

Legislative Analysis



36TH DISTRICT COURT BAILIFFS

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Senate Bill 281 (reported from House committee without amendment)

Analysis available at
<http://www.legislature.mi.gov>

Sponsor: Sen. Tonya Schuitmaker

House Committee: Judiciary

Senate Committee: Judiciary

(Enacted as Public Act 132 of 2015)

Complete to 7-15-15

SUMMARY:

Senate Bill 281 amends the Revised Judicature Act to add an additional circumstance under which a bailiff of the 36th District Court (City of Detroit) may be removed from office.

Under the act, a person serving as a bailiff of the former common pleas court of Detroit as of August 31, 1981, became a bailiff of the 36th district court on September 1, 1981. The RJA provides that a bailiff of the 36th district court holds office until death, retirement, resignation, or removal from office by the court for misfeasance or malfeasance in office. A vacancy in the office of bailiff may not be filled.

The bill would allow the court to remove a bailiff from office for the inability to perform essential functions of the office. The bill takes effect 90 days after enactment.

MCL 600.8322

FISCAL IMPACT:

Under the bill, in addition to being removed for misfeasance or malfeasance in office, a bailiff of the 36th District Court could also be removed for inability to perform essential functions of the office. Removal of a bailiff would result in decreased expenditures for the City of Detroit, as the annual full-time or part-time salary and associated retirement costs would no longer have to be paid, because vacant positions are not to be filled. The bill would have no fiscal impact on the state.

BRIEF DISCUSSION OF THE ISSUE:

Under the Revised Judicature Act, people appointed under Sections 23 and 31 of former Public Act 260 of 1929, and serving as bailiffs of the Common Pleas Court of Detroit on August 31, of 1981, became bailiffs of the 36th District Court on September 1, 1981, and hold that office until death, retirement, resignation, or removal from office by the court for misfeasance or malfeasance in office.

Three persons appointed under former PA 260 are still serving as bailiffs in the 36th District Court. Since they cannot be removed from their positions except for malfeasance

or misfeasance, the chief judge has little or no control over their job performance. As a significant portion of a bailiff's tasks is to serve process (delivering court documents such as a subpoena directly to a person), this lifetime employment provision has become problematic. Reportedly, at least one of these bailiffs has been subcontracting the service of process to others, meaning that the chief judge has even less oversight of individuals the bailiff hires. Since the conduct does not quite rise to the level of malfeasance (illegal or dishonest conduct) or misfeasance (the improper or wrongful exercise of lawful activity), the court does not have the grounds to terminate the bailiff's employment.

The bill would address the issue by allowing the court to remove any of these bailiffs from office if the bailiff cannot perform essential functions of the office (e.g., serving process). It has been mentioned that nowhere else in statute is someone guaranteed public employment for life.

The bill would not apply to other bailiffs of the 36th District Court, who act as independent contractors, rather than employees, of the court. When serving process, they are paid from the fees that litigants pay to the court.

POSITIONS:

An overview of the bill was presented by a judge, but no formal positions on the bill were offered.

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Robin Risko

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