

Report on Public Policy Position

Name of committee:

Civil Procedure and Courts Committee

Contact person:

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Bill Number:

[HB 4953](#) (Palmer) Environmental protection; other; reimbursement of costs and attorney fees for actions under NREPA; provide for. Amends [1994 PA 451](#) (MCL [324.101](#) - [324.90106](#)) by adding sec. 1111.

[HB 5037](#) (Agema) Environmental protection; other; legal actions by department of environmental quality; require department to pay defendant's legal fees if unsuccessful. Amends [1994 PA 451](#) (MCL [324.101](#) - [324.90106](#)) by adding sec. 1106.

Date position was adopted:

October 20, 2007

Process used to take the ideological position:

Position adopted after discussion and vote at a scheduled meeting.

Number of members in the decision-making body:

20

Number who voted in favor and opposed to the position:

7 Voted for position

2 Voted against position

4 Abstained from vote

7 Did not vote

Position:

Oppose with recommended amendments

Explanation of the position, including any recommended amendments:

The majority of the members voting opposed the bills, essentially because of disagreement with adopting a one-sided "loser pays" principle in this specific kind of case.

But the committee voted unanimously that if the bills are adopted (1) they should not mandate the imposition of attorney fees, but rather give the court discretion to award them, and (2) HB 4953 should refer to "actual reasonable attorney fees", as HB 5037 already does.

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.

<http://legislature.mi.gov/doc.aspx?2007-HB-4953>

<http://legislature.mi.gov/doc.aspx?2007-HB-5037>

FOR LEGISLATIVE ISSUES ONLY:

This position falls within the following Keller-permissible categories:

- The regulation and discipline of attorneys
- ✓ The improvement of the functioning of the courts
- ✓ The availability of legal services to society
- The regulation of attorney trust accounts
- The regulation of the legal profession, including the education, the ethics, the competency, and the integrity of the profession.

Keller-permissible explanation:

The award of attorney fees to the party that prevails in litigation will have effects on parties' willingness to seek redress in the courts. The award of attorney fees is a function that would be performed by the trial courts.