



**Senate Fiscal Agency**  
**P. O. Box 30036**  
**Lansing, Michigan 48909-7536**

BILL



ANALYSIS

**Telephone: (517) 373-5383**  
**Fax: (517) 373-1986**

House Bill 5158 (Substitute S-3 as passed by the Senate)  
 Sponsor: Representative Michael Nye  
 House Committee: Judiciary and Civil Rights  
 Senate Committee: Judiciary

Date Completed: 6-20-96

### **CONTENT**

The bill would amend the Revised Judicature Act (RJA) to do all of the following:

- Revise the method of providing State funding for trial courts, including establishing a formula based 85% on population and 15% on caseload.
- Phase out the current system of State General Fund support for the Third Circuit Court (Wayne County), the Detroit Recorder's Court, and the 36th District Court (Detroit). Under the bill, those courts eventually would receive State funding according to the same formula that would apply to other trial courts.
- Abolish the Detroit Recorder's Court and merge it with the Third Circuit Court, unless the City of Detroit, alone or together with Wayne County, assumed financial responsibility for the operation and maintenance of the Recorder's Court.
- Abolish the State Judicial Council (SJC, which is an administrative body that serves as the funding unit and State employer of court employees of the Third Circuit, Recorder's, and 36th District Courts) and transfer those employees to either Wayne County or the City of Detroit.
- Revise the method of determining judges' salaries, and provide for 100% State funding of those salaries, including direct payments to judges at specified levels and reimbursements to local units for additional salary amounts paid by court funding units.
- Provide that court personnel would be employees of the county or the district court funding unit; specify roles of the employers and chief judges in overseeing employees; and prohibit a judge from hiring close relatives.
- Allow a county or group of counties to create a "local court management council", to coordinate the delivery of court services.
- Create the "Trial Court Assessment Commission" and require it, every other year, to make recommendations to the Legislature regarding the number of trial court judges needed, the number of district courts needed, court consolidation, converting probate judgeships to circuit judgeships, and assignment of court personnel.
- Create the "Caseload Classification Commission", to study and classify the civil and criminal cases filed in Michigan trial courts, develop criteria for determining the relative complexity of the various types of cases, and recommend a funding formula for the operation of those courts, taking caseload complexity into account.
- Require the Supreme Court to create a "Judicial Performance Commission".
- Make other provisions regarding State funding of certain court services, evening and weekend court sessions, assessment of late penalties, and district court jurisdiction and appeals.
- Repeal, effective October 1, 1997, parts of the RJA and parts of Public Act 369 of

## **1919, which regulates the Detroit Recorder's Court.**

The bill is tie-barred to Senate Bill 1052, which would establish the family division of circuit court.

### Effective Dates

Provisions of the bill dealing with all of the following would take effect upon the bill's date of enactment:

- Creating the Trial Court Assessment Commission.
- Requiring the Supreme Court to create the Judicial Performance Commission.
- Allowing the probate court to hold evening and weekend sessions.
- Changing the term "district control unit" to "district funding unit".
- Abolishing the State Judicial Council.

Provisions of the bill dealing with all of the following would take effect on October 1, 1996:

- Distributing money in the State Court Fund to trial courts.
- Distributing trial court general funds to trial courts throughout the State.
- Allowing counties to create local court management councils.
- Deleting the current provisions for State funding of trial courts.

Provisions of the bill dealing with all of the following would take effect on October 1, 1997:

- Abolishing of the Detroit Recorder's Court and merging it with the Third Circuit Court, or continuing the Recorder's Court if Detroit agreed to assume responsibility for its operation and maintenance.
- Distributing revenue from assessment of court costs.
- Paying judicial salaries.
- Establishing counties' and chief judges' roles as employers and supervisors of court staff.
- Transferring SJC employees to Wayne County or Detroit.
- Deleting provisions for State contributions to the 36th District, Third Circuit, and Recorder's Courts and the funding of certain personnel and functions of those courts.
- Sunsetting late penalties.
- Allowing appeals from the 36th District Court.

Provisions of the bill dealing with circuit court evening and weekend sessions, and district court jurisdiction, would take effect on October 1, 1998.

### Court Funding

State Court Fund. Revenue in the State Court Fund (SCF) is generated from the collection of certain court fees. The RJA specifies how proceeds of the SCF are to be distributed in given fiscal years. Under the Act, in fiscal year (FY) 1996-97, the State Treasurer is required to distribute specific amounts to the State Court Administrator for the operational expenses of certain trial courts. After those allocations, 23% of the balance of the SCF is to be distributed for indigent civil legal assistance and to the State Court Administrator for the operations of the Court of Appeals to alleviate the backlog of that court's caseload. Of that amount, \$2 million is to go to the Court of Appeals, with the rest allocated for indigent civil legal assistance. Finally, 5% of the balance is required to be distributed for oversight, data collection, and court management assistance by the State Court Administrative Office (SCAO).

The bill, instead, specifies that, in FY 1996-97, 23% of the SCF would have to be distributed for indigent civil legal assistance and the Court of Appeals backlog of cases, \$2 million of which would be for the Court of Appeals backlog; 1% of the balance would have to be distributed for oversight, data collection, and court management assistance by the SCAO; and the balance of the SCF would have to be distributed to the SCAO for the operating expenses of trial courts, according to the bill's 85/15 funding formula.

Under the Act, in FY 1997-98 and subsequent fiscal years, the State Treasurer is required to distribute specific amounts to the State Court Administrator for the operational expenses of certain trial courts. After those allocations, 23% of the balance of the SCF is to be distributed for indigent civil legal assistance, and 5% of the balance is required to be distributed for oversight, data collection, and court management assistance by the SCAO.

The bill, instead, specifies that in FY 1997-98 and subsequent fiscal years, 23% of the SCF would have to be distributed for indigent civil legal assistance; 1% of the balance would have to be distributed for oversight, data collection, and court management assistance by the SCAO; and the balance of the SCF would have to be distributed to

the SCAO for the operating expenses of trial courts, according to the bill's 85/15 funding formula.

The bill also specifies that the allocation to trial courts based on the 85/15 funding formula "recognizes that the caseload of trial courts is reflected in the judicial salaries paid for or reimbursed by the state under this Act".

85/15 Funding Formula. For each fiscal year, the per capita amount of trial court funding from the SCF would have to be determined by subtracting the population in the previous fiscal year served by municipal courts that were not courts of record from three times the State population in the previous fiscal year, then dividing the result into 85% of the balance of the SCF, after the allocations for indigent civil legal assistance and court management. The amounts to be allocated under the 85% population portion of the funding formula for trial courts serving a county would have to be calculated as follows:

- For a county served by only one district court, the per capita amount would have to be multiplied by three times the county's population in the previous fiscal year.
- For a county served by more than one district court, the per capita amount would have to be multiplied by two times the county's population in the previous fiscal year, for the circuit and probate courts. The per capita amount would have to be multiplied by the portion of the county population for the previous fiscal year that was served by each district court, to determine the amount for that district court. (For purposes of this calculation, the Detroit Recorder's Court would be considered a circuit court.)

The caseload amount of trial court funding from the SCF would have to be determined by dividing 15% of the balance of the Fund, after the allocations for indigent civil legal assistance and court management, by the total number of new cases, other than civil infraction actions, filed in all trial courts in the previous fiscal year. The amount for each trial court serving a county would be calculated by multiplying the caseload amount by the number of new cases, other than civil infraction actions, filed in that court for that county in the previous fiscal year, as reported to the SCAO.

Trial Court General Funds. With the exception of certain expenses (e.g., facilities, utilities,

courtroom security, juror and witness fees, and assigned counsel for indigents) the RJA requires the State to maintain and operate the Third Circuit, Recorder's, and 36th District Courts and annually to appropriate funds for their operation and maintenance. The Act also requires that the Legislature "appropriate sufficient funds in order to fund at least 31.5% of all trial court operational expenses", subject to specific offset provisions, for trial courts other than the State-funded trial courts.

The bill would delete the 31.5% requirement and reduce State GF allocations to the three State-funded trial courts (i.e., the Third Circuit, Recorder's, and 36th District Courts), by phasing out that State support over a 10-year period, and allocating "trial court general funds" to all trial courts in the State according to the 85/15 population/caseload formula that the bill would establish for the State Court Fund. Under the bill, in FY 1996-97, the State-funded trial courts could receive up to 90% of their FY 1995-96 General Fund (GF) allocation; that percentage would be reduced by 10 points each year, through FY 2004-2005. Beginning in FY 2005-06, the 1995-96 level of GF funding for trial courts, plus any new unrestricted GF funding, would be allocated to all trial courts in the State based on the 85/15 funding formula.

For each fiscal year of the 10-year phase-out period, the State-funded trial courts would receive either the declining percentage of the amounts of general funds allocated to them in FY 1995-96 or a trial court allocation under the bill's 85/15 funding formula, whichever was greater. ("Trial court general funds" for a fiscal year would mean the amount of general funds allocated to State-funded trial courts in FY 1995-96 plus any other unrestricted general funds appropriated or allocated in the fiscal year for the operation of trial courts, other than for judicial salaries.)

Trial courts other than the three State-funded trial courts would receive a trial court allocation based on the 85/15 funding formula. If the State-funded trial courts received a declining percentage of their FY 1995-96 GF allocation, trial court general funds to be distributed to all other trial courts under the 85/15 funding formula would be reduced by the amount allocated to the State-funded trial courts. If the State-funded trial courts received a declining percentage of their FY 1995-96 GF allocation, the other trial courts in Wayne County would receive trial court general funds based on the 85/15 funding formula, but the per capita amount would be multiplied by Wayne County's population in the

previous fiscal year, to determine the allocation to the probate court, and multiplied by the portion of Wayne County's population for the previous fiscal year served by each district court other than the 36th District Court, to determine the amount for the county's district courts.

Alternative Allocations. If the total amount received by a court funding unit under the bill's SCF and trial court general funds allocation provisions for all courts funded by that funding unit were less than the funding unit would have received under the funding mechanisms in House Bill 5158 as passed by the House of Representatives on March 28, 1996, the SCAO would have to adjust the allocations so that the funding unit received the amount it would have received under the House-passed version of the bill.

District Court Revenue. The RJA requires that, when fines and costs are assessed by a magistrate, a traffic bureau, or a judge of the district court, at least \$9 be assessed as costs. That amount also must be collected for each conviction or civil infraction determination and each guilty plea or civil infraction admission, except for parking violations. Of each \$9 collected, 45 cents goes to the Michigan Judges Retirement System, 30 cents to the Legislative Retirement Fund, \$4.25 is dedicated to the State General Fund, and the balance must be deposited in the State Court Fund. The bill would delete the requirement that \$4.25 go to the General Fund, so that the balance after the retirement system allocations would go entirely to the SCF.

#### Recorder's Court

Abolishment and Merger. The bill would abolish the Detroit Recorder's Court and merge it with the Third Circuit Court, effective October 1, 2001, unless the City of Detroit, alone or together with Wayne County, agreed by October 1, 1997, to assume responsibility for the operation and maintenance of the Recorder's Court.

The incumbent judges of the Recorder's Court on September 30, 2001, would become judges of the Third Circuit Court on October 1, 2001, and would serve as circuit judges until January 1 of the year in which their terms as Recorder's Court judges would normally have expired. Effective October 1, 2001, each incumbent judge of the Recorder's Court who had been appointed to that office by the Governor after the filing deadline for the August primary preceding the 2000 general election would

become a judge of the Third Circuit Court and would serve as a circuit court judge until the January 1 succeeding the first general election held after the vacancy to which he or she was appointed occurred. At that election, a successor would be elected for the remainder of the unexpired term that the predecessor incumbent of the Recorder's Court would have served had he or she remained in office. In seeking election to the Third Circuit Court after October 1, 2001, a Recorder's Court judge could file an affidavit of candidacy in the same manner as other incumbent judges of the circuit court, and would be entitled to designation on the ballot as a judge of the circuit court.

All files, records, and pending cases of the Recorder's Court would have to be transferred to the Third Circuit Court according to Supreme Court rules, and the circuit court would have to exercise all powers regarding those files, records, and cases, as provided by Supreme Court rules. The Third Circuit Court would have jurisdiction to hear and determine all transferred cases, and would have to exercise all authority with regard to those cases as though they had been commenced in the Third Circuit Court. Orders and judgments of the Recorder's Court would be appealable in the same manner and to the same courts as was applicable before the merger date.

Effective October 1, 2001, the bill would repeal Public Acts 326 of 1883 and 369 of 1919, both of which regulate the operations of the Detroit Recorder's Court (MCL 726.1-726.49 and 725.1-725.39).

Conditional Continuation of Detroit Recorder's Court. The Recorder's Court would not be abolished and merged with the Third Circuit Court if the City of Detroit, by resolution adopted by the city's governing body not later than October 1, 1997, agreed to assume responsibility to maintain and operate the court, or if Detroit and Wayne County, by resolutions adopted by their governing bodies not later than October 1, 1997, agreed jointly to assume responsibility to maintain and operate the court.

The bill specifies that if Detroit, acting through its governing body, agreed to assume responsibility for required expenses, that action would constitute an exercise of the city's option to provide a new activity or service or to increase the level of activity or service offered beyond that required by existing law. The action would constitute a voluntary acceptance by the city of all expenses and capital

improvement that could result from assumption of responsibility for maintaining and operating the Recorder's Court. The exercise of that option, however, would not affect the State's obligation to reimburse Wayne County and Detroit for judicial salaries or to appropriate and disburse funds to the city for the necessary costs of State requirements established by a State law, other than the bill's provisions for Detroit to assume responsibility for the operation and maintenance of the Recorder's Court.

The City of Detroit annually would have to appropriate, by line item or by lump-sum budget, funds for operating and maintaining the Recorder's Court, including, but not limited to, the following:

- Employee compensation.
- Facilities.
- Utilities, including telephones.
- Courtroom security.
- Assigned counsel provided for indigents accused of criminal offenses or ordinance violations, whether before or after conviction.
- Compensation paid to jurors.
- Fees and mileage allowances paid to witnesses.
- Expenses paid to judges assigned by the Supreme Court or SCAO to serve temporarily in the Recorder's Court.
- Fees for transcripts ordered by a judge.
- Expenses incurred as a result of the operation of a probation department, except to the extent the State had assumed the responsibility as provided by law.
- Medical or psychiatric examinations ordered by the court at public expense, except for referrals to the psychiatric clinic of the Recorder's Court.

Effective October 1, 2001, each employee of Wayne County serving in the Recorder's Court would become an employee of the City of Detroit serving in the Recorder's Court. (Under the bill, State Judicial Council employees serving in the Recorder's Court would become employees of Wayne County on October 1, 1997; if Detroit assumed responsibility for the Recorder's Court, those employees then would become employees of Detroit on October 1, 2001.)

The City of Detroit would be the employer of the city-paid employees of the Recorder's Court and would have the same authority with respect to them as the bill would confer on an employer of

circuit court employees. The chief judge of the Recorder's Court would have the same authority with respect to city-paid employees of the court as the bill would confer on a chief judge of circuit court.

All employees of Wayne County serving in the Recorder's Court on September 30, 2001, would be transferred on October 1, 2001, to the Recorder's Court as operated by the City of Detroit and would be employees of the city subject to all rights and benefits they held with the county. A transferred employee could not, by reason of the transfer, be placed in any worse position with respect to workers' compensation, pension, seniority, wages, sick leave, vacation, health and welfare insurance, or any other terms and conditions of employment that the employee enjoyed as an employee of the county.

The City of Detroit would have to assume and be bound by any existing collective bargaining agreement held by the county and, except where the existing agreement otherwise permitted, would have to retain the employees covered by that agreement. Detroit's assumption of responsibility for the Recorder's Court could not adversely affect any existing rights and obligations contained in the existing collective bargaining agreement. The city would have to consider the rates of compensation and the conditions of employment established for all employees in the city when exercising its authority as employer of city-paid employees of the Recorder's Court.

All personal property, including equipment and furniture, owned by the Recorder's Court or owned and furnished by the State or by Wayne County for the Recorder's Court on October 1, 2001, would become the property of Detroit and continue to be used to the benefit of the Recorder's Court. Wayne County would have to reimburse the city for any property furnished by the State to the court that was removed from the court between October 1, 1997, and October 1, 2001. Personal property of Wayne County would remain with the county unless the city and county agreed otherwise.

#### State Judicial Council

Abolishment. Under the RJA, the State Judicial Council is the employer of trial court employees who are paid by the State. The bill would abolish the SJC effective October 1, 1997. As of that date, Wayne County would be the funding unit for the Third Circuit Court.

The funding unit for the Recorder's Court would consist of Detroit and Wayne County. The city and county each would be responsible for funding the same court functions performed by the Recorder's Court for which each of those municipalities was responsible during calendar year 1980. If the Recorder's Court were abolished and merged with the Third Circuit Court, pursuant to the bill, Wayne County would be the funding unit for Recorder's Court functions.

The funding unit for the 36th District Court would be Detroit and Wayne County. The city and the county each would be responsible for funding the same court functions performed by 36th District Court for which each of those municipalities was responsible during calendar year 1980.

Transfer of Court Employees. Effective October 1, 1997, each SJC employee serving in the Third Circuit Court would become an employee of Wayne County and a member of the Wayne County retirement system; each SJC employee serving in the 36th District Court would become an employee of Detroit and a member of the City of Detroit employees' retirement system; and an SJC employee serving in the Recorder's Court would become an employee of Wayne County and a member of the Wayne County retirement system. (If Detroit, alone or together with Wayne County, assumed responsibility for the operation and maintenance of the Recorder's Court, all county employees serving in the Recorder's Court on September 30, 2001, would become employees of Detroit on October 1, 2001.)

#### Judicial Salaries

The salaries of Supreme Court justices (which are set by the State Officers Compensation Commission) and Court of Appeals judges are fully funded by the State. Currently, and until December 31, 1996, appeals court judges' salaries are set at 96% of the salary of a Supreme Court justice, and salaries of trial court judges vary depending on the level of the court in which they serve. The maximum salary of a circuit court judge, and a Detroit Recorder's Court judge, is set at 92% of the salary of a Supreme Court justice; the maximum salary of a district or probate court judge is set at 88% of the salary of a Supreme Court justice. The salaries of trial court judges consist of a salary base, paid by the State, and a local supplement paid by the county or district control unit in which the court is located. The State, however, reimburses local units for most of the difference between the base salary and the

maximum salary. (This is known as the "standardization payment".) The State, then, pays about 90% of each trial court judge's salary with the remainder being borne by the local unit. A trial court judge's total salary, however, may not exceed the statutory maximum percentage of a Supreme Court justice's salary. (The salaries of judges in the three State-funded trial courts are paid entirely by the State.)

Public Acts 259 and 260 of 1995 (House Bills 5457 and 5460) broke the "tie-bar" of a judge's salary to a Supreme Court justice's salary. Under those amendments to the RJA, beginning January 1, 1997, the salaries of judges of the Court of Appeals, circuit court, probate court, and district court paid by the State cannot increase unless the Legislature, by statute, sets a higher salary. The State-paid portion of the salaries is set at specific dollar amounts and specific limits are placed on the amount of local supplements.

House Bill 5158 (S-3), instead, specifies that, beginning January 1, 1997, judges would receive specific State-paid salaries and specific amounts of local supplements, which would be reimbursed by the State if they were not more or less than prescribed amounts, so that judges' salaries would be fully funded by the State. An increase in the salary of a judge caused by an increase in the salary of a Supreme Court justice could not be effective until February 1 of the year in which the justice's salary increase became effective, but would be retroactive to January 1 of that year.

Court of Appeals Judges. Under the RJA, through December 31, 1996, each judge of the Court of Appeals receives an annual salary equal to 96% of the annual salary of a Supreme Court justice. Beginning January 1, 1997, each appeals court judge is to receive an annual salary of \$114,007, which cannot be increased unless the Legislature enacts a higher salary.

Under the bill, effective January 1, 1997, each judge of the Court of Appeals would receive an annual salary equal to 92% of the annual salary of a Supreme Court justice or \$114,007, whichever was greater.

Circuit Court Judges. Under the RJA, for calendar year 1996 and each subsequent calendar year, the portion of a circuit judge's annual salary payable by the State is \$65,314. For calendar years 1996 and beyond, the State must reimburse to a county paying an additional salary to a circuit judge 90% of that additional salary, unless the additional

salary payable by that county causes the judge's total annual salary to exceed \$109,257. Effective January 1, 1997, a circuit judge's salary cannot be increased unless the Legislature enacts a higher salary.

The bill, instead, specifies that each circuit judge would receive an annual salary payable by the State as provided in the bill and could receive from any county in which he or she regularly held court an additional salary as determined from time to time by the county board of commissioners. In any county in which an additional salary was granted, the additional amount would have to be paid at the same rate to all circuit judges regularly holding court in that county.

Until the salary of a Supreme Court justice exceeded \$133,240, each circuit judge would receive an annual salary determined as follows:

- An annual salary, payable by the State, of \$65,314 plus an additional \$500 for each year in which the salary of a Supreme Court justice was increased by 3% or more.
- An additional salary, payable by the county or counties of the judicial circuit. The State would have to reimburse to a county or counties paying an additional salary \$43,943, if the total additional salary were not less than or more than that amount. If the county or counties paid a circuit judge less than or more than \$43,943, the county or counties would not be entitled to reimbursement from the State.

If the salary of a Supreme Court justice exceeded \$133,240, but were not more than \$135,412, each circuit court judge would receive an annual salary determined as follows:

- An annual salary, payable by the State, of \$65,314 plus an additional \$500 for each year in which the salary of a Supreme Court justice was increased by 3% or more.
- An additional salary, payable by the county or counties of the judicial circuit. If a county or counties paying an additional salary to a circuit judge paid the judge the difference between 88% of a Supreme Court justice's salary and \$65,314, the State would have to reimburse to a county or counties that amount. If the county or counties paid a circuit judge an additional salary that exceeded that amount, the county or counties would not be entitled to reimbursement from the State.

If the salary of a Supreme Court justice exceeded \$135,412, each circuit court judge would receive an annual salary determined as follows:

- An annual salary payable by the State that was \$45,724 less than the greater of 88% of a Supreme Court justice's salary or \$109,257 plus \$500 for each year in which a Supreme Court justice's salary was increased by 3% or more.
- An additional salary, payable by the county or counties of the judicial circuit. The State would have to reimburse to a county or counties \$45,724, if the total additional salary were not less than or more than that amount. If the county or counties paid a circuit judge less than or more than \$45,724, the county or counties would not be entitled to reimbursement from the State.

Recorder's Court Judges. Public Act 369 of 1919, which regulates the Detroit Recorder's Court, provides for the salaries of Recorder's Court judges. Under that Act, each judge, including the presiding judge, receives an annual salary from the county in which the court is located in the same amount as paid by the State to circuit judges. The State must reimburse the county. As an additional salary, through December 31, 1996, Detroit must pay each judge an amount equal to the difference between 92% of the annual salary of a Supreme Court justice and the annual salary paid to a Recorder's Court judge by the county. The State must reimburse the city. For each calendar year beginning with 1997, Public Act 369 requires the city to pay to each judge \$43,943, which the State must reimburse. Public Act 369 prohibits either the county or the city from paying a cost-of-living allowance or any other cash compensation, other than the authorized salaries. Beginning January 1, 1997, the salary of a Recorder's Court judge cannot be increased unless the Legislature enacts an increased salary. (MCL 725.13)

The bill would repeal the section of Public Act 369 providing for the salaries of Recorder's Court judges effective January 1, 1997, and specifies that each judge of the Detroit Recorder's Court, including the chief judge and the recorder, would receive an annual salary from the county in which the court was located, in the same amount as paid by the State to circuit court judges under the bill. The State would have to reimburse to the county an amount equal to the annual salary paid by the county to a Recorder's Court judge.

As an additional salary, the city in which the court was located would have to pay to each judge of the Recorder's Court an amount determined as follows:

- Until the salary of a Supreme Court justice exceeded \$133,240, each Recorder's Court judge would receive an additional salary of \$43,943. If the city paid each judge \$43,943, and not more or less than that amount, the State would have to reimburse the city for the amount of the additional salary.
- If the salary of a Supreme Court justice exceeded \$133,240 but were not more than \$135,412, each judge would receive an additional salary of the difference between 88% of the salary of a Supreme Court justice and \$65,314. If the city paid each judge that amount, the State would have to reimburse the city. If the city paid any judge an additional salary, including any cost-of-living allowance, that exceeded that amount, the city would not be entitled to reimbursement from the State.
- If the salary of a Supreme Court justice exceeded \$135,412, each judge would receive an additional salary of \$45,724. If the city paid each judge that amount, the State would have to reimburse the city. If the city paid any judge an additional salary, including any cost-of-living allowance, that exceeded \$45,724, the city would not be entitled to reimbursement from the State.

The bill would prohibit either the county or the city from paying a cost-of-living allowance or any other cash compensation, other than the salaries authorized in the bill, to a judge of the Recorder's Court.

Probate Court Judges. Currently, under the RJA, the minimum annual salary for a probate judge is 90% of the annual salary payable by the State to a circuit judge. Of that amount, \$6,000 must be paid by the county, or by the counties comprising a probate court district, and the balance must be paid by the State.

In addition, a probate judge may receive from any county in which he or she regularly holds court an additional salary determined by the county board of commissioners. Through December 31, 1996, an additional salary cannot cause a probate judge's total annual salary to exceed 88% of the annual salary of a Supreme Court justice.

Beginning January 1, 1997, an additional salary cannot exceed \$45,724.

For calendar year 1996, the State must reimburse \$41,152 to a county paying an additional salary, unless the additional salary causes the judge's total salary to exceed 88% of a Supreme Court justice's salary. For calendar year 1996 and each subsequent year, the portion of the a probate judge's annual salary payable by the State is \$52,783, and the State must reimburse \$41,152 to a county paying an additional salary. Beginning January 1, 1997, a probate judge's salary payable by the State cannot be increased unless the Legislature enacts a higher salary.

The bill, instead, provides that, until the salary of a Supreme Court justice exceeded \$127,447, each probate judge would receive an annual salary of \$104,507, determined as follows:

- A minimum annual salary of \$58,783.
- An additional salary of \$45,724 paid by the county or by the counties comprising a probate court district. If a probate judge received a total additional salary of \$45,724, and not more or less than that amount, the State would have to reimburse the county or counties for the additional salary.

If the salary of a Supreme Court justice exceeded \$127,447, each probate judge would receive an annual salary determined as follows:

- A minimum annual salary of the difference between 82% of a Supreme Court justice's salary and \$45,724.
- An additional salary of \$45,724 paid by the county or by the counties comprising a probate court district. If a probate judge received a total additional salary of \$45,724, and not more or less than that amount, the State would have to reimburse the county or counties for the additional salary.

The bill would retain the requirement that \$6,000 of a probate judge's minimum annual salary be paid by the county, or by counties comprising a probate court district, but also would require that, beginning January 1, 1997, the State annually reimburse counties for that contribution.

Part-Time Probate Court Judges. The RJA provides that a probate judge of a county comprising part of a proposed probate court district in which the electors of one or more

counties did not approve the district, receives an annual salary based on the county's population. For counties having a population under 10,000, the judge's salary is \$9,000, payable half by the State and half by the county. In a county having a population of 10,000 or more but less than 15,000, the judge's salary is \$10,000, payable half by the State and half by the county. In addition, a probate judge may receive from the county an additional salary of up to \$43,000, as determined by the board of commissioners. From funds appropriated to the judiciary, the State must pay to a county a State salary standardization payment of \$5,750 for each probate judge.

The bill, instead, provides that the probate judge of a county having a population under 15,000 and comprising part of a proposed probate court district in which the electors of one or more counties did not approve the district would receive an annual salary of \$20,000. Of that amount, \$6,000 would have to be paid by the county and the balance paid by the State. The bill would retain the option of an additional salary of up to \$43,000, and specifies that the total salary of a part-time probate judge could not exceed \$63,000. In addition to the \$5,750 standardization payment, the State would have to pay to a county \$6,000 for each probate judge, to offset the portion of the minimum annual salary paid by the county.

The bill also specifies that a part-time probate judge would have to be available for the performance of other judicial duties, including assignment to the family division of the circuit court (proposed by Senate Bill 1052), for not less than two full days per week or four half days per week.

District Court Judges. Currently, the RJA requires that, through December 31, 1996, a district judge receive an annual salary payable by the State equal to 90% of the annual salary payable by the State to a circuit judge. In addition, a district judge may receive from the "district control unit" (which the bill would refer to as the "district funding unit") an additional salary determined by the unit's governing legislative body, which cannot cause a district judge's total annual salary to exceed 88% of a Supreme Court justice's annual salary. For calendar year 1996, the State must reimburse to a district control unit paying an additional salary \$41,152 of that additional salary.

For calendar year 1996 and each subsequent calendar year, the portion of a district judge's annual salary payable by the State is \$58,783.

The State must reimburse to a district control unit paying an additional salary \$41,152 of that additional salary. Beginning January 1, 1997, the salary of a district judge cannot be increased unless the Legislature enacts a salary increase.

The bill, instead, provides that, until the salary of a Supreme Court justice exceeded \$127,447, each district judge would receive an annual salary of \$104,507 determined as follows:

- An annual salary of \$58,783 payable by the State.
- An additional salary of \$45,724 payable by the district funding unit or units. If a district judge received a total additional salary of \$45,724, and not more or less than that amount, the State would have to reimburse the funding unit or units the amount paid to the judge.

If the salary of a Supreme Court justice exceeded \$127,447, each district judge would receive an annual salary determined as follows:

- A minimum annual salary of the difference between 82% of the salary of a Supreme Court justice and \$45,724.
- An additional salary of \$45,724 from the district funding unit or units. If a district judge received a total additional salary of \$45,724, and not more or less than that amount, the State would have to reimburse the funding unit or units the amount paid to the judge.

#### Court Personnel

Circuit Court. Currently, the RJA specifies that, except as otherwise provided by law, the chief judge of the circuit court in each judicial circuit must appoint the employees of the court and fix their compensation within appropriations provided by the county board of commissioners of the county or counties comprising the judicial circuit. Compensation of the employees in each circuit must be paid by the county or counties.

The bill, instead, provides that, in a single-county circuit, the county would be the employer of the county-paid employees of the circuit court. In a multiple county circuit, the employer of the county-paid employees of the court would be as determined pursuant to a contract entered into by the counties within the circuit under Public Act 8 of the Extra Session of 1967, which provides for the intergovernmental transfer of functions and

responsibilities (MCL 124.531-124.536). If the counties did not enter into an agreement under Public Act 8, each county would be the employer of the county-paid employees who served in that county or who were designated by agreement of the counties within the circuit as being employed by that county.

The employer of county-paid employees of the circuit court would have the authority to establish policies and procedures relating to compensation, fringe benefits, and pensions; make and enter into collective bargaining agreements with representatives of the county-paid employees of the circuit court for purposes of establishing those policies and procedures; and appoint an agent for collective bargaining as it related to those policies and procedures.

The chief judge of the circuit court could establish personnel policies and procedures relating to working hours, holidays, leave, affirmative action, discipline, grievances, personnel records, probation, hiring practices, and other personnel matters not specified in the bill as a county authority; enter into collective bargaining agreements with representatives of the county-paid employees of the circuit court for purposes of establishing those policies and procedures; and appoint an agent for collective bargaining as it related to those policies and procedures.

The chief judge also would have the authority to appoint, supervise, discipline, or dismiss the employees of the circuit court according to applicable collective bargaining agreements. In appointing employees, the chief judge could not exceed the amount appropriated for salaries, wages, and benefits of court employees. Compensation would be paid by the county or counties comprising the judicial circuit. Each circuit judge could appoint his or her personal secretary, law clerk, bailiff, or legal assistant, if any. When performing services in a judge's courtroom or chambers, employees would be subject to the control of the judge and the judge could supervise, discipline, or dismiss those employees in accordance with applicable collective bargaining agreements.

If the bill's implementation required a transfer of court employees, all employees of the former court employer would have to be transferred to the circuit court and appointed as employees of the appropriate employer pursuant to the bill, subject to all rights and benefits they held with the former court employer. An employee who was transferred

could not, by reason of the transfer, be placed in any worse position with respect to workers' compensation, pension, seniority, wages, sick leave, vacation, health and welfare insurance, or any other terms and conditions of employment that the employee enjoyed as an employee of the former court employer.

The employer designated under the bill would have to assume and be bound by any existing collective bargaining agreement held by the former court employer and, except where the existing agreement otherwise permitted, retain the employees covered by that agreement. The bill specifies that this requirement could not adversely affect any existing rights and obligations contained in the existing agreement.

The county board of commissioners and the employer designated under the bill would have to consider the rates of compensation and the conditions of employment established for all employees in the county when exercising authority to bargain on compensation, benefits, and pensions and in making annual appropriations for the operation of the circuit court.

Each county would be responsible for providing the necessary security for the circuit court of the county at the discretion of the county commission, or the county executive in counties with an executive form of government.

The county board of commissioners in each county annually would have to appropriate, by line item or lump-sum budget, funds for the operation of the circuit court in that county.

Recorder's Court. Effective October 1, 1997, Wayne County would be the employer of the county-paid employees of the Recorder's Court. Under the bill, Wayne County and the chief judge of the Recorder's Court would have the same authority and responsibilities with respect to Recorder's Court employees as the bill would confer upon counties and circuit court chief judges as employers of circuit court employees. If the City of Detroit agreed, pursuant to the bill, to assume responsibility for the operation and maintenance of the Recorder's Court, Wayne County employees serving in Recorder's Court would become employees of Detroit effective October 1, 2001. The city then would have the same authority and responsibilities with respect to Recorder's Court employees as the bill would confer on counties as employers of circuit court employees.

Probate Court. The bill includes provisions granting the same authority to and imposing the same responsibilities upon counties and probate court chief judges with respect to probate court employees as it would confer upon counties and circuit court chief judges as employers of circuit court employees.

District Court. The bill includes provisions granting the same authority to and imposing the same responsibilities upon district funding units and district court chief judges with respect to district court employees as it would confer upon counties and circuit court chief judges as employers of circuit court employees.

Nepotism. The bill would prohibit a judge or justice from hiring or employing a member of his or her immediate family as a court employee, as a process server, or in any judicial support-related capacity. "Member of his or her immediate family" would mean a person related to the judge or justice by blood or affinity to the third degree. This provision would not apply to employees hired before the effective date of the prohibition.

#### Local Court Management Council

The bill would allow a county or group of counties to create, by resolution, a local court management council pursuant to Public Act 8 of the Extra Session of 1967. A council could be given the responsibility for coordinating the delivery of court services within the county or group of counties. Subject to the approval of the SCAO, the council also could be given responsibility for allocating disbursements from the State Court Fund to the county or counties.

#### Trial Court Assessment Commission

The bill would create the Trial Court Assessment Commission within the Supreme Court. By October 1 of each odd-numbered year, the Commission would have to make a detailed recommendation to the Legislature regarding all of the following:

- The number of circuit, probate, and district judges necessary to dispose of Michigan's trial court caseload.
- Whether the number of district court districts within a county should be increased or decreased, or if district court districts should be consolidated, and how a recommended reduction or consolidation should be accomplished.

- Whether counties should be consolidated into new probate court districts in areas of the State where probate caseloads were low, and means for accomplishing this recommendation including incentives that could be offered to local governments and electors for approval of probate court districts.
- How and when to convert probate judgeships into circuit judgeships in counties having more than one probate judge, for the purpose of assigning circuit judges to the family division of circuit court (family court) proposed by Senate Bill 1052.
- Whether the probate and district courts should be merged in counties having probate and district court caseloads that were below the statewide averages, and legislative changes necessary to accomplish that merger.
- Whether changes in the structure of courts should be made after considering the impact of the proposed family court on courts and caseloads.

The Commission also would have to monitor and review the implementation of the proposed family court and its effect on the processing of trial court caseloads. By October 1 of each odd-numbered year, the Commission would have to make detailed recommendations to the Legislature as to changes in the structure of the family court, including any proposed mergers or consolidations.

The Trial Court Assessment Commission would consist of the following:

- Five members appointed by the Chief Justice of the Supreme Court.
- Five members representing the interests of local governments, appointed by the Governor. (Two would have to be appointed from a list of candidates recommended by the Michigan Association of Counties, two from a list of candidates recommended by the Michigan Municipal League, and one from a list of candidates recommended by the Michigan Townships Association.)
- Two elected and serving members of the Michigan Senate, one appointed by the Majority Leader and one appointed by the Minority Leader.
- Two elected and serving members of the Michigan House of Representatives, one appointed by the Speaker of the House and one appointed by the Minority Leader.

- The Director of the Department of Management and Budget, or the Director's designee.
- Two members appointed by the Governor from a list of candidates recommended by the State Bar of Michigan.
- Four public members appointed by the Governor, one from each of the four judicial districts for the election of Court of Appeals judges, including at least one certified public accountant.

Members would have to be appointed within 30 days after the bill's effective date and would serve for a term of four years or until a successor was appointed, whichever was later. Vacancies would have to be filled in the same manner as the original appointment.

The Commission's first meeting would have to be called by the Chief Justice, who would have to appoint the chair from among the four public members and appoint other Commission officers. A majority of members would constitute a quorum for the transaction of business; a majority of members serving and voting would be required for official action of the Commission. The Commission would have to comply with the Open Meetings Act and the Freedom of Information Act.

Members would serve without compensation, but could be reimbursed for actual and necessary expenses incurred in the performance of official duties.

#### Caseload Classification Commission

The bill would create a Caseload Classification Commission within the Legislative Council. The Legislative Council would have to provide the Commission with suitable office space, staff, and necessary equipment. The Commission would consist of the following:

- Four members of the Senate, including two from each caucus.
- Four members of the House of Representatives, including two from each caucus.
- Five judges. Two would have to be circuit judges, one would have to be a district judge, one would have to be a probate judge, and, unless the Detroit Recorder's Court were abolished, one would have to be a Recorder's Court judge.
- One member who represented the Department of Management and Budget.

The leader of each caucus in the Senate and the House would have to appoint the legislative members of the Commission by January 1, 1997. By agreement and with the Governor's concurrence, the leader of each legislative caucus would have to appoint the remaining Commission members by January 1, 1997. The Governor would have to designate one of the judges as chairperson of the Commission.

Commission members, other than legislators, would be appointed to staggered, four-year terms. Legislative members of the Commission would be appointed for two-year terms. A vacancy would have to be filled in the same manner as the original appointment. A quorum would consist of a majority of members appointed and all Commission business would have to be conducted by not less than a quorum. The Commission would have to comply with the Open Meetings Act and the Freedom of Information Act.

Commission members could not receive a salary for their service, but would have to be reimbursed for reasonable, actual, and necessary expenses incurred in the performance of duties as a Commission member.

The Caseload Classification Commission would have to study and classify the civil and criminal cases filed in the district, circuit, and probate courts and the Detroit Recorder's Court and develop a set of criteria for determining the relative complexity of the various types of cases. The Commission then would have to apply the criteria to the caseload of the courts and recommend to the Legislature a funding formula for the money appropriated annually for the operation of the courts. The funding formula would have to take into account, for each county, both the total caseload and the relative complexity of the cases that comprised that caseload.

The Commission would have to submit the recommended funding formula to the Secretary of the Senate and the Clerk of the House of Representatives by July 15, 1997. If a proper request were submitted by a serving member of the Legislature, the Legislative Service Bureau would have to prepare a bill embodying the recommended funding formula by September 15, 1997. If the funding formula were not enacted into law by December 31, 1997, the Commission would have to revise the formula and submit it to the Legislature by March 31, 1998. If the funding formula were not enacted within 60 days after submission, the Commission would have to revise

the funding formula and submit it again within 90 days. The revised funding formula would be subject to the same enactment process as the formula originally submitted. Until the Legislature enacted the funding formula, the Commission would have to continue to revise and resubmit it to Legislature.

The Commission could recommend modifications to a funding formula enacted into law pursuant to the process outlined above. Modifications could not be recommended sooner than two years after the formula's effective date, unless the modifications were based upon omissions, technical errors, changes in the law, or court decisions. Subsequent modifications could not be recommended sooner than two years after previous modifications other than those based upon omissions, technical errors, changes in the law, or court decisions. Proposed modifications would be subject to the same enactment process as the original funding formula.

#### Judicial Performance Commission

The bill would require the Supreme Court to create a Judicial Performance Commission, which would have to develop standards for evaluating the performance of all Michigan judges. The results of the evaluation of judges would have to be made available to the public by June 1, 1999. In developing the standards, the Supreme Court would have to consider the American Bar Association guidelines for the evaluations of judicial performance (August 1985).

#### Other Provisions

State Funding. The bill would delete requirements that the costs of various specific employees and functions of the State-funded trial courts be paid by the State. These would include the Third Circuit Court and 36th District Court reporter or recorder; the Wayne County jury board; and the 36th District Court's judicial assistant, probation department, and magistrate.

Evening and Weekend Sessions. The bill would specifically allow the circuit court and the probate court to hold evening and weekend sessions of the court.

Sunset. The bill would delete a January 1, 1998, sunset on the RJA's authorization for assessing a 20% late penalty on overdue payments for penalties, fees, or costs.

District Court. The RJA provides that the district court does not have jurisdiction in actions for

injunctions, divorce, or actions that are historically equitable in nature, except as otherwise provided by law. The bill specifies, however, that the district court would have the jurisdiction and power to make any order proper to effectuate fully the court's jurisdiction and judgments.

The RJA also provides that appeals from the district court are to the circuit court, except that all appeals in misdemeanor and ordinance violation cases tried in the 36th District Court, or in a felony case over which the 36th District Court has jurisdiction before trial, are to the Detroit Recorder's Court. The bill specifies that appeals of 36th District Court matters to the Recorder's Court would apply only if the Recorder's Court were not merged with the Third Circuit Court.

#### Repealers

The bill would repeal, effective October 1, 1997, sections of the RJA that deal with all of the following:

- Establishment and responsibilities of the executive committee and executive chief judge of the Third Circuit and Recorder's Courts (MCL 600.563, 600.564, 600.567, and 600.592).
- Requiring the probate court to furnish a letter of authority of guardianship to a fiduciary or guardian free-of-charge (MCL 600.872).
- The salary of the Third Circuit Court's reporter or recorder (MCL 600.1123).
- Wayne County's payment to the City of Detroit for courtroom security in the Recorder's Court (MCL 600.1417).
- The authority of the 36th District Court chief judge to appoint SJC employees serving in that court (MCL 600.8272).
- The establishment, operation, and responsibilities of the State Judicial Council (MCL 600.9102-600.9107).
- The 36th District Court's judicial assistant's designation as an employee of the SJC (MCL 600.9944).

The bill also would repeal, effective October 1, 1997, sections of Public Act 369 of 1919 that deal with all of the following:

- Establishment and responsibilities of the executive committee and executive chief judge of the Third Circuit and Recorder's Courts (MCL 725.31-725.34).
- Designation of Recorder's Court staff as employees of the SJC (MCL 725.35 and 725.36).

- State operation and maintenance of the Detroit Recorder's Court and remittance to the State of city and county revenue received from the Recorder's Court (MCL 725.37).
- The transfer of district court functions and employees from the Recorder's Court to the 36th District Court (MCL 725.38).

MCL 600.151a et al.

Legislative Analyst: P. Affholter

### **FISCAL IMPACT**

State. The fiscal impact on the State is indeterminate. Some sections of the bill would produce savings to the State while other sections would increase State costs. Savings would occur if the State Judicial Council were abolished. The State would no longer incur costs for employees who manage the Council for the employment of the Third Circuit, 36th District, and Recorder's Court employees, effective October 1, 1997. In the area of employee salaries of the courts mentioned, however, the State would not realize those savings, as the General Fund dollars would be redistributed to all of the trial court funding units in the State. The State would see some savings in the area of employee benefits, specifically retirement benefits since the State would be absolved of a future liability for paying retirement benefits for those employees who are not yet vested in the State system, but have contributed to the retirement system. Of the 1,096 current employees of the State Judicial Council, it is estimated that at least one-half are not vested in the State system.

The bill also would result in a loss of funds to the State General Fund by redirecting revenue collected from district court costs from the General Fund and to the State Court Fund. The loss is estimated to be approximately \$7 million. The funds instead would be used to provide additional funding to the trial courts in the State and to hold harmless counties that would lose funds under the new distribution formula of the State Court Fund.

The State also would incur additional costs for the full assumption of judges' salaries. This is estimated to be approximately \$3.5 million.

Local. The impact on local government also is indeterminate. For all counties excluding Wayne, there would be savings from the State's full assumption of judges' salaries, as well as an increase in funding for civil legal assistance, and trial court operations. Effective October 1, 1997,

civil legal assistance would pick up the full 23% of the State Court Fund without the \$2,000,000 that would otherwise go to the Court of Appeals for reduction of its backlog. The State Court Fund would increase substantially, allowing counties that do not now receive money from this Fund to receive some of the funding based on the new formula. The Fund would include the current estimate for FY 1996-97 of \$12,502,000 for out-State courts, \$7,000,000 for holding harmless certain counties, \$5,496,000 that would otherwise go to the State-funded courts, and \$900,000 from the reduction to the State Court Administrative Office portion. This is a total of \$25,898,000, which would be distributed under the bill to all funding units based on the new formula.

Wayne County and the City of Detroit would incur additional cost as they would become responsible for court employees who would no longer be employees of the State Judicial Council. With the 10% reduction in General Fund dollars in FY 1996-97 through FY 2004-05, these funding units would have to replace the lost funds themselves or reduce services. Although the General Fund dollars received by the county for court operations would be phased out over 10 years, the first year would result in a loss of approximately \$3 million to the county. The county also would lose approximately \$5 million in State Court Fund revenue for the Third Circuit, 36th District, and Recorder's Courts, which would be redistributed under the new formula to all courts. The new formula, however, would make available approximately \$6 million which would be distributed to all of the courts in Wayne County.

The City of Detroit or Wayne County could incur additional cost for the Recorder's Court due to the bill's abolishment of this court. Based on the 1993 survey by the SCAO, expenditures for the Recorder's Court were approximately \$23 million. The State's 10% reduction in funding for this court would make the cost of assuming this court even greater.

Fiscal Analyst: M. Bain

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.