



**House
Legislative
Analysis
Section**

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**REVISE CIRCUIT AND PROBATE
JUDGESHIPS**

**House Bill 6498 (Substitute H-1)
First Analysis (12-3-02)**

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

THE APPARENT PROBLEM:

As a community grows or declines due to shifts in population, the community's need for different types of judgeships may change. 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), which collects and analyzes information on judicial workloads, among other things. The SCAO uses this information to allocate judicial resources through the temporary reassignment of judges and caseloads as necessary and biennially issues a Judicial Resources Recommendations report to recommend to the state supreme court and the legislature changes in the number of judgeships. One consideration reflected in the SCAO's August 2001 report is the legislature's creation of the family division of the circuit court in 1998 to handle delinquency cases, neglect and abuse cases, adoption proceedings, name changes, and other family matters. Because these matters were previously heard in the probate court, the creation of the family division has generally resulted in an increase in circuit courts' caseloads and a corresponding decrease in probate courts' caseloads. In areas where such a caseload shift has occurred but the legislature has not changed in statute the numbers of judges assigned to the various courts, a probate judge may be assigned to the circuit court, allowing the courts to more efficiently handle their respective caseloads.

Among other things, the August 2001 SCAO report recommended the addition of two judgeships in the 16th Circuit Court, which is the circuit court for Macomb County, and the elimination of two judgeships in the 3rd Circuit Court, which is the circuit court for Wayne County. The SCAO also recommended the addition of one 7th Circuit Court judgeship (Genesee County). In each case, however, the SCAO advised that the courts ought to be reviewed for further adjustments to their allocation of judicial resources in two years. Further, the SCAO's report includes comments, which shed light on potential future recommendations. Specifically, the report suggested that the 16th Circuit Court could use

12 judges (one more than the SCAO actually recommended) and that the 3rd Circuit Court and the Wayne County Probate Court could collectively make do with a total of 69 judges, down from the current 73—64 circuit court judges and nine probate judges. Moreover, the report suggested that the Genesee County circuit and probate courts could use 13 judges collectively—up from ten. In both Macomb and Genesee Counties, the SCAO noted that probate judges had been reassigned to the family division of the circuit courts.

In response to the SCAO's recommendations and observations, the legislature enacted Public Acts 253, 254, and 257 of 2001. Among other things, these acts permitted the addition of two judgeships to the 16th Circuit Court as of 2003 and provided for the elimination of two 3rd Circuit Court judgeships as of 2003 and the elimination of one more judgeship as of 2005. (Note: new judgeships must be approved by the local governments that fund each court. Thus, permitting an addition of a judgeship only results in the actual addition of a judgeship, when the addition is approved at the local level.) The acts also provided for the elimination of one Wayne County Probate Court judgeship on the earlier of the following two dates:

- the expiration of the term of an incumbent probate judge who is eligible to seek reelection but who does not file by affidavit to seek reelection to that office or who withdraws within three days after filing by affidavit to seek reelection; or
- the expiration of the term of an incumbent probate judge who is not eligible to seek reelection to that office.

In Genesee County, the acts permitted two additional 7th Circuit Court judgeships—one in 2003 and one in 2005—and provided for the elimination of a probate judgeship in 2005.

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To complicate matters further, in the November 2002 general election a sitting probate judge in Macomb County ran for and was elected as judge in the 16th Circuit Court. Given that two of the county's probate judges are currently handling cases for the family division of the 16th Circuit Court anyway, it has been suggested that this would be an appropriate time to change the statute to eliminate a probate judgeship in Macomb County and add a judgeship in the 16th Circuit. Legislation has been introduced to accomplish this, to clarify existing statutory language, and to potentially speed up certain changes already provided for in statute.

THE CONTENT OF THE BILL:

House Bill 6498 would amend the Revised Judicature Act (MCL 600.504 et al.) to modify the number of circuit and probate judgeships currently assigned to certain counties, as follows:

3rd Judicial Circuit. Under current law, the 3rd Judicial Circuit, consisting of Wayne County, will have 64 judges until 12 noon, January 1, 2003, and then will have 63 judges until 12 noon, January 1, 2005. After that date, the circuit will have 61 judges. Under the bill, however, if a vacancy occurred between January 1, 2003, and January 1, 2005 in a judgeship held by an incumbent judge of the circuit who was ineligible to seek reelection to that office in 2004, then the judgeship would be eliminated unless the total number of judgeships in the circuit had been reduced to 61 before the vacancy occurred.

16th Judicial Circuit. Under current law, the 16th Judicial Circuit consists of Macomb County and has nine judges. In addition, subject to Section 550 of the act (MCL 600.550), the county, subject to local approval by a resolution adopted by its board of commissioners, may elect two additional circuit judgeships, effective January 1, 2003. The bill would add that the county could create one additional judgeship, effective January 1, 2005, under this provision. In addition, the bill would specify that, if a new office of judge is added to the circuit by election in 2004, the term of office of that judgeship for that election only would be eight years.

Probate Judges. Currently, the RJA specifies that, with certain exceptions, each probate court district created by law shall have one probate judge, and each county that is not part of a probate court district created by a resolution calling for a special election or previously created by law must have at least one probate judge. The counties of Berrien, Calhoun, Ingham, Monroe, Muskegon, Saginaw, St. Clair, and

Washtenaw each have two probate judges. In addition, until January 1, 2005 the county of Genesee has three judges, and beginning at 12 noon on January 1, 2005 will have two judges. However, if, after that date, a vacancy occurred in the judgeship held by the incumbent probate judge in Genesee County whose term of office expired January 1, 2005 and who would be ineligible to seek reelection to that office in 2004, that judgeship would be eliminated, effective 12 noon on January 1, 2005.

Macomb County currently has three probate judges. The bill would specify, instead, that Macomb County will have three probate judges until 12 noon, January 1, 2005. However, if the incumbent probate judge in Macomb County whose term of office expires on January 1, 2005 is elected in 2002 to the office of circuit judge in the 16th Judicial Circuit for a term beginning January 1, 2003, that probate judgeship would be eliminated, effective 12 noon, January 1, 2005. After that date, Macomb County will have two probate judges, under the provisions of the bill.

Currently, under the act, Wayne County is to have eight probate judges beginning on the earliest of the following dates: i) upon the expiration of the term of an incumbent probate judge who is not eligible to seek reelection to that office; or ii) upon the expiration of the term of an incumbent probate judge who is eligible to seek reelection but who does not file by affidavit to seek reelection to that office, or who withdraws within three days after filing by affidavit to seek reelection to that office. Under the bill the latter provision would specify, instead, "upon the occurrence of a vacancy in a judgeship held by an incumbent probate judge in Wayne County whose term expires on January 1, 2005, and who would be ineligible to seek reelection to that office in 2004."

BACKGROUND INFORMATION:

For more information on how the SCAO analyzes judicial resources, see the House Legislative Analysis Section's first analysis of Senate Bill 76 et al., dated 12-11-01.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

The SCAO noted in its August 2001 Judicial Resources Report that two of Macomb County's three probate judges have been reassigned to the

circuit court. The SCAO also indicated that the 16th Circuit Court, which covers Macomb County, could use a total of 12 judges. In 2001 the legislature permitted two additional judges in the 16th Circuit Court beginning on January 1, 2003, bringing the circuit's total number of judgeships up to 11. Then, during the November 2002 general election, a Macomb County probate judge ran for and was elected to the 16th Circuit Court even though his term as probate judge was not set to expire until January 1, 2005. Because two of Macomb's probate judges are effectively serving on the circuit court and the SCAO has indicated that the 16th Circuit could use 12 judges, it is appropriate to allow Macomb County to drop a probate judgeship and add another circuit court judgeship effective January 1, 2005. Under the bill, the (new) governor could fill the vacancy left in the probate court by the judge who is leaving to join the circuit court, so that the two courts would continue to have 14 judges between them. At the same time, the bill would provide clarification that it is that judgeship that will be eliminated on January 1, 2005; without such clarification, it would be unclear, based on the statute, which of the three probate judgeships is to be eliminated. Beginning January 1, 2005, the circuit court could have up to 12 judges and the probate court would have two judges; this allocation of judicial resources would more accurately reflect the relative caseloads of the circuit and probate courts.

In the 2001 legislation, the legislature provided for the elimination of one probate judgeship and the addition of a circuit court judgeship, effective January 1, 2005, which coincides with the expiration date of the term of a current probate judge who would not be eligible for reelection, anyway. The bill would clarify that if that judge's term expires between January 1, 2003 and January 1, 2005, the (new) governor could appoint someone to fill the vacancy, but that it is that judgeship that will expire on January 1, 2005. As in the case of Macomb County, without this clarification, it is unclear which of Genesee's probate judgeships is to be eliminated on January 1, 2005.

Although judges in Wayne County would generally prefer not to see the reductions in the number of circuit and probate judgeships occur, these reductions are already provided for in statute. Given that they will occur, the bill proposes a humane solution to eliminate judgeships by attrition rather than forcing incumbents to run against one another.

POSITIONS:

There are no positions on the bills.

Analyst: J. Caver

■ 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.