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**SFA****BILL ANALYSIS**

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Senate Bill 461 (as introduced 5-7-03)  
Sponsor: Senator Alan L. Cropsey  
Committee: Judiciary

Date Completed: 5-13-03

### **CONTENT**

**The bill would amend Chapter 8 (Probate Courts) of the Revised Judicature Act (RJA) 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 agreed to reimburse the State for the additional annual salary and the probate judge agreed 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 could make up the first probate court district, and eliminate authorization for the 14th, 16th, and 19th probate court districts.**

#### **Probate Court Districts**

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. Although the identified districts range from the first to the 19<sup>th</sup>, the RJA provides for 16 probate districts in total.)

Currently, if approved by the county voters, the first probate district consists of Baraga, Houghton, and Keweenaw Counties. Under the bill, the first district could consist of those three counties or Houghton and Baraga Counties, or Houghton and Keweenaw Counties.

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

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

**Current 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 of not more than \$43,000, as determined by the county board of commissioners. The bill would increase the limit on this additional annual salary to \$45,724.

Proposed Additional Salary. The bill would allow a part-time probate judge to receive another additional salary if all of the following applied:

- The county board of commissioners approved payment from the county to the probate judge of \$45,724 for the first additional salary.
- The county board of commissioners passed a resolution that included all of the following: a determination of an amount that the board was willing to reimburse the State as an additional minimum annual salary; an agreement that the determination would 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 would not be decreased during the judge's term of office.
- The probate judge agreed 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 met the criteria for a full-time probate judge under the RJA, any additional minimum annual salary authorized under the bill would be considered part of the minimum annual salary for a full-time probate judge.
- The Supreme Court or the State Court Administrative Office approved the payment of the additional minimum annual salary.

This additional minimum annual salary would have to be paid by the State as a grant to the county, and the county would have to pay that amount to the probate judge. The county could 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 received an additional minimum annual salary under the bill, including the \$20,000 minimum annual salary and the first additional annual salary of \$45,724, could not exceed 85% of the salary of a Justice of the Supreme Court.

If a part-time probate judge later met the RJA's criteria for a full-time probate judge, any additional minimum annual salary authorized under the bill would be considered part of the minimum annual salary specified for a full-time judge.

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

MCL 600.807 & 600.822

## **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.

#### 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.

Legislative Analyst: Patrick Affholter

#### **FISCAL IMPACT**

The bill would remove the current \$63,000 cap on the total salary of a part-time probate judge, if a county approved an additional payment and other conditions were met. The salary currently consists of a State salary payment of \$20,000 and an additional amount up to \$43,000 from the county. Under the bill, the total salary of a part-time probate judge could be increased up to the same total maximum salary as a full-time probate judge, which is currently \$139,919. The cost of the increase for any part-time probate judge would be determined and paid for by the county. There are 10 part-time probate judges.

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

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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.