



Senate Fiscal Agency
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BILL ANALYSIS

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House Bill 4666 (Substitute H-3 as reported without amendment)
House Bill 4670 (Substitute H-2 as reported without amendment)
Sponsor: Representative Jim Runestad (H.B. 4666)
Representative Joseph N. Bellino, Jr. (H.B. 4670)
House Committee: Judiciary
Senate Committee: Judiciary

CONTENT

House Bill 4666 (H-3) would amend the Revised Judicature Act to do the following:

- Allow a proof of service of process to be made by a written statement of the facts, under penalty of perjury, instead of an affidavit.
- Prescribe a felony penalty of up to 15 years' imprisonment and/or a maximum fine of \$2,000 for an individual who intentionally made a false declaration of proof of service.

Currently, proof of service of process must be made by one of the following methods:

- Written acknowledgment of the receipt of a summons and a copy of the complaint, dated and signed by the person authorized under the Act to receive them.
- A certificate, stating the facts of service if service is made in Michigan by a sheriff, or by a deputy sheriff, medical examiner, bailiff, or a constable, or a deputy of any these officers, if the officers held office in a county in which the court issuing the process is held.

If service is made by any other person, the proof of service must be made by an affidavit stating the facts of service and indicating the person's official capacity, if any.

Under the bill, proof of service could be made by written acknowledgement of receipt of the summons and complaint, or by a certificate, as described above. If service were made by any other individual, proof of service could be made by a written statement of the facts of the service, verified by a statement set forth in the bill.

House Bill 4670 (H-2) would amend the sentencing guidelines in the Code of Criminal Procedure to categorize false declaration of personal service in a proof of service of process as a Class C offense against the public trust with a statutory maximum of 15 years.

MCL 600.1910 (H.B. 4666)
777.15d (H.B. 4670)

Legislative Analyst: Jeff Mann

FISCAL IMPACT

House Bill 4666 (H-3) would have an indeterminate impact on the State and local courts. The bill would replace the requirement for an affidavit stating the facts of proof of service with a requirement for a written statement with specified language. The bill also would impose a penalty of up to 15 years' imprisonment for the falsification of this statement. Affidavits commonly require a notarization, so replacing an affidavit with a simple written statement

would simplify the job of a process server, which would have the potential to reduce administrative costs; however, the proposed penalty potentially could increase administrative costs, if the falsification of proof of service documents were actually a widespread problem throughout the Michigan court system. Additionally, it is not clear that Michigan courts would acknowledge the statutory change, as the process for proof of service is already specified in the Michigan Court Rules (MCR 2.104). As provided by the Constitution, Article VI, Section 5, the Michigan Supreme Court uses the court rules to "establish, modify, amend and simplify the practice and procedure in all courts of this state". At present, the court rules and the statute are consistent.

In addition, the proposed felony could have a negative fiscal impact on State and local government. More felony arrests and convictions could increase resource demands on law enforcement, court systems, community supervision, jails, and correctional facilities. The average cost to State government for felony probation supervision is approximately \$3,024 per probationer per year. For any increase in prison intakes, in the short term, the marginal cost to the State is approximately \$3,764 per prisoner per year. Any associated increase in fine revenue increases funding to public libraries.

House Bill 4670 (H-2) would have no fiscal impact on local government and an indeterminate fiscal impact on the State. According to the Michigan Supreme Court's July 2015 opinion in *People v. Lockridge* (in which the Court struck down portions of the sentencing guidelines law), the sentencing guidelines are advisory for all cases. This means that the addition to the guidelines under the bill would not be compulsory for the sentencing judge. As penalties for felony convictions vary, the fiscal impact of any given felony conviction depends on judicial decisions.

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