



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383  
Fax: (517) 373-1986  
TDD: (517) 373-0543

Senate Bill 448 (as passed by the Senate)  
Sponsor: Senator Alan L. Cropsey  
Committee: Judiciary

Date Completed: 5-26-05

### **RATIONALE**

The Revised Judicature Act (RJA) provides for the operation and administration of Michigan courts. A number of provisions in the RJA, however, do not reflect the current state of the judiciary or are incompatible with other provisions of law. For example, Chapter 8 (Probate Courts) of the RJA grants some probate judges the jurisdiction, powers, and duties of a district judge, but Chapter 4 (Trial Court Concurrent Jurisdiction) does not recognize that concurrent authority. Also, the per-day salary for a retired judge may be based in part on his or her retirement allowance, but the judicial retirement system now uses a defined contribution plan under which retired judges enrolled in the plan will not receive a pension; and police officers and courts may receive monetary deposits to ensure future court appearances from out-of-State civil infraction violators under the Michigan Vehicle Code, but not under the RJA. It has been suggested that various amendments to the RJA be adopted to facilitate the efficient operation of the courts and to make the RJA consistent with current court practices and other provisions of law.

### **CONTENT**

**The bill would amend the Revised Judicature Act to make various changes relating to the operation and administration of Michigan courts. The bill would do all of the following:**

- Allow a plan of concurrent jurisdiction to provide that probate judges in certain counties would have the jurisdiction, powers, and duties of a district judge.**

- Revise the per-day salary of a retired judge assigned to active judicial service.**
- Change the effective date of a probate court district approved by the electors of certain counties.**
- Allow the destruction of civil infraction records three years, rather than six years, after entry of a finding in an action.**
- Allow a nonresident of Michigan, who was issued a citation for a civil infraction, to leave a monetary deposit with the court or the officer who issued the citation.**
- Provide for the rounding of probate court estate administration fees.**
- Revise the applicability of certain court sanctions.**
- Authorize Department of Natural Resources (DNR) conservation officers to serve civil process in any district court action to which the State was a party.**
- Revise provisions pertaining to the bonding of district court magistrates; actuarial reports concerning the retirement for 36<sup>th</sup> District Court bailiffs; the location of a Court of Appeals judge; and court reporters and recorders.**
- Repeal several sections of the RJA.**

#### Concurrent Jurisdiction

Section 410 of the RJA prohibits a plan of concurrent jurisdiction from delegating a power of appointment to a public office delegated by constitution or statute to the circuit court or a circuit judge, the probate court or a probate judge, or the district court or a district judge. Section 810a of

the Act, however, provides that the probate judges in certain counties have the jurisdiction, powers, duties, and title of a district judge within their counties, in addition to the jurisdiction, powers, duties, and title of a probate judge. (Section 810a currently applies to the probate judges in Arenac, Kalkaska, Crawford, Lake, Iron, and Ontonagon Counties. Beginning January 2, 2007, it also will apply to the probate judges in Alcona, Baraga, Benzie, Missaukee, Montmorency, Oscoda, and Presque Isle Counties.)

The bill specifies that a plan of concurrent jurisdiction could provide that a probate judge of a county listed in Section 810a would have the jurisdiction, powers, and duties of a district judge within that county, including jurisdiction over small claims and civil infraction actions and the power of appointment to a public office delegated by constitution or statute to the district judge.

#### Retired Judges' Per-Day Salary

Article VI, Section 23 of the State Constitution allows the Supreme Court to authorize people who have been elected and served as judges to perform judicial duties for limited periods or specific assignments. In addition, the RJA allows the Supreme Court to authorize any retired judge from any court to perform judicial duties in any court in the State.

The RJA provides that the salary for each day in which a retired judge serves pursuant to Article VI, Section 23 and Michigan law is the greater of the following:

- \$100 per diem for each day or part of a day spent discharging his or her duties.
- The difference between 1/250<sup>th</sup> of the annual salary paid for the judicial office during the time the retired judge serves in the office and 1/250<sup>th</sup> of the State retirement allowance paid to the retired judge during the time he or she serves in the office.

Under the bill, a retired judge's per-day salary instead would be 1/250<sup>th</sup> of the annual salary paid for the judicial office during the time he or she served in office.

#### Probate Court Districts' Effective Dates

The RJA provides for the creation of certain multicounty probate court districts if a majority of the electors voting on the question in each affected county approves the probate court district. The Act specifies that a probate court district becomes effective on the date of common expiration of the terms of the probate judges in the counties comprising the district that occurs not less than 220 days after the vote on the question. Under the bill, instead, a probate court district would become effective on the beginning date of the term for which an incumbent probate judge in any county in the district no longer sought reelection to that office that occurred at least 220 days after the vote on the question.

#### Civil Infraction Document Disposal

Under the RJA, not less than six years after the entry of a judgment in a civil action, including a summary proceeding, a civil infraction action, or an ordinance violation or criminal case in the district court, the court may dispose of documents, records, recordings, and notes related to that action, except the register of actions pursuant to a schedule adopted by the State Administrative Board. The bill would delete reference to a civil infraction action from that provision. Under the bill, the court could order the destruction of documents, records, recordings, and notes related to a civil infraction action not less than three years after the entry of a finding in the action.

The bill would retain an exception that allows a court to order the destruction of notes, tapes, and recordings that have been transcribed and filed with the court one year after the date of the filing of the transcript.

#### Civil Infraction Citation

The bill would allow a person who was not a Michigan resident and who was issued a citation for a civil infraction to "recognize to the law enforcement officer or to the court for his or her appearance by leaving with the officer or court a sum of money not to exceed \$100.00". The officer who received the deposit would have to give the person a receipt for the money, together with the written citation.

Upon or before completing his or her tour of duty, the law enforcement officer would have to deliver the money and the citation either to the court named in the citation or the agency chief or person authorized by the chief to receive deposits. The chief or other authorized person would have to deposit the money and the citation with the court. Failure to deliver the deposit would be embezzlement of public money.

If the person who posted a deposit failed to appear as required in the citation, or for a scheduled informal or formal hearing, the court having jurisdiction and venue over the civil infraction would have to enter a default judgment against the person. The deposited money then would be forfeited and applied to any civil fine or costs ordered.

#### Estate Administration Fees

The RJA requires that, in all decedents' estates in which proceedings are instituted for probate, the probate court charge and collect fees as an expense of administration on the value of all assets, as of the date of the decedent's death. The fees, which are based on the value of an estate, equate to a dollar amount plus a percentage of an amount over a certain level. For example, in an estate valued at less than \$1,000, the fee is \$5 plus 1% of the amount over \$500. In an estate valued at \$100,000 to \$500,000, the fee is \$362.50 plus 1/8 of 1% of the amount over \$100,000. For estates worth over \$500,000, additional fees are charge based on increments of \$100,000.

The fees are due and payable to the probate court before the filing of the final account or within one year after the commencement of probate proceedings, whichever occurs first. Under the bill, the fees, *rounded to the whole dollar*, would be due and payable at that time.

#### Court Sanctions

The RJA grants the Supreme Court, the circuit court, and all other courts of record the power to punish by fine and/or imprisonment people who are guilty of any neglect or violation of duty or misconduct in certain circumstances. These include parties to actions, attorneys, counselors, and all other people for the nonpayment of any sum of money that the court has ordered to be paid, "in cases where by law execution

cannot be awarded for the collection of the sum". The bill would delete the quoted phrase from that provision.

#### DNR Service of Civil Process

The RJA provides that civil process in the district court must be served by a sheriff, deputy sheriff, or court officer appointed for that purpose. Officers of the Department of State Police may serve civil process, however, in any action to which the State is a party, and city or village police may serve civil process in any action to which their city or village is a party. The bill would allow DNR conservation officers, in addition to State Police officers, to serve civil process in any action to which the State was a party.

#### 36<sup>th</sup> District Court Bailiffs

The RJA provides that a person who was serving as a bailiff of the former Common Pleas Court of Detroit on August 31, 1981, became a bailiff of the 36<sup>th</sup> District Court on September 1, 1981. The Act requires that the court clerk pay \$1 from certain district court filing fees to the Wayne County retirement fund, to be credited to the retirement fund of the bailiffs of the 36<sup>th</sup> district serving civil process. The county annually must review the retirement fund and ensure that it is maintained in an actuarially sound condition. Copies of the actuarial reports must be provided to the State Court Administrator. Under the bill, the reports would have to be provided to the chief judge of the 36<sup>th</sup> District Court rather than to the State Court Administrator.

#### District Court Magistrates' Bonding

The RJA requires magistrates to be registered electors in the county in which they are appointed. All magistrates serve at the pleasure of the district court judges. Before assuming office, people appointed as magistrates must take the constitutional oath of office and file a bond with the county treasurer in an amount determined by the State Court Administrator. The bill would require the bond to be filed with the treasurer of a local funding unit of the district, rather than with the county treasurer.

Under the RJA, a magistrate's bond applies to temporary service in another county. Under the bill, the bond also would apply to

temporary service pursuant to a multiple district plan. (The Act allows a district court magistrate to serve in any participating district in a multiple district plan involving districts in the same county.)

### Other Provisions

The bill would do the following:

- Require a Court of Appeals judge whose first term began on or after January 1, 1994, to maintain offices only in the principal Court of Appeals offices in his or her district or in another office located in the municipality, rather than city, where the principal Court of Appeals facilities are located.
- Eliminate requirements that certain probate court testimony taken by an official court reporter or recorder and all district court proceedings that are required to be recorded, use a recording device approved by the State Court Administrator.
- Provide that a court reporter or court recorder would hold office at the pleasure of the chief judge of the court to which he or she was appointed, rather than at the pleasure of the Governor, and delete language pertaining to the suspension of a court reporter or recorder for incompetence or misconduct.

### Repealer

The bill would repeal sections of the RJA that provide for the assignment of a "senior judge" to certain nonjury civil actions (MCL 600.557-600.557b); and a section that requires magistrates to maintain a docket on forms approved by the Supreme Court and submit reports relative to caseload and activity in a manner and form prescribed by the Supreme Court (MCL 600.8555).

MCL 600.226 et al.

### **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**

The bill would make changes in the RJA that are necessary for the efficient operation of the court system and that would provide consistency in court operations. The

Supreme Court reportedly has requested legislation to make appropriate changes in the RJA, including those discussed below.

By specifying in Chapter 4 of the Act that a plan of concurrent jurisdiction could provide that a probate judge had the jurisdiction, power, and duties of a district judge in certain counties in which probate judges are granted that authority under Chapter 8, the bill would bring provisions of the Act that deal with concurrent jurisdiction and probate courts into conformity with one another.

The bill would standardize the per-day salary retired judges receive when they are assigned to a period of active judicial service pursuant to the Constitution. Currently, the salary may be based in part on a judge's pension payment, but since the judicial retirement system now includes a defined contribution plan, not all judges will receive pensions. Under the bill, all retired judges assigned to active service would receive equal pay, regardless of whether they were enrolled in a defined benefit or defined contribution retirement plan.

Although the Governor has the authority to appoint court reporters and recorders, and the RJA provides that court reporters and recorders hold office at the pleasure of the Governor, as a practical matter, those court officers work for the court. Under the bill, a court reporter or recorder appropriately would serve at the pleasure of the chief judge of the court to which he or she was appointed.

Currently, courts and police officers have little enforcement capability regarding out-of-State residents charged with nontraffic civil infractions. Under the RJA, courts and officers may issue an infraction citation, but the Act does not authorize them to receive payment to ensure a later court appearance. This is inconsistent with the Michigan Vehicle Code, under which officers and courts may accept such deposits. By allowing a nonresident charged with a civil infraction to recognize to a law enforcement officer or the court for his or her appearance by leaving a cash deposit, the bill would provide consistency between the RJA and the Vehicle Code and help assure that an out-of-State violator would return to Michigan for further proceedings.

Many violations of law that DNR conservation officers enforce are civil infractions, yet the RJA does not authorize conservation officers to serve civil process. In cases in which service is necessary for civil infraction actions, the DNR apparently must request that the State Police, a county sheriff's department, or a court officer serve the civil process. The bill would give DNR conservation officers the same authority as State Police officers to serve civil process in a case in which the State is a party.

### **Opposing Argument**

The bill should not transfer authority over court reporters and recorders from the Governor to chief judges. Article VI, Section 27 of the State Constitution prohibits the Supreme Court, the Court of Appeals, the circuit court, or any justices or judges of those courts, from exercising any power of appointment to public office except as provided in the Constitution.

**Response:** The bill would not amend Section 1104 of the RJA, which empowers the Governor to appoint court reporters and recorders. The bill simply specifies that, once appointed, court reporters and recorders would serve at the pleasure of their chief judge. The courts should have clear supervisory authority over court reporters and recorders, including the ability to terminate their employment.

Legislative Analyst: Patrick Affholter

### **FISCAL IMPACT**

The bill would have an indeterminate fiscal impact on State and local government.

#### **Civil Infraction Citation**

The bill could potentially increase the collection of fines and costs ordered for civil infractions by allowing an out-of-State resident to deposit up to \$100 with a law enforcement officer. By encouraging violators to pay something up front, the bill would enable courts to collect a portion of fines and costs, which currently often go unpaid when non-Michigan residents fail to appear in court.

#### **Retired Judges' Per-Day Salary**

By changing the formula for calculating the salary of a visiting judge, the bill would increase costs for local court funding units.

Currently, the local government pays a retired judge the difference between  $1/250^{\text{th}}$  of the annual salary for that office and  $1/250^{\text{th}}$  of the judge's State retirement allowance. In almost all cases, this salary calculation is likely to be the greater of the formula's two possibilities, the other being a flat \$100 per day. For example,  $1/250^{\text{th}}$  of a 2005 circuit court judge's salary is approximately \$560. According to the State Court Administrative Office, for a circuit court judge who retired in 2004 with 16 years of service,  $1/250^{\text{th}}$  of his or her State retirement allowance equals almost \$270. Thus, the daily cost of a visiting judge in this scenario currently would be \$290; while under the proposed revision the daily cost instead would be the full \$560. The actual cost increases are impossible to calculate because the State retirement allowance for each judge varies based on salary at retirement as well as number of years of service.

#### **Civil Infraction Document Disposal**

By allowing courts to dispose of civil infraction documents after three years instead of six years, the bill could save local court funding units administrative and storage costs.

Fiscal Analyst: Bethany Wicksall

#### **A0506\S448a**

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.