



**House
Legislative
Analysis
Section**

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RESTRUCTURE COURT SYSTEM

**House Bill 5158
House Joint Resolution S
House Joint Resolution T**

**Sponsor: Rep. Michael Nye
Committee: Judiciary and
Civil Rights**

Complete to 11-27-95

A SUMMARY OF HOUSE BILL 5158 AND HOUSE JOINT RESOLUTIONS "S" AND "T" AS INTRODUCED 9-27-95

The bill would amend the Revised Judicature Act (MCL 600.151 et al.) to reconfigure a number of the courts in Michigan and to change how the court system is funded. The bill would establish a new trial court "unit" of general jurisdiction consisting of three component courts: a circuit court, a district court, and a new "family" court. The bill would establish a trial court unit in each county, with the exception of Wayne County, which would have two trial court units (one for Detroit and one for the rest of the county). It also would abolish the probate court, Detroit Recorder's Court (replacing it with the fifty-eighth judicial circuit), and the five existing municipal courts (which would become or be combined with a district court). The courts would be funded by a combination of court fees and fines (which generally would be kept locally rather than being sent to the state), county support (through provision of court facilities, supplies, and staffing), and state funding for judges' salaries and retirement without the option for local supplementation by local units of government. Finally, the bill would repeal the Revised Judicature Act's provisions on mediation of tort action and instead add new provisions regarding voluntary binding mediation and arbitration of civil cases other than divorce and medical malpractice.

House Joint Resolution S would amend the constitution to constitutionally authorize the proposed court reconfiguration and would require that all judges salaries be uniform. House Joint Resolution T would increase the state sales and use taxes by one cent to replace, in part, funding that is now directed to other entities but which, under the bill, would go to the newly reconfigured court.

More specifically, the resolutions and the bill would do the following:

House Joint Resolution S would amend the 1963 state constitution to allow the reconfiguration of the courts proposed in House Bill 5158. The resolution would eliminate the existing constitutional provisions governing (and references to) circuit and probate courts, and instead add references to trial court "units" of general jurisdiction. Instead of dividing the state into judicial "circuits" along county lines, the resolution would divide the state into county-based judicial "units." In each judicial "unit" there would be -- instead of one or more circuit judges, a probate court, and one or more statutorily established district courts -- "a family court, a circuit court, and a district court." The resolution would delete most of Article IV, section 18, which

House Bill 5158 and House Joint Resolutions S and T (11-27-95)

specifies that judicial salaries (for justices of the supreme court, judges of the court of appeals, circuit judges, and probate judges) be uniform and that allows salaries to be increased but not decreased "except and only to the extent of a general salary reduction in all other branches of government." This section of the constitution also requires that the annual salaries of circuit judges be set by law, and allows circuit judges to receive, in addition to their state salaries, additional salaries from counties so long as all circuit judges regularly holding court in the county receive the same amount. The resolution would amend this section to say instead that "Salaries of justices of the supreme court, of the judges of the court of appeals, and of the judges of trial courts of general jurisdiction shall be uniform and shall be determined as provided by law."

House Joint Resolution T would amend the state constitution of 1963 in the following ways.

(1) It would raise the sales and use taxes from 6 percent to 7 percent as of January 1, 1997, and allocate the proceeds from the additional 1 percent as follows:

-- 93 percent for transportation purposes, specifically planning, administering, constructing, reconstructing, financing, and maintaining state, county, city, and village roads, streets, and bridges;

-- 5 percent for the support of public libraries and county law libraries;

-- 1 percent for secondary road patrol and traffic accident prevention grants; and

-- 1 percent for highway safety and justice training as provided by law.

(2) It would eliminate the gas tax by specifying that, as of January 1, 1997, the legislature could not impose a specific tax directly or indirectly on fuels sold or used to propel motor vehicles on highways and aircraft without the approval of a majority of the qualified voters in the state.

(3) The resolution would **delete** the requirement that all fines assessed and collected in the counties, townships, and cities for any breach of the penal laws be exclusively applied to the support of public libraries and county law libraries.

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House Bill 5158

Current state court configuration. Currently, the state constitution vests the judicial powers of the state "exclusively in one court of justice," which is divided into "one supreme court, one court of appeals, one trial court of general jurisdiction known as the circuit court, one probate court, and courts of limited jurisdiction" established by the legislature by a two-thirds vote of members elected to and serving in each house (Article IV, section 1). The court of appeals currently is divided into four districts, with the number of appellate judges having grown from nine to 28 since 1963. Under the constitution, the circuit court is divided into judicial circuits along county lines (Article IV, section 11), as are probate court districts (Article IV,

section 15). The legislature can create, alter, or discontinue circuit court circuits, and can create or alter probate court districts of more than one county if the voters in the affected counties approve. Currently, there are 57 judicial circuits of the circuit court with 181 judgeships, and 78 probate court districts with 107 judgeships. The legislature also has the power to combine the office of probate judge with any judicial office of limited jurisdiction within a county.

In addition to the four constitutionally-based courts, there currently are three existing courts of limited jurisdiction established by law: the district court, municipal courts, and Detroit Recorder's Court. The largest of these statutory courts is the district court, which currently has 101 districts and 260 district judges. The district court was created by Public Act 154 of 1968, which both abolished and replaced justices of the peace, police courts, and most municipal courts with district courts. Municipal courts are statutorily authorized or established under Public Acts 279 of 1909 (Home Rule Cities) and 269 of 1933 (now repealed) to hear cases arising under city charters, ordinances, or regulations (MCL 780.221). Although the 1968 district court act abolished municipal courts and prohibits the creation of any new municipal courts, it did allow municipalities to keep their existing courts. Since passage of the 1968 act, the number of municipal courts has decreased to five, with six judges: Eastpointe (formerly East Detroit) in Macomb County, and four "Grosse Pointe" courts (Grosse Pointe, Grosse Pointe Park, Grosse Pointe Farms, and Grosse Pointe Woods) in Wayne County. The remaining statutorily created court is Detroit Recorder's Court, which has 29 judges and which is the only existing municipal court of record. Historically it can be traced back to the creation of the Detroit Mayor's Court of 1824, when Michigan was still a territory of the United States. In 1857, the Charter of the City of Detroit consolidated the Mayor's Court, the Police Court of 1850, and the criminal jurisdiction of the Circuit Court for the County of Wayne into the Recorder's Court. The court was established in state law in 1883 by Local Act 326.

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The new trial court unit.

The bill would add a new chapter (Chapter 4. Trial Court) to the RJA to create a new single trial court of general jurisdiction in each county as a "unit" consisting of a circuit court, a district court, and a family court. However, with the concurrence of the county board of commissioners and the supreme court, a trial court unit also could decide to combine the circuit, district, and family courts within that unit.

There would be two exceptions to this "one trial court unit per county":

- (1) Wayne County would have two trial court units, one for Detroit and one for the rest of the county; and
- (2) any two or more contiguous counties, with voter approval, could decide to establish a multi-county trial court unit.

Judges, public accountability. Each trial court unit would have at least one circuit court judge, one district court judge, and one family court judge, each of whom would serve in the court to which he or she was elected or appointed. Each candidate for one of the component

courts of the trial court unit would appear on the ballot separately from the names of the candidates for the other two trial court unit component courts.

Trial court unit judges would be required to do the following:

(1) Administer the operation of the component courts in that trial court unit, either jointly or through a chief judge elected by the trial court unit judges. Alternatively, a majority of the trial court unit judges could vote to establish and implement "any other reasonable procedure of administration" for their trial court unit, though if no chief judge were elected, the statutory duties of a chief judge would have to be assigned to one or more of the trial court unit judges as the judges determined;

(2) adopt procedures for assigning and reassigning case and for assigning judges between courts (if the judges of a trial court unit couldn't agree on such procedures, the supreme court would do it for them); and

(3) at least four times a year, publicly post the number of cases filed in his or her court, the number of cases finalized, and the number of full trial days held for that calendar quarter.

Assignment of trial court unit cases and judges. All assignments and reassignments of cases filed in a trial court unit would be made among the judges of that unit unless none were qualified and able to undertake a particular case. Judges of one trial court unit couldn't be assigned to serve in another trial court unit unless there was no judge in the unit needing help who was able to perform that work ("render that assistance").

Location of clerks' offices Whenever possible, the clerks of each component court of a trial court unit would be required to have offices at the same location. If a component court sat at the main county courthouse and at one or more locations within a county (or, in the case of multi-county trial court units, within the component counties), then the clerk at that court could have an office at each location. However, each additional location outside of the county courthouse would be administered by a deputy clerk only for filing purposes.

Role of family and juvenile agencies. State and public agencies that provide help to families or juveniles -- including the friend of the court, the circuit court marriage counselor, and the staff of the former probate court -- would be required to help the component courts of the trial court units ("in accordance with their jurisdiction").

Abolished courts. The bill would abolish Detroit Recorder's Court and the probate court (though one reference to the probate court remains in section 880b of the bill), as well as the five existing municipal courts. A new circuit court would be created in the city of Detroit, the probate court's functions would be divided among the component courts of the proposed trial court unit, and the municipal courts would become (or be merged with) district courts.

All files, records, and pending cases of recorder's court and the probate court would be transferred to the circuit court or the family court according to supreme court rules, and the circuit and family courts would have jurisdiction over the transferred cases as though the cases had started in that court. Orders and judgments of the probate court or Recorder's Court would

be appealable in the same way and to the same courts as before the transfer.

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The new circuit court.

The circuit court, which currently is the constitutionally-designated single court of general jurisdiction, would become one of the three component courts of the trial court unit, and would take over the probate court's jurisdiction of wills, estates, and trusts.

Jurisdiction. Currently, circuit courts have statutory jurisdiction in general over matters at common law ("as altered by the constitution and the laws of this state, and the rules of the supreme court"), equity, and as prescribed by rule of the supreme court (MCL 600.601). More specifically, the circuit court has jurisdiction in civil cases involving more than \$10,000 (MCL 600.8301) and in domestic relations cases (which includes actions for divorce, separate maintenance, marriage annulments, paternity, family support, injunctive relief, the custody of minors, the visitation of minors, and interstate child support actions). It has criminal jurisdiction over adult felony cases, juvenile felony cases waived from probate court (MCL 764.27), and certain serious misdemeanor cases. The circuit court also hears cases appealed from lower courts.

The probate court, whose proceedings are defined as civil rather than criminal, is generally divided into "probate" (wills and estates) and juvenile divisions. Under the court's probate division, the court has exclusive legal and equitable jurisdiction over the probating of wills and the administration of estates and trusts of deceased people (see MCL 700.21). Under its juvenile division, also known as "juvenile court," the probate court has exclusive original jurisdiction of delinquent children, which includes both "status" offenses (that is, offenses that apply only to minors, such as repeated disobedience to "reasonable and lawful" commands of parents or school truancy) and violations by children younger than 17 of municipal ordinances or state or federal laws (except for 15- and 16-year-olds who commit certain crimes punishable by a life sentence and who are "waived" by the prosecutor to adult court). Finally, the probate court has jurisdiction over name changes. (See The new family court and The new district court, below, for other areas currently under the jurisdiction of the probate court.)

Under the bill, the circuit court's jurisdiction would change as follows:

-- The court would keep its current jurisdiction in matters at common law (as amended constitutionally, by statute, and by supreme court rules), equity, and as prescribed by supreme court rules. It also would keep exclusive jurisdiction over adult felony cases and certain serious misdemeanors.

-- It would lose its current jurisdiction over domestic relations, except for divorce actions that didn't involve minor children of the parties to the divorce.

-- It would take over the current probate court's jurisdiction in cases concerning wills and decedent estates and trusts.

-- It would have concurrent jurisdiction with the district court in (a) all civil cases,

regardless of the amount of money involved, and (b) in cases of foreclosure on real estate and land contracts (currently under the exclusive jurisdiction of district courts).

-- It would have concurrent jurisdiction with both of the other unit courts (the family court and the district court) over name changes

Circuit court judges. Circuit court judges would take over certain probate functions (namely, estates and wills) currently performed by probate judges and would be disqualified from the kinds of probate proceedings and conflicting employment that apply to probate judges currently.

In each trial court unit, the circuit judge(s) could appoint probate registers and one or more deputy probate registers (currently, probate registers and deputy probate registers may be appointed by the probate judge or chief probate judge).

Taking of testimony. Currently, the RJA requires that certain kinds of testimony before a probate judge to be taken by an official court reporter or recorder on a recording device approved by the state court administrator, including testimony in (a) contested matters, (b) matters concerning the admission of mentally ill or developmentally disabled people to hospitals, (c) matters pertaining to people having a contagious disease, (d) other matters, as requested by "an interested party," and (e) as required by supreme court rule (MCL 600.859). The bill would amend these provisions to change "probate judge" to "circuit judge," and delete the requirement that testimony be taken in matters concerning the admission of mentally ill or developmentally disabled people to hospitals.

Appeals. Currently, a party to a proceeding in the probate court may appeal, by right, certain probate court orders to the court of appeals (including final orders regarding estates or trusts, certain adoption orders, and Drain Code condemnations [MCL 600.861]). Other orders, sentences, and judgments can be appealed by application to the circuit court (MCL 600.863).

Under the bill, parties to probate proceedings in the circuit court could appeal by right to the court of appeals final orders regarding estates or trusts and final orders in Drain Code condemnation cases.

New circuit court circuits. The bill would reconfigure the existing third judicial circuit, which currently consists of Wayne County, and create a new, fifty-eighth judicial circuit, with the number of judges yet to be specified. The new fifty-eighth circuit would consist of the city of Detroit, while the third circuit would consist of Wayne County except for the city of Detroit. Thus, the trial court unit in the city of Detroit would include the fifty-eight circuit court, while the trial court unit in the rest of Wayne County would include the third circuit court.

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The new family court.

The bill would add a new chapter to the RJA (Chapter 10. Family Court) that would create a new, "family" court and specify its jurisdiction and powers. The family court would

handle most of the domestic relations matters now split between the circuit and probate courts, as well as involuntary commitments under the Mental Health Code.

Jurisdiction. Currently, the probate court has legal and equitable jurisdiction over proceedings concerning guardianships, conservatorships, and protective orders (see MCL 700.21); exclusive legal and equitable jurisdiction over proceedings regarding fiduciaries (see MCL 700.5 and 700.21); emancipation of minors (MCL 722.4); Mental Health Code proceedings, including civil admissions of mentally ill adults and emotionally disturbed minors (MCL 330.1468, 330.1498n et seq.), guardianships of developmentally disabled people and their estates (MCL 330.1604 et seq.); adoptions (MCL 710.21 et seq.), acknowledgments of paternity (see MCL 700.111), name changes (MCL 711.1), and various health-related matters (such as kidney transplants, health threats to others, waiver of parental consent for minors' abortions, and durable power of attorney for health care proxy). In addition, the juvenile division of the probate court has exclusive original jurisdiction over abused or neglected children under the age of 18. The probate court also has concurrent jurisdiction with the circuit court in divorce custody matters where the circuit court waives jurisdiction, and concurrent jurisdiction of 17- and 18-year-old juveniles.

The bill would give exclusive jurisdiction to the family court over domestic relations cases (except for divorces without minor children involved) and, concurrently with the circuit and district courts, name changes. More specifically, the family court would have exclusive jurisdiction over the following domestic relations cases:

- * divorce ("and ancillary matters") involving minor children of the parties to the divorce;
- * guardians and conservators;
- * adoption (as well as cases involving certain children incapable of adoption);
- * juveniles under the juvenile division of the probate code;
- * the status and emancipation of minors;
- * child custody and child custody jurisdiction; and
- * paternity and child support.

Family court judges. Each unit of the trial court would have a family court and at least one family court judge. Family court judges would be nominated and elected under the provisions (including the eligibility requirements) of the Michigan Election Law, with the names of the candidates appearing on the ballot separately from the names of other candidates for judgeships. As is now the case with probate judges (MCL 600.811), family court judges' terms would begin on the January 1 immediately following election. If there were more than one family court judge in a trial court unit, their terms would be arranged in the same way as the terms of circuit court judges under the Michigan Election Law. As also is the case with probate judges, family court judges would qualify by taking the constitutional oath of office, and judges would subscribe the oath and file the oath in the county clerk's office.

Demands for jury trials. As is currently the case with regard to the probate court (MCL 600.857), if a party to an action in the proposed family court demanded a jury, the jury would be summoned and selected under Chapter 13 ("Jury Boards and Jurors") of the RJA. Any practices with regard to juries (including examinations, challenges, replacements, and oaths) that wasn't covered by the RJA would continue to be governed by supreme court rules. (There also would be a \$30 jury demand fee; see below.)

Waiver of fees. The bill would preserve the existing prohibition against the charging of fees for beginning proceedings under the Mental Health Code (MCL 600.880), for filing paternity acknowledgements (MCL 600.880), or, if the party filing the motion was the subject of the proceeding, filing guardianship or conservatorship proceedings (MCL 600.880b).

Costs. As currently is the case for probate courts (MCL 600.858), when it appeared "reasonable and proper," the family court could require a party to a proceeding, before a hearing, to give sufficient security for all costs that might be awarded against that party. In a contested case, the family court could award costs to either party to be paid by the other party "as justice and equity" required.

Appeals. Currently, certain probate court orders may be appealed as a matter of right to the court of appeals (MCL 600.861), including adoption orders, orders of disposition placing a child under the supervision of the court or removing the child from his or her family, and orders terminating parental rights. Under the bill, parties to family court proceedings could appeal as a matter of right all final orders of the family court to the court of appeals.

As currently is the case for probate court appeals (MCL 600.866), family court appeals would have to be on a written transcript of the record made in the court or on a record settled and agreed to by the parties and approved by the court. Appeals could not be tried de novo. Appeals would be governed by, and notice of appeals would have to be given to each interested party according to, supreme court rule.

County role in family courts. As is now the case with probate courts (MCL 600.817), the county (or counties) in each trial court unit would be required to provide the family court with all necessary record-keeping and office supplies, furniture, and equipment.

Recordkeeping. As is now the case with probate judges of the probate court (MCL 600.832), family court judges would have possession of the seal, records, books, files, and papers belonging to the family court. Each judge would be required to keep a true and correct record of each family court order, sentence, and decree, as well as of all other official acts made or done by the judge ("and of all other things proper to be recorded in the family court"). Family court records, except as otherwise provided by law, could be inspected without charge by the public ("an interested person"), and the family court would be required to keep an alphabetical index to the records of the family court proceedings in each trial court.

The family court (instead of the probate court, MCL 600.872) also would be responsible for making certifications (or "exemplifications") of letters of authority or of guardianship, providing them for free upon request to fiduciaries or guardians (or their attorneys), and delivering certified copies of orders for publication.

Currently, the RJA specifies the kinds of testimony (which includes testimony in matters concerning the admission of mentally ill or developmentally disabled people to hospitals or other specialized facilities) before a probate judge that must be taken by an official court reporter or recorder on a recording device approved by the state court administrator, and requires that the court keep the index of the testimony for at least ten years (MCL 600.859). The bill would similarly require official court "stenographers," or a "mechanical" recording device approved by the supreme court, to take any testimony "required to be taken" in family court matters, and would require the court to keep both the index and "original notes" for at least fifteen years. As is currently the case, the stenographer would be required to keep a "sufficient" index of the testimony, but would not be required to transcribe the testimony unless the court or a party ordered a transcript. The court would have to keep the index and the original notes for at least fifteen years instead of ten years.

Family court clerks (rather than circuit and probate court clerks) would maintain custody registries and would be responsible for certifying and forwarding, upon request from certain parties, copies of custody decrees/judgments.

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The new district court.

Jurisdiction. Currently, the district court has exclusive jurisdiction in civil actions involving amounts up to \$10,000 and over civil infraction actions, regardless of the offender's age (MCL 600.8301). It also administers land contract and mortgage foreclosures (MCL 600.5726), and has equitable jurisdiction over forfeiture proceedings brought under Chapter 47 of the RJA (MCL 600.8303), equitable jurisdiction concurrent with the circuit court in small claims cases (cases involving up to \$1,750, MCL 600.8302), and concurrent jurisdiction with municipal courts over landlord-tenant disputes (MCL 600.5704). The district court currently has criminal jurisdiction over misdemeanors punishable by a fine or imprisonment up to one year; ordinance and charter violations punishable by fines or imprisonment; arraignment, fixing of bail and the accepting of bonds; and preliminary examinations in all felony cases and in certain misdemeanor cases that are within the circuit court's jurisdiction (MCL 600.8311).

Under the bill, the district court would retain its current criminal jurisdiction and the following changes would be made regarding its civil jurisdiction:

-- the court would retain (and now have exclusive) jurisdiction over landlord-tenant disputes,

-- the court would continue to have concurrent jurisdiction with the circuit court in small claims cases,

-- the court would have concurrent jurisdiction with the circuit court over (a) all civil cases, regardless of the amount of money involved, and (b) land contract and mortgage foreclosures.

Appeals. Currently, with one exception, appeals from the district court are to the circuit court for the county in which the judgement is rendered. The exception is the thirty-sixth district, which consists of the city of Detroit. All appeals in misdemeanor or ordinance violation cases tried in the thirty-sixth district court, or in felony cases over which the thirty-sixth district court has jurisdiction before trial, currently are to Detroit Recorder's Court. Under the bill, appeals from district courts, with the continued exception of the thirty-sixth district court, would continue to be to the circuit county in which the judgment was rendered. Appeals from the thirty-sixth district court would go to the third circuit court (which, under the bill, would consist of Wayne County minus the city of Detroit).

New district courts. The bill would abolish the five existing municipal courts (MCL 600.9938a) in Eastpointe (in Macomb County), Grosse Pointe, Grosse Pointe Park, Grosse Pointe Farms, Grosse Pointe Shores, and Grosse Pointe Woods (in Wayne County). [Note: Apparently there is some dispute over whether there are five or six municipal courts in addition to Detroit Recorder's Court, which usually is classed as a circuit court-level court. The village of Grosse Pointe Shores operates what apparently is a municipal court even though there is no statutory authority for villages, as opposed to cities, to operate municipal courts (see MCL 600.9928); in addition, unlike the five other municipal courts, the municipal judge is not elected by voters of the village but is assigned to the court.] The district court act (Public Act 154 of 1968) established the District 38 court in the city of East Detroit (which has since changed its name to "Eastpointe") [MCL 600.8122], and the District 32-b court in the cities of Grosse Pointe Woods, Grosse Pointe Park, Grosse Pointe, and Grosse Pointe Farms, and the village of Grosse Pointe Shores [MCL 600.8121]. However, although these districts were created by the district court act, the cities in these districts opted to keep their municipal courts instead of moving to a district court system. Under the bill, beginning on January 1, 1996, the five existing municipal courts would be abolished and district courts would begin to function in Districts 32-b and 38. All causes of action transferred to the new district courts would be as valid ("and subsisting") as they were in the municipal courts from which they were transferred, and all orders and judgments entered in the municipal courts before January 1, 1996, would be appealable to the same courts and in the same way as before January 1, 1996. Employees of the abolished municipal courts would have the same rights and privileges (and to the same extent and effect) as currently apply under the RJA to employees of other courts abolished by the district court act. Thus, for example, full time employees of the abolished municipal courts would be transferred to the new district court and all other full-time employees of the abolished courts would have preferential employment rights in the district court; seniority rights, annual and sick leave, and longevity pay and retirement benefits would be preserved "in a manner not inferior to their prior position"; and retirement benefits accrued by employees in the abolished courts would remain the obligation of the municipalities (or other agencies of government), while district court employee retirement systems would have to provide retirement benefits to employees of abolished courts at least equal to those provided by the former abolished courts.

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Court fees and funding.

Current court fees. Public Act 189 of 1993 (enrolled House Bill 4873) significantly changed the funding of state trial court operational expenses. It increased a number of court fees,

instituted a number of new fees (while eliminating a number of existing fees), and created a new state court fund to receive most of the new fees and fee increases. (Where specific fee increases weren't allocated to the state court fund, they were kept locally to replace the fees that the act eliminated.) The fund is divided as follows: A fixed 5 percent goes to the state court administrative office; a fixed 23 percent goes to civil legal services for indigents (except for the first four years, when \$2 million of this 23 percent annually goes to the court of appeals to help alleviate its backlog); Wayne County trial courts receive an annually decreasing percentage of the balance of the fund over the five-year period between fiscal years 1993-94 and 1997-98, going from 28 percent to 23 percent; and outstate trial courts receive \$1.6 million annually, plus an annually increasing percentage of the balance of the fund over the same five-year period (going from 44 percent to 49 percent).

The act also repealed and replaced statutory language added by Public Act 438 of 1980, which called for the state to gradually assume funding of all state trial court operational expenses instead of just Wayne County trial court operational expenses, with full state funding to have been attained by fiscal year 1988-89. The act instead promises that the legislature will fund at least 31.5 percent of all outstate trial court operational expenses beginning with fiscal year 1993-94.

The act made the following changes to court fees and where the fees go:

Current probate court fees. Currently, fees collected by the probate court go to one of four places: (1) the judges' retirement system; (2) the state general fund; (3) the state court fund; or (4) county general funds. Of the county funds, some go to the county general fund without restrictions, while others statutorily must be applied ("exclusively") to the expenses of the probate court, with priority given to certain expenses connected with adult guardianship proceedings.

A 1978 amendment to the probate code (Public Act 543) added "jury demand" fees (of up to \$30) and certain other fees (graduated fees for administering decedents' estates, record copying fees, marriage ceremony fees, and deposition and testimony fees). All of the jury demand fees and two-fifths of the other fees go to the general county fund; the remaining three-fifths of the other fees go to the state general fund.

In addition to the above fees, prior to Public Act 189 of 1993, a \$15 fee was assessed for any of several specified petitions or motions, with the fee being fully dedicated to the judges' retirement system. Public Act 189 instituted separate filing and motion fees for the probate court, keeping the motion fees at \$15 and increasing the filing fees substantially (except for a flat \$25 fee for "small estates" worth \$5,000 or less). The act added a new \$50 filing fee for commencing guardianship or limited guardianship proceedings to pay for costs imposed by 1988 guardianship reforms, increased record copying fees and the fee for depositing wills for safekeeping (from \$5 to \$25), and added two new \$25 fees, one for registering trusts and one for bringing appeals from the probate court.

Under Public Act 189 of 1993, requirements that the state general fund get three-fifths of estate administration fees, the increased record copying fees, marriage ceremony and deposition fees, and testimony fees remained unchanged, while half of the motion fees and all of the \$25 fees (for depositing wills or registering trusts, and for appeals from the probate court) collected

now are kept locally, to be used for probate court expenses, with priority given to certain expenses of adult guardianship proceedings. The other half of the motion fees and all but \$21 (which goes to the judges' retirement system) of the increased (and increasing) filing fees go to the state court fund.

Current circuit court fees. Prior to Public Act 189, certain circuit court fees (such as motion fees and jury demand fees) varied depending on whether the court was in a county with a population of more or less than 100,000. The act put in place a uniform schedule of fees that applies to all circuit courts, eliminated various fees (the nonjury fee, filing fees for all domestic relations temporary restraining orders, various judgment fees), and increased or added a number of fees, as well as directing where the fees are to go. Public Act 189 not only increased filing fees and appeals fees, but scheduled them to further increase annually until they reach a \$100 maximum in 1997. Motion fees were doubled (from \$10 for large counties to \$20 for all counties), a monthly friend of the court "disbursement" fee of \$1.25 was added (in addition to the existing monthly \$2 service fee), and a number of other fees (such as jury demand fees and writ fees) also were increased.

Generally, circuit court fees must be paid to the county treasurer unless otherwise specified. Until passage of the 1993 amendment, the county treasurer received the balance of all filing fees collected, after fixed amounts of money were deducted for deposit in four different funds (\$18.75 to the judges' retirement fund, \$5 to the legislative retirement fund, \$5.25 to the state general fund, and \$2 to the community dispute resolution fund created by Public Act 260 of 1988). Public Act 189 of 1993 changed this formula for dividing up filing fees; the county treasurer became one of the entities receiving a fixed sum (\$11) from each filing fee, while the state court fund became the recipient of the balance once the fixed deductions were made. The state court fund currently also receives \$15 of every appeal fee, one dollar of the new \$1.25 monthly friend of the court disbursement fee, and half of all fees for appeals to the circuit court (the county treasurer receives the balance of the appeals fees, 25 cents of the \$1.25 FOC disbursement fees, and the other half of the motion fees). The county treasurer continues to receive all of a number of other fees, including increased "jury demand" fees, various service fees, and fees for appeals from the circuit court.

Current district court fees. Public Act 189 increased various district court civil filing fees and added a \$25 fee for appeals from the district court, while eliminating related fees of \$2 (the "return fee") and \$5 ("the clerk and entry fee") and trial fees. Every filing fee includes a \$2 surcharge for the community dispute resolution fund, as well as money for the judges' retirement fund and the district control unit; the balance, after these deductions, goes to the state court fund.

More specifically, out of every \$52 filing fee, \$2 goes to the community dispute resolution fund; \$13.50 goes to the judges' retirement fund; \$16.50 goes to the district control unit; and the balance (\$20) goes to the state court fund. Out of every \$32 filing fee (including small claims filing fees and "possession of premises" filing fees), \$2 goes to the community dispute resolution fund; \$9 goes to the judges' retirement fund; \$11 goes to the district control unit; and the balance (\$10) goes to the state court fund. Out of every \$17 filing fee (including small claims filing fees), \$2 goes to the community dispute resolution fund; \$4.50 goes to the judges' retirement fund; \$5.50 goes to the district control unit; and the balance (\$5) goes to the state court fund.

When fines and costs are assessed by a district court magistrate or judge or by a traffic bureau, there is a \$9 minimum. Of all fines and costs assessed and collected each month, 45 cents goes to the judges' retirement fund, 30 cents goes to the legislative retirement fund, \$4.25 goes to the state general fund, and the balance goes to the state court fund.

Proposed changes in funding. The bill would abolish the state court fund created by Public Act 189 (though sections 880 and 880b retain references to this fund), and generally keep fees and fines collected by courts locally (going either to the county treasurer or to the treasurer of the district control unit) rather than sending some or all of them to the state.

More specifically, the bill would make the following changes to the following fees:

Former probate court fees. The bill would transfer to the circuit court the collection of certain probate fees (except for marriage ceremony fees), and instead of requiring that three-fifths of certain fees be sent to the state general fund, the bill would credit all of these fees to the county general fund.

Presumably, the provision requiring that half of probate court motion fees and the balance of probate court filing fees, once the \$21 is taken out for the judges' retirement fund, would be repealed. However, the bill actually only amends the two sections of the RJA (MCL 600.660 and 600.880b) dealing with these fees to delete provisions (which are reinstated in other sections of the bill) regarding prohibitions against fees in certain circumstances (proceedings under the Mental Health Code, filing acknowledgments of paternity, subjects of guardianship or conservatorship proceedings).

The bill would eliminate the \$25 probate appeals fee, and although it would retain the requirement that the \$25 fee for registering trusts or depositing wills be deposited in the county general fund, it would eliminate the provisions that specify that these fees be used exclusively for probate court expenses, with priority being given to certain expenses connected with adult guardianship proceedings.

Finally, under the bill, the family court would take over jurisdiction for guardianships and the bill would add a new provision under the family court chapter (MCL 600.1037) that would charge a \$50 filing fee for commencing a guardianship or limited guardianship in the family court. However, the bill would not amend this provision as it exists in the probate code (MCL 600.880a).

Circuit court fees. The bill would eliminate the requirement that \$11 of each circuit court filing fee go to the county treasurer and the balance of the fee go to the state court fund (once the fixed amounts for the judges' and legislative retirement funds, the state general fund, and the community dispute resolution fund had been deducted). Instead, once the fixed deductions for the two retirement funds, the community dispute resolution fund, and state general fund were made, the balance of circuit court filing fees once again would go to the county treasurer. Similarly, the bill would eliminate current requirements that \$15 of each fee for appeals from the circuit court, \$10 of each \$20 motion fee, and one dollar of each \$1.25 FOC disbursement fee go to the state court fund. All of these fees, instead, would go to the county treasurer.

District court fees. The bill would delete the requirements that the balance of civil filing fees (including small claims filing fees) -- after the deductions for the community dispute resolution fund, the judges' retirement fund, and the district control unit treasurer -- go to the state court fund. Instead it would direct the balance (after the deductions) to the treasurer of the district control unit. The bill also would eliminate the requirement that the balance of all fines and costs assessed by district courts -- once payments had been made to the judges' and legislative retirement funds and to the state general fund -- go to the state court fund, and instead would require that the balance go to the state general fund (once the retirement fund deductions had been made).

* * *

Judges' salaries. The bill would retain current provisions in the RJA that require the state to pay the salaries of circuit court judges (MCL 600.555) and district court judges (MCL 600.8202). However, the bill would delete provisions that currently allow counties to vote to pay circuit court judges salaries in addition to the amount of their state salaries, and that allow district control units to similarly supplement the salaries of district court judges. The bill also would delete the provision limiting district judges' state salaries to 90 percent of the state annual salary to circuit court judges. Instead, like circuit court judges, district court judges' salaries would be paid by the state "in an amount provided by law." Finally, the bill would repeal the sections of the probate code (MCL 600.821 and 600.822) that currently govern probate judges' salaries. Currently, probate judges' salaries are set at a minimum of 90 percent of the annual salary payable by the state to circuit judges, with a portion of the salary paid by the counties (which also may choose to grant a supplemental salary) and a portion (depending on a number of different formulas) paid by the state. The bill does not address the question of family court judges' salaries.

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Court employees. Currently, although court employees generally are paid by local units of government, they are appointed by the court's chief judge. (The RJA gives the authority to appoint court employees (except as otherwise provided by law) to the chief judges of circuit courts [MCL 600.591], district court judges [MCL 600.8271], and chief probate judges [MCL 600.831].) There are four categories of court employees that are not appointed by the judge: the county clerks, who are constitutionally elected officials and who by law [MCL 600.571(a)] serve as the clerk of the circuit court for the county; court stenographers, who are appointed by the governor (after having been recommended by the judge(s) of the court to which they are appointed, MCL 600.1104); jury boards, who also are appointed by the governor (on the recommendation of the circuit judges of the judicial circuit in which the county is located); and circuit court probation officers, who are appointed by the Department of Corrections (MCL 791.222).

The bill would repeal the section in the probate code authorizing chief probate judges to appoint court employees, and would specify that court-appointed employees in the circuit courts would be county employees, while those in the district courts would be employees of the governing bodies of the district control unit.

The bill also would eliminate the current requirements that the state pay the third circuit court (currently consisting of Wayne County) reporters or recorders and judicial assistant, the thirty-sixth district court (currently consisting of the city of Detroit) reporters or recorders, bailiffs, and judicial assistant, and the jury board in Wayne County (though section 4803 in the bill still refers to "the state" in the definition of "funding unit" for the third circuit court and the thirty-sixth district court, while deleting references to the Recorder's Court and municipal courts).

* * *

Mediation and arbitration of civil actions. The bill would require that the plaintiff and defendant in civil actions choose one or more of three ways of resolving the case within 21 days after the action had been filed: binding mediation, binding arbitration, or trial with mandatory nonbinding mediation and sanctions under the Michigan court rules. The defendant and plaintiff would indicate their choice to the clerk of the court on an "election" form (created by the state court administrator and provided by the clerk) in a sealed envelope. The clerk would compare the forms submitted by each party, and the case would be resolved by the first method chosen by both parties. If there were no agreement between the two parties' selections, the case would go to trial with mandatory nonbinding arbitration.

The bill would repeal the existing chapter of the RJA on tort action mediation (Chapter 49a) and instead add two new chapters, one on mediation (Chapter 49b) and one on arbitration (49c).

Binding mediation. The bill would repeal, and reinstate with some changes, the provisions of Chapter 49a ("Tort Action Mediation") of the Revised Judicature Act as Chapter 49b. Generally, the bill would repeal (without replacing) current provisions allowing judges to be members of mediation panel and the current procedures for parties to accept or reject a panel's evaluation and the procedures following the acceptance or rejection of a mediation panel's evaluation (including trials following rejection of an evaluation).

Under the bill, mediation would be binding, and judgments would be entered in the amount of the mediation panel's evaluation (including all fees, costs, and interest to the date of judgment). A mediation panel's evaluation would be reviewable by the circuit court for the county in which the dispute arose, but only if the mediation panel was without or exceeded its jurisdiction or if the evaluation wasn't supported by competent, material, and substantial evidence on the whole record, or was procured by unlawful means such as fraud or collusion. Every civil action -- except in cases of divorce and medical malpractice (which the bill would require be conducted under the medical malpractice mediation chapter of the RJA) -- that parties chose to mediate would be mediated under the new chapter's provisions. The fact that a review of a mediation proceeding was pending wouldn't automatically stay the order of judgment entered in the amount of the mediation panel's evaluation.

Binding arbitration. The bill's arbitration provisions parallel its mediation provisions. Arbitration would be binding on all parties who chose it, and -- except in cases of divorce and medical malpractice -- every civil action that parties chose to arbitrate would be arbitrated under the new chapter's provisions. Except for the explicit exclusion of attorneys from arbitration

panels, the bill's arbitration provisions would follow its mediation provisions, including the amount of the fee (\$75) and penalty (\$60) for failing to submit the required materials to the arbitration clerk.

Medical malpractice mediation. The bill also would amend two sections of the RJA chapter on medical malpractice mediation (Chapter 49) along lines similar to its tort action mediation amendments. That is, it would delete existing provisions (a) requiring judges to whom actions are assigned to refer the action to mediation by written order not less than 91 days after the filing of the answer(s); (b) regarding actions (or defenses) determined to be frivolous; and (c) regarding procedures following acceptance or rejection of a mediation evaluation. The bill also would delete the existing provision that a judgment be entered in the amount of the mediation panel's evaluation (including all fees, costs, and interest to the date of judgment) if all the parties accept the evaluation; instead, the bill would simply say that a judgment would be entered in the amount of the mediation panel's evaluation.

* * *

Legal aid funding. Public Act 189 of 1993 (enrolled House Bill 4873) allocated a fixed 23 percent of the balance of the state court fund (after the annual \$1.6 million annual payment to outstate trial courts) to civil legal services for indigents, to begin four years after the act went into effect (for the first four years, \$2 million of this 23 percent is allocated annually to the court of appeals to help alleviate its backlog). The bill would repeal these provisions.

* * *

Repeals. The bill would repeal the acts creating the Detroit Recorder's Court (Local Act 326 of 1883) and municipal courts of record (Public Act 369 of 1919), which effectively refers only to Detroit Recorder's Court.

The bill also would repeal Chapter 49a (Tort Action Mediation) of the Revised Judicature Act and sections of the RJA that provide for the following:

- * creation of the state court fund (Section 151a) and funding for indigent civil legal aid (Section 1485);
- * transfer of municipal judges (Section 225a);
- * the 1981 administrative unification of the third circuit court and Detroit Recorder's Court (Sections 563, 564, 567, 592, 593, 594, 595, 1123, 1417), including transfer and retirement of 36th district court employees (Sections 8272, 8273, 8275) and the creation, composition and operation of the state judicial council (Sections 9101, 9102, 9104, 9105, 9106, 9107);
- * the probate court (Sections 801, 803, 805, 807, 808, 809, 810, 811, 812, 813, 815, 817, 819, 821, 822, 824, 825, 826, 828, 829, 831, 832, 835, 836, 843, 845, 846, 847, 854, 855, 856, 857, 858, 863, 866, 872, 875);

- * medical malpractice mediation evaluations (Sections 4917, 4921);
- * appropriation of state funds for trial court operational expenses (Section 9947).

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.