



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

BILL



ANALYSIS

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

Senate Bill 709 (as reported without amendment)
Sponsor: Senator Rick Jones
Committee: Judiciary

Date Completed: 1-25-16

RATIONALE

Under the direction of the Michigan Supreme Court, the State Court Administrative Office (SCAO) conducts a biennial review of the judicial resource needs of Michigan courts. The review begins with a statistical analysis in which case filings are weighted to reflect the amount of judicial time needed to handle each type of case. For courts in which the statistical analysis indicates that a significant judicial need or excess exists, the SCAO conducts a secondary analysis focusing on the particular court or courts and any factor that may not have been accounted for in the weighted caseload formula. Based on these procedures, the 2015 Judicial Resources Recommendations report, issued in July 2015, recommended the elimination of nine probate and district judgeships, the addition of two circuit judgeships, and the retention of a district judgeship that is scheduled to be eliminated. It has been suggested that those recommendations be adopted in statute.

CONTENT

The bill would amend the Revised Judicature Act to do the following:

- **Eliminate four probate court judgeships.**
- **Eliminate five district court judgeships, which would include the transfer of a district judge to the probate court in Delta County, where one probate judgeship would be eliminated.**
- **Require the question of creating the First Probate Court District to be submitted to the electors of the affected counties (Houghton and Keweenaw) and, if voters did not approve the probate district, authorize the probate judges in those counties and Baraga County to act as district judges upon the elimination of a district judgeship.**
- **Authorize the addition of two circuit court judgeships.**
- **Delete the scheduled elimination of one district court judgeship.**
- **Revise the process and conditions for implementing a plan of concurrent jurisdiction.**

Elimination of Probate Court Judgeships

Currently, certain counties, including Ingham, Monroe, Saginaw, and St. Clair, have two probate judges. Under the bill, each of those four counties would have one probate judge beginning on the earlier of the following dates:

- The date on which a vacancy occurred in the office of probate judge in the county, unless the vacancy occurred after the vacating judge had been defeated in a primary or general election.
- The beginning date of the term for which an incumbent probate judge in the county no longer sought election or re-election to that office.

Elimination of District Judgeships

Berrien County. The Fifth Judicial District consists of Berrien County and has five judges. Under the bill, beginning on the earlier of the following dates, the fifth district would have four judges:

- The date on which a vacancy occurred in the office of district judge in the fifth district, unless the vacancy occurred after the vacating judge had been defeated in a primary or general election.
- The beginning date of the term for which an incumbent district judge in the fifth district no longer sought election or re-election to that office.

City of Detroit. The 36th Judicial District consists of the City of Detroit and has 30 judges. Under the bill, beginning on the earlier of the following dates, the 36th district would have 29 judges:

- The date on which a vacancy occurred in the office of district judge in the 36th district, unless the vacancy occurred after the vacating judge had been defeated in a primary or general election.
- The beginning date of the term for which an incumbent district judge in the 36th district no longer sought election or re-election to that office.

Oakland County. The 52nd Judicial District consists of a portion of Oakland County and has 10 judges. Under the bill, beginning on the earlier of the following dates, the 52nd district would have nine judges:

- The date on which a vacancy occurred in the office of district judge in the first or third division of the 52nd district, unless the vacancy occurred after the vacating judge had been defeated in a primary or general election.
- The beginning date of the term for which an incumbent district judge in the first or third division of the 52nd district no longer sought election or re-election to that office.

(The 52nd district is divided into four election divisions, and would remain so divided under the bill. The first division has three judges and consists of the Cities of Novi, South Lyon, Walled Lake, and Wixom and the Townships of Commerce, Highland, Lyon, Milford, and Novi. The third division has three judges and consists of the Cities of Auburn Hills, Lake Angelus, Rochester, and Rochester Hills and the Townships of Addison, Oakland, Orion, and Oxford.)

Delta County Probate & District Judgeships. Except as otherwise provided in the Act, each county that is not part of a probate court district has one probate judge. Under the bill, Delta County would have one probate judge until January 2, 2017. Beginning on that date, the office of probate judge for Delta County would be combined with the office of judge of the 94th Judicial District, and the county would have two probate judges. The judgeship added under this provision would be filled by the incumbent judge of the 94th Judicial District, who would become a probate judge for the balance of the term to which he or she was elected.

Beginning on the earlier of the following dates, Delta County would have one probate judge:

- The date on which a vacancy occurred in the office of probate judge in Delta County, unless the vacancy occurred after the vacating judge had been defeated in a primary or general election.
- The beginning date of the term for which an incumbent probate judge in Delta County no longer sought election or re-election to that office.

The 94th Judicial District consists of Delta County and has one judge. Under the bill, beginning January 2, 2017, under Section 810a of the Act, a Delta County probate judge would serve as judge of the 94th district.

(Under Section 810a, in counties where the only district judgeship is being eliminated and the section of the Act that governs that district court provides that Section 810a applies, the probate judge in that county has the jurisdiction, powers, duties, and title of a district judge within the county, in addition to the jurisdiction, powers, duties, and title of a probate judge.)

First Probate District/Baraga, Houghton, & Keweenaw Counties. Section 807 of the Act provides that a probate court district is created in each of several multicounty districts listed in that section

when a majority of the electors voting on the question in each affected county approves the probate court district. Under Section 808, when each county board of commissioners in a district listed in Section 807 agrees by resolution to form a probate court district, the question of creating the probate district must be submitted to the electors of those counties at the next primary, general, or special election that occurs more than 49 days after the resolution is adopted. If approved by a majority of the electors voting on the question in each affected county, those counties then constitute the probate court district identified in Section 807.

The districts listed in Section 807 include the first district, which consists of Houghton and Keweenaw Counties. Under the bill, if the creation of the First Probate Court District were not approved by a majority of the electors voting on the question in each of those counties before the November 2018 general election, the question would have to be submitted to the electors at that election. A resolution approved by the boards of commissioners of each county would not be needed for the question to be placed on the ballot.

The 97th Judicial District consists of Baraga, Houghton, and Keweenaw and has one judge. Under the bill, if the creation of the First Probate Court District were not approved by a majority of the electors voting on the question in each of the affected counties at or before the November 2018 general election, the provision described below would apply.

Beginning on the date on which a vacancy occurred in the office of district judge in the 97th district, unless the vacancy occurred after the vacating judge had been defeated in a primary or general election, or on the beginning date of the term for which an incumbent district judge in the 97th district no longer sought election or re-election to that office, whichever was earlier, the following would apply, under Section 810a:

- The probate judge for Baraga County would serve as judge of the 97th district within that county.
- The probate judge for Houghton County would serve as judge of the 97th district within that county.
- The probate judge for Keweenaw County would serve as judge of the 97th district within that county.

Addition of Circuit Judgeships

Oakland County. The Sixth Judicial Circuit consists of Oakland County and has 19 judges. Under the Act, subject to Section 550, the sixth circuit is authorized to have one additional judge beginning January 1, 2019. Under the bill, subject to Section 550, the sixth circuit also could have one additional judge beginning January 1, 2021.

(Under Section 550, additional circuit judgeships may not be created unless approved by each county in the circuit.)

Macomb County. The 16th Judicial Circuit consists of Macomb County and has 13 judges. Subject to Section 550, the 16th circuit is authorized to have one additional judge beginning January 1, 2017, and one more additional judge beginning January 1, 2019. Under the bill, subject to Section 550, the 16th circuit also could have one additional judge beginning January 1, 2021.

Retention of a District Judge

The 44th Judicial District consists of the Cities of Royal Oak and Berkley and has two judges. The 44th district will have one judge beginning on the earlier of the following dates:

- The date on which a vacancy occurs in the office of district judge in the 44th district, unless the vacancy occurs after the vacating judge has been defeated in a primary or general election.
- The beginning date of the term for which an incumbent district judge in the 44th district no longer seeks election or re-election to that office.

The bill would delete the provision that eliminates one judgeship from the 44th district. The 44th district would continue to have two judges.

Plan of Concurrent Jurisdiction

The Act provides for the implementation of a plan of concurrent jurisdiction within a judicial circuit. Subject to approval by the Supreme Court and limitations specified in the Act, within a judicial circuit, a plan of concurrent jurisdiction must be adopted by a majority vote of all of the judges of the trial courts in the plan unless a majority of all of the judges of the trial courts in that judicial circuit vote not to have a plan of concurrent jurisdiction.

Under the bill, among judicial circuits, a plan of concurrent jurisdiction could be adopted by a majority vote of all of the judges of the trial courts in the plan, subject to Supreme Court approval and limitations specified in the Act.

Currently, a plan of concurrent jurisdiction may provide for one or more of the following:

- The circuit court and one or more circuit judges may exercise the power and jurisdiction of the probate court.
- The circuit court and one or more circuit judges may exercise the power and jurisdiction of the district court.
- The probate court and one or more probate judges may exercise the power and jurisdiction of the circuit court.
- The probate court and one or more probate judges may exercise the power and jurisdiction of the district court.
- The district court and one or more district judges may exercise the power and jurisdiction of the circuit court.
- The district court and one or more district judges may exercise the power and jurisdiction of the probate court.
- If there are multiple judicial districts within the judicial circuit, one or more district judges may exercise the power and jurisdiction of judge of another district court district within the judicial circuit.

Under the bill, if a plan of concurrent jurisdiction involved multiple circuits, the plan also could provide for one or more of the following:

- One or more district judges could exercise the power and jurisdiction of judge of another district court district within the judicial circuits.
- One or more probate judges could exercise the power and jurisdiction of judge of another probate court within the judicial circuits.
- One or more circuit judges could exercise the power and jurisdiction of judge of another circuit court within the judicial circuits.

Under the Act, in a judicial district in which the district court is affected by a plan of concurrent jurisdiction, the district court has concurrent jurisdiction with the circuit court or the probate court, or both, as provided in the plan, except as to the following matters:

- The circuit court has exclusive jurisdiction over appeals from the district court and from administrative agencies as authorized by statute.
- The circuit court has exclusive jurisdiction and power to issue, hear, and determine prerogative and remedial writs consistent with Article VI, Section 13 of the State Constitution.

The bill would refer to the district court that has concurrent jurisdiction with the circuit court or courts and/or the probate court or courts.

In addition, under the bill, the provision maintaining the circuit court's exclusive jurisdiction and power to issue, hear, and determine prerogative and remedial writs consistent with Article VI,

Section 13 would not limit the district court's authority to issue writs specifically authorized in statute or court rule.

(Article VI, Section 13 of the State Constitution specifies that the circuit court has original jurisdiction in all matters not prohibited by law; appellate jurisdiction from all inferior courts and tribunals, except as otherwise provided by law; power to issue, hear, and determine prerogative and remedial writs; supervisory and general control over inferior courts and tribunals within their respective jurisdictions in accordance with rules of the Supreme Court; and jurisdiction of other cases and matters as provided by rules of the Supreme Court.)

MCL 600.401 et al.

BACKGROUND

The July 2015 Judicial Resources Recommendations (JRR) report issued by the Michigan Supreme Court and the State Court Administrative Office recommended that nine trial court judgeships be eliminated by attrition and that the addition of three trial court judgeships be authorized. The recommendations are based on the SCAO's most recent biennial review of the judicial needs of State courts.

The JRR report recommends the elimination of probate court judgeships in Ingham, Monroe, Saginaw, and St. Clair Counties. Each of those counties currently has two probate judges.

The report recommends the elimination of a district court judgeship in each of the following districts:

- The fifth district (Berrien County).
- The 36th district (City of Detroit).
- The 52nd district (a portion of Oakland County).
- The 94th district (Delta County).
- The 97th district (Baraga, Houghton, and Keweenaw Counties).

In the 94th district, the SCAO also recommends giving the Delta County probate judge district court authority.

In the 97th district, the SCAO also recommends giving the probate judges for Baraga, Houghton, and Keweenaw Counties district court authority, and the JRR report notes that the only way to reduce the court by more judgeships is to create a probate court district.

The JRR report recommends the authorization of an additional circuit court judgeship in Macomb County and in Oakland County, and that a judgeship scheduled for elimination through attrition in the 44th Judicial District (Royal Oak and Berkley) not be eliminated.

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

Judgeships are expensive for taxpayers and it is not economical to retain judgeships in courts where they are not needed. Also, more judges are sometimes needed in other courts. The demand for judicial resources in a particular court can change over time as caseloads fluctuate based on various factors, including the number and types of cases that a court handles.

The JRR reports issued in recent years, and subsequent legislative action in response to the recommendations in those reports, have focused on "right-sizing" Michigan's judiciary. The research done by the SCAO in compiling those reports has used both quantitative and qualitative analysis of courts' caseloads and their judicial resource needs. Through the use of weighted analysis of court cases, and secondary analysis of certain courts' caseloads, the 2011 and 2013

JRR reports led to legislation that has already eliminated 25 unneeded judgeships, with 20 more slated for future elimination through attrition. Those recommendations also resulted in the authorization of five additional judgeships for courts in which the caseload merited more judicial resources, meaning there eventually will be a net reduction of 40 judges. According to the 2015 JRR report, those reductions have saved the State more than \$6.1 million and further savings are expected as 20 more judgeships are eliminated by attrition. Savings also accrue to local units, as the need for facilities and staff decreases when judgeships are eliminated. Together with the net reductions proposed in the 2015 report, the SCAO estimates cumulative savings in excess of \$193.0 million. By adopting the recommendations in the 2015 JRR report, the bill would continue to streamline Michigan's judiciary and save millions of dollars in unnecessary State and local spending.

Opposing Argument

The bill should not eliminate a judgeship from Detroit's 36th district court. According to testimony before the Senate Judiciary Committee from the city's corporation counsel, the 36th district is one of the busiest courts in the State, it has experienced an increased workload in the last year or two, and that trend is expected to continue. For the first time in about 60 years, Detroit's population is beginning to rise and its economy is improving as the population grows and business investment in the city increases. In addition, under the current mayor's administration, the city's legal office has taken on more responsibility in handling cases that formerly were not addressed or were forwarded to the county prosecutor's office. According to the corporation counsel, the city has adopted the Michigan Vehicle Code into its local ordinances, so the city now handles those cases, and a memorandum of understanding with the county prosecutor allows the city to prosecute certain cases that it previously did not handle. The city also has developed new guidelines regarding plea bargains that result in more cases going to trial, and it has changed the process for notifying police officers when they are scheduled to testify in court, so there are fewer dismissals of cases for an officer's failure to appear. In addition, the city has begun prosecuting people for failing to pay city income taxes, which it evidently did not do in the past. All of these developments have contributed to a recent increase in caseload for the 36th district court that is expected to continue. Eliminating a judgeship in that court when its caseload is on the rise would be ill advised.

Response: The 36th district court currently has 30 judges, but the SCAO's 2015 analysis estimated that it could operate effectively with 26.52 judgeships, meaning the court has a judicial excess of 3.48 judges. Despite that excess, the JRR report and the bill propose eliminating just one judgeship, so the court still would have a more-than-sufficient number of judges. The report indicates that the 36th district's caseload, excluding traffic civil infractions and parking tickets, decreased from more than 220,000 in 2008 to less than 152,000 in 2014, while the city's population declined from more than 1.0 million in 1990 to less than 700,000 at present. If the court does in fact see increased caseloads going forward, future JRR reports can recommend adding judgeships as they are needed.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have a positive fiscal impact on the State and local units of government.

According to the JRR report, each circuit and probate court judgeship has a cost to the State of \$159,089, and each district court judgeship has a cost to the State of \$157,303. These costs include salary, retirement contributions up to 7%, and the employer share of FICA taxes (OASI and Medicare). The local court system pays for the remaining judgeship costs, including fringe benefits (health care and additional staff), facility costs, and overhead. The costs for local circuit, district, and probate courts differ by location.

If both circuit court judgeships were approved and all of the probate and district court judgeships were eliminated as proposed, the net savings to the State would be approximately \$1.10 million per year. This analysis assumes no additional cost for the retained district court judgeship.

Because the local costs for courts differ by location, it is difficult to measure the potential savings to local units of government, but to the extent that local courts were able to reduce staff or equipment costs, they would realize savings.

Fiscal Analyst: Ryan Bergan

A1516\sb709a

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.