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COURT FEES, COURT FUNDING

House Bill 4873 as enrolled
Second Analysis (1-19-94)

Sponsor: Rep. Michael J. Griffin
House Committee: Appropriations
Senate Committee: not referred

THE APPARENT PROBLEM:

Financial problems for Michigan 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 600.151a 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. Outstate trial courts would receive \$1.6 million annually; outstate trial courts also would receive an increasing percentage of the balance of the fund, going from 44 percent to 49 percent over the next five years. At the same time, Wayne County trial courts would receive a decreasing percentage, going from 28 percent of the balance of the fund to 23 percent. Civil legal services for indigents would receive a fixed percentage of 23 percent, except that for the first four years, \$2 million of this percentage would be allocated annually to the court of appeals to help alleviate its backlog. The state court administrative office would receive a fixed percentage of 5 percent.

The bill also would make permanent the community dispute resolution program, currently slated to expire at the end of 1995. The bill would take effect October 1, 1993, but could not take effect unless House Bill 4842 (which would redistrict and enlarge the court of appeals) also was enacted. 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 proceeding involving a "small estate" worth \$5,000 or less. 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, or for commencing a child protective proceeding or other juvenile proceeding under the juvenile 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, with priority for certain expenses of adult guardianship proceedings. However, the subjects of guardianship or conservatorship proceedings would be exempted from motion fees, and no motion fee would be charged for a motion to release restricted funds in the case of a conservatorship for a minor.

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Newly instituted would be other fees: 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. Each of these \$25 fees would be retained locally, and applied to probate court expenses in the same manner as motion fee revenue.

Fees would be waived for indigence, in whole or in part, upon a showing by affidavit of indigence or inability to pay.

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 bill would eliminate the January 1, 1996 sunset on funding for the community dispute resolution program (set at \$2 of each filing fee), thus making the program 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. The bill would require a support payer to pay to the friend of the court a disbursement fee of \$1.25 per month for every month or portion of a month that support or maintenance is required to be paid (this would be in addition to an existing service fee of \$2 per month). Of the \$1.25, 25 cents would go to the county's general fund, with the balance going 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 various civil actions 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 under or over \$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 \$9, with the increase going to the state court fund. Fees for trials (now at \$10 to \$30) would be eliminated, while the fee for demanding a jury (now at \$10 to \$30) 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 charts illustrate the fee changes.

Probate Court Fees			
Description	Current Fee	New Fee	Last Raised
Filing fee - civil action or proceeding *increases annually up to \$100	0 - \$15	\$60*	1982
Filing fee for an estate worth \$5,000 or less	0	\$25	1982
Filing trust registration or will for safekeeping	0 - \$5	\$25	----
Filing fee - guardianship or limited guardianship proceeding	0	\$50	----
Probate motion fee	0 - \$15	\$15	1982
Appeals from probate court	0	\$25	----
Certified copies, etc.	\$3 plus \$1/page	\$10 plus \$1/page	----

Circuit Court Fees			
Description	Current Fee	New Fee	Last Raised
Civil filing fee *increases annually up to \$100	\$42	\$62*	1982
Domestic relations TROs ¹	\$40	0	----
Non jury fee	\$15	0	1970
Jury demand fee, large county	\$30	\$60	1969
Jury demand fee, small county	\$20	\$60	
Motion fee, large county	\$10	\$20	1982
Motion fee, small county	0	\$20	----
Consolidated actions, separated judgments	\$10	0	1970
Judgment fee	\$10	0	1970
Appeals to circuit court *increases annually to \$100	\$5	\$60*	----
Appeals from circuit court	\$20	\$25	
Writ of garnishment, attachment, execution, or judgment debtor discovery subpoena	0	\$15	
FOC disbursement fee (in addition to a current service fee of \$2/month)	0	\$1.25/month	
Certified copies, etc.	\$1/page	\$10 plus \$1/page	----

District Court Fees			
Description	Current Fee	New Fee	Last Raised
Civil filing fee over \$3,000 or \$1,750 ²	\$32	\$52	1982
Civil filing fee over \$600	\$22	\$32	1982
Civil filing fee less than \$600	\$12	\$17	1982
Civil filing fee - other	\$32	\$52	
Civil filing fee - possession of premises	\$22	\$32	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	\$9	1975
Appeals from district court	0	\$25	
Certified copies, etc.	\$1/page	\$10 plus \$1/page	----

¹ A person seeking a temporary restraining order (TRO) in a domestic relations situation must now pay the same filing fee as any circuit court action, unless the fee is waived for indigence. The proposal would eliminate the filing fees for all domestic relations TROs.

² The current threshold for the higher filing fee is \$3,000. The bill would lower the threshold to \$1,750.

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. Outstate trial courts would get \$1.6 million annually, plus an increasing percentage of the remaining balance of the fund over the next five years; they would get 44 percent of the balance in the fund's first year (fiscal year 1993-94), increasing annually to 49 percent in fiscal year 1997-98. Wayne County trial courts would get 28 percent of the remaining balance in the fund's first year, decreasing annually to 23 percent in fiscal year 1997-98. The state court administrative office and legal aid societies would get fixed percentages of 5 percent and 23 percent respectively. However, from fiscal year 1993-94 through fiscal year 1996-97, \$2 million of the 23 percent allocated for legal aid would be diverted

each year to the court of appeals to help to alleviate its backlog.

Funding pledge; revenue offsets. The bill would replace statutory language added by Public Act 438 of 1980, which called 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 31.5 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. (In other words, roughly speaking, courts are to receive 31.5 percent of expenses minus 31.5 percent of the sum of fees, state payments for judges salaries, Michigan friend of the court funds, and child care funds.) 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 1990-91 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). 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 1990-91 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 funding. Money in the state court fund earmarked for indigent civil legal services would be distributed to legal aid societies and other "service providers" (which could include individual attorneys) under contracts with the state bar foundation; contract applications would have to include information on services as prescribed by the bill. Contracts would have to be awarded so that indigent legal services were provided in every area of the state, on a nonprofit basis. Contracts would have to require service providers to determine priorities among client needs, and obtain regular input from clients regarding needs. Service priorities generally would have to include matters of residential housing and domestic violence. Service providers would have to comply with American Bar Association standards for the provision of civil legal assistance to indigents.

The amount of funding under any contract would be proportional to the number of indigents residing in the service area, compared to the number of indigents in the state. At least ten percent of the total amount awarded under all contracts would have to go to civil legal services provided on a statewide basis for legal aid training, for legal aid for Native Americans, and for legal aid for migrant workers.

With the approval of the state court administrator, the state bar foundation would receive one percent of the amount distributed (or \$40,000, whichever was more) as reimbursement for performing its duties under the bill.

FISCAL IMPLICATIONS:

The Senate Fiscal Agency has estimated that fee increases would generate at least \$19.6 million for the state court fund in the 1993-94 fiscal year. Of that sum, Wayne County trial courts would receive \$5 million, outstate trial courts would receive \$9.5 million, the court of appeals would receive \$2 million, the legal aid program would receive \$2.1 million, and the state court administrative office would receive \$900,000. Twenty-four outstate funding units have been identified as eligible to receive funds during the 1993-94 fiscal year. Annual fee increases are expected to generate an additional \$1 million annually; thus, in four years, the state court fund is expected to be receiving \$23.6 million annually. (Notes on the Budget and Economy, Senate Fiscal Agency, September/October 1993.)

ARGUMENTS:

great as they are, the bill should not divert additional millions of dollars to civil legal services.

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 fees could 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, the bill would temporarily provide desperately needed funding for the court of appeals, 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.

Against:

The bill falls far short of fulfilling the state's long-ignored promise to fund the courts. Only a small percentage of outstate court costs would be funded, and only 24 counties and local funding units (other than Wayne) would be eligible for funding in the bill's first year of implementation.

Against:

The bill would take locally-generated revenue and send it to the state to be used for various purposes. Of particular concern is the way the bill would devote scarce revenues to legal aid societies and other providers offering civil legal assistance to indigents--something that is both ill-timed and unnecessary. Since 1992, legal aid programs have received a portion of the interest on lawyers' trust accounts; that money, distributed by the state bar foundation under administrative order of the Michigan Supreme Court, will amount to nearly \$743,000 this year. With court funding needs as