

Legislative Analysis



STATE PRESIDING PROBATE JUDGE: REPEAL PROVISIONS

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House Bill 4881 reported without amendment
Sponsor: Rep. Ken Horn
Committee: Judiciary

First Analysis (9-13-11)

BRIEF SUMMARY: The bill would repeal sections of the Revised Judicature Act pertaining to the election and duties of a state presiding probate judge.

FISCAL IMPACT: The bill would have no fiscal impact on state or local government.

THE APPARENT PROBLEM:

Legislation has been introduced to repeal two obsolete provisions of the Revised Judicature Act that pertain to the election of a state presiding probate judge and the duties of that position. The duties, which include the appointment of judges to serve temporarily in other counties, are now carried out by the state supreme court and/or the State Court Administrative Office (SCAO) under other statutes and provisions of the state constitution.

THE CONTENT OF THE BILL:

The bill would amend the Revised Judicature Act to repeal Sections 819 and 824.

Section 819 allows probate judges to hold an annual convention to elect a state presiding probate judge. Duties of a state presiding probate judge include appointing probate judges to hold court in other counties as provided in the act.

Section 824 requires a circuit court judge to fill the position of a probate judge if the office of probate judge is vacant, or the probate judge is temporarily absent due to incapacitation or is performing other duties required by law. If no circuit court judge is available, the probate judge or probate register may request the state presiding probate judge to assign a probate judge of another county or probate court district to serve in the open position. The provision also allows the judge temporarily serving in the position to hear to the end any matter begun during the temporary service.

MCL 600.819 and 600.824

BACKGROUND INFORMATION:

The sections of the Revised Judicature Act proposed to be repealed date back to at least The Probate Code of 1939. In 1978, the Probate Code was repealed, a Revised Probate

Code enacted, and the provisions relating to the organization of the probate court were relocated to the Revised Judicature Act (RJA). In 1998, the Revised Probate Code was repealed and replaced by the Estates and Protected Individuals Code.

Under provisions of the state Constitution, the Michigan Supreme Court controls the rule-making process, and provisions of the RJA govern the temporary assignment of probate judges, as well as circuit and district court judges.

ARGUMENTS:

For:

The bill would repeal two obsolete provisions that at one time were part of the Probate Code of 1939. When the 1939 Probate Code was repealed and replaced in 1978, provisions pertaining to the probate court were relocated to the Revised Judicature Act, which also included the organization of the other major courts in the state. However, neither of the sections proposed to be repealed are applied today. As mentioned earlier, the duties that at one time had been performed by the state presiding probate judge are now conducted by the state supreme court and the State Court Administrative Office.

POSITIONS:

A representative of the Michigan Probate Judges Association testified in support of the bill. (9–8–11)

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