



**House  
Legislative  
Analysis  
Section**

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**ADD, DELETE JUDGESHIPS**

**Senate Bills 76 and 765 with House  
committee amendment**

**Sponsor: Sen. Bill Bullard, Jr.**

**Senate Bill 764 with House committee  
amendment**

**Sponsor: Sen. John Cherry Jr.**

**Senate Bill 786 with House committee  
amendment**

**Sponsor: Sen. Glenn Steil**

**Senate Bill 825 with House committee  
amendment**

**Sponsor: Sen. William Van Regenmorter**

**House Committee: Civil Law and the  
Judiciary**

**Senate Committee: Judiciary**

**First Analysis (12-11-01)**

**Senate Bills 76, 764-765, 786 and 825 (12-11-01)**

***THE APPARENT PROBLEM:***

As communities grow or decline due to shifts in population, a community's need for district and circuit judgeships also may change. Growing communities may need more judges to handle the increased needs of the community, while communities that lose population may need fewer judges to handle the resulting reduced caseloads. The analysis of "judicial resources" (that is, whether or not communities need more or fewer judges) is the responsibility of the State Court Administrative Office (SCAO), the judicial branch office that, among other things, collects and analyzes information on judicial workloads. The SCAO uses the information it collects to allocate judicial resources through the temporary reassignment of judges and caseloads as necessary, and periodically recommends to the state supreme court and the legislature changes in the number of judgeships. As the SCAO points out, estimating judicial workload and a community's corresponding need for judges is a complex process that involves both quantitative and qualitative factors.

The SCAO analyzes judicial resources by means of a two-step process: a preliminary statistical analysis

and a secondary extended analysis. The SCAO first does a statistical review of the comparative workload of the courts, using three workload indicators: a "weighted caseload analysis," which indicates how many judges would be needed if the standards and case weights developed by the Trial Court Assessment Commission were applied; the average caseload per judge, which indicates the number of judges needed if each judge were to handle an average non-weighted caseload; and a "regression analysis" of caseload, which indicates how many judges would be needed based on a court's caseload if the court were treated similarly to other courts based on the existing relationship between judgeships and caseloads statewide.

If the SCAO determines that there is a consistent difference of at least one judgeship between the current number of judges in a court and the estimated need for judges, based on a three-year weighted caseload measure, it then does an "extended analysis" of the courts so identified. It is on this "extended analysis" that the SCAO bases its recommendations about whether to add or eliminate judgeships.

On August 29, 2001, the State Court Administrative Office issued its Judicial Resource Recommendations Report for the 2002 election cycle. The SCAO recommends the addition of eight judgeships in five courts, and the elimination of three judgeships in two courts, at the end of 2002. The office further recommends that, in three other courts, a review of judgeship needs be conducted at the time a vacancy first occurs by resignation, retirement, or death. A series of bills have been introduced to address the SCAO's recommendations.

### ***THE CONTENT OF THE BILLS:***

The bills would each amend the Revised Judicature Act (MCL 600.504 et al.) to add and delete certain district and circuit judgeships, as follows. All of the bills are tie-barred to each other and to House Bill 5357, which would add two circuit judgeships in Macomb County and eliminate one probate judgeship in Wayne County.

New judgeships must be approved by the local governments that fund each court. Thus, all of the judgeships authorized in the bills would be subject to local approval.

Senate Bill 76 would address the 6<sup>th</sup> Circuit Court. The 6<sup>th</sup> Judicial Circuit consists of Oakland County and has 17 judges. The bill would add 2 judges effective January 1, 2003. If two new judges were added to the 6<sup>th</sup> judicial circuit by election in 2002, as authorized by the bill, the candidate receiving the highest number of votes would be elected for an eight-year term, and the candidate receiving the second highest number of votes would be elected for a six-year term.

Senate Bill 764. The 7<sup>th</sup> Judicial Circuit, which consists of Genesee County, has seven judges. The bill would add one circuit judgeship effective January 1, 2003, and one more effective January 1, 2005. In addition, the bill provides that Genesee County would have two probate judges, rather than three as at present, effective January 1, 2005.

Oakland County currently has four probate judges, but is authorized under the act to have as many as five. Wayne County has nine probate judges, but is authorized to have up to 12. Under the bill, those judges would be authorized to have only their current number of probate judges.

The 68<sup>th</sup> Judicial District, which consists of the City of Flint, is a district of the third class and has six judges. The bill would eliminate one judgeship,

beginning either on the date on which a vacancy occurs, or at the beginning of the term for which an incumbent judge no longer seeks reelection, whichever is earlier.

Senate Bill 765 would eliminate two circuit court judgeships effective January 1, 2003, and an additional judgeship effective January 1, 2005, in the 3<sup>rd</sup> Judicial Circuit. The 3<sup>rd</sup> Circuit consists of Wayne County and currently has 64 judges.

Senate Bill 786. The bill would address the 30<sup>th</sup> District Court, which is a district of the third class and consists of the city of Highland Park. The 30<sup>th</sup> District Court currently has two judges. The bill would eliminate one judgeship, either when a vacancy occurs or on January 1, 2003, whichever is earlier.

In addition, the bill would eliminate one judgeship in the 31<sup>st</sup> District Court, which is a district of the third class and consists of the city of Hamtramck.

Senate Bill 825 would add two circuit judgeships in Kent County, and one additional circuit judge in Ottawa County.

The 17<sup>th</sup> Judicial Circuit, which consists of Kent County, currently has seven judges. Under the bill, the two new judgeships would be authorized effective January 1, 2003, and the bill specifies if those two new judgeships were added by election in 2002, then the candidate receiving the highest number of votes would be elected for an eight-year term, and the candidate with the second largest number of votes would be elected for a six-year term.

The 20<sup>th</sup> Judicial Circuit, which consists of Ottawa County, currently has three judges. The bill would authorize one new judgeship effective January 1, 2005. The person elected would serve an eight-year term.

### ***HOUSE COMMITTEE ACTION:***

The House Committee on Civil Law and the Judiciary adopted amendments to all the bills to break a tie-bar to Senate Bill 766. The committee further amended Senate Bill 76 to address the length of the terms of the new judges that would be added.

### ***BACKGROUND INFORMATION:***

2001 Judicial Resource Recommendations. The State Court Administrative Office released its biennial

review of judicial resource needs on August 29, 2001. The report recommends the addition of eight judgeships in five courts, and the elimination of three judgeships in two courts at the end of 2002. Further, the report recommends that, in three other courts, a review of judgeships should be conducted at the time a vacancy first occurs by resignation, retirement, or death.

District courts. The SCAO identified several district courts for review by adjusted weighted caseload. As a result, it makes the following recommendations:

- 18<sup>th</sup> District Court – Westland: no change recommended; review judgeship needs in two years.
- 31<sup>st</sup> District Court – Hamtramck: review when first vacancy occurs for elimination of judgeship.
- 68<sup>th</sup> District Court – Flint: review when first vacancy occurs for elimination of judgeship.
- 70<sup>th</sup> District Court – Saginaw County: review when first vacancy occurs for elimination of judgeship.
- In addition, the SCAO reviewed several courts due to request, pending legislation, or prior review. As a result, it makes the following recommendations:
- 30<sup>th</sup> District Court – Highland Park: eliminate one judgeship upon vacancy.
- 35<sup>th</sup> District Court – Plymouth: no change recommended; review judgeship needs in two years.
- 45A District Court – Berkley: no change recommended.
- 45B District Court – Oak Park: no change recommended.
- 47<sup>th</sup> District Court: Farmington Hills: no change recommended.
- 50<sup>th</sup> District Court: Pontiac: no change recommended.
- 63<sup>rd</sup> District Court: Kent County: no change recommended; review judgeship needs in two years.
- Circuit/probate courts. The SCAO identified several circuit/probate courts for review by adjusted weighted caseload. As a result, it makes the following recommendations:

- 3<sup>rd</sup> Circuit Court/Wayne County Probate: eliminate two circuit judgeships upon vacancies; review judgeship needs in two years.

- 6<sup>th</sup> Circuit Court/Oakland County Probate: add two circuit judgeships; review judgeship needs in two years.

- 7<sup>th</sup> Circuit Court/Genesee County Probate: add one circuit judgeship; review judgeship needs in two years.

- 16<sup>th</sup> Circuit Court/Macomb County Probate: add two circuit judgeships; review judgeship needs in two years.

- 17<sup>th</sup> Circuit Court/Kent County Probate: add two circuit judgeships; review judgeship needs in two years.

- 20<sup>th</sup> Circuit Court/Ottawa County Probate: no change recommended; review judgeship needs in two years.

- In addition, the SCAO reviewed one court due to request, pending legislation, or prior review. As a result, it makes the following recommendations:

- 21<sup>st</sup> Circuit Court/Isabella County Probate: Add one circuit judgeship.

Methodology for determination of judicial workload. The State Court Administrative Office uses three statistical procedures, or “workload measures,” in coming up with an initial indicator of the need to add or eliminate judges. After the initial statistical review, an extended analysis of case-related factors, support resources, and environmental factors then is done before the SCAO makes a determination regarding judicial workload and resource requirements.

The preliminary statistical review includes three statistical procedures that are used most widely across the 50 states: weighted caseload, average caseload per judge, and regression. Use of each of these procedures results in a number that can be used to compare the number of actual judges in a court with the number of judges the statistical procedure suggests. These three statistical procedures are described in the Supreme Court’s 2000 *Annual Review*:

“*Weighted caseload* measures of judicial workload were developed based on empirical data concerning case processing in Michigan. To develop weighted workload measures, the time that judges and judicial

officers spent on case-related work was recorded. The data was then analyzed to determine the total case-related time spent on each type of case, the time spent on a case by a judge, and the time spent on a case by a judicial officer. The empirical data supported the development of estimates of judge time available for case-related matters, the development of case weights, and the division of workload between judges and judicial officers

*Average caseload* is a measure that describes how many judges would be needed to process a particular number of cases if each judge handled an exact average number of cases. For example, if the average judge statewide handled 1,000 cases and a court had 1,500 filings one would estimate that the court needed about 1.5 judges to process the 1,500 new filings. Average caseload provides a useful estimate of need when case types are fairly uniformly distributed across courts. When the complexity of cases varies across courts, the average caseload per judge method loses some ability to make fine distinctions concerning relative need.

Finally, *regression* is a useful tool for selecting courts for examination that have a disproportionate number of judges for the court's caseload relative to other Michigan courts. The procedure is based on the relationship between filings and the number of judges available to process those filings. Since judges are individuals and not subject to fractionalization, it is not possible to match the number of available judges exactly with caseload. Therefore, some variation in the number of available judges relative to the caseload is to be expected. Regression allows the determination of whether or not a court's resources are significantly out of line with statewide policies. An advantage of regression is that it provides confidence intervals to be placed around the estimated need for judges. For example, it is possible to determine that one is 95 percent confident that a particular court needs between 1 and 1.50 judges to process the caseload of the court based on the experience of courts statewide."

The secondary, or extended, analysis is tailored to the particular court. Case-related factors include caseload mix, types of cases (traffic, asbestos, complex civil, domestic, complex criminal, court of claims), case counting methodology, docket backlog, and prosecutor and law enforcement practices (including charging practices affecting case count, pleas, and trials). Support resources include consideration of staffing levels (including availability of judicial officers, case processing staff, and law clerks), assignments into or out of the court, facilities, and

technological resources (including computer systems, networking, and video arraignments). Finally, environmental factors include demographics (housing and labor market patterns, prisons, *pro per* cases, or businesses), local legal culture (contested hearings versus stipulations, number of waivers of preliminary exams, stipulations to the evidence versus testimony), and judicial philosophy (the time a judge give litigants and attorneys, jury versus bench trials, pleas versus trials, justice system involvement, and community leadership).

Local approval of additional judgeships. Since the state constitution requires that new judgeships be filled by election, any additions to the number of judgeships must be made in time for candidates to file for election to a newly created seat. Under the Revised Judicature Act deadlines are established for the statutory creation and local approval of new judgeships. The Michigan Election Law places a deadline on filing for the primary election. Furthermore, the creation of new district judgeships requires the approval by the governing bodies of the appropriate district control units. In order for a new judgeship to be filled, a resolution must be adopted by the appropriate local unit of government and filed with the state court administrator. Thus, a new judgeship cannot be created and filled without the approval of the appropriate local unit of government.

### **FISCAL IMPLICATIONS:**

According to the SCAO's Judicial Resource Recommendations Report dated 8-29-01, and also to an undated analysis by the House Fiscal Agency (HFA), the current method of trial court funding in Michigan requires counties and local municipalities to appropriate the significant share of the cost of trial court operations. The state pays the cost of judges' salaries.

The state portion of the cost of new judgeships (for 2002) includes state pay ranging from \$95,651 for district court judges to \$97,335 for circuit and probate court judges. In addition, the state provides reimbursement (standardization) payments to funding units in the amount of \$45,724 to offset the cost of judges' local pay. The state is responsible for the employer's share of FICA taxes of \$7,488 and \$7,512, respectively, and contributions for retirement of \$9,896 and \$10,014, respectively. Average state travel costs per judge are approximately \$600. Finally, there is a one-time cost of approximately \$6,000 for each new district court judgeship for the purchase of court recording equipment. This amounts to a *total* state cost of \$158,759 for a district

court judgeship, and \$160,585 for a circuit or probate court judgeship.

Also, there are significant local costs associated with the addition of a judgeship. Local costs for the addition of a trial court judgeship are higher than the state costs, both in terms of “one-time” costs and ongoing, annual costs. It is difficult to provide a set cost per judge. Because personnel costs are a significant portion of trial court operational costs, variation in salary rates statewide result in substantial differences in annual support costs from location to location.

### **ARGUMENTS:**

#### ***For:***

The package of bills (including House Bill 5357, which has passed the House), would accomplish much of the reallocation of judicial resources as recommended by the State Court Administrative Office. The package is based on the August, 2001 report of the SCAO, which was based, in turn, on extensive analysis of factors such as population, caseload, and so forth. In addition, the package stays within the policy guidelines put forth by the governor’s office, which states that there should be no net increase in numbers of judges; that is, that for every judgeship added, one should also be eliminated in order to keep costs under control. The package would accomplish this, while recognizing the needs of growing communities for more judges. Where judgeships are eliminated, this is accomplished by attrition, so that the offices will be eliminated when incumbents leave office.

#### ***Against:***

The package of bills reflects many of the SCAO’s recommendations, but it varies from the report in several instances. For instance, while the SCAO recommends that Wayne County should have two fewer circuit judges, the package of bills goes further than that, and eliminates three circuit judges. And, where the SCAO recommended that an additional circuit court judgeship in Isabella County and no change for Ottawa County, the bill package would instead add a judge in Ottawa and fail to include Isabella. It could be argued that the legislature should pay closer attention to the court’s recommendations when assessing the needs for these judgeships, as the recommendations are based on expert analysis and understanding of judicial workload needs.

#### ***Against:***

Many of the communities slated for the elimination of judgeships presented testimony to the House and Senate committees in protest of the legislation. They argued that these cuts in judicial resources will negatively affect citizens’ ability to have access to justice. Many presented compelling testimony of their communities’ needs to have these judgeships left intact, or even to have additional judgeships. Perhaps an assessment of judicial resources ought not to be limited by the executive branch’s proclamation that no new judgeships can be added; perhaps these needs should be weighed against other competing needs in the budget process, rather than against an arbitrary standard of the number of currently existing judgeships.

### **POSITIONS:**

Representatives of the Oakland County Circuit Court, the Macomb County Circuit Court, and the Kent County Circuit Court testified in support of adding judgeships in those courts. (11-20-01)

The following submitted testimony in opposition to the elimination of judgeships in Wayne County, and in Highland Park and Hamtramck:

- Congressman John Conyers and Congresswoman Carolyn Cheeks Kilpatrick (11-19-01)
- The Detroit Branch of the NAACP (11-20-01)
- The Wolverine Bar Association (11-20-01)
- The Wayne County Commission (11-1-01)

The judges of the 68<sup>th</sup> District Court submitted testimony in opposition to the elimination of a judgeship in that court. (11-20-01)

The judges of the 21<sup>st</sup> Circuit Court in Isabella County testified in opposition to the legislation’s failure to add a judgeship in that court, as recommended by the SCAO report. (11-20-01)

Analyst: D. Martens

■ 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.