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BILL ANALYSIS



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Senate Bill 709 (as passed by the Senate)
Sponsor: Senator Rick Jones
Committee: Judiciary

Date Completed: 8-11-16

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; that is, the need for more or fewer judges. 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 a number of 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 some of those recommendations and certain other revisions be adopted in statute.

In addition, Michigan's 51st judicial district, which consists of Waterford Township in Oakland County, is allocated two judgeships by law but, due to a judge's retirement, one of those judgeships is now vacant. Evidently, the court's local funding unit would like to continue the court's operation with just one judge.

CONTENT

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

- **Eliminate three probate court judgeships, one each in Ingham, Saginaw, and St. Clair Counties.**
- **Eliminate five district court judgeships, one each in the fifth district (Berrien County), 36th district (Detroit), 51st district (Waterford Township), 52nd district (a portion of Oakland County), and 74th district (Bay County).**
- **Authorize the addition of two circuit court judgeships, one each in Oakland and Macomb Counties, beginning January 1, 2021, subject to county approval.**
- **Delete the scheduled elimination of one circuit court judgeship in the 18th circuit (Bay County).**
- **Delete the scheduled elimination of one district court judgeship in the 44th district (Royal Oak and Berkley).**
- **Authorize a plan of concurrent jurisdiction that included more than one judicial circuit.**
- **Authorize district, probate, and circuit judges to exercise the power and jurisdiction of a judge in other district, probate, and circuit courts within the circuits covered by a plan of concurrent jurisdiction.**

Elimination of Probate Court Judgeships

Certain counties, including Ingham, Saginaw, and St. Clair, have two probate judges. Under the bill, each of those three 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.

Waterford Township. The 51st Judicial District consists of Waterford Township in Oakland County and has two judgeships. Under the bill, the 51st District would have one judgeship.

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.)

Bay County. The 74th Judicial District consists of Bay County and has three judgeships. Under the bill, beginning on the earlier of the following dates, the 74th district would have two judges:

- The date on which a vacancy occurred in the office of district judge in the 74th 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 74th district no longer sought election or re-election to that office.

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.

Addition of Circuit Judgeships

Oakland County. The Sixth Judicial Circuit consists of Oakland County and has 19 judges. Subject to Section 550 of the Act, 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 Circuit Judge

The 18th Judicial Circuit consists of Bay County and has three judges. The 18th circuit will have two judges beginning on the earlier of the following dates:

- The date on which a vacancy occurs in the office of circuit judge in the 18th circuit.
- The beginning date of the term for which an incumbent circuit judge in the 18th circuit no longer seeks election or re-election to that office.

The bill would delete the provision that eliminates one judgeship from the 18th circuit.

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.

The bill also provides that, 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 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.

Under the bill, the district court would have concurrent jurisdiction with the circuit court or courts and/or the probate court or courts, except as to the matters listed above.

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 were based on the SCAO's most recent biennial review of the judicial needs of State courts.

The JRR report recommended 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 recommended 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 recommended giving the Delta County probate judge district court authority.

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

The JRR report recommended 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 has estimated cumulative savings in excess of \$193.0 million. By adopting some of the recommendations in the 2015 JRR report and enacting other revisions, the bill would continue efforts to streamline Michigan's judiciary and save millions of dollars in unnecessary State and local spending.

Response: As passed by the Senate, the bill does not fully reflect the 2015 judicial resources recommendations. That report recommended eliminating a probate judgeship in Monroe County, as well as eliminating district judgeships in the 94th district (Delta County), and combining Delta County's probate court with the 94th district. The JRR report also recommended that, if Houghton and Keweenaw Counties do not approve the creation of a probate court district, the probate judges for each county in the 97th district (Baraga, Houghton, and Keweenaw) serve as 97th district judge within their respective counties.

Supporting Argument

Although the 2015 judicial resource recommendations did not include reducing the number of judgeships in 51st district, the SCAO apparently does not object to reducing that court by one judgeship, which would reflect the status quo since a judge retired from that court early in 2016. By requiring the 51st judicial district to have one judge instead of two, the bill would accommodate local wishes regarding the size of that court and would continue the effort to provide for more efficient judicial operations.

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 July 2015 Judicial Resources Recommendations 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 \$945,000 per year. This analysis assumes no additional cost for the retained circuit court judgeship or 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

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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.