND SHERIFFS' FEES

Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 4924 (H-2) as reported
House Bill 5359 as introduced
Sponsor: Rep. Earl Poleski

Analysis available at
<http://www.legislature.mi.gov>

House Bill 5360 (H-1) as reported
Sponsor: Rep. Kurt Heise

Committee: Judiciary
Complete to 5-19-16

SUMMARY:

House Bill 4924 would establish a \$10 fee each for GPS verification and photo verification, and increase the fee for serving process with an incorrect address by \$5.

House Bill 5360 would raise certain fees that a county sheriff is authorized to charge for various actions performed, and delete the authority to receive fees for several actions, such as summoning a jury upon a writ of inquiry.

House Bill 5359 would make a technical correction to a citation to conform to changes made by House Bill 5360.

Each of the bills will take effect 90 days after enactment. House Bills 5359 and 5360 are tie-barred to each other and to House Bill 4924. A tie-bar means the bill cannot become law unless a bill to which it is tie-barred is also enacted. A more detailed summary follows.

House Bill 4924 (Service of Process in RJA)

The Revised Judicature Act (RJA) prescribes a schedule of fees for process or papers served out of a court by a person authorized under the act or Michigan Supreme Court rules to serve process.

The bill would add the following two fees:

- ❖ For each global positioning service verification requested by the plaintiff, \$10.
- ❖ For each photo verification requested by the plaintiff, \$10.

Currently, upon submitting a sworn affidavit, a person authorized to serve process or papers out of a court is entitled to receive a \$10 fee plus mileage for each process that has an incorrect address, in addition to any fee the person is entitled to receive under the fees shown above. The bill would increase this fee by \$5 to \$15.

The updates to the other fees reflects the current amounts. When new fees were enacted in 2012, the legislation called for them to be increased by \$1 per year each October 1 in 2013, 2014, and 2015. The new figures reflect those increases.

House Bill 5360 (County Sheriff Fees)

The bill amends the RJA to increase certain fees that a county sheriff is authorized to charge for various actions performed (MCL 600.2558). Several fees would also be deleted. The table below shows the services for which the allowable fees would be increased.

Description	Current Fee/New Fee
Taking a bond	\$1.50/\$10
Certificate on the sale of real estate	\$1.50/\$10
For each copy of the certificate	\$1.50/\$5
For taking a bond for the liberties of the jail	\$1.50/\$10
For making and returning an inventory and appraisal to the appraisers	\$10/\$100 full day \$5/\$50 half day
Drafting an inventory, per page	\$1.25/\$10
Copying the inventory, per page	10 cents/\$1
For posting notices on property for foreclosure sales, per posting	\$16/\$25
For selling lands on the foreclosure of a mortgage by advertisement; & executing a deed to the purchaser and for all services on that sale	\$50/\$75
For each adjournment of the sale of land on the foreclosure of a mortgage by advertisement	\$8/\$15
For serving notice of a person claiming title under a tax deed	\$16/\$25

The bill also eliminates several fees as follows:

- ❖ For summoning a jury upon a writ of inquiry, attending the jury, and making and returning the inquisition, \$5.
- ❖ For summoning a jury under any precept or summons of any officer in any special proceeding, \$5, and for attending the jury when required, \$5.
- ❖ For giving notice for general or special election to the inspectors of the different townships and ward of the county, \$1 for each ward or township, and the expenses of publishing the required notices (to be paid by the county)
- ❖ For attending the state supreme court by the order of the court, \$10 for each day (paid out of the state treasury).
- ❖ For keeping and providing for a debtor in jail where the debtor is unable to support herself or himself, \$1 for each day or as fixed by the board of commissioners (paid by the creditor).

House Bill 5359

The bill amends the RJA to change a citation pertaining to the allowable fee a sheriff is authorized to charge for selling lands on the foreclosure of a mortgage by advertisement to conform to revisions made by House Bill 5360. (MCL 600.3240)

FISCAL IMPACT:

There would be no fiscal impact on the state, and process servers and local sheriffs would benefit from the new fees (HB 4924) and increased fees (HB 5360).

BRIEF DISCUSSION OF THE ISSUES:

As a package, the bills update fees paid to process servers (an individual who serves, or delivers, papers or legal documents to a defendant or person involved in a court case), and fees paid to sheriffs or their deputies for various actions, including some relating to foreclosure actions. In general, these are fees paid by a plaintiff or the plaintiff's attorney in civil matters.

House Bill 4924 adds fees for GPS verification and photo verification. Individuals and businesses who must have legal documents delivered in civil actions are increasingly requiring process servers to provide additional verification to document attempts of service and completed service. This practice has grown since the scandal in New York City in the late 2000s in which some process servers claimed to have provided service but in reality had falsified records, with some of the documents to be served dumped in city sewers, leading some to refer to such fraudulent activity as "sewer service." Moreover, large financial institutions, mortgage companies, debt collection agencies, and others often require the new technologies to be used by process servers in order to comply with guidelines issued by the Consumer Financial Protection Bureau for service of process.

Use of GPS and photo verification can provide detailed information (time, date, latitude and longitude coordinates, etc.), which is useful if lawful service is later challenged in a lawsuit. The development of easy-to-use GPS and photo verification applications for cell phones and tablets that store data with a third party (which protects against tampering) has lowered the cost and made use of such technologies less burdensome. Though some say use of such technologies only verify that a process service was at a particular location on the day and at the time verified by the technologies, and not that service was actually attempted or completed, others believe that the use of GPS and photo verification of service will eventually be mandated across the nation.

The bill does not require that process servers use GPS or photo verification services, it simply puts a fee for such services in statute. Unless the fees are codified, they cannot be included in services that constitute an attorney's "costs" of litigation and therefore subject to taxation.

House Bill 5360 raises the statutory fees that sheriffs can charge for various actions they are required to, or asked to, perform. Though a few look to represent significant increases, it must be pointed out that most of the current fee amounts date back to the 1990s, with some being unchanged since the 1970s, and so are unreasonably low. For example, statute requires an inventory be made of all property that is seized and then for the property to be appraised before it is sold. It is simply unreasonable to expect an appraiser to devote an entire day appraising the value of the property for only \$10. The fees represented in the bill are considered to be comparable to fees charged by other parties for similar services. Though apparently a judge may allow a higher fee to be charged for some or all of these

services, raising the fees in statute avoids the tedious task of going to every court in the state to educate judges on appropriate fee levels and also provides more consistency between courts. Reportedly, in some cases, the fee range allowed by judges for an identical service can be a difference of hundreds of dollars.

POSITIONS:

A representative of the Michigan Court Officers, Deputy Sheriffs Association testified in support of the bills. (5-10-16)

The Michigan Sheriffs' Association indicated support for the bills. (5-10-16)

The Michigan Associations of Counties indicated support for the bills. (5-10-15)

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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.