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BILL



ANALYSIS

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Senate Bill 461 (as enrolled)  
Sponsor: Senator Alan L. Cropsey  
Senate Committee: Judiciary  
House Committee: Judiciary

**PUBLIC ACT 40 of 2003**

Date Completed: 8-27-03

**RATIONALE**

The Revised Judicature Act (RJA) provides for most probate court judges in Michigan to be paid a full-time annual salary of 85% of the salary of a Justice of the Supreme Court. Based on that formula, those probate judges receive an annual salary of \$139,919. The Act also prohibits a full-time probate judge from practicing law other than as a probate judge. There are 10 counties in Michigan, however, that currently do not meet the criteria for a full-time probate judge (i.e., they have fewer than 15,000 people, according to the 1990 U.S. census; are not part of a probate court district approved by the voters; and are not specifically designated as having a full-time probate judge). The probate judges in those 10 counties are paid a part-time salary and may otherwise engage in the practice of law, which enables them to supplement their judicial salary.

Under the RJA, a part-time probate judge receives an annual salary of \$20,000 and may receive from the county an additional salary. The maximum additional salary had been \$43,000, for a total allowable salary of up to \$63,000. (The actual salaries of the 10 part-time judges in 2002 ranged from \$25,800 in Oscoda County to \$55,794 in Presque Isle County.) While the caseload for a probate court in these small counties may not justify paying the judge a full-time salary, many people have concerns about allowing the judges to practice law in addition to sitting as a judge. Even though the RJA prohibits a part-time probate judge from representing a party in a contested case in the probate court, allowing a judge to sit on the bench in one court and represent clients in another may be perceived as a conflict of interest. Some people suggested that a county be authorized

to pay a part-time probate judge another additional salary that allows his or her total compensation to reach the amount earned by a full-time probate judge, if the part-time probate judge participates in a plan of concurrent jurisdiction and a family court plan, and agrees not to practice law other than as a judge. (Please see **BACKGROUND** for more information about full-time and part-time probate judges, plans of concurrent jurisdiction, and family court plans.)

In addition, the RJA identifies a number of probate court districts, consisting of two or three counties, that are created when a majority of the electors voting on the question in each affected county in a district approves the district. (Counties that do not approve a district, or are not identified in this provision, have probate judges but are not part of a district.) Public Act 715 of 2002 eliminated statutory authorization for some of those districts and realigned the county makeup of others. (Although the identified districts range from the first to the 19th, the RJA provided for 16 probate districts in total after the 2002 legislation.) Among other things, the 2002 amendments moved Baraga County from the third district to the first, which previously consisted of Houghton and Keweenaw Counties. Since the district now has three counties, the RJA allowed it to be created only with the approval of the voters in all three counties. It was suggested that the first district be authorized as either a three-county district, if voters in all three counties approve it, or as a two-county district, including Houghton and either of the other two counties, if voters in the remaining county turn it down.

## **CONTENT**

**The bill amended Chapter 8 (Probate Courts) of the Revised Judicature Act to do all of the following:**

- **Increase from \$43,000 to \$45,724 the additional annual salary that a part-time probate judge may receive from the county, beyond his or her \$20,000 salary.**
- **Allow a part-time probate judge to receive another additional salary, for total compensation of up to 85% of the salary of a Justice of the Supreme Court, if the county board of commissioners agrees to reimburse the State for the additional annual salary and the probate judge agrees to participate in a plan of concurrent jurisdiction and a family court plan, and not to engage in the practice of law other than as a judge.**
- **Identify different combinations of counties that may make up the first probate court district, and eliminate authorization for the 14th, 16th, and 19th probate court districts.**

The bill took effect on July 9, 2003.

### **Part-Time Probate Judges' Salaries**

**First Additional Salary; Increase.** Generally, a probate judge of a county with a population of less than 15,000 (according to the 1990 U.S. census) that is not part of a probate court district in which a majority of the electors have approved a district, is considered a part-time probate court judge. A part-time probate court judge may engage in the practice of law other than as a probate judge, but may not represent a party in a contested proceeding in the probate court. Under the RJA, a part-time probate judge receives an annual salary of \$20,000, and may receive from the county an additional salary, as determined by the county board of commissioners. The bill increased the limit on this additional annual salary from \$43,000 to \$45,724.

**New Additional Salary.** Under the bill, a part-time probate judge may receive another additional salary if all of the following apply:

- The county board of commissioners approves payment from the county to the

probate judge of \$45,724 for the first additional salary.

- The county board of commissioners passes a resolution that includes all of the following: a determination of an amount that the board is willing to reimburse the State as an additional minimum annual salary; an agreement that the determination will not be decreased during the judge's term of office; an agreement to reimburse the State immediately for the additional minimum annual salary authorized under the bill; and an agreement that the amount of reimbursement will not be decreased during the judge's term of office.
- The probate judge agrees in writing 1) to participate in a plan of concurrent jurisdiction as provided in Chapter 4 of the RJA; 2) to participate in a family court plan as provided in Chapter 10 of the RJA; 3) not to engage in the practice of law other than as a judge; and 4) that if he or she later meets the criteria for a full-time probate judge under the RJA, any additional minimum annual salary authorized under the bill will be considered part of the minimum annual salary for a full-time probate judge.
- The Supreme Court or the State Court Administrative Office approves the payment of the additional minimum annual salary.

This additional minimum annual salary must be paid by the State as a grant to the county, and the county must pay that amount to the probate judge. The county may increase the determination of the additional salary, and its obligation to reimburse the State during the probate judge's term of office.

The total annual salary paid to a part-time probate judge who receives an additional minimum annual salary under the bill, including the \$20,000 minimum annual salary and the first additional annual salary of \$45,724, may not exceed 85% of the salary of a Justice of the Supreme Court.

If a part-time probate judge later meets the RJA's criteria for a full-time probate judge, any additional minimum annual salary authorized under the bill must be considered part of the minimum annual salary specified for a full-time judge, and the county's obligation under the bill to reimburse the State will end.

A probate judge who receives an additional minimum annual salary under the bill may not engage in the practice of law other than as a judge.

#### Probate Court Districts

Under revisions enacted in 2002, if approved by the county voters, the first probate district would have consisted of Baraga, Houghton, and Keweenaw Counties. Under the bill, the first district may consist of those three counties or Houghton and Baraga Counties, or Houghton and Keweenaw Counties.

The 14th probate district consisted of Kalkaska and Crawford Counties, the 16th probate district consisted of Iosco and Arenac Counties, and the 19th district consisted of Mason and Lake Counties. The bill eliminated authorization for the 14th, 16th, and 19th probate districts.

Under the RJA, when each county board of commissioners of a district agrees by resolution to form a district, the question must be submitted to the voters of the affected counties at the next primary, general, or special election that occurs more than 49 days after the resolution is adopted. The bill requires the State to reimburse the affected counties for one-half of the additional cost of submitting to the electors the question of forming a probate court district, if the question is submitted at a primary, general, or special election held after the bill's effective date but before November 3, 2004.

MCL 600.807 et al.

#### **BACKGROUND**

##### Full-Time Probate Judges

Section 821 of the RJA prohibits the following probate judges from engaging in the practice of law other than as a judge and requires that those judges receive a full-time annual salary:

- A probate judge of a county that is not part of an authorized probate court district.
- The probate judge in each probate court district in which a majority of the electors voting on the question in each county of the district approves creation of the district.
- A probate judge in a county having a population of 15,000 or more according to

the 1990 U.S. census, if the county is not part of a probate court district created pursuant to law.

- A probate judge in Arenac, Kalkaska, Crawford, and Lake Counties. (The RJA grants those judges the power, authority, and title of a district judge within their respective counties, in addition to the power, authority, and title of a probate judge.)

Under the RJA, each full-time probate judge receives a minimum annual salary of the difference between 85% of the salary of a Supreme Court Justice and \$45,724, plus an additional salary of \$45,724 paid by the county, or by the counties comprising a probate court district. If a probate judge receives that amount from the county or counties, the State must reimburse the county or counties the amount paid to the judge.

##### Part-Time Probate Judges

Currently, there are 10 counties in Michigan that have fewer than 15,000 people, according to the 1990 U.S. census; are not part of a probate court district approved by the voters; and are not specifically designated as having full-time probate judges. Those counties are: Alcona, Baraga, Benzie, Iron, Keweenaw, Missaukee, Montmorency, Ontonagon, Oscoda, and Presque Isle. All 10 counties are authorized to be part of a probate court district, but their respective districts have not been approved by the voters.

##### Plan of Concurrent Jurisdiction & Family Court Plan

Public Act 678 of 2002 added Chapter 4 (Trial Court Concurrent Jurisdiction) to the RJA. Under Chapter 4, judges of circuit, probate, and district courts may adopt plans of trial court concurrent jurisdiction. Under such a plan, the circuit court and one or more circuit judges may exercise the power and jurisdiction of the probate court and/or the district court; the probate court and one or more probate judges may exercise the power and jurisdiction of the circuit court and/or the district court; and the district court and one or more district judges may exercise the power and jurisdiction of the circuit court and/or the probate court. Chapter 4 also specifies certain matters over which each court maintains exclusive jurisdiction.

Public Act 682 of 2002 amended Chapter 10 (Family Division of Circuit Court) of the RJA to revise provisions pertaining to the organization and jurisdiction of the family division of circuit court (family court). Public Act 682 requires that the chief circuit judge and chief probate judge in each judicial circuit establish a family court plan by July 1, 2003, and that the Supreme Court develop such a plan for a circuit court that does not do so by that deadline. A family court plan must identify any probate judge serving pursuant to the plan. A probate judge serving in the family court, under a family court plan, has the authority of a circuit judge in family court cases.

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

Paying some small-county probate judges on a part-time basis has long been a concern. The caseload in part-time probate courts does not justify full-time compensation, a situation that was exacerbated when jurisdiction over most family law matters was transferred from the probate court to the family court in 1996. Since part-time judges must have some reasonable way to supplement their judicial income, they are not subject to the usual prohibition against judges' practicing law except as a judge. Allowing a sitting judge also to work as an attorney representing clients in court, however, can appear to be a conflict of interest even though part-time probate judges may not represent a party in a contested case in the probate court. For instance, a part-time probate judge might represent a client in circuit or district court at the same time that his or her opposing counsel appears before the judge on another matter in probate court.

The bill offers a solution to both of these longstanding concerns by allowing a county to compensate a part-time probate judge with an additional annual salary, raising his or her potential maximum salary to the level of a full-time probate judge's salary, if the part-time judge agrees to participate in a plan of concurrent jurisdiction. Since participation in such a plan allows a judge to hear cases in the district and circuit courts, as well as the probate court, the part-time probate judge's caseload will increase to a level that warrants additional pay. Also, the bill prohibits such a

judge from engaging in the practice of law other than as a judge, which eliminates the potential conflict of interest. Part-time probate judges have participated in concurrent jurisdiction demonstration projects, so there is precedent for these judges' officiating over district and circuit court cases. The bill presents an appropriate means to provide a part-time probate judge with suitable compensation for expanded judicial work.

### **Supporting Argument**

Although the State must pay the additional salary authorized by the bill, it will not result in increased State spending. The State must pay the salary as a grant to the county and the county must pay the grant amount to the judge. The additional salary may be paid, however, only if the county board of commissioners agrees to reimburse the State immediately for the extra compensation. Payment of the additional salary, then, is permissive, and the part-time probate judge's county will absorb the expense.

**Response:** According to testimony before the Senate Judiciary Committee by the part-time probate judge from Presque Isle County, only a couple of the State's part-time probate judges are confident that their counties will provide the additional salary. In order to address the problems inherent in part-time probate judgeships, the State likely will have to fund these positions at some point in the future. In addition, the State pays the entire salary of a full-time probate judge and should do so for a part-time judge as well. The RJA requires that \$6,000 of a full-time probate judge's minimum annual salary and the \$45,724 additional salary be paid by the county (or counties, in the case of a probate court district), but it also requires the State to reimburse those amounts to the county or counties.

### **Supporting Argument**

Full-time probate court judges, as well as district, circuit, and appeals court judges, receive an automatic pay increase whenever a Supreme Court Justice's salary is increased. Supreme Court Justices receive pay increases through the State Officers Compensation Commission process, and lower-court full-time judges receive salaries designated as a percentage of a Justice's salary. Part-time probate judges' maximum salaries, however, are fixed in statute. The most they may receive is increased only when an amendment to the RJA authorizes higher pay. Reportedly, full-time probate judges have received more than \$30,000 in pay increases since 1996,

while part-time judges have had no statutory authorization for higher pay since Public Act 374 of 1996 raised their base salary to \$20,000. Allowing counties to provide part-time probate judges with an additional salary addresses this disparity, at least partially.

**Response:** According to figures supplied by the State Court Administrative Office, no part-time probate judge was paid the maximum allowable salary of \$63,000 in 2002. The highest paid part-time probate judge made \$55,794, or more than \$7,000 below the statutory authorization.

### **Supporting Argument**

Until March 31, 2003, when Public Act 715 of 2002 took effect, Baraga County was authorized to be part of the third probate court district, along with Iron County. Since Baraga County is part of the 12th judicial circuit and the 97th judicial district, together with Houghton and Keweenaw Counties, it had been suggested that Baraga be moved from the third to the first probate court district, so that the probate district would be consistent with the 12th circuit and the 97th district. A three-county alignment for a probate court district raised some concerns, though, because the voters in all three counties would have had to approve the formation of the probate district.

Although many people in that three-county area believe that a three-county probate district would best serve the area, some in Keweenaw County evidently are concerned about the possibility of being overshadowed by the two larger counties if the three-county district is approved. Under the 2002 amendments, however, if Keweenaw voters turned down the formation of the district, Houghton and Baraga could not join together in a probate district even if the voters in those counties approved it. Under the bill, if Keweenaw voters choose not to approve the first probate court district, Houghton and Baraga still may form the probate district. Likewise, if Baraga voters reject the district, Houghton and Keweenaw voters may create it.

### **Supporting Argument**

The bill removes statutory authorization for the 14th, 16th, and 19th probate court districts, which no longer have part-time judges. The RJA identifies counties that may become part of a probate district by grouping together counties with part-time probate judges or pairing a county that has a part-time judge with a county that has a full-time probate judge. As a result of recent

legislation, all of the counties previously authorized to create the 14th, 16th, and 19th probate districts now have full-time probate judges. Public Act 92 of 2002 gave the probate judges of Kalkaska, Crawford, and Arenac Counties the power, authority, and title of district judge within their respective counties. Public Act 715 of 2002 did the same for the probate judge of Lake County. The 2002 legislation also included those judges in the provision of the RJA that establishes the criteria for full-time judges. The other counties in the 16th and 19th probate districts (Iosco and Mason) have more than 15,000 people, so the probate judges of those counties already were full-time judges.

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

The bill increases the cap on the total salary of a part-time probate judge from \$63,000 (\$20,000 plus \$43,000) to \$65,724 (\$20,000 plus \$45,724), and, if a county approves an additional payment and other conditions are met, provides that the total salary of a part-time probate judge may be increased up to the same total maximum salary as paid to a full-time probate judge, which is currently \$139,919. The cost of the increase for any part-time probate judge will be determined and paid for by the county. There are 10 part-time probate judges.

The bill also allows for the possible realignment of the first probate district (Baraga, Houghton, and Keweenaw Counties).

Under Section 808(6), the State must pay one-half of the additional cost of submitting the question of forming a probate district to the electors of the affected counties. If counties likely to form a district hold a special election, the cost will be approximately \$66,000, resulting in a State cost of \$33,000. This figure is based on the 2000 presidential primary costs adjusted for inflation. If the question is added to a primary general election ballot, the election cost will be minimal.

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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.