

Fiscal Note & Local Impact Statement

125th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL: **Am. Sub. H.B. 292** DATE: **May 12, 2004**
STATUS: **As Passed by the Senate** SPONSOR: **Rep. Oelslager**
LOCAL IMPACT STATEMENT REQUIRED: **No — Minimal cost**

CONTENTS: **Establishes minimum medical requirements for filing certain asbestos claims, specifies a plaintiff's burden of proof in tort actions involving exposure to asbestos, establishes premises liability in relation to asbestos claims, and prescribes the requirements for shareholder liability for asbestos claims under the doctrine of piercing the corporate veil**

State Fiscal Highlights

STATE FUND	FY 2004 – FY 2005	FY 2006	FUTURE YEARS
General Revenue Fund			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Potential one-time effect in terms of civil caseload backlog and reduced administrative efficiency	Potential decrease	Potential annual increase
Other State Funds			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	- 0 -	- 0 -	Potential annual decrease

Note: The state fiscal year is July 1 through June 30. For example, FY 2004 is July 1, 2003 – June 30, 2004.

- **Healthcare expenditures.** It is difficult to establish a direct empirical or causal connection between the bill and its fiscal effects on the state, particularly in terms of various healthcare expenditures. There is likely some proportion of medical costs incurred annually by the state that are the result of or directly affected by the current liability system. It is not unreasonable to conclude therefore that the bill's provisions relative to establishing certain medical requirements for filing asbestos-related claims and limiting successor asbestos-related liability might limit future state expenditures.
- **Courts of appeals.** The caseloads of certain courts of appeals appear likely to experience a one-time increase as a result of applications to reconsider those asbestos-related tort actions that have been administratively dismissed by the courts of common pleas for not providing the required prima facie evidence of bodily injury. While difficult to calculate a precise cost per appeal, that one-time cost would likely be borne in terms of increased backlogs and reduced administrative efficiency, most likely occurring during the time period covering FYs 2004 through 2005, but possibly extending beyond FY 2005.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2004	FY 2005	FUTURE YEARS
Counties			
Revenues	Potential loss in filing fee revenues	Potential loss in filing fee revenues	Potential annual loss in filing fee revenues
Expenditures	Potential decrease in civil justice system expenditures	Potential decrease in civil justice system expenditures	Potential annual decrease in civil justice system expenditures

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.** The asbestos-related tort action cases affected by the bill are most likely handled by courts of common pleas due to the dollar amount of the damages sought. The net effect of the bill's various changes to civil practice and procedure in relation to asbestos-related claims is potentially that fewer such actions will be filed in courts of common pleas by plaintiffs to recover asbestos-related damages or that such actions may be curtailed. If there were in fact a reduction in the number of asbestos-related tort actions filed or a curtailment to such actions, there would in all likelihood be an overall operational savings realized in various courts of common pleas resulting from a decrease in judicial dockets and in the related workload of other court personnel. Whether the resulting savings in annual operating costs for any given court of common pleas might exceed minimal is uncertain. If the number of asbestos-related tort actions was reduced or such actions were

curtailed, courts of common pleas will likely see a loss in various related filing fee revenues.

Detailed Fiscal Analysis

Operation of the bill

The bill makes changes to civil practice and procedure relative to establishing minimum medical requirements for filing certain asbestos-related claims, and specifies a plaintiff's burden of proof in certain tort actions.

Asbestos claims

Under the bill, a cause of action for bodily injury caused by exposure to asbestos accrues, or arises, upon the date on which the plaintiff is informed by competent medical authorities that the plaintiff has an injury related to the exposure or upon the date on which by the exercise of reasonable diligence the plaintiff should have known that the injury was related to the asbestos exposure. The bill requires that tort actions alleging physical illness or impairment as the result of asbestos exposure include a written report and supporting test results constituting prima facie evidence of a linkage between the alleged exposure and the resulting illness or impairment.

The net effect of these changes relative to asbestos-related claims and liabilities will likely be to eliminate or curtail some causes for action involving alleged asbestos exposure and resulting illness or impairment.

State fiscal effects

It is difficult to establish a direct empirical or causal connection between the bill and its fiscal effects on the state, particularly in terms of healthcare expenditures related to asbestos claims. There is likely some proportion of such medical costs incurred annually by the state that are the result of or directly affected by the current liability system. It is not unreasonable to conclude therefore that state healthcare expenditures may experience some decrease as a result of the bill. The bill's provisions relative to the establishment of certain medical requirements for filing asbestos-related claims and the limitation of successor asbestos-related liability might limit future state expenditures.

Courts of appeals

If a judge dismisses a plaintiff's case for lack of prima facie evidence supporting an asbestos-related tort action, the bill gives that plaintiff the right to appeal such a dismissal in the appropriate court of appeals. There are 12 courts of appeals in Ohio, the judges of those courts are paid from the state treasury, and many of the court's employees, e.g., reporters, law clerks, secretaries, and other necessary employees are paid from the state treasury as well.

The right to appeal means that certain courts of appeals will likely experience a one-time increase in their caseloads as a result of applications to reconsider those asbestos-related tort actions that have been administratively dismissed by courts of common pleas. While difficult to calculate a precise cost per appeal, that one-time cost would likely be borne in terms of increased backlogs and reduced administrative efficiency, most likely occurring during the time period covering FYs 2004 and 2005, but possibly extending beyond FY 2005.

Local fiscal effects

Local civil justice systems generally

The net effect of the bill's changes to civil practice and procedure in relation to certain asbestos-related claims will potentially be that fewer tort actions will be filed by plaintiffs to recover asbestos-related damages or that such actions may be curtailed.

If there were in fact a reduction in the number of asbestos-related tort actions or such actions are curtailed, there would in all likelihood be an overall savings realized in various local civil justice systems resulting from a decrease in judicial dockets and in the related workload of other court personnel. The asbestos-related tort action cases affected by the bill are likely handled by courts of common pleas, which hear professional tort actions, product liability actions, and all civil cases in which the amount in controversy exceeds \$500. Municipal and county courts are permitted to handle civil actions in which the amount in controversy does not exceed \$15,000.

If the number of asbestos-related tort actions was reduced or such actions were curtailed, the affected courts will likely see a loss in various related filing fee revenues. However, there would also be a savings realized by those affected courts in terms of their personnel and related operating costs. Revenues from filing fees flow to county treasuries in the case of the courts of common pleas and county courts. In the case of a municipal court, these revenues flow to the treasury of the municipal corporation within which that court is located.

Courts of common pleas

The bill's provisions will primarily affect asbestos-related tort actions filed in courts of common pleas given the relatively large dollar amount in damages likely being sought. The net effect of the bill's various changes to civil practice and procedure in relation to asbestos-related

claims is potentially that fewer actions will be filed in courts of common pleas by plaintiffs to recover asbestos-related damages or that such actions may be curtailed. If there were in fact a reduction in the number of asbestos-related tort actions filed or a curtailment to such actions, there would in all likelihood be an overall operational savings realized in various courts of common pleas resulting from a decrease in judicial dockets and in the related workload of other court personnel. Whether the resulting savings in annual operating costs for any given court of common pleas might exceed minimal is uncertain.

Municipal and county courts

It appears unlikely that the bill will noticeably affect, if at all, the annual operating expenditures and revenue generating activities of municipal and county courts.

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