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Bill Analysis
Legislative Service Commission

Am. H.B. 226
126th General Assembly
(As Passed by the House)

Reps. Hoops, C. Evans, Flowers, Kearns, Martin, McGregor, Seitz, Setzer, Wagoner, Brown, Hartnett, Koziura, Willamowski, Barrett, Coley, Combs, Daniels, Domenick, Harwood, Otterman

BILL SUMMARY

- Authorizes the legislative authority of a municipal corporation to establish by ordinance a schedule of fees to be taxed as costs in any civil, criminal, or traffic action or proceeding in a municipal court for the performance by officers or other employees of the municipal corporation's police department or marshal's office of services of the types that are performed by sheriffs and constables and that are taxable as costs.
- Directs the clerk of court, when the clerk collects taxable fees for services performed by officers or other employees of a municipal corporation's police department or marshal's office or by a municipal court bailiff, to pay the fees to the general fund of the municipal corporation that employs the officer or employee or to the general fund of the entities that fund the bailiff's salary in the same pro-rated amount as the salary is funded.
- Provides that the bill does not authorize or require any officer or employee of a municipal corporation's police department or marshal's office or any municipal court bailiff to perform any service that is not otherwise authorized by law.

CONTENT AND OPERATION

Municipal court fee schedule

The bill authorizes the legislative authority of a municipal corporation to establish by ordinance a schedule of fees to be taxed as costs in any civil, criminal,

or traffic action or proceeding for the performance by officers or other employees of the municipal corporation's police department or marshal's office of any of the services specified in R.C. 311.17 and 509.15. These sections set forth the fees taxed for services performed by sheriffs and constables, such as serving subpoenas and attending criminal trials. (See **COMMENT**.) The bill provides that no fee in the schedule may be higher than the fee specified in R.C. 311.17 for the performance of the same service by the sheriff. If a fee set by municipal ordinance conflicts with a fee for the same service established in a statute or rule of court, the fee established in the statute or rule applies. (R.C. 1901.26(A)(1)(b)(i).)

Taxation of costs and payment when collected

The bill provides that when an officer or employee of a municipal police department or marshal's office performs, in a civil, criminal, or traffic action or proceeding, a service specified in R.C. 311.17 or 509.15 for which a taxable fee has been established under any section of the Revised Code, the court must tax as costs in the action or proceeding the applicable legal fees and any other extraordinary expenses, including overtime, provided for the service. The clerk of the court must pay those legal fees and other expenses, when collected, into the general fund of the municipal corporation that employs the officer or employee. If the bailiff of a municipal court performs one of those services, the fee for the service is the same and is taxable to the same extent as if the service had been performed by an officer or employee of the police department or marshal's office of the municipal corporation in which the court is located; the fees are paid into the general fund of the entity or entities that fund the bailiff's salary in the same pro-rated amount as the salary is funded. (R.C. 1901.26(A)(1)(b)(ii) and (iii).)

Services not authorized or required

The bill states that the new provisions in the bill do not authorize or require any officer or employee of a police department or marshal's office of a municipal corporation or any bailiff of a municipal court to perform any service that is not otherwise authorized by law (R.C. 1901.26(A)(1)(b)(iv)).

COMMENT

R.C. 311.17 sets fees for the service and return of the following writs and orders and for the other services listed below performed by sheriffs:

(A) For the service and return of the following writs and orders:

(1) Executions (no levy--\$20; levy on realty--\$25 for first tract and \$10 for each additional tract; levy on goods or chattels--\$50);

- (2) Writs of attachment of property, except for purpose of garnishment (\$40);
 - (3) Writs of attachment for the purpose of garnishment (\$10);
 - (4) Writ of replevin (\$40);
 - (5) Warrants to arrest (\$10 per person);
 - (6) Attachments for contempt (\$6 per person named in writ);
 - (7) Writs of possession or restitution (\$60);
 - (8) Subpoenas (\$6 for each person named in writ);
 - (9) Venires, for each person named in the writ, in either a civil or criminal case (\$6);
 - (10) Summoning each juror, other than on venire (\$6);
 - (11) Writs of partition (\$60);
 - (12) Orders of sale on partition (\$50 for first tract; \$25 for each additional tract);
 - (13) Other orders of sale of real property (\$50 for first tract; \$25 for each additional tract);
 - (14) Administering oaths to appraisers (\$3);
 - (15) Furnishing copies for advertisements (\$1 for each 100 words);
 - (16) Copies of indictments (\$5 for each defendant);
 - (17) All summonses, writs, orders, and notices (\$6 for first name; \$1 for each additional name);
- (B) In addition to the fee for service and return:
- (1) On each summons, writ, order, or notice (\$1 for first mile; 50¢ for each additional mile);
 - (2) Taking bail bonds (\$3);
 - (3) Jail fees:
 - (a) Receiving, discharging, or surrendering prisoners (\$5);

- (b) Taking prisoners before a judge or court (\$5);
- (c) Calling actions (\$1);
- (d) Calling juries (\$3);
- (e) Calling witnesses (\$3);
- (f) Bringing prisoners before court on habeas corpus (\$6);
- (4) Poundage on execution, decree, or sale of real estate (1½%);
- (5) Making and executing deeds of land sold on execution, decree, or order of the court (\$50).

R.C. 311.17 also establishes mileage and poundage fees and provides that when any of the services described are rendered by an officer or employee whose salary or per diem compensation is paid by the county, the applicable legal fees and any other extraordinary expenses, including overtime, provided for the service shall be taxed in the costs in the case and, when collected, shall be paid into the general fund of the county.

R.C. 509.15 sets fees for the following services performed by township constables:

- (1) Serving and making return of each of the following:
 - (a) Order to commit to jail, order on jailer for prisoner, or order of ejection, including copies to complete service (\$1 for each defendant);
 - (b) Search warrant or warrant of arrest, for each person named in the writ (\$5);
 - (c) Writ of attachment of property other than garnishment (\$20);
 - (d) Writ of attachment for garnishment (\$5);
 - (e) Writ of possession or restitution (\$20);
 - (f) Attachment for contempt (\$3 per person);
 - (g) Writ of replevin (\$20);
 - (h) Summons and writs, subpoena, venire, and notice to garnishee (\$3 per person named);

- (i) Execution against property or person (80¢ and 6% of money collected);
- (j) Any other writ, order, or notice required by law (\$3 for first person; 50¢ for each additional person).
- (2) Mileage (50¢ for first mile; 20¢ for each additional mile);
- (3) Attending a criminal case during the trial or hearing and having charge of prisoners (\$2.50);
- (4) Attending civil court during a jury (\$2) or nonjury trial (\$1.50);
- (5) The actual amount paid solely for the transportation, meals, and lodging of prisoners, and for the moving and storage of goods and the care of animals taken on any legal process;
- (6) Summoning and swearing appraisers (\$2);
- (7) Advertising property for sale, by posting, taken on any legal process (\$1);
- (7) Taking and making return of any bond required by law (80¢).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	04-28-05	p. 727
Reported, H. Judiciary	06-21-05	pp. 1363-1364
Passed House (99-0)	06-21-05	pp. 1380-1381

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