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BILL



ANALYSIS

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Senate Bill 158 (as reported with amendment)
Sponsor: Senator Bruce Patterson
Committee: Judiciary

Date Completed: 10-30-03

RATIONALE

Some people believe that there should be an increase in the maximum taxable costs that may be assessed under Chapter 57 (Summary Proceedings to Recover Possession of Premises) of the Revised Judicature Act. (Taxable costs are amounts that a court may require a nonprevailing party to pay to a prevailing party for the expenses of the litigation.) Chapter 57 allows a landlord to initiate a civil action in district or municipal court to seek to recover possession of premises, such as land, an apartment, condominium property, or a mobile home, that is used or intended for use primarily as a dwelling or as a place for commercial or industrial operations or storage. An action may be commenced for such reasons as failure or refusal to pay rent; refusal to vacate the premises after termination of a lease; violation of the terms of a lease; causing a serious and continuing health hazard; taking possession by forcible entry, holding possession by force after a peaceable entry, or coming into possession by trespass; or continuing in possession of the premises after the sale of the property.

Chapter 57 and court rules contain procedures for the expedited recovery of the property,

and Chapter 57 permits a court to assess against a party the taxable costs of a proceeding. While some statutory court costs and fees have been increased in recent years, taxable costs assessable in summary proceedings under Chapter 57 have not changed since they were enacted by Public Act 120 of 1972.

CONTENT

The bill would amend the Revised Judicature Act to increase certain taxable costs that the court may allow under Chapter 57. The bill would take effect on January 1, 2004.

In proceedings under Chapter 57, costs may be allowed in the same amounts as are provided by law in other civil actions in the same court (except that certain additional costs allowed in Supreme Court and circuit court proceedings do not apply). The court also may allow as taxable costs under Chapter 57 certain maximum amounts for particular proceedings. The bill would increase those allowed taxable costs as shown in Table 1.

Table 1

Proceeding	Current Maximum	Proposed Maximum
Motion resulting in dismissal or judgment	\$20	\$75
Judgment taken by default ^{a)}	\$15	\$75
Trial of a claim for possession only	\$20	\$150
Trial of a claim for damages only ^{b)}	\$20	\$150
Trial including both a claim for possession and a claim for a money judgment	\$30	\$150
^{a)} The bill would add "or consent".		
^{b)} The bill would refer to a claim for "a money judgment" rather than for "damages".		

The bill would retain a requirement that, in determining taxable costs in tenancy cases, the judge consider whether the jury or judge found that a portion of the rent allegedly due to the plaintiff was excused by reason of the plaintiff's breach of the lease or breach of statutory covenants.

MCL 600.5759

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Public Act 120 of 1972 added Chapter 57 to the RJA to allow summary proceedings for the recovery of premises. Among its provisions, Chapter 57 permits a court in these cases to assess certain taxable costs. Thirty-one years after their enactment, the amounts specified in Chapter 57 are no longer sufficient to cover the costs incurred by a party in a case. For example, \$20 does not begin to pay today's costs for hiring a lawyer to file a motion. The bill would increase the maximum amounts of taxable costs to levels that more reasonably reflect a party's costs in summary proceedings to recover possession of premises. The assessment of these costs would continue to be left to a judge's discretion, but could not exceed the amounts specified in the bill.

Response: While taxable costs are meant to compensate the prevailing party to some degree for the time and cost involved with the case, they are not a strict repayment of those costs.

Supporting Argument

Public Act 226 of 1999 amended the RJA to increase allowable costs in civil actions or special proceedings in circuit court. The maximum allowable cost for a trial of the action or proceeding increased from \$30 to \$150 and the maximum allowable cost in actions that result in default or a consent judgment went from \$15 to \$75. The bill's proposed increases in taxable costs under Chapter 57 would be consistent with the 1999 increase in costs in circuit court actions.

Response: Typically, summary proceedings to recover premises are short and simple procedures and the cost to litigate these cases is low. It is not necessary to raise these taxable costs commensurate with the

increase in allowable costs in circuit court civil actions.

Opposing Argument

Actions under Chapter 57 often involve low-income tenants, yet the proposed increases in taxable costs are quite steep. Low-income individuals tend to pay a substantial percentage of their income for housing costs and have little money left after meeting other essential needs. Many of these people would not be able to afford the increased taxable cost awarded to a prevailing party in addition to having to pay a judgment. The bill should accommodate low-income tenants by including a waiver or discount for indigent parties.

Response: The prevailing party should be entitled to taxable costs regardless of the other party's financial status. In addition, a statutory exemption for the indigent could drive low-income tenants out of the housing market because landlords might be less inclined to rent property to low-income tenants if the landlords could not recover costs. In any event, the specified amounts are maximum awards and the judge has the discretion to assess the costs and determine how much to award. A party's income can always be a factor in that decision.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have an indeterminate impact on the State and local units of government. Revenue received or costs incurred would depend on the number of cases in which the State or a local unit of government was involved in summary proceedings and whether the State or local unit was the prevailing party.

Fiscal Analyst: Bethany Wicksall

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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.