



Sub. H.B. 294

123rd General Assembly
(As Passed by the House)

Reps. Willamowski, DePiero, Grendell, Hollister, Krebs, Pringle, Taylor, Terwilleger, Barrett, Salerno, Flannery, Amstutz, Jolivette, Mead, Vesper, Maier, Core, Tiberi, Buchy

BILL SUMMARY

- Supplements existing law's execution procedures for the recovery of taxed court costs with a "certificate of judgment" collection mechanism under which an entry of judgment that includes a grant of judgment for court costs constitutes an order authorizing the clerk of a court to issue in a specified manner a certificate of judgment against the person who is liable for the payment of the court costs.
- Authorizes the clerk of a court to enter into contracts with one or more public agencies or private vendors for the collection of amounts due under judgments for costs after complying with the competitive bidding procedures of the County Commissioners Law, obtaining the approval of the contract terms by the legislative authority associated with the court, and ensuring that the contract terms include provisions for oversight of the agency's or vendor's collection activities by the clerk of the court and the legislative authority associated with the court.

CONTENT AND OPERATION

Background

Statutory provisions specify or otherwise control the *nature* and *amount* of the regular court costs (e.g., filing fees) that the Supreme Court, courts of appeals, Court of Claims, courts of common pleas, municipal courts, county courts, and mayor's courts generally must charge and collect in connection with civil and criminal actions, proceedings, and appeals. In relatively recent times, the General Assembly also has required certain courts to collect specified types of additional court costs (sometimes denoted "fees") in certain civil or criminal actions,

proceedings, or appeals in order to provide funding for specified programs or to provide funding for aspects of the operation of Ohio courts (e.g., computerization).

Statutory provisions *in conjunction with* rules of court adopted by the Ohio Supreme Court pursuant to Article IV of the Ohio Constitution govern the *party in favor of whom* and the *party against whom* an Ohio trial or appellate court must or may grant an award of court costs. Ohio court decisions recognize the General Assembly's authority to define the items that comprise court costs that potentially may be awarded to a party in a civil or criminal action, proceeding, or appeal and clarify whether particular items are awardable court costs or merely personal expenses of litigants. In Ohio, awardable court costs generally do not include attorney's fees of a prevailing party in the absence of a statutory authorization of an award of those fees. (See **COMMENT 1** and **2**.)

Civil actions in general

Existing law

Statutory law generally requires Ohio courts to *tax* and enter of record separately the court costs of the parties to *all* actions, motions, and proceedings (sec. 2335.18--not in the bill). Several statutory provisions (one of which is contained in the bill) appear to focus on *civil actions and proceedings* and to provide (1) that, after a judgment is rendered in a "cause" (apparently meaning a *civil* action or proceeding), the court must carry the court costs of the "recovering" party (i.e., a prevailing plaintiff or defendant) into the recovering party's judgment together with that party's recovered debt or damages (i.e., assuming that party is the plaintiff) and (2) that the trial court must separately state in the record or docket entry pertaining to the "cause" the court costs of the "party against whom the judgment is rendered" (i.e., the losing plaintiff or defendant). A party in whose favor *a judgment for court costs* is so rendered is prohibited from releasing, satisfying, or discharging any of the awarded court costs unless that party previously has paid the costs to the clerk of the court, the costs have been paid to the person entitled to them, or the costs have been legally assigned or transferred to that party by the persons in whose names the costs stand taxed upon the record or docket. (Sec. 2335.19.)

Existing statutory law permits a "party recovering judgment in a cause" who is awarded court costs to collect the court costs from the *party against whom they are taxed* through execution proceedings on the judgment. Thus, if the party recovering judgment is a prevailing plaintiff, that party may commence execution proceedings against the losing defendant's real or personal property and recover from the property's sale the prevailing plaintiff's awarded damages, judgment interest, and court costs. (Sec. 2335.24; sec. 2335.20--not in the bill.)

Under certain circumstances, existing law also permits the clerk of the court involved in a "cause" to commence special execution proceedings against the *party indebted to the clerk or another person* to compel that party to pay *that party's own court costs*. The circumstances are (1) when the "party recovering judgment in a cause" has neglected to immediately commence execution proceedings on the judgment and (2) when execution proceedings of that nature have been undertaken but the execution does not result in the satisfaction of the taxed court costs. Under either circumstance, the clerk may commence execution proceedings for the clerk's own benefit or must commence execution proceedings if requested to do so by a person "entitled to fees in the bill of costs taxed against either party" (sec. 2335.21--not in the bill).

Upon demand to the clerk of the court involved, the party who is responsible for the payment of court costs is entitled to an *itemized bill of the court costs* owed. The clerk must "make, sign, and deliver" the itemized bill without charge. Upon making a demand of that nature, the party cannot be compelled to pay the taxed court costs until the clerk makes and delivers the itemized bill with a receipt for any previously paid costs. (Sec. 2335.32--not in the bill but cross-referenced in the bill.) (See **COMMENT 3**.)

Operation of the bill

Certificates of judgment for court costs. The bill provides, as in existing law, that on the rendition of judgment in any cause *in any court* (added by the bill), the costs of the recovering party, together with the party's debt or damages, must be carried into the party's judgment, and the costs of the party against whom that judgment is rendered must be separately stated in the record or docket entry (sec. 2335.19(A)). The bill supplements existing law's execution procedure to recover taxed court costs with a new *certificate of judgment* collection mechanism. The bill provides that an entry of judgment that includes a grant of judgment for costs is an order that authorizes the clerk of the court to issue in a specified manner (see below) a certificate of judgment against the person who is liable for the payment of the court costs. The procedure for issuing the certificate of judgment is as follows (sec. 2335.19(B) and (C); sec. 2335.32--not in the bill):

(1) The clerk of a court who wishes to issue a certificate of judgment for costs pursuant to a judgment for costs first must provide *an itemized bill of fees and costs* to the person who is liable for costs under the judgment (hereafter, the liable person). The clerk must provide the itemized bill either upon the request of the liable person as specified in R.C. 2335.32 or without the liable person's request.

(2) If the liable person does not pay the fees and costs within 30 days after the clerk provides the itemized bill, the clerk must send the liable person a *notice requesting payment* of the fees and costs as stated in the itemized bill.

(3) If the liable person does not respond to that notice with full payment of the fees and costs within 30 days, the clerk must send the liable person a second notice requesting payment of the fees and costs.

(4) If 90 days elapse from the date that the clerk provides the itemized bill and if the liable person has not paid the full amount of the fees and costs pursuant to the itemized bill and the notices requesting payment, the clerk may issue a certificate of judgment against the liable person for the unpaid fees and costs.

Collection contracts. The bill also authorizes the clerk of a court to enter into contracts with one or more public agencies or private vendors for the collection of amounts due under judgments for costs. The amounts to be collected may include any interest that is due on a judgment for the costs. Before entering into or renewing a contract of that nature, the clerk of a court must do the following (sec. 2335.24(B)(1)):

(1) Comply with the competitive bidding procedures set forth in the County Commissioners Law (secs. 307.86 to 307.92--not in the bill). For purposes of complying with the competitive bidding procedures in that Law, the clerk of the court is considered the contracting authority.

(2) Obtain the approval of the terms of the contract by the legislative authority associated with the court (see **COMMENT 4**);

(3) Ensure that the prospective contract's terms include one or more provisions for oversight of the public agency's or private vendor's collection activities by both the clerk of the court and the legislative authority associated with the court.

COMMENT

1. The statutes pertaining to *regular court costs* in Ohio courts are: R.C. 2503.17(A)--Supreme Court; R.C. 2303.20--courts of appeals and courts of common pleas; R.C. 2743.09(F) and 2303.20--Court of Claims; R.C. 1901.26(A)(1)--municipal courts; R.C. 1907.24(A)(1)--county courts; and R.C. 1905.08--mayor's courts.

2. (a) Civil Rule 54(D) specifies that, except when express provision therefor is made either in a statute or the Civil Rules, "costs shall be allowed to the prevailing party unless the court otherwise directs." This provision appears to

require a court, in general, to award court costs *to the prevailing party* in a civil action, whether that party is the plaintiff or the defendant. However, the provision gives the court *discretion* to otherwise direct the payment of court costs (e.g., to require the prevailing party to pay that party's own court costs). In addition, it subjects both "the prevailing party rule" and its "court discretion exception" to statutory or Civil Rules provisions that expressly govern court costs awards in specified civil actions. See *Vance v. Roedersheimer* (1992), 64 Ohio St.3d 552 (Civil Rule 54(D) "grants the court discretion to order that the prevailing party bear all or part of his or her costs."); *Ohio Edison Co. v. Franklin Paper Co.* (1985), 18 Ohio St.3d 15 ("Civil Rule 54(D) is not a grant of an absolute right of costs to be allowed to the prevailing party."); *Carr v. Lunney* (1995), 104 Ohio App.3d 139; *Coleman v. Jagniszczak* (1995), 104 Ohio App.3d 413; *Shipman v. Alamo Rent-A-Car, Inc.* (1990), 70 Ohio App.3d 333; *Gnepper v. Beegle* (1992), 84 Ohio App.3d 259 (" . . . [The] Eighth District Court of Appeals established a two-step analysis to determine whether an expense is allowable as a taxable cost under Civ. R. 54(D). The first step of the inquiry is to determine *whether an expense is a taxable litigating expense or a personal expense*; the second is to decide whether the expense should be taxed as a cost in the particular case. . . . "); and *Cooper v. Morris* (1997), 84 Ohio Misc.2d 1 (meaning of prevailing party).

(b) Ohio court decisions also have consistently held that the General Assembly controls the nature of *awardable* court costs. Thus, a court may award a prevailing party under Civil Rule 54(D) only those court costs that the General Assembly has authorized to be awarded. In *Centennial Ins. Co. v. Liberty Mut. Ins. Co.* (1982), 69 Ohio St.2d 50, 50-51, the Ohio Supreme Court stated in this regard as follows:

This court has consistently limited the categories of expenses which qualify as "costs." "Costs, in the sense the word is generally used in this state, may be defined as being the statutory fees to which officers, witnesses, jurors and others are entitled for their services in an action * * * and which the statutes authorize to be taxed and included in the judgment * * *. * * * Costs did not necessarily cover all of the expenses and they were distinguishable from fees and disbursements. They are allowed only by authority of statute * * *." . . .

Today, we reaffirm the principle that "(t)he subject of costs is one entirely of statutory allowance and control." . . .

See also *State, ex rel. Gravill, v. Fuerst* (1986), 24 Ohio St.3d 12; *Sorin v. Bd. of Edn.* (1976), 46 Ohio St.2d 177; and *Benda v. Fana* (1967), 10 Ohio St.2d 259 ("The costs that may be fixed and taxed in a civil action in Ohio are specifically set out in the Revised Code. . . . [Costs] do not include expenses of litigation that are not specifically provided for by statute)."

3. (a) Under existing law, upon the rendition of judgment in a "cause," the clerk of a court of common pleas must make out and file with the papers in the "cause" an itemized bill of the clerk's costs. The clerk is prohibited from issuing an execution in any "cause" for, or receiving, the clerk's or another officer's costs unless that itemized bill is rendered (sec. 2303.28--not in the bill).

(b) In Ohio, a plaintiff in a civil action *may be required* to make an "advance deposit" of certain court costs when the plaintiff files the complaint commencing the action (e.g., an advance deposit of the requisite *filing fees*). Existing sections 1901.26, 1907.24, and 2323.31 (not in the bill) permit municipal courts, county courts, and courts of common pleas to require *by rule* the making of advance deposits for "the filing of any civil action or proceeding or (in the case of a municipal or county court) an advance deposit when a jury trial is demanded. Under certain circumstances, the courts may waive these requirements (e.g., a plaintiff's affidavit of inability to make a required deposit).

Thus, some of a plaintiff's filing fees and other court costs may be paid in advance *to the clerk of the court* while other court costs may await payment to the clerk after judgment is rendered in a civil action. The decision of the Court of Appeals for Cuyahoga County in *White v. White* (1977), 50 Ohio App.2d 263, explains how *practically* taxed court costs will be collected in light of advanced and non-advanced court costs:

FN1. . . .

In summary, if a party pays his costs and then recovers judgment for his costs, he can collect them from the other party. If a party has not paid his costs and obtains a judgment for his costs, he may collect the costs from the other party and then pay the clerk, or, if he does not effect collection, the clerk may execute and make the prevailing party pay the costs he incurred. The prevailing party would then have to recoup his costs from the other party under the judgment. The party incurring the costs, however, remains primarily liable to the clerk of courts for the costs incurred at his instance. Naper v. Bowers (1834), Wright 692; In re Kaffenberger's Estate (1942), 71 Ohio App. 201, 48

N.E.2d 885. This means that the clerk may execute against the party awarded costs for those costs incurred by him without first executing against the party against whom costs were awarded.

50 Ohio App.2d at 269 (emphasis added).

4. The bill defines "legislative authority" as follows: (a) it has the same meaning as in R.C. 1901.03(B) if the clerk of the court involved is the clerk of a municipal court--under that provision, it means the legislative authority of the municipal corporation in which a municipal court, other than a county-operated municipal court, is located, and the respective board of county commissioners of the county in which a county-operated municipal court is located, and (b) if the clerk of the court involved is the clerk of a county court or a court of common pleas, it means a board of county commissioners. (Sec. 2335.24(B)(2).)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	04-09-99	p. 389
Reported, H. Civil & Commercial Law	06-09-99	p. 805
Passed House (99-0)	06-10-99	p. 818

H0294-PH.123/rss

