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BILL ANALYSIS

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Senate Bill 448 (as enrolled)
Sponsor: Senator Alan L. Cropsey
Senate Committee: Judiciary
House Committee: Judiciary

PUBLIC ACT 326 of 2005

Date Completed: 4-11-06

RATIONALE

The Revised Judicature Act (RJA) provides for the operation and administration of Michigan courts. A number of provisions in the RJA, however, did not reflect the current state of the judiciary or were 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) did not recognize that concurrent authority; police officers and courts were authorized to 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; and the RJA required a \$10 appeal fee payable to trial courts in one section but provides in other sections for a \$25 fee for an appeal from the probate court, circuit court, and a district, municipal, or common pleas court. It was suggested that various amendments to the RJA be adopted to facilitate the efficient operation of the courts and to make the RJA consistent with court practices and other provisions of law.

- **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 is 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 is a party.**
- **Revise provisions pertaining to appeal fees payable to trial courts; the bonding of district court magistrates; actuarial reports concerning the retirement for 36th District Court bailiffs; and the location of a Court of Appeals judge.**
- **Repeal two sections of the RJA.**

The bill took effect on December 27, 2005.

CONTENT

The bill amended the Revised Judicature Act to do all of the following:

- **Allow a plan of concurrent jurisdiction to provide that probate judges in certain counties have the jurisdiction, powers, and duties of a district judge.**
- **Change the effective date of a probate court district approved by the electors of certain counties.**

Concurrent Jurisdiction

Section 810a of the Act 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.) Section 410, however, prohibits a plan of concurrent jurisdiction from delegating a power of appointment to a public office delegated by constitution or statute to the district court or a district judge. The bill makes an exception to this prohibition.

The bill specifies that a plan of concurrent jurisdiction may provide that a probate judge of a county listed in Section 810a has 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.

In addition, the Act specifies that in a judicial circuit affected by a plan of concurrent jurisdiction, the district court has exclusive jurisdiction over small claims and civil infraction actions. The bill includes an exception in that provision for a plan that gives a probate judge of a county listed in Section 810a the jurisdiction, powers, and duties of a district judge within that county.

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 previously specified that a probate court district became effective on the date of common expiration of the terms of the probate judges in the counties comprising the district that occurred not less than 220 days after the vote on the question. Under the bill, instead, a probate court district becomes effective on the beginning date of the term for which an incumbent probate judge in any county in the district no longer seeks reelection to that office that occurs 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, or in 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. Previously, that revision also referred to a civil infraction action. Under the bill, the court may 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 retained 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 allows a person who is not a Michigan resident and who is 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 receives the deposit must 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 must 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 must deposit the money and the citation with the court. Failure to deliver the deposit is embezzlement of public money.

If the person who posted a deposit fails 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 must enter a default judgment against the person. The deposited money then must 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*, are 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. The bill deleted from that provision the phrase "in cases where by law execution cannot be awarded for the collection of the sum".

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 allows DNR conservation officers, in addition to State Police officers, to serve civil process in any action to which the State is a party.

36th District Court Bailiffs

Under the RJA, 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 36th 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 36th

district serving civil process. The county annually must review the retirement fund and ensure that it is maintained in an actuarially sound condition. Previously, copies of the actuarial reports had to be provided to the State Court Administrator. Under the bill, the reports must be provided, instead, to the chief judge of the 36th District Court.

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 in an amount determined by the State Court Administrator. The bill requires the bond to be filed with the treasurer of a district funding unit of the judicial district, rather than with the county treasurer as was previously required.

A magistrate's bond applies to temporary service in another county. Under the bill, the bond also applies 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.)

The magistrate bonding revisions apply to bonds filed or renewed by district court magistrates after December 31, 2005.

Appeal Fees

Section 321(7) of the RJA required that a \$10 appeal fee be paid to the clerk of the trial court upon appeal to the Court of Appeals. Section 880c(1), however, requires the party bringing an appeal to pay a \$25 fee to the probate court register upon appeal from the probate court to the circuit court or Court of Appeals; Section 2529 requires a \$25 fee to be paid to the clerk of the circuit court upon appeal to the Court of Appeals or Supreme Court; and Section 6536 requires the appellant in every appeal from a district, municipal, or common pleas court to pay the clerk of the trial court the taxable costs of the prevailing party, together with \$25.

The bill deleted the \$10 appeal fee requirement in Section 321(7).

Other Provisions

The bill requires 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.

The bill also eliminated requirements that certain probate court testimony taken by an official court reporter or recorder use a recording device approved by the State Court Administrator, and instead requires that the testimony be recorded.

Repealers

The bill repealed a section of the RJA that required 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).

The bill also repealed a section that required all proceedings in the district court that are required to be recorded under the Act be recorded by the district court recorder by the use of recording devices approved by the State Court Administrator, or taken by the district court reporter (MCL 600.8611).

MCL 600.303d 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 made changes in the RJA that were necessary for the efficient operation of the court system and that provide consistency in court operations. The Supreme Court reportedly 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 may provide that a probate judge has 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 brings provisions of the Act that deal with concurrent jurisdiction and probate courts into conformity with one another.

Previously, courts and police officers had little enforcement capability regarding out-of-State residents charged with nontraffic civil infractions. Although courts and officers could issue an infraction citation, the Act did not authorize them to receive payment to ensure a later court appearance. This was 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 provides consistency between the RJA and the Vehicle Code and will help assure that an out-of-State violator returns to Michigan for further proceedings.

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

There were conflicting provision in the Act pertaining to appeal fees payable to trial courts. The bill deleted the \$10 fee in Section 321(7) that was inconsistent with the \$25 fee in Sections 880c(1), 2529(1)(g), and 6536.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

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

The bill may 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 will enable courts to collect a portion of fines and costs. These fines and

costs often go unpaid when non-Michigan residents fail to appear in court.

The bill also allows courts to dispose of civil infraction documents after three years instead of six years, which may save local court funding units administrative and storage costs.

In addition, the bill permits conservation officers from the DNR to serve civil process in any action to which the State is a party. Previously, this was done by sheriffs, sheriff deputies, or court officers, so the bill may result in administrative savings to the DNR, the courts, and sheriffs' offices.

Fiscal Analyst: Stephanie Yu

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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.