

LAWSUITS CHALLENGING ADOPTED BUDGETS OF COUNTY GOVERNMENT

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House Bill 5076 (Substitute H-3)

Sponsor: Rep. Peter Pettalia

Committee: Judiciary

Complete to 11-27-12

A SUMMARY OF HOUSE BILL 5076 AS REPORTED BY COMMITTEE

The bill would amend the Uniform Budgeting and Accounting Act to specify who can bring lawsuits about levels of funding in a county's general appropriations act and lawsuits about the administration, execution, and enforcement of a general appropriation act.

Under the statute, a **general appropriations act** means the budget as adopted by the local legislative body or as otherwise given legal effect under a charter.

The bill contains language asserting that a general appropriations act, including any amendment to that act, "is presumed to fund those activities of a county mandated by law at a serviceable level."

The bill would specify the following:

Suits against the legislative body

- The chief administrative officer of a county has exclusive standing to bring suit against a legislative body of that county concerning a general appropriations act, including any challenge to serviceable levels of funding for any department or branch of that county, including a department or branch headed by another elected or appointed official.
- A court funded by a county has standing to bring a suit on its own behalf against the legislative body of that local unit concerning a general appropriations act, including any challenge to serviceable levels of funding for that court. (The bill would not apply to courts of the third district, as they are funded by the city in which they are located and not by the county.)
- Before a court brings a suit against the legislative body, a mediator would have to certify in writing that the parties were unable to resolve the issues by mediation.
- A court hearing a suit must consider the financial ability of the county to pay when considering any challenge as to serviceable levels of funding.

Suits against the chief administrative officer

- The administration, execution, and enforcement of a general appropriations act approved by a legislative body of a county are powers exclusively vested in the chief administrative officer of that county.
- The legislative body of a county has exclusive standing to bring suit against the chief administrative officer of that county concerning an action relating to the administration, execution, and enforcement of a general appropriations act for any department or branch of that county, including a department or branch headed by another elected or appointed official.
- A court funded by a county has standing to bring suit on its own behalf against the chief administrative officer of that county concerning an action relating to the administration, execution, and enforcement of a general appropriations act for that court. Before a court brings a suit on its own behalf against the chief administrative officer of the county, a mediator would have to certify in writing that the parties were unable to resolve the issues by mediation.

Suits described above could only be brought in the Michigan Court of Appeals within 60 days after (1) the adoption of a general appropriations act; (2) an amendment to a general appropriations act, if the amendment is a basis for the suit; or (3) an action relating to the administration, execution, and enforcement of the general appropriations act, if the action is a basis for the suit.

The jurisdiction of the Court of Appeals (COA) over a suit brought by a court against a chief administrative officer or the legislative body of a county is exclusive and that jurisdiction or any judicial duties inherent in that jurisdiction could not be transferred to any other court. The COA could request the state Supreme Court to assign a retired judge under provisions of the Revised Judicature Act to assist the COA by resolving discovery issues, reviewing the evidence, making proposed findings of fact and conclusions of law, and performing any other necessary related judicial duties.

Unless an action brought under these provisions is timely preserved for review by the Court of Appeals, litigation on any issue as to a general appropriations act, or an amendment to that act, or an action relating to the administration, execution, and enforcement of that act, is barred.

The pendency of a claim in a suit described in the bill would not constitute a basis for expenditure of funds by any department or branch of the local unit, or a court funded by the county, in excess of that authorized by a general appropriations act, including an amendment to that act.

The bill specifies that if any portion of the two new sections added by the bill or the application of the sections to any circumstance is found invalid by a court, the invalidity would not affect the remaining portions of application of the sections that could be given

effect without the invalid portion or applications. The provisions of the proposed sections are severable.

Under the Uniform Budgeting and Accounting Act, the term "chief administrative officer" applies to the village manager or president; the township manager or supervisor; the city manager or mayor; a school superintendent; a person designated by the board of a charter school; and an elected county executive, appointed county manager, county controller, or person designated by the county commissioners, depending on county organization.

MCL 141.436 and 438

FISCAL IMPACT:

The bill would have an indeterminate impact on counties. If a portion of a county's general appropriations act is successfully challenged in court, counties and county-funded courts would have their finances indeterminately affected by this bill.

The Court of Appeals may see higher costs due to an increase in caseloads as a result of counties or court administrators filing claims under the bill. Funds for Court of Appeals operations costs, as well as Court of Appeals' judges salaries, are appropriated through the state's Judiciary budget from the state General Fund. Any filing or motion fees paid to the Court of Appeals would be appropriated through the state's Judiciary budget. In FY 2013-14, these filing and motion fees are used to partially fund Swift and Sure Sanctions program grants.

POSITIONS:

The Michigan Association of Counties supports the bill. (11-28-12)

The Michigan Association of County Clerks opposes the bill. (11-27-12)

The State Court Administrative Office/Supreme Court opposes the H-3 Substitute, but would adopt a neutral position if an amendment was adopted to give courts involved in mediation an additional 30 days (for a total of 90 days after the adoption of a general appropriations act) in which to bring a suit as described in the bill. (11-27-12)

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■ 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.