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BILL ANALYSIS



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Senate Bill 823 (Substitute S-2 as reported)
Senate Bill 829 (as reported without amendment)
Sponsor: Senator Alan L. Cropsy (Senate Bill 823)
Senator Alan Sanborn (Senate Bill 829)
Committee: Judiciary

Date Completed: 1-15-04

RATIONALE

Article VI, Section 11 of the Michigan Constitution allows the number of trial court judges to be changed by law and requires the changes to be made on the recommendation of the Supreme Court "to reflect changes in judicial activity". To meet that requirement, the State Court Administrative Office (SCAO) conducts a biennial review of the judicial needs of trial courts and makes recommendations to the Legislature regarding changes in the number of judges. The SCAO's 2003 report recommends the addition of three circuit court judgeships and one district court judgeship, the retention of one circuit court judgeship scheduled to be eliminated in 2005, the elimination of two district judgeships, and the elimination of one probate court judgeship.

In addition, an addendum to the 2003 SCAO report addresses the issue of part-time probate judges. Ten counties in Michigan have part-time probate judges because the counties do not meet the criteria in the Revised Judicature Act (RJA) for a full-time probate judge (i.e., each county has fewer than 15,000 people, according to the 1990 U.S. census; is not part of a probate court district approved by the voters; and is not specifically designated as having a full-time probate judge). A part-time probate judge may receive a maximum annual salary of \$65,724 (compared with \$139,919 for a full-time probate judge). The RJA allows part-time probate judges to engage in the practice of law, other than as a judge, which enables them to supplement their judicial salary. While the probate court caseload in these counties may not justify paying the judge a full-time salary, many people have concerns about allowing the judges to practice law in

addition to sitting as a judge. Even though the RJA prohibits a part-time probate judge from representing a party in a contested case in the probate court, a judge who sits on the bench in one court and represents clients in another might be perceived to have a conflict of interest.

To provide these judges with full-time pay and workload, and remove the potential conflict of interest of a judge who practices law, the addendum to the 2003 SCAO report recommends that the State convert some part-time probate judgeships to full-time by statutorily giving them district court authority, and that others be converted to full-time judges with district court authority if the counties' electors do not authorize a probate court district by the date of a vacancy in the district court. In conjunction with these measures, the addendum recommends eliminating two district judgeships and one circuit judgeship.

CONTENT

Senate Bills 823 (S-2) and 829 would amend the Revised Judicature Act to authorize three new judgeships (two in circuit court and one in district court); eliminate two judgeships (one in circuit court and one in district court); retain two circuit judgeships scheduled to be eliminated; revise the conditions for the elimination of one probate judgeship in Wayne County; and grant the probate judges in nine counties the authority and title of a district judge within their respective counties, in addition to the authority of a probate judge.

Table 1 shows the courts in which a judgeship would be added, eliminated, or retained.

Table 1

County	Circuit	District
Clare & Gladwin	+1	
Dickinson, Iron, & Menominee	-1	
Macomb	+1	
Mecosta & Osceola		+1
Ontonagon & Gogebic		-1 ^{a)}
Wayne	2 ^{b)}	

^{a)} If a probate court district is not created.

^{b)} The bill would retain two judgeships scheduled to be eliminated on January 1, 2005.

As a rule, the elimination of a judgeship would occur when there was a vacancy or an incumbent judge did not seek re-election.

The authorization for additional circuit court judgeships would be subject to RJA requirements for county approval, and the authorization for an additional district court judgeship would be subject to RJA requirements for district control unit approval, before an additional judgeship is filled by election. (Under Section 550, an additional circuit judgeship may not be authorized to be filled by election unless the county board of commissioners of each county in the circuit adopts a resolution approving the judgeship. Under Section 8175, an additional district judgeship may not be authorized to be filled by election unless the governing body of each district control unit in the district adopts a resolution approving the judgeship. The county clerk, or the clerk of each district control unit, must file a copy of the resolution with the State Court Administrator by 4:00 p.m. of the 16th Tuesday preceding the August primary for the election to fill the additional judgeship.)

Senate Bill 823 (S-2)

Wayne County

Circuit Court. The Third Judicial Circuit consists of Wayne County and has 63 judges. The RJA specifies that, beginning at noon on

January 1, 2005, the Third Circuit will have 61 judges. Under the bill, the Third Circuit would continue to have 63 judges.

Probate Court. Wayne County has nine probate judges and will have eight probate judges upon the earlier of the following:

- The occurrence of a vacancy in a judgeship held by an incumbent probate judge whose term expires on January 1, 2005, and who would be ineligible to seek reelection in 2004.
- The expiration of the term of an incumbent probate judge who is not eligible to seek reelection to that office.

The bill would change the first condition to the occurrence of a vacancy in a judgeship held by an incumbent judge whose term expired on January 1, 2005, or January 1, 2007, and who would be ineligible to seek reelection.

Dickinson, Iron, and Menominee Counties

The 41st Judicial Circuit consists of Dickinson, Iron, and Menominee Counties and has two judges. Under the bill, the 41st Circuit would have one judge on the date on which a vacancy occurred, or on the beginning date of the term for which a judge in that circuit no longer sought reelection, whichever was earlier.

Clare and Gladwin Counties

The 55th Judicial Circuit consists of Clare and Gladwin Counties and has one judge. Under the bill, subject to Section 550, the 55th Circuit could have one additional judge effective January 1, 2005.

Mecosta and Osceola Counties

The 77th Judicial District consists of Mecosta and Osceola Counties and has one judge. Under the bill, subject to Section 8175, the 77th District could have one additional judge effective January 1, 2005.

Ontonagon and Gogebic Counties

The 98th Judicial District consists of Ontonagon and Gogebic Counties and has one judge. Under the bill, if the Second Probate Court District were not created under Section 807 of the RJA, the judgeship in the 98th

District would be eliminated on the date a vacancy occurred, or the beginning date of the term for which the judge in that district no longer sought reelection, whichever was earlier. (Under Section 807, a probate court district is created in certain groups of counties when a majority of the electors voting on the question in each affected county approves the probate court district. The Second Probate Court District consists of Ontonagon and Gogebic Counties.)

Probate Judges Authorized to Act as District Judges

The RJA provides that the probate judges in Arenac, Kalkaska, Crawford, and Lake Counties have the power, authority, and title of district judge within their respective counties, in addition to the power, authority, and title of a probate judge. (Under the RJA, those judges receive a full-time salary and may not practice law, other than as a judge.) The bill would add the probate judge of Iron County to that provision.

In addition, the probate judges in the following counties would have the power, authority, and title of district judge within their respective counties, in addition to being a probate judge:

- Alcona, Missaukee, Montmorency, and Presque Isle, effective January 2, 2005.
- Benzie and Oscoda, effective January 2, 2007.
- Gogebic and Ontonagon, if the Second Probate Court District were not created, on the date the district judgeship in the 98th District would be eliminated under the bill.

(All of the probate judges affected by this provision, except for the probate judge of Gogebic County, currently are part-time judges. Under the bill, all of these part-time judges would receive a full-time salary when they were given district court authority and they could not practice law, other than as a judge, after that time.)

Senate Bill 829

The 16th Judicial Circuit consists of Macomb County and has 11 judges. The RJA allows the 16th Circuit to have one additional judge effective January 1, 2005. Under the bill, subject to Section 550 of the RJA, the 16th

Circuit could have one more additional judge as of that date.

The Act provides that if a new office of judge is added to the 16th Circuit by election in 2004, the term of office of that judgeship, for that election only, will be eight years. Under the bill, that would apply if *only one* new judgeship were added. If two new judgeships were added to the 16th Circuit by election in 2004, the candidate receiving the highest number of votes in the November general election would be elected for an eight-year term for that election only, and the candidate receiving the second highest number of votes would be elected for a six-year term.

MCL 600.504 et al. (S.B. 823)
600.517 (S.B. 829)

BACKGROUND

Judicial Resources Recommendations

The recommendations in the SCAO's judicial resources report are based on a three-year weighted statistical analysis of trial courts' caseloads, followed by an extensive analysis of additional factors affecting the workload of selected trial courts, such as the types of cases processed, demographic trends, and the availability of other resources. Generally, courts that statistically display either a need for at least one and one-half additional judges, or an excess of at least one and one-half judges, using the weighted caseload measure, are selected for further review. The SCAO also may review additional courts based on the request of a court's chief judge, the existence of pending legislation dealing with judgeships, or the recommendations in prior workload studies. According to the 2003 SCAO report, judicial recommendations are made only after this analysis, which uses available quantitative and qualitative information such as "the makeup of the caseload, caseload trends, prosecutor and law enforcement practices, staffing levels, facilities, technological resources, the need for assignments to or from other jurisdictions, demographics and demographic trends, and local legal culture".

Since the operation of the family division of circuit court (family court) involves many probate judges' serving in circuit court, the SCAO examined the circuit and probate courts'

needs together, and the judicial resources recommendations reflect those combined needs.

Full-Time and Part-Time Probate Judges

Section 821 of the RJA prohibits the following probate judges from engaging in the practice of law other than as a judge and requires that those judges receive a full-time annual salary:

- A probate judge of a county that is not part of an authorized probate court district.
- The probate judge in each probate court district in which a majority of the electors voting on the question in each county of the district approves creation of the district.
- A probate judge in a county having a population of 15,000 or more according to the 1990 U.S. census, if the county is not part of a probate court district created pursuant to law.
- A probate judge in Arenac, Kalkaska, Crawford, and Lake Counties. (The RJA grants those judges the power, authority, and title of a district judge within their respective counties, in addition to the power, authority, and title of a probate judge.)

Under the RJA, each full-time probate judge receives a minimum annual salary of the difference between 85% of the salary of a Supreme Court Justice and \$45,724, plus an additional salary of \$45,724 paid by the county, or by the counties comprising a probate court district. If a probate judge receives that amount from the county or counties, the State must reimburse the county or counties the amount paid to the judge.

Currently, there are 10 counties in Michigan that have fewer than 15,000 people, according to the 1990 U.S. census; are not part of a probate court district approved by the voters; and are not specifically designated as having full-time probate judges. Those counties are: Alcona, Baraga, Benzie, Iron, Keweenaw, Missaukee, Montmorency, Ontonagon, Oscoda, and Presque Isle. All 10 counties are authorized to be part of a probate court district, but their respective districts have not been approved by the voters.

Plan of Concurrent Jurisdiction & Family Court Plan

Public Act 678 of 2002 added Chapter 4 (Trial Court Concurrent Jurisdiction) to the RJA. Under Chapter 4, judges of circuit, probate, and district courts may adopt plans of trial court concurrent jurisdiction. Under such a plan, the circuit court and one or more circuit judges may exercise the power and jurisdiction of the probate court and/or the district court; the probate court and one or more probate judges may exercise the power and jurisdiction of the circuit court and/or the district court; and the district court and one or more district judges may exercise the power and jurisdiction of the circuit court and/or the probate court. Chapter 4 also specifies certain matters over which each court maintains exclusive jurisdiction.

Public Act 682 of 2002 amended Chapter 10 (Family Division of Circuit Court) of the RJA to revise provisions pertaining to the organization and jurisdiction of the family court. Public Act 682 required that the chief circuit judge and chief probate judge in each judicial circuit establish a family court plan by July 1, 2003, and that the Supreme Court develop such a plan for a circuit court that did not do so by that deadline. A family court plan must identify any probate judge serving pursuant to the plan. A probate judge serving in the family court, under a family court plan, has the authority of a circuit judge in family court cases.

Public Act 40 of 2003 amended Chapter 8 (Probate Courts) of the RJA to allow a part-time probate judge to receive an additional salary, for total compensation equal to that of a full-time probate judge, if the county agrees to reimburse the State for the additional salary and the probate judge agrees to participate in a plan of concurrent jurisdiction and a family court plan, and not to engage in the practice of law other than as a judge.

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

By authorizing the addition of circuit judgeships in the 16th Judicial Circuit

(Macomb County) and the 55th Judicial Circuit (Clare and Gladwin Counties), the addition of a district judgeship in the 77th Judicial District (Mecosta and Osceola Counties), and the retention of Wayne County circuit judgeships scheduled to expire, the bills would address current judicial resources needs in those jurisdictions.

Macomb County currently has 11 circuit judges and three probate judges. One circuit judgeship is scheduled to be added on January 1, 2005, and one probate judgeship is scheduled to be eliminated on that date. Due to an increasing caseload and a growing county population, however, the SCAO report recommends that another judgeship be added to the 16th circuit effective January 1, 2005.

Clare and Gladwin Counties, which comprise the 17th Probate Court District as well as the 55th Judicial Circuit, have only one judge in each of those courts. The combined population of the two counties has increased by almost 25% since 1990. Given the counties' rapid growth rate and the courts' current caseload, the SCAO recommends an additional judgeship for the 55th circuit.

Mecosta and Osceola Counties, which make up the 77th Judicial District, the 49th Judicial Circuit, and the 18th Probate Court District, are served by one judge in each of those courts. Because of the counties' caseload and population growth, as well as the assignment of other judges to assist courts in Mecosta and Osceola Counties, the SCAO determined that another judgeship should be created there. The judicial resources report found that the need for an additional judge is greater in the 49th circuit, but local trial court judges and other local officials prefer the addition of a district judgeship. So, the 2003 SCAO report recommends that a judgeship be added to the 77th district, and that the district judges provide assistance to the 49th Circuit Court.

Public Acts 253 and 254 of 2001 amended the RJA to reduce the Third Judicial Circuit from 64 judges to 63 on January 1, 2003, and to 61 judges on January 1, 2005, and to reduce the Wayne County Probate Court from nine judges to eight upon the expiration of the term of an incumbent judge who is not eligible to seek reelection or upon the expiration of the term of another judge who does not file for reelection. According to the 2003 SCAO

report, however, eliminating two circuit judgeships in 2005 could adversely affect the court. The report cites improvements made in the Third Circuit's individual dockets, conformity with time standards, and reduced jail crowding in Wayne County, and asserts that the loss of two judgeships "could set back that progress". Although Wayne County's population has declined by more than 2.5% since 1990, it remains the 11th largest county in the nation. Also, more than half of all criminal trials in the State occur in Wayne County. Given the court's progress, the county's size, and the large criminal caseload, the Wayne County circuit judgeships scheduled to be eliminated should be retained.

Response: The bills do not exactly reflect the recommendations in the 2003 SCAO judicial resources report. For instance, the report recommends retaining one, not both, of the circuit judgeships scheduled to be eliminated in Wayne County in 2005, and eliminating another probate judgeship there in 2007. The report also recommends that a judgeship be eliminated in both the Eighth Judicial District (Kalamazoo County) and the 70th Judicial District (Saginaw County).

Supporting Argument

Paying some small-county probate judges on a part-time basis has long been a concern. The caseload in part-time probate courts does not justify full-time compensation, a situation that was exacerbated when jurisdiction over most family law matters was transferred from the probate court to the family court in 1996. Since part-time judges must have some reasonable way to supplement their judicial income, they are not subject to the usual mandate that a judge not practice law except as a judge. Allowing any sitting judge to represent clients in court, however, can create the appearance of a conflict of interest. Even though a part-time probate judge may not represent a party in a contested case in the probate court, the judge might represent a client in circuit or district court at the same time that his or her opposing counsel appears in probate court on another matter.

Some counties have elected to form probate court districts, as authorized by law, while in other counties part-time probate judges have been statutorily authorized to exercise the power of district judges, making their judicial seats full-time positions. Pursuant to Public Act 40 of 2003, counties with part-time

probate judges also may elect to pay them a supplemental salary up to the total compensation of a full-time probate judge, in exchange for the judges' agreeing to participate in a plan of concurrent jurisdiction with the district and circuit courts and not to practice law other than as a judge. Although these options have reduced the number of part-time probate judges over the years, there are still 10 counties that employ part-time probate judges.

Senate Bill 823 (S-2) proposes a long-term solution to this situation. Consistent with recommendations in the addendum to the 2003 SCAO report, the bill would authorize part-time probate judges in most of those counties to act as district judges in addition to serving as probate judge, effective on specific dates over the next several years. In the 41st Judicial Circuit (Dickinson, Iron, and Menominee Counties), giving the Iron County probate judge district court authority would be paired with eliminating a circuit judgeship by attrition, as recommended in the SCAO report. In the 98th Judicial District (Gogebic and Ontonagon Counties), the bill would convert the part-time probate judgeship in Ontonagon County to full-time by authorizing the Ontonagon and Gogebic probate judges to act as district judges, and eliminating the district court judgeship upon a judicial vacancy in that district, if the two counties do not approve the formation of the Second Probate Court District as authorized by the RJA.

Response: Senate Bill 823 (S-2) would address the problem of part-time probate judgeships in only eight of the 10 counties that have part-time judges. The SCAO report also recommends that the part-time probate judgeships in Baraga and Keweenaw Counties be converted to full-time judgeships with district court authority upon a district judgeship vacancy in the 97th District (Baraga, Houghton, and Keweenaw Counties), if the First Probate Court District is not created. (Under the RJA, the First Probate Court District may consist of Baraga, Houghton, and Keweenaw Counties; Baraga and Houghton Counties; or Houghton and Keweenaw Counties.)

Opposing Argument

Jurisdictions other than those for which the SCAO recommends new judgeships have had rising caseloads and population increases. The Third Division of the 52nd Judicial District, for

instance, is in a rapidly growing suburban area in Oakland County and is in need of an additional judgeship, while other judicial districts in the county perhaps could get by with fewer judges. Senate Bill 201, which remains in the Senate Judiciary Committee, proposes such a realignment of judicial resources. Senate Bill 823 (S-2) should incorporate that proposal.

Response: According to testimony before the Senate Judiciary Committee by the counsel for the Supreme Court and the State Court Administrator, the need for additional district court judges in the 52nd district is not statistically indicated. (While the SCAO's recommendations are based on an entire court, not division-by-division, it may be that the caseload of the Rochester-based Third Division is increasing while that of the Troy-based Fourth Division is on the decline. If so, a shift of one judgeship from the Fourth Division to the Third Division might be in order.) According to the 2003 SCAO report, Oakland County district courts actually have excess judicial resources when reviewed on a county-wide basis. If Oakland County implemented a plan of concurrent jurisdiction for its circuit, probate, and district courts, perhaps those trial courts could meet their judicial needs more efficiently.

Opposing Argument

The 90th Judicial District, which consists of Charlevoix and Emmet Counties in the northwestern part of the Lower Peninsula, has seen population growth of over 25% since 1990. The 90th district has only one district court judge, but Charlevoix and Emmet Counties each have a circuit judge and they share a probate judge as the Seventh Probate Court District. Senate Bill 212, which remains in the Judiciary Committee, proposes an additional district judgeship for these counties. Senate Bill 823 (S-2) should incorporate that proposal.

Response: While the 2003 SCAO judicial resources report states that "an additional judgeship may be warranted at some future time" if the district's current population trends continue, it also indicates that the court's caseload "does not currently warrant additional judicial resources".

Opposing Argument

The 17th Judicial Circuit (Kent County) is greatly in need of additional judicial resources. Although the SCAO report indicates a

statistical need for more than two additional judges, it recommends only one at this time because two new judgeships were added to the 17th circuit in 2003, and the report asserts that the circuit court should have a period of time to adjust to the impact of those new judgeships on case processing. The bills do not include statutory authorization for this recommended new judgeship.

Response: Reportedly, Kent County officials do not want an additional circuit judgeship at this time.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would increase costs to State and local units of government.

Circuit & Probate Judges

Based on the 2003 salary of a circuit or probate judge, the State would incur the following annual costs for each new circuit judgeship, or save the same amount for each circuit or probate judgeship eliminated:

Salary	\$139,919
Social Security/Medicare	7,423
Defined Contribution Retirement	9,794
Total	\$157,136

Local costs would depend on the cost of fringe benefits for judges provided by the county, support staff costs, and whether additional office or courtroom facilities would be necessary.

District Judges

Based on the 2003 salary of a district judge, the State would incur the following annual costs for each new district judgeship, or save the same amount for each district judgeship eliminated:

Salary	\$138,272
Social Security/Medicare	7,399
Defined Contribution Retirement	9,679
Total	\$155,350

The State also would be responsible for a one-time cost of approximately \$6,000 for recording equipment for a new district court judge.

Local costs would depend on the cost of fringe benefits for judges provided by the local unit of government, support staff costs, and whether additional office or courtroom facilities would be necessary.

Probate Judges Authorized to Act as District Judges

The State pays \$25,750 of each part-time probate judge's salary. Counties pay the balance of their salaries up to a maximum total salary of \$65,724, depending on each county. When a part-time probate judge is authorized to act as a district judge, he or she is paid as a district judge. The State then incurs the cost of this entire salary, and the additional Social Security, Medicare, and retirement costs. As noted above, in 2003 this totaled \$155,350 per district judge. The local units of government still would be responsible for fringe benefits, which may vary.

Fiscal Analyst: Bethany Wicksall

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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.