



Ohio Legislative Service Commission

Jeffrey R. Kasler

Fiscal Note & Local Impact Statement

Bill: Sub. S.B. 36 of the 128th G.A. **Date:** June 25, 2009

Status: As Reported by Senate Judiciary Civil Justice **Sponsor:** Sen. Kearney

Local Impact Statement Procedure Required: Yes

Contents: Offer of judgment in a civil action

State Fiscal Highlights

STATE FUND	FY 2010 - FUTURE YEARS
General Revenue Fund (GRF) and Other State Funds	
Revenues	Net annual effect uncertain
Expenditures	Net annual effect uncertain

Note: The state fiscal year is July 1 through June 30. For example, FY 2010 is July 1, 2009 – June 30, 2010.

- It is unclear how the bill will affect the existing dynamics in civil actions where the state is a plaintiff and the defendant would be permitted to make an offer of judgment that, if rejected, potentially exposes the state to an additional financial liability. Whether the net effect on the revenues and expenditures of the state will exceed minimal is uncertain.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2009 - FUTURE YEARS
Courts of Common Pleas	
Revenues	- 0 -
Expenditures	Potential annual cost savings
Counties, Municipalities, Townships, School Districts, and Special Districts	
Revenues	Net annual effect uncertain
Expenditures	Net annual effect uncertain

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- Courts of Common Pleas.** In theory, by requiring a plaintiff to pay costs incurred by a defendant if the court's judgment is less favorable than a previously rejected settlement offer, the bill may generate a cost savings by potentially facilitating more pre-trial settlements and thus reducing cases on the courts' dockets.

- **Local Governments Generally.** The bill creates the potential for both an increase in cost savings or expenditures, depending upon the mix of civil actions in which the affected local government is either a plaintiff or defendant. As a plaintiff, an affected local government may be awarded more or less money than might otherwise have been the case under current law and practice. Similarly, as a defendant, an affected government may expend more or less money than might otherwise have been the case under current law and practice. The net annual effect of these potentialities on any given local government is uncertain.
-

Detailed Fiscal Analysis

Judgment Offers in a Civil Action

For the purpose of this fiscal analysis, the bill most notably:

- Permits a defendant in a civil action filed in the court of common pleas to issue a settlement offer to the plaintiff, no less than ten days before the scheduled trial.
- Permits a defendant in a civil action in the court of common pleas to issue a settlement offer to the plaintiff after one party's liability has been determined but at least ten days before a hearing to determine the extent of liability.
- Renders the settlement offer withdrawn and inadmissible if it is rejected but does not preclude a later offer.
- Requires the plaintiff to pay the costs incurred by the defendant, if the judgment is less favorable than the defendant's previous settlement offer.

State and Political Subdivisions as Plaintiffs

It is possible for the state or any of its political subdivisions to be the plaintiff in a civil action that it has filed in a court of common pleas. If that occurs, it is plausible that the state or the political subdivision could receive a pre-trial settlement offer from the defendant. Under the bill, if the state or political subdivision accepts the offer, the court is notified in writing and a judgment rendered. If, however, the state or political subdivision rejects the settlement offer, it is withdrawn and considered inadmissible, and the civil action presumably proceeds to a trial.

Should the judgment rendered after a trial be less favorable than the settlement offer previously rejected by the state or political subdivision, the bill provides that the state or political subdivision must assume responsibility for the costs incurred by the defendant. In researching the fiscal impact of the bill, LSC fiscal staff did not assign a degree of likelihood to the aforementioned scenario, but instead assumed that it was simply a possibility. The timing, frequency, and magnitude of such outcomes are uncertain and arguably problematic to predict. It is unclear how this provision will affect the existing dynamics in civil actions where the state or a political subdivision is a

plaintiff and the defendant would be permitted to make an offer of judgment that, if rejected, potentially exposes the state or political subdivision to an additional financial liability. Whether the net effect on the revenues and expenditures of the state or any political subdivision will exceed a minimal savings or increase is uncertain.¹

Courts of Common Pleas

As noted, the bill addresses civil actions under the subject matter jurisdiction of the court of common pleas. In theory, its provision requiring a plaintiff to pay costs incurred by a defendant if the court's judgment is less favorable than a previously rejected settlement offer may generate a cost savings by potentially facilitating more pre-trial settlements and thus reducing cases on the courts' dockets.

Political Subdivisions as Defendants

A political subdivision of the state may potentially be at some time a defendant in a civil action filed in a court of common pleas. If that occurs, it is plausible that the political subdivision may extend a pre-trial settlement offer to the plaintiff. Under the bill, if the plaintiff accepts the offer, the court is to be notified in writing and a judgment rendered. If, however, the plaintiff rejects the settlement offer, it is withdrawn and considered inadmissible, and the civil action presumably proceeds to a trial.

Should the judgment rendered after a trial be less favorable than the settlement offer previously rejected by the political subdivision, the bill provides that the plaintiff must assume responsibility for the costs incurred by the defendant. In researching the fiscal impact of the bill, LSC fiscal staff did not assign a degree of likelihood to the aforementioned scenario, but instead assumed that it was simply a possibility. The timing, frequency, and magnitude of such outcomes are uncertain and arguably problematic to predict. It is unclear how this provision will affect the existing dynamics in civil actions in which a political subdivision is a defendant and as the defendant would be permitted to make an offer of judgment that, if rejected, will potentially lead to the recovery of its costs. Whether the resulting net effect on the revenues and expenditures of the political subdivision will exceed minimal is uncertain.

¹ Minimal is defined as the estimated annual cost no more than \$5,000 for any affected county, city, or township with a population of 5,000 or more, or a school district with an average daily membership (ADM) of 1,000 or more. For villages or townships with a population under 5,000 or a school district with an ADM under 1,000, minimal is defined as an estimated annual cost no more than \$1,000. For the state, minimal is amount estimated at less than \$100,000 per year.