



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

BILL



ANALYSIS

**Telephone: (517) 373-5383**  
**Fax: (517) 373-1986**

Senate Bill 56 (as passed by the Senate)  
Sponsor: Senator Rick Jones  
Committee: Judiciary

Date Completed: 8-25-15

### **RATIONALE**

Under the Michigan Constitution, the State Officers Compensation Commission (SOCC) determines the salaries and expense allowances of the members of the Legislature, the Governor, the Lieutenant Governor, the Attorney General, the Secretary of State, and the justices of the Supreme Court. Those determinations take effect only if the Legislature adopts them. While salaries for justices of Michigan's highest court are established by the SOCC process, the salaries for judges of the Court of Appeals, the probate court, the circuit court, and the district court are determined by statute. Under the law, the judges' pay is established as a percentage of the salary of a Supreme Court justice. In effect, then, the SOCC process also determines the salary of judges at all court levels in Michigan. It has been suggested that judges' salary adjustments instead be based on pay increases awarded by the Civil Service Commission to State employee executives and administrators.

### **CONTENT**

**The bill would amend the Revised Judicature Act to change the salary calculations for judges of the Court of Appeals, circuit court, probate court, and district court. Currently, those salaries are based on a percentage of the salary paid to a justice of the Supreme Court. Under the bill, the salaries would equal a percentage of the salary of a Supreme Court justice as of December 31, 2015, plus an amount based on percentage pay increases, excluding lump-sum payments, paid to civil service nonexclusively represented employees (NEREs) classified as executives and administrators on or after January 1, 2016.**

The bill would take effect on January 1, 2016.

#### Court of Appeals Judges

Under the Act, each judge of the Court of Appeals must receive an annual salary equal to the greater of the following:

- 92% of the annual salary of a justice of the Supreme Court.
- \$114,007.

(The current annual salary of a Supreme Court justice is \$164,614.)

Under the bill, each judge of the Court of Appeals instead would have to receive an annual salary calculated as follows:

- 92% of the annual salary of a justice of the Supreme Court as of December 31, 2015.
- In addition, an amount equal to that amount multiplied by the compounded aggregate percentage pay increases, excluding lump-sum payments, paid to civil service NEREs classified as executives and administrators on or after January 1, 2016.

### Circuit Court Judges

Under the Act, each circuit judge must receive an annual salary payable by the State that is the difference between 85% of the salary of a justice of the Supreme Court and \$45,724. Each circuit court judge also may receive from any county in which he or she regularly holds court an additional salary as determined by the county board of commissioners. In any county where an additional salary is granted, it must be paid at the same rate to all circuit judges regularly holding court in that county.

The State must reimburse \$45,724 to a county or counties paying an additional salary to a circuit judge, if the total additional salary, including any cost-of-living allowance, payable by that county or counties is not less than or more than that amount. If the county or counties pay a circuit judge less than or more than \$45,724, the county or counties are not entitled to reimbursement from the State.

Under the bill, each circuit judge would have to receive an annual salary calculated as follows:

- An annual salary payable by the State equal to is the difference between 85% of the salary of a Supreme Court justice as of December 31, 2015, and \$45,724.
- In addition to the State salary, an additional salary payable by the county or the counties of the judicial circuit, as currently provided.
- In addition to the State salary and additional county salary, an amount equal to those amounts multiplied by the compounded aggregate percentage pay increases, excluding lump-sum payments, paid to civil service NEREs classified as executives and administrators on or after January 1, 2016.

### Probate Court Judges

Under the Act, each probate court judge must receive an annual salary determined as follows:

- A minimum annual salary of the difference between 85% of the salary of a justice of the Supreme Court and \$45,724.
- An additional salary of \$45,724 paid by the county or by the counties comprising a probate court district.

If a probate judge receives a total additional salary of \$45,724 from the county or counties, and does not receive less than or more than that amount, including any cost-of-living allowance, the State must reimburse the county or counties the amount the county or counties have paid to the judge.

Under the bill, each probate judge would have to receive an annual salary calculated as follows:

- A minimum annual salary of the difference between 85% of the salary of a Supreme Court justice as of December 31, 2015, and \$45,724.
- In addition to the minimum annual salary, an additional salary paid by the county or the counties comprising a probate court district, as currently provided.
- In addition to the minimum annual salary and additional county salary, an amount equal to those amounts multiplied by the compounded aggregate percentage pay increases, excluding lump-sum payments, paid to civil service NEREs classified as executives and administrators on or after January 1, 2016.

### District Court Judges

Under the Act, each district court judge must receive an annual salary determined as follows:

- A minimum annual salary payable by the State of the difference between 84% of the salary of a justice of the Supreme Court and \$45,724.
- An additional salary from the district funding unit or units.

If a district judge receives a total additional salary of \$45,724 from the district funding unit or units and does not receive less than or more than that amount, including any cost-of-living allowance, the State must reimburse the district funding unit or units the amount that the unit or units paid to the judge.

Under the bill, each district judge would receive an annual salary calculated as follows:

- A minimum annual salary payable by the State of the difference between 84% of the salary of a Supreme Court justice as of December 31, 2015, and \$45,724.
- An additional salary from the district funding unit or units, as currently provided.
- In addition to the minimum State salary and additional local salary, an amount equal to those amounts multiplied by the compounded aggregate percentage pay increases, excluding lump-sum payments, paid to civil service NEREs classified as executives and administrators on or after January 1, 2016.

#### Effective Date of Salary Increase

Currently, for judges of the Court of Appeals, circuit court, probate court, and district court, an increase in the amount of salary payable to a judge caused by an increase in the salary of a justice of the Supreme Court is not effective until February 1 of the year in which the Supreme Court Justice's increase becomes effective, but is retroactive to January 1 of that year. The bill would delete those provisions.

Under the bill, the additional salary based on percentage pay increases to NEREs would take effect on the same date as the effective date of the pay increases paid to those employees, and could not be based on a pay increase paid to them if the effective date of the increase were before January 1, 2016.

MCL 600.304 et al.

#### **BACKGROUND**

Article IV, Section 12 of the State Constitution created the State Officers Compensation Commission, which "shall determine the salaries and expense allowances of the members of the legislature, the governor, the lieutenant governor, the attorney general, the secretary of state, and the justices of the supreme court". The SOCC consists of seven members appointed by the Governor and must meet each two years for not more than 15 session days.

The SOCC determinations take effect only if the Legislature approves them by a concurrent resolution adopted by a majority vote of those elected and serving in each house of the Legislature. The concurrent resolution may amend the SOCC determinations to reduce them by the same proportion for each of the applicable offices. The Legislature may not reduce the SOCC determinations, however, to a level below the compensation received by the office holders on the date the determinations are made. If the salary and expense determinations are approved, with or without amendment, they become effective for the legislative session immediately following the next general election.

Before 2002, SOCC determinations applied to legislators, the Governor, the Lieutenant Governor, and justices of the Supreme Court. The Commission's recommendations became effective unless the Legislature rejected them by concurrent resolution adopted by two-thirds of the members of each house of the Legislature.

In August 2002, Michigan voters approved Proposal 02-1, which amended Article IV, Section 12 to do the following:

- Add the Attorney General and Secretary of State to the list of State officials whose salaries and expense allowances are determined by the SOCC.

- Require the Legislature to approve determinations proposed by the SOCC by majority vote before those determinations take effect.
- Allow the Legislature to reduce compensation increases proposed by the SOCC.
- Provide that the legislatively approved SOCC determinations do not take effect until the legislative session that begins after the next general election.

Since the adoption of the 2002 constitutional amendment, no salary increases have been approved for any of the offices to which the SOCC process applies. The 2009 SOCC report made a recommendation, which the Legislature approved, that the salaries for all of those offices except Supreme Court justices be reduced by 10%. The SOCC recommended pay increases for the justices in 2011 and 2013, but the Legislature did not approve those recommendations.

The 2015 SOCC report recommends a 3% increase for the office of Supreme Court justice in 2017 and a 3% increase in 2018. The report recommends that the salary for all other applicable offices remain unchanged. The 2015 Commission also endorsed reforming judicial compensation "as laid out in Senate Bill 56".

## **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**

According to a March 2011 report of the State Bar of Michigan's Judicial Crossroads Task Force, the current system of determining judges' pay "ignores the important distinctions between the nature and limitations of judicial service and other elected offices", and frequently subjects judicial compensation to considerations unrelated to the judicial branch of government. As the report pointed out, judges are unlike all other elected officials in Michigan. "Although they are elected and serve locally, as state officers of Michigan's one court of justice, they are accountable to the Michigan Supreme Court..."

While it may be appropriate to subject the salaries of legislators and others elected to statewide office to the SOCC process, the pay rate of more than 500 trial court and Court of Appeals judges should not depend on legislative approval. Because the pay rate of those judges is required by law to be based on a percentage of the salary of Supreme Court justices, however, the judges' salaries may be adjusted only when the Legislature approves an increase recommended by the SOCC. Although the SOCC recommended pay raises for Supreme Court justices in 2011 and 2013 (which would have triggered increases for all judges), no pay hike has been approved since the voters adopted a constitutional amendment in 2002 to require legislative approval of SOCC recommendations. Rather than being dependent upon the pay rate for a Supreme Court justice, compensation for judges of the district, probate, circuit, and appeals courts should be geared to increases offered to nonunion State executives and administrators.

### **Supporting Argument**

If the process for calculating State-court judges' salaries is not changed, the judiciary may soon face a crisis. Because the Legislature has not approved SOCC recommendations for increases in Supreme Court justices' salaries, trial court and Court of Appeals judges have not had a raise in the past 13 years, and there is little indication that compensation will increase in the near future. It is unreasonable to expect highly qualified professionals to serve in a position in which there is no expectation of salary advancement over time. If judicial salaries continue to remain stagnant, talented, experienced, and knowledgeable attorneys may be dissuaded from seeking election or appointment to the bench. Indeed, it might be difficult in some areas to find any qualified candidates willing and interested in filling an opening on the bench. This problem needs to be recognized and addressed before it becomes critical. Tying a judge's pay rate to increases for classified State executives would help to ensure that judicial positions attract good candidates.

### **Supporting Argument**

The reforms proposed by the bill are consistent with the constitutional framers' desire for a stable, nonpartisan judiciary and with recent reforms that have strengthened Michigan's judiciary. Several

years ago, the Judicial Crossroads Task Force of the State Bar of Michigan recommended a number of reforms. Many of those recommendations have been implemented since the report was issued in 2011. These include such measures as reducing the number of Michigan's judgeships, streamlining courts through consolidation and shared workload in many jurisdictions, implementing new technologies to reduce the cost of court business, instituting specialized business court dockets, and establishing and expanding problem-solving courts such as drug and sobriety courts and veterans' courts. These efforts have helped Michigan's judicial system to run more smoothly and efficiently. One task force recommendation that has not been addressed is removing judicial compensation from the political process. The bill would help to accomplish that goal, which in turn would promote a stable and effective judiciary.

**Response:** The State Bar's task force also recommended that all trial court judges receive the same salary and benefits, because the Supreme Court can require judges at any level to serve on assignment in any court in the State.

Legislative Analyst: Patrick Affholter

## **FISCAL IMPACT**

The bill would have no direct fiscal impact on State or local government. As the bill would change the process in which adjustments to judicial salaries (except salaries of Supreme Court Justices) are made to adjustments based on non-lump-sum increases given to nonexclusively represented employees classified as executives and administrators, an indirect fiscal impact can be estimated by analyzing historical judicial salaries as well as the adjustments that would have occurred had judges been considered NEREs for the respective fiscal years.

If the bill had been or were in effect over the five-year-period of fiscal year (FY) 2011-12 through FY 2015-16, the result would be approximately \$17.0 million in increased costs to the State, or \$3.4 million annually. This analysis is based on a historical trend analysis of past judicial salaries and adjustments made to NEREs classified as executives and administrators for FY 2011-12 through FY 2015-16.

As Table 1 shows, the actual NERE adjustments in any given year can range from 0% to 3% with an average of 2%.

**Table 1**

<b>Fiscal Year</b>	<b>NERE Adjustments</b>
FY 2011-12	0%
FY 2012-13	3%
FY 2013-14	1%
FY 2014-15	2%
FY 2015-16	2%

Tables 2 through 5 reflect the amounts of the judges' salaries under current law (based on appropriations) and the amounts of the salaries if the bill had been in effect since FY 2011-12.

**Table 2**

<b>Fiscal Year</b>	<b>Court of Appeals Judge Remuneration</b>	<b>Court of Appeals Judge Remuneration (with NERE Adjustment)</b>
FY 2011-12	\$151,438	\$151,438
FY 2012-13	\$151,439	\$155,982
FY 2013-14	\$151,439	\$157,541
FY 2014-15	\$152,841	\$160,692
FY 2015-16	\$151,404	\$163,906

**Table 3**

<b>Fiscal Year</b>	<b>Circuit Court Judge Remuneration</b>	<b>Circuit Court Judge Remuneration (with NERE Adjustment)</b>
FY 2011-12	\$139,920	\$139,920
FY 2012-13	\$140,080	\$144,117
FY 2013-14	\$139,920	\$145,558
FY 2014-15	\$140,742	\$148,470
FY 2015-16	\$139,922	\$151,439

**Table 4**

<b>Fiscal Year</b>	<b>Probate Court Judge Remuneration</b>	<b>Probate Court Judge Remuneration (with NERE Adjustment)</b>
FY 2011-12	\$138,812	\$138,812
FY 2012-13	\$139,261	\$142,976
FY 2013-14	\$138,811	\$144,406
FY 2014-15	\$138,811	\$147,294
FY 2015-16	\$138,811	\$150,240

**Table 5**

<b>Fiscal Year</b>	<b>District Court Judge Remuneration</b>	<b>District Court Judge Remuneration (with NERE Adjustment)</b>
FY 2011-12	\$138,271	\$138,271
FY 2012-13	\$138,549	\$142,420
FY 2013-14	\$138,272	\$143,844
FY 2014-15	\$138,841	\$146,721
FY 2015-16	\$138,272	\$149,655

The prospective indirect fiscal impact is uncertain as the annual NERE adjustments are neither preordained nor always above 0%. As the compounding effect from NERE base adjustments is shown in the historical scenario, the fiscal cost could increase over time if increases occur annually. Additionally, the total number of judges in each court category could change the total impact if judicial resources are increased or decreased.

For local governments, if any additional benefits or compensation are linked to the base judicial salaries, there could be an increase in fiscal costs.

Fiscal Analyst: John Maxwell

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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.