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COURT FEES, COURT FUNDING

House Bill 4873 (Substitute H-2) First Analysis (7-22-93)

Sponsor: Rep. Michael J. Griffin
Committee: Appropriations

THE APPARENT PROBLEM:

Financial problems for state courts have been worsening for some time. Burgeoning caseloads, increasing expenses, and the state's failure to fulfill its 1980 promise to assume funding all have contributed to a growing clamor for something to be done. In response to a myriad of concerns about current court fee and funding structures, statutory revisions have been proposed.

THE CONTENT OF THE BILL:

The bill would amend the Revised Judicature Act (MCL 600.880 et al.) to increase or institute various fees for district courts, circuit courts, and probate courts, eliminate other fees, and generally allocate increases to a newly-created state court fund, which would provide funding for trial court operations statewide and for civil legal services for indigents. (Where specific increases would not go to the state court fund, they would be retained locally, as a replacement for fee revenue lost through eliminated fees.) Most filing fees would increase annually for the next five years; at the same time, the relative proportions received by Wayne County trial courts and outstate trial courts from the trial court fund would shift. Wayne County trial courts would receive a decreasing percentage of the fund over the next five years, going from 28 percent to 23 percent, while outstate trial courts would receive an increasing percentage, going from 44 percent to 49 percent. Civil legal services for indigents would receive a fixed percentage of 23 percent, while the state court administrative office would receive a fixed percentage of 5 percent. The bill also would eliminate the sunset on the \$2 surcharge on various filing fees; that surcharge funds the community dispute resolution program, which thus would be made permanent. The bill would take effect October 1, 1993. Further details follow.

Probate courts. The probate court fee system would be substantially revised. At present, a \$15 fee is assessed for any of several specified petitions

or motions, with the fee being fully dedicated to the judges' retirement system. The bill would replace this arrangement with separate filing fees and motion fees. Filing fees generally would be \$60, increasing by \$10 annually to \$100. However, only a \$25 fee would be charged for commencing a property proceeding (e.g. probating a will) involving an estate of less than \$5,000. Newly instituted would be a \$50 filing fee for commencing a guardianship or limited guardianship proceeding (thus addressing costs imposed by 1988 guardianship reforms). No fee would be charged for commencing a proceeding under the Mental Health Code. The judges retirement system would get \$21 of each \$60 (and annually increasing) filing fee, with the balance going to the state court fund. The court fund also would get the other filing fees.

A \$15 motion fee for the probate court would be equally divided between the state court fund and the county, with the latter money being earmarked for probate court expenses. Newly instituted would be other fees: for annual accounting of a trust (\$25, earmarked for the state court fund), registering a trust (\$25), and bringing an appeal from the probate court to the court of appeals (\$25). The fee for depositing a will for safekeeping would be increased from \$5 to \$25.

Circuit Courts. At present, certain circuit court fees vary according to whether the court is in a county with a population of more or less than 100,000. (For example, although filing fees are the same, there is no motion fee in smaller counties, while a \$10 motion fee applies in larger counties. While the fee for demanding a jury is \$20 in smaller counties, it is \$30 in larger counties.) The bill would enact a uniform schedule of fees that would apply in all circuit courts. Filing fees would be increased from \$42 to \$62, with the increase going to the state court fund; annual increases would bring the filing fee to \$100 in fiscal year 1997-98, again with the increases going to the court fund. The \$2 surcharge on filing fees that funds the community dispute resolution

program, now scheduled to expire in 1996, would be made permanent. Motion fees would be increased to \$20 statewide, of which half would go the court fund. While various judgment fees and the nonjury fee (the fee for a trial without a jury) would be eliminated, several other fees retained locally would be increased: the jury demand fee (to \$60), fees for making an appeal to the court of appeals or the supreme court (from \$20 to \$25), and service fees for writs of garnishment and the like (from \$5 to \$15).

Counties also would retain a substantial portion of the increase in the fee for appealing to the circuit court; that fee would go from \$5 to \$60, increasing annually over five years until it reached \$100. A fixed \$15 would go to the state court fund, while the balance would be retained locally.

Various domestic relations matters would be affected. Filing fees for domestic violence injunctions and stalking injunctions would be eliminated. Fees for handling support payments would be increased from \$2 to \$3.25 per month; the county general fund would continue to get \$2, while the \$1.25 increase would go to the state court fund.

Fees for copies of records, now at \$1 per page, would be \$10 plus \$1 per page.

District courts. Filing fees for a civil action in district court, now at \$12 to \$32 depending on circumstances, would be increased to \$17 to \$52, with the increases going to the court fund. Small claims court filing fees, now at \$12 or \$22 depending on whether the amount involved is over or under \$600, would be increased to \$17 and \$32, with the increases going to the state court fund. The \$2 surcharge (for community dispute resolution) included in the various filing fees would be made permanent. Writ fees would increase from \$5 to \$15. The minimum fee for costs would rise from \$5 to \$8, with the increase going to the state court fund. Fees for trials would be eliminated, while the fee for demanding a jury would be increased to \$40.

A \$25 fee for appeals from the district court would be instituted, but related fees of \$2 (the "return fee") and \$5 ("the clerk and entry fee") would be eliminated.

The following chart has been provided by the state court administrative office.

Probate Court Fees			
Description	Current Fee	Proposed Fee	Last Raised
Filing fee - civil action or proceeding concerning an estate, trust, will or property *increases annually \$10 thereafter up to \$100	\$15	\$60*	1982
Filing fee - commencing a proceeding in which the estate, trust, will or property is less than \$5,000	\$15	\$25	1982
Filing trust registration or will for safekeeping	\$5	\$25	----
Fee for annual trust accounting	0	\$25	----
Filing fee - guardianship or limited guardianship proceeding	0	\$50	----
Filing fee - other proceedings *increases annually \$10 thereafter up to \$100	0	\$60*	----
Probate motion fee	0 - \$15	\$15	1982
Appeals from probate court	0	\$25	----

Circuit Court Fees			
Description	Current Fee ¹	Proposed Fee	Last Raised
Civil filing fee *increases annually \$10 thereafter up to \$100	\$40	\$60*	1982
Domestic relations TROs ²	\$40	0	----
Non jury fee	\$15	0	1970
Judgement fee	\$10	0	1970
Motion fee, large county	\$10	\$20	1982
Motion fee, small county	0	\$20	----
Separate judgments rendered	\$10	0	1970
Appeals to circuit court	\$5	\$60	----
Appeals from circuit court	\$20	\$25	
Jury demand fee, large county	\$30	\$60	1969
Jury demand fee, small county	\$20	\$60	
Writ of garnishment, attachment, execution, or judgment debtor discovery subpoena	\$5	\$15	
FOC disbursement fee	\$2/month	\$3.25/month	

District Court Fees			
Description	Current Fee ¹	Proposed Fee	Last Raised
Civil filing fee over \$1,750	\$30	\$50	1982
Civil filing fee over \$600	\$20	\$30	1982
Civil filing fee less than \$600	\$10	\$15	1982
Civil filing fee - other	\$30	\$50	
Civil filing fee - possession of premises	\$20	\$30	1982
Filing fee - small claims under \$600	\$10	\$15	1982
Filing fee - small claims over \$600	\$20	\$30	1982
Jury demand fee	\$10 - \$30	\$40	1969
Trial fee	\$10 - \$30	0	1982
Writ of garnishment, restitution, attachment, execution, or judgment debtor discovery subpoena	\$5	\$15	
Clerk/entry fee	\$5	0	1974
Return fee	\$2	0	1974
Minimum costs	\$5	\$8	1975
Appeals from district court	0	\$25	

¹A \$2 assessment fee is added to each filing fee for circuit and district court civil actions. The calculations in this chart for filing fees are based on the filing fee amount only, and the CDRP assessment is estimated separately. The CDRP assessment was added in 1988.

²A person seeking a temporary restraining order in a domestic relations situation must now pay the same filing fee as any circuit court action, unless the fee is waived for indigency. The proposal would, in effect, waive the filing fees for all domestic relations' TROs.

State court fund. The bill would create the state court fund, which would receive money allocated by the bill, together with the interest income of fund investments; money in the fund at the end of a fiscal year would remain in the fund, and not revert to the general fund. Disbursements from the fund would be made every three months, except for the first year (fiscal year 1993-94), in which the first disbursement could come as late as six months after the bill's effective date of October 1, 1993.

The fund would be divided between: the state court administrative office for oversight, data collection, and court management assistance; legal aid societies meeting criteria set by the bill; Wayne County trial courts, which currently receive state funding for court operations (the fund money would constitute the state funding of Wayne County trial courts); and outstate trial courts, which would thereby start receiving state funding for operational expenses. Wayne County trial courts would get 28 percent of the fund in the fund's first year (fiscal year 1993-94), decreasing annually to 23 percent in fiscal year 1997-98. Outstate courts would get 44 percent in fiscal year 1993-94, increasing annually to 49 percent in fiscal year 1997-98. The state court administrative office and legal aid societies would receive fixed percentages of 5 percent and 23 percent, respectively.

Revenue offsets for outstate courts. The bill would replace statutory language added by Public Act 438 of 1980, which calls for the state to gradually assume funding of all trial court operational expenses, with full state funding to have been attained by fiscal year 1988-89. The bill would instead promise that the legislature will fund at least 30 percent of all outstate trial court operational expenses commencing with fiscal year 1993-94.

The bill also would express a legislative intent that the state will fund the highest percentage of outstate trial court operational expenses, offset by an

equivalent percentage of court revenues, as available funds will allow, as determined by the legislature. Funds to which a county or district control unit would be entitled would be offset by the sum of court revenues collected by that county or district control unit in the 1992-93 state fiscal year plus any state funding to that county or control unit (including funding for trial court operational expenses, judges' salaries, friend of the court funds, and child care funds). (In other words, roughly speaking, a court is to receive 30 percent of expenses minus 30 percent of fees.) The actual amount of offset would be equal to the percentage of trial court operational expenses funded for the county or district control unit, unless fees exceeded expenses, in which case the offset would only bring state funding to zero (in other words, roughly speaking, courts could keep fees in excess of costs).

The state court administrative office (SCAO) would monitor trends in the ratio of trial court operational expenses to court revenues for each county and district control unit. Data for a county or district control unit would be compared to the benchmark year of 1991-92 and statewide trends. Upon discovering a significant difference from statewide trends, the SCAO would review the budget and management of the court(s) involved, and report to the House and Senate Appropriations Subcommittees on General Government. The legislature could in the following fiscal year authorize adjustments to funding from the state court fund.

Legal aid societies. Money in the state court fund earmarked for indigent civil legal services would be distributed to legal aid societies (that is, nonprofit corporations providing free civil legal assistance to indigents). Eligibility criteria and funding procedures would be prescribed by the bill. To be eligible, a legal aid society would have to receive or have received funding under the federal legal services corporation act (in Wayne County, the Legal Aid and Defender Association would be

included among eligible legal aid societies). Ten percent of the money earmarked for legal aid would go to societies providing services on a statewide basis, including support and training for legal aid societies and general services on a statewide basis for populations with special legal needs. The remaining 90 percent would be apportioned among legal aid societies on a per-county basis; apportionment would be based on the proportion of indigents in the population. The fund and distributions from it would be administered by the state treasurer, who would disburse revenues as directed by the state court administrator.

Assigned counsel. The bill would require trial courts to establish minimum standards for attorneys serving as assigned criminal counsel. Minimum standards would be have to be developed in consultation with a local or county bar association.

FISCAL IMPLICATIONS:

The state court administrative office reports fee increases would generate about \$18 million in additional revenues in the first year, with additional annual increases generating about an additional \$1 million each year through 1998, reaching \$22 million in that year. All of that additional revenue would go to the trial court fund. Sums received by Wayne county trial courts are expected to remain stable, and the portions of fees earmarked for retirement systems would remain the same. (7-14-93 and 7-21-93)

ARGUMENTS:

For:

The bill would provide the means of enabling the state to fulfill its longstanding promise to fund outstate trial courts, thus giving concrete expression to the constitutional principle of one court of justice. Most court fees have not kept pace of inflation or clerical costs, and increases, while significant, would not be oppressively large. While some may be concerned about limiting access to justice to people who can afford it, it should be noted that many fees can be waived by a judge. Moreover, by establishing a statutory funding source for legal aid societies, the bill will help to make the justice system more accessible for the poor. Provisions for funding offsets, while complicated, will help to ensure that limited state funding capability is directed to counties and district control units that need it most. Finally, much of the judicial

budget proposed by the House Appropriations committee is predicated on enactment of this bill. For example, the revenue increases anticipated under this bill made it possible to shift about \$800,000 in general fund money to the court of appeals; without the bill, it might not be possible to fully fund existing operations for the court, whose caseload burden is reaching legendary proportions.

Against:

By steeply hiking virtually all court fees, the bill would make justice more expensive, and limit access to the courts to those who have the means to pay. Some might argue that the bill represents another attempt to balance the budget on the backs of the taxpayers. Moreover, the bill falls far short of fulfilling the state's long-ignored promise to fund the courts.

POSITIONS:

The State Court Administrative Office supports the bill. (7-21-93)