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## ADD, DELETE CERTAIN JUDGESHIPS

### House Bill 5357 (Substitute H-2) First Analysis (11-29-01)

**Sponsor: Rep. Jim Howell**  
**Committee: Civil Law and the Judiciary**

#### ***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. Legislation has been introduced, under House Bill 4788, to address some of the SCAO's judicial resource recommendations. Other portions of the recommendations will be addressed under Senate Bills 763 through 766. It is now proposed that legislation be introduced to address changes in the 16<sup>th</sup> Circuit Court and in Wayne County probate courts. (For further information, see HLAS analysis of House Bill 4788.)

#### ***THE CONTENT OF THE BILL:***

The bill would amend the Revised Judicature Act to add certain circuit judgeships, effective January 1, 2003, and to eliminate a probate judgeship, upon the expiration of the term of an incumbent who did not seek, or was not eligible for, reelection. The local governments that fund each court must approve new judgeships. Additions and deletions would be as follows:

- 16<sup>th</sup> Circuit Court – Macomb County. The 16<sup>th</sup> Judicial Circuit consists of Macomb County and has nine judges. The bill would add two judgeships, effective January 1, 2003. The bill would specify that, if two new offices of judge were added to the circuit by election in 2002, the candidate receiving

the highest number of votes in the November 2002 general election 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.

• Wayne County. Wayne County currently has nine probate judges. The bill would eliminate one judgeship. The bill would also delete current provisions that allow the Wayne County Board of Commissioners to provide for additional probate judges when deemed necessary. Instead, the bill would specify that the county would have eight probate judges beginning on the earliest of the following dates:

\*\* Upon the expiration of the term of an incumbent who did not seek reelection, or

\*\* Upon the expiration of the term of an incumbent who wasn't eligible to seek reelection.

The bill would also specify that Wayne County would have nine probate judges until these provisions took effect.

MCL 600.517 et al.

### ***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 according to the SCAO, 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, says the SCAO. 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 bill would authorize two additional judgeships for the 16<sup>th</sup> Circuit Court in Macomb County to account for changes in judicial workload and local demographics. The additional judgeships reflect the recommendations of the State Court Administrative Office's (SCAO) Judicial Resources Recommendations Report of August 29, 2001. The circuit now has nine judges with three terms expiring every two years. According to the House Republican

Policy Office, the bill proposes to stagger the terms of the newly elected judges so that not more than four of the 11 judges would have terms expiring at the same time: the candidate with the highest vote in the general election to fill the new position would receive an eight-year term and the candidate with the next highest vote would receive a six-year term. The additions should also help ease clogged dockets and improve the administration of justice, and will mean shorter waits for trials on criminal and civil matters. Further, the county could avoid the cost of jailing suspects, who could be cleared and released sooner, or convicted and sent to state prison. As local governments that help pay the costs of these courts must approve any additional judgeships prior to election deadlines, the bill would not constitute a state mandate on the local unit; rather, it would authorize (and approve for the state's share of necessary funding) needed judgeships where a local community acts affirmatively to create and fill the positions.

The bill also proposes to eliminate one probate judgeship in Wayne County. The SCAO report noted that 64 circuit court judges and nine probate judges, for a total of 73 judges, serve Wayne County. The report also noted that much of the probate court's jurisdiction has been transferred to the family division of the circuit court, which results in the circuit court having the equivalent of 67 judgeships to meet its needs, and the probate court having six judgeships to meet its needs. The recommendations of the SCAO were that the circuit and probate dockets be handled by 69 judges, rather than 73. However, the bill would eliminate only one probate court judgeship, and would not affect an incumbent who could run again for office.

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

In a letter to the House and Senate committees, the Detroit Branch of the National Association for the Advancement of Colored People (NAACP) generally deplores the elimination of judgeships, as proposed in the SCAO recommendations for Hamtramck, Highland Park, and Wayne County. The letter calls upon the governor to promote fair and equitable treatment of all citizens, especially in the judicial process, where, according to the letter, minorities tend to be subjected to negative treatment. The letter also addresses the issue of racial profiling, which it suggests extends to the courtroom, and would be exacerbated by the proposed elimination of judgeships.

Letters were also received from members of Congress for the Detroit area. Each voiced strong

opposition to SCAO recommendations that would eliminate judgeships for Hamtramck, Highland Park, and Wayne County. The letters note that in spite of an increase in population in these judicial districts, the caseloads in the courts have not decreased. Also, the letters note, “at a time when our court system is straining from excessive caseloads, elimination of judicial personnel would pose unnecessary hardship on an already overburdened system . . . and would add additional delays for citizens seeking justice in these courts”.

***Against:***

The provisions of House Bill 5357, together with the proposed additions and elimination of judgeships in House Bill 4788, fall far short of the SCAO recommendations for 2001, which are based on existing and projected needs of specific communities. The report recommends that eight judgeships be added in five courts, and that three judgeships be eliminated 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.

***Response:***

The majority of the issues that were proposed in the SCAO recommendations that are not included in House Bills 5357 or 4788 are addressed in Senate Bills 763 through 766.

***POSITIONS:***

The Michigan Probate Judges Association has not formally taken a position on the bill. However, the association states that it has never supported the elimination of probate judges. If judges *are* to be eliminated, it favors elimination by attrition. (11-28-01)

The Macomb County Board of Commissioners supports the bills. (11-28-01)

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■ 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.