



The Voice of Small Business

## **MICHIGAN**

**To:** Honorable Members of the House Judiciary Committee  
**From:** Charles Owens, State Director  
**Date:** November 27, 2018  
**RE:** Senate Bills 100 and 101

We are writing to ask your support for Senate bills 100 and 101 that would end the unfair advantage that state agencies have when dealing with small business owners in regulatory disputes.

This legislation would require a state agency to pay the legal costs of the prevailing party when that state agency loses a lawsuit involving a regulatory issue.

This change would curb the current approach by state departments and agencies of telling a citizen or business owner that if they don't like the "deal" a state agency proposes to resolve an issue they can "take it to court". Agencies use this tactic in place of good faith negotiation because they know that taxpayers and business owners will have to settle because they do not have the financial ability to fight the state (who has an almost unlimited supply of taxpayer dollars to spend on litigation) in court.

While existing law does require a state agency to pay the court costs of a prevailing party in a lawsuit, for all practical purposes the state rarely pays when they lose. The way the current language is written limits this provision to cases that are considered "frivolous" by the presiding officer in the hearing. In most cases the "presiding officer" is an employee of the state. In addition, current law does not allow anyone with a net worth of more than \$500,000, or an owner of a business with a net worth exceeding \$3,000,000 or with more than 250 employees to be awarded court costs if they prevail against the state. While it may seem that business owners with this kind of net worth should be able to pay their own court costs, every business owner knows that net worth does not translate into cash in the bank for fighting an unfair rule dispute with a state agency that has unlimited legal resources.

The change in the law made by Senate Bills 100 and 101 would encourage state agencies and departments to work with permit applicants, property owners, taxpayers and business owners to resolve issues rather than have department staff present constituents with an ultimatum – to do what the department wants or else take their case to court and incur steep costs - even if they prevail.

Again, we ask you to report Senate bills 100 and 101 from Committee and we thank you for your support of Michigan's small business owners.