House Legislative Analysis Section

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RESTRUCTURE THE COURT SYSTEM

House Bill 5158 (Substitute H-2)
House Joint Resolution S (Substitute H-2)
House Joint Resolution T (Substitute H-1)
Sponsor: Rep. Michael Nye

House Bill 5421 with committee amendments
Sponsor: Rep. Terry Geiger

House Bill 5425 with committee amendment
Sponsor: Rep. Laura Baird

House Bill 4184 (Substitute H-3)
Sponsor: Rep. Mary Schroer

First Analysis (1-10-96)

Committee: Judiciary and Civil Rights

THE APPARENT PROBLEM:

Michigan's court system has been reformed or "restructured" periodically -- through constitutional, judicial, and statutory changes -- during the course of its nearly 200-year history. The first Michigan court system was established in 1805, when Michigan became a territory of the United States. The territorial court system was changed a number of times before Michigan became a state in 1837, and since statehood the court system has been periodically restructured with each new state constitution (in 1835, 1850, 1908, and 1963) and through ongoing statutory and judicial changes. The 1963 state constitution continued court restructuring, establishing a court of appeals, intermediate between the supreme court and the lower courts, and eliminating the justice of the peace and circuit court commissioners. The 1963 constitution gives the legislature authority to establish courts of limited jurisdiction, and the legislature did so in 1968, when it enacted the district court act (Public Act 154) that created the district court and that, with subsequent legislation, eventually eliminated all but a handful of municipal courts.

Since 1963, the organization of the court system has continued to evolve, both through legislative and judicial action, while public discussion of court reform and funding has been ongoing. However, this discussion has intensified significantly in the past couple of years, with proposals for court reform being put forth by both the legislative and judicial branches of government, as well as by the bar association and other interested parties. Legislatively, this recent activity pushing for court reform can be traced back at least to 1980, when Public Act 438 reorganized the Wayne County-Detroit area courts and provided for state funding of the three Wayne County courts: the Third (Wayne County) Circuit Court, Detroit Recorder's Court, and the new 36th (Detroit) District Court. Public Act 438 also established a five-year timetable (beginning in 1983) for phasing in full state funding (beginning in 1988) of all state trial court operations, and provided for the termination of state funding to the Wayne County courts if the state didn't follow through with funding the so-called "outstate" trial courts' operational expenses. The phased-in state funding of outstate trial courts that was to have begun in 1983 never took place, however, at least in part because of the economic recession of the early 1980s. In that same year (1983) the attorney general issued an opinion (OAG #6125) that held both that the legislature could not terminate funding to the Wayne County courts if full state funding of all trial court weren't achieved, and that the 1980 legislation only expressed legislative intent to fund all trial courts.

Despite the attorney general's opinion, as succeeding legislatures did not follow through with the phased-in state funding of outstate trial courts, public dissatisfaction increased over the perceived unfairness

of the state's selective funding of state trial court operations. In 1988, the year that had been targeted by MCL 600.9947 for the state to fund one hundred percent of all court operational expenses, a group of local governments (initially eight counties, but eventually 76 of the state's 83 counties, 44 cities, 11 townships, and one village) sued the state (in Grand Traverse County et al. v the State of Michigan et al.) in an attempt to force the state to fully fund all state court operational expenses. In 1992 the court of claims found that the state did have a statutory -- but not constitutional -- obligation to fund all state trial courts. The court of appeals agreed in January 1994 with the lower court's ruling. The case then went to the state supreme court, which in August 1995 reversed the lower courts and ruled that the state does not have to pay for state trial court operations.

In addition to legislative activity and litigation, the judiciary also has advocated for court reform, including state funding of a unified court system. For example, in October 1985, then supreme court Chief Justice G. Mennon Williams described three proposed programs (developed in conjunction with the State Court Administrative Office, the trial court judges, and the State Bar of Michigan) to improve the court system. The first program was aimed at reducing the delay in the courts; the second called for a blue-ribbon citizens' committee to study the operation of state courts and recommend ways they could improve their services; and the third proposed moving forward "on the longstanding goal of state rather than local funding for Michigan's One Court of Justice." The 26-member Citizens' Commission to Improve Michigan Courts was formed by the supreme court in January 1986, and issued its final report and recommendations the following October. The commission noted, in its Final Report and Recommendations to Improve the Efficiency and Responsiveness of Michigan Courts, that time and resource constraints prevented it from exploring the full range of suggested areas of inquiry, and proposed that the Michigan Supreme Court continue in some fashion the work that the commission had begun. Two years later, then-Chief Justice Dorothy Comstock Riley called for another commission to review the judicial article (Article VI) of the 1963 state constitution. In 1990 Senate Concurrent Resolution 9 created a 21-member Commission on the Courts in the Twenty-First Century "to study and recommend changes to maximize the resources and efficiency of Michigan's judicial system." The commission's report, Michigan's Courts in the 21st Century, was issued the following December. That report also noted the constraints placed on its deliberation by limited time, personnel, and financial resources. In particular, with respect to the proposal to unify the court system, the report expressed concern that there would be "insufficient time and money to properly study trial court unification and test its appropriateness to Michigan's court system," despite the commission's recommendation that pilot projects precede any permanent change to the court system. In October 1994, the supreme court formed a 21-member Michigan Justice Project Planning Committee to study the structure and funding of the Michigan court system. The committee issued its report, Charting the Course for Michigan Justice, in May 1995, and the following September, Chief Justice James H. Brickley presented to a joint session of the legislature the supreme court's proposal for reforming the judicial branch of government, Justice in Michigan.

Meanwhile, as the Grand Traverse case was proceeding through the courts, the state legislature enacted Public Act 189 of 1993. The act eliminated the controversial section of the Revised Judicature Act (MCL 600.9947, as added by Public Act 438 of 1980) that promised full state funding of all state trial courts, replacing it instead with a new court funding scheme committing the state to funding at least 31.5 percent of all trial court operational expenses, subject to certain "offsets." Public Act 189 of 1993 also raised court fees, and set up a state court fund to receive and distribute the additional revenues. However, because of the act's offset provisions, only a relatively small number of outstate local governments received any funds under the new provisions. (For example, by August 1994 only 22 of the outstate counties [and the City of Pontiac] had received money from the state court fund, in amounts ranging from $800 to Baraga County to over one million dollars to Macomb County).

In the last two years there also have been (unsuccessful) legislative attempts to fund outstate trial courts through the appropriations process. Thus, although the House-passed version of the judiciary budget, which was contained in the general government appropriations act for fiscal year 1994-95, included full funding for all state trial courts, the enacted bill (Public Act 288 of 1994) did not. The enrolled version of the judiciary appropriations for fiscal year 1995-96 did include an additional $25 million for outstate trial courts (reduced from a House-passed amount of $180 million), but the governor vetoed the $25 million, saying that "expanded state funding of Michigan state trial courts c[ould] only go forward on a rational basis" after major structural changes such as court reorganization and a review of "the appropriate number, location and jurisdiction of trial judges." The 1994 judiciary appropriations act (Public Act 288 of 1994) also included a provision establishing a joint legislative study committee, which was to report by March 17, 1995, "to enable the legislature to evaluate the most effective use of state

appropriations for trial court operations." That committee's main finding echoed the governor's veto message, saying that any discussion of court funding must include a discussion of court organization.

Finally, in the fall of 1995, the chairs of both the Senate Judiciary Committee and the House Judiciary and Civil Rights Committee proposed separate court restructuring plans, though the Senate proposal, to date, is not in bill form. The House proposal, which consists of a package of bills and joint resolutions, is the subject of this analysis.

THE CONTENT OF THE BILLS AND RESOLUTIONS:

The bills and joint resolutions would amend a number of existing laws and the 1963 state constitution to reconfigure the trial courts in Michigan and to change how the entire court system is funded. In general, the main bill in the package, House Bill 5158, would amend the Revised Judicature Act (MCL 600.151 et al.) to establish a new, county-based trial court of general jurisdiction consisting of three component courts: a circuit court, a district court, and a new "family" court. Detroit Recorder's Court would be abolished (and replaced by a "Detroit criminal division" of the third circuit court), and the probate court would become the family court. Court funding would change: most of the fees and fines collected by courts would be kept locally, while the court revenues that were sent to the state would be distributed under a complex formula in the bill. The state would pay all trial court judges a uniform salary and would pay for certain "due process" costs that currently are paid by local units of government. House Joint Resolution S would amend the 1963 state constitution to allow for the structural and salary changes proposed by House Bill 5158, while House Joint Resolution T would amend the constitution to replace the revenue from penal fines that would be lost to libraries under House Bill 5158 with revenue from state income tax revenues. House Bill 4184 would amend the Open Meetings Act and House Bill 5425 would amend the Freedom of Information Act to implement in statute the proposed constitutional amendment in HJR S that would subject meetings of state courts to the open meetings and freedom of information laws. Finally, House Bill 5421 would set up a temporary "state court information management commission" to make recommendations on the design, implementation, and operation of a statewide computerized court information management system.

A more detailed description of the resolutions and bills follows.

House Joint Resolution S would amend Article VI of the 1963 state constitution to allow the reconfiguration of the courts proposed in House Bill 5158. More specifically, the resolution would do the following:

-- Currently, the constitution says that "The judicial power of the state is vested exclusively in one court of justice which shall be divided into one supreme court, one court of appeals, one trial court of general jurisdiction known as the circuit court, one probate court, and courts of limited jurisdiction that the legislature may establish by a two thirds vote of the members elected to and serving in each house." Instead of naming the circuit court as the trial court of general jurisdiction, the resolution would delete this reference and instead refer only to "one trial court of general jurisdiction." In addition, the resolution would eliminate the legislature's authority to establish courts of limited jurisdiction (as well as deleting language in section 26 that refers to the legislature establishing a court or courts of limited jurisdiction).

-- Currently, the constitution allows the legislature to divide the state into judicial circuits along county lines with one or more elected judge in each circuit, provides for the nonpartisan election of circuit judges, specifies the circuit court's jurisdiction, and makes the county clerk the clerk of the circuit court. The resolution would allow the legislature to divide the state into judicial "units" along county lines and to divide the judicial units into subject matter jurisdictions and election districts. Each judicial unit would be required to have at least one judge, and the legislature would be allowed to transfer or assign judges to subject matter jurisdictions and election districts. The legislature also would be allowed to provide for the nonpartisan nomination and election of all trial court judges in the election district where they lived. Judges' terms of office would continue to be six years, but the resolution would allow the initial terms to be varied by law to allow for the staggering of judges' terms within a unit. The current jurisdiction of the circuit court would become the jurisdiction of the trial court of general jurisdiction, though additional jurisdiction would be by law rather than supreme court rule. Finally, the county clerk would be named "keeper of records" for the trial court, instead of clerk of the court.

-- The resolution would delete the existing sections of the constitution (Article VI, sections 15 and 16) establishing the probate court.

-- Salaries of appeals court judges would be uniform and set by law. Beginning on January 1, 1997, judges' salaries would be paid wholly by the state, and supplementation of judges' salaries by local units of

government would be prohibited (though the elimination of supplemental salaries would not be allowed to reduce any judge's total salary). Trial court judges' salaries also would be set by law, and beginning on January 1, 2001, would be uniform rather than varying (as is now the case) between the circuit level courts and the lower level courts (i.e. the probate and district courts).

-- The phrase "trial court of general jurisdiction" would be substituted in various sections for current references to the circuit court or probate court. Thus, the trial court of general jurisdiction, instead of the circuit and probate courts, would be a court of record; incumbent trial court judges would be allowed to become candidates for reelection by filing affidavits of candidacy (instead of circuit court or probate court judges); vacancies in the office of justice or judge (instead of "judge of any court of record or in the district court") would be filled by the governor; three judges from the trial court (instead of one circuit judge, one probate judge, and one judge of a court of limited jurisdiction) would serve on the judicial tenure commission; and judges of the trial court (instead of circuit judges and other judges as provided by law) would be conservators of the peace within their respective jurisdictions.

-- Only the supreme court and the court of appeals (and no longer the circuit court) would be prohibited from exercising the power of appointment to public office except as constitutionally allowed.

-- The resolution would add a new section that would require that certain court meetings ("to decide administrative, budgetary, or financial matters or court rules") and records be open to the public as provided by law.

-- The resolution would be put on the August 6, 1996 ballot, and there would be two effective dates: the salary provisions for judges would take effect on January 1, 1997, while the court restructuring provisions would take effect on January 2, 1999.

House Joint Resolution T would amend the library section of the state constitution of 1963 (Article VIII, Section 9) to set a December 31, 1998, end to the current allocation of penal fines to libraries. Beginning on January 1, 1999, the resolution would allocate to libraries an amount equal to 0.75 percent of the gross state income tax revenues. The resolution would be on the ballot for August 6, 1996.

House Bill 4184 would amend the Open Meetings Act (MCL 15.262) to include courts -- when meeting to decide court rules or administrative, budgetary, or financial matters unrelated to a case -- under the act's provisions. The Open Meetings Act requires, among other things, that all meetings of public bodies be open to the public and defines "public body" to mean "any state or local legislative or governing body . . . which is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function." The bill would amend the definition of "public body" to include "a court when convening as a body to decide administrative, budgetary, or financial matters unrelated to a case or court rules," and would define "court" to mean the supreme court, the court of appeals, and the trial court of general jurisdiction." The bill is tie-barred to House Joint Resolution S.

House Bill 5425 would amend the Freedom of Information Act (MCL 15.232 and 15.243) to include judicial records related to financial, budgetary, and administrative matters under the act's provisions. The Freedom of Information Act requires gives people the right, with certain exceptions, to inspect, copy or receive copies of public records of public bodies, and defines "public body" to include the executive and legislative branches of government. However, the definition explicitly excludes the judiciary ("including the office of the county clerk and employees thereof when acting in the capacity of clerk to the circuit court") from the definition of "public body." The bill would amend the definition of "public body" to include in the definition "the judiciary, employees of the judiciary, the office of the county clerk, and employees of the office of the county clerk." However, the bill would explicitly exempt from the act's disclosure requirements "a public record of the judiciary unrelated to financial, budgetary, or administrative matters of the judiciary." The bill is tie-barred to House Joint Resolution S.

House Bill 5421 would amend the Revised Judicature Act (MCL 600.1487) to add a new section that would create a two-year "state court information management commission" in the Legislative Council to make detailed recommendations to the supreme court, the legislature, and the governor on the design, implementation, and operation of a computerized information management system. The legislature would designate, by statute, the appropriate body to implement the commission's recommendations.

The commission would be created under the authority of Article V (the executive branch), Section 4 of the constitution, which allows the legislature to establish -- outside of any of the 20 state departments -- temporary commissions or agencies for special purposes lasting no

more than two years. Commission meetings would be subject to the Open Meetings Act, and commission records would be subject to the Freedom of Information Act.

Computer system requirements. The computerized information management system recommended by the commission would have to allow data on all aspects of court operation and management to be relayed among all courts in the state. The system also would have to be compatible with those of the following agencies and offices:

* the Department of State;

* the Department of State Police;

* the Law Enforcement Information Network (LEIN);

* the Department of Social Services;

* the office of friend of the court;

* the Department of Management and Budget;

* the Department of Treasury;

* the county prosecuting attorneys; and

* any other agencies or entities designated by the commission.

Commission members. The chief justice of the supreme court (or the justice designated by the chief justice) would chair the commission and would designate other officers he or she considered necessary or appropriate. The chief information officer for the state would be the facilitator of the commission, which would have the following 26 members:

* Four members from the legislature, two appointed by the Speaker of the House (one from each caucus) and two appointed by the Senate Majority Leader (one from each caucus);

* The chief justice of the supreme court or a justice designated by him or her;

* One judge each from the court of appeals, the circuit court, the probate court, and the district court, all of whom would be appointed by the chief justice of the supreme court;

* A local court administrator, someone who was serving as a friend of the court, and one county clerk, all of whom also would be appointed by the chief justice of the supreme court;

* The directors of the Departments of Management and Budget, State Police, and Social Services, the secretary of state, and the state treasurer (or their designees);

* Three at-large members appointed by the governor; and

* Six members -- two each from the state universities with elected boards (i.e. Wayne State University, Michigan State University, and the University of Michigan) -- appointed, from the faculty or staff with expertise in computers, by the chair of each elected board.

The members first appointed to the commission would be appointed within 30 days after the bill took effect. A majority of the members present and voting would be required for official action by the commission; a majority of the commission members would constitute a quorum for transacting business at commission meetings and would be required for a vote to approve the commission's final recommendations. Commission members would serve without pay, but could be reimbursed for their actual and necessary expenses incurred in performing their official duties as commission members.

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House Bill 5158

Current state court configuration. Currently, the state constitution vests the judicial powers of the state "exclusively in one court of justice," which is divided into "one supreme court, one court of appeals, one trial court of general jurisdiction known as the circuit court, one probate court, and courts of limited jurisdiction" established by the legislature by a two-thirds vote of members elected to and serving in each house (Article IV, section 1). The court of appeals currently is divided into four districts, with the number of appellate judges having grown from nine to 28 since 1963. Under the constitution, the circuit court is divided into judicial circuits along county lines (Article IV, section 11), as are probate court districts (Article IV, section 15). The legislature can create, alter, or discontinue circuit court circuits, and can create or alter probate court districts of more than one county if the voters in the affected counties approve. Currently, there are 57 judicial circuits of the circuit court with 181 judgeships, and 78 probate court districts with 107 judgeships. The legislature also has the power to combine the office of probate judge with any judicial office of limited jurisdiction within a county.

In addition to the four constitutionally-based courts, there currently are four existing courts established by law: the court of claims, the district court, municipal courts, and Detroit Recorder's Court. The court of claims, which was created originally by Public Act 135 of 1939 and was incorporated into the 1963 Michigan constitution, has exclusive jurisdiction over claims of more than $1,000 against the state of Michigan and its agencies. Under Public Act 236 of 1961 (which took effect on January 1, 1963), the court of claims was made a function of the 30th circuit court in Ingham County, within which it is structured, organized, and staffed (MCL 600.6404). The largest of the statutory courts is the district court, which is a court of limited jurisdiction that currently has 101 districts and 260 district judges. The district court was created by Public Act 154 of 1968, which both abolished and replaced (with district courts) justices of the peace, police courts, and most municipal courts. Municipal courts, the other statutorily designated court of limited jurisdiction, are statutorily authorized or established under Public Acts 279 of 1909 (Home Rule Cities) and 269 of 1933 (now repealed) to hear cases arising under city charters, ordinances, or regulations (MCL 780.221). Although the 1968 district court act abolished municipal courts and prohibits the creation of any new municipal courts, it did allow municipalities to keep their existing courts. Since passage of the 1968 act, the number of municipal courts has decreased to five, with six judges: Eastpointe (formerly East Detroit) in Macomb County, and four "Grosse Pointe" courts (Grosse Pointe, Grosse Pointe Park, Grosse Pointe Farms, and Grosse Pointe Woods) in Wayne County. (The village of Grosse Pointe Shores has a municipal court also, sharing a municipal judge instead of electing its judge.) The remaining statutorily created court is Detroit Recorder's Court, which has 29 judges and which is the only existing municipal court of record. Historically it can be traced back to the creation of the Detroit Mayor's Court of 1824, when Michigan was still a territory of the United States. In 1857, the Charter of the City of Detroit consolidated the Mayor's Court, the Police Court of 1850, and the criminal jurisdiction of the Circuit Court for the County of Wayne into the Recorder's Court. The court was established in state law in 1883 by Local Act 326 and generally is considered to be a circuit court-level court.

Trial court restructuring. The bill would replace the current, two-tiered trial court system in Michigan with a single trial court of general jurisdiction. Currently, Michigan has what can generally be described as two trial court levels, a circuit court level and a lower court level. At the circuit court level there is the constitutionally-established court of general jurisdiction named the circuit court, which currently is divided into 57 judicial circuits with 181 judgeships, as well as the statutorily-established Detroit Recorder's Court (with 29 judgeships), which generally is considered to be a circuit court-level court. At the "lower" trial court level there is the probate court (with 78 districts and 107 judgeships), the district court (with 101 districts and 260 judgeships), and the five municipal courts (with six judges). With certain exceptions, the bill would create a single trial court of general jurisdiction in each county consisting of three component courts (the circuit court, the district court, and a new "family" court), all of whose judges would eventually be paid a uniform salary by the state.

Abolished courts. On January 2, 1999, the probate court would become the family court (section 801). Detroit Recorder's Court would be abolished on January 2, 1999 (section 9932), with all files, records, and pending cases being transferred to the new Third Circuit Court-criminal division-Detroit. The five existing municipal courts would be abolished on January 1, 1999 (section 9932), with all the cases arising in the cities and village of these districts going to the 38th District Court (Eastpointe, section 9933) and the 32nd-B District Court (section 9940). If the cities decided not to adopt district courts, the supreme court would provide for the filing, processing, and trial of those cases.

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The new trial court unit.

The bill would add a new chapter (Chapter 4. Trial Court) to the Revised Judicature Act (RJA) to create a new single trial court of general jurisdiction in each county as a "unit" consisting of a circuit court, a district court, and a family court. However, the bill also would establish a unique three-division circuit court in Wayne County, and would allow for both multi-county trial court units and trial court units that had one or two, instead of three, component courts.

In Wayne County, the judicial unit of the trial court unit of general jurisdiction would include a family court and the third judicial circuit, which would be divided into a "circuit court-civil division," and two "circuit court-criminal divisions," one for Detroit and one for the rest of Wayne County.

With the concurrence of the county board of commissioners and the supreme court, a trial court unit in a county with fewer than 50,000 residents could decide to combine the circuit, district, and family courts within that unit into either two courts (a family/circuit

supplement trial court judges' salaries would be abolished. The bill would set the salaries of appeals court and trial court judges, using a formula that would require judges to be paid the greater of either a percentage of the salary of a supreme court justice or a fixed sum that had an "escalator" equal to $500 for each year in which supreme court justices' salaries were increased by three percent or more (though this $500 increase would not take effect until February 1 of the year in which the supreme court justices' salary increase took effect). Thus, under the bill each appeals court judge would receive an annual salary equal to the greater of either (a) 92 percent of the salary of a supreme court justice or (b) $114,007 plus an additional $500 for each year in which supreme court justices' salaries were increased by three percent or more. Trial court judges salaries would be the greater of either (a) 82 percent of the salary of a supreme court justice or (b) a fixed amount (with the $500 escalator) that would differ depending on whether the judge were a circuit or recorder's court judge ($109,257) or a district, probate, or family court judge ($104,205). [Note: Because the bill's salary provisions would take effect two years before its restructuring provisions, recorder's court and probate judges are included under the new salary provisions until those courts were changed or abolished.]

Judges would continue to receive actual expenses when assigned to another court, but would no longer receive additional compensation of $25 or 1/250 of the difference in salary.

Judicial performance commission. Under the bill, the supreme court would create a judicial performance commission that would develop standards for evaluating the performance of all judges in the state. The results of the evaluation of judges according to the standards set by the commission would be made available to the public June 1, 1997. If the commission hadn't developed and implemented evaluation standards by the specified deadline, an alternative method of public access to judicial performance would be used until the commission standards did go into effect: Beginning on January 1, 1998 (and within 15 days after the end of each calendar quarter), each trial court unit judge would be required to publicly post quarterly statements giving the number of cases filed and finalized in his or her court and the number of full trial days he or she held.

Additional judgeships: Headlee escape provision. Except for judgeships transferred between courts under the bill, additional judgeships would not be authorized to be filled by election unless the county approved the creation of that judgeship. Additional judgeships would have to be authorized by a resolution adopted by the county board of commissioners, a copy of which the county clerk would then have to file with the state court administrator by 4 p.m. on the 13th Tuesday preceding the August primary for the election that would fill that additional judgeship. When such a resolution was filed, the state court administrator would be required to ("immediately") notify the county clerk with respect to any new judgeship authorized under this subsection of the bill.

The bill would specify, however, that by allowing additional judgeships, the legislature wasn't creating those judgeships (and therefore wouldn't be triggering any Headlee provisions). More specifically, if a county did approve the creation of an additional judgeship, that approval would constitute (a) an exercise of the county's option (under Public Act 101 of 1979) to provide a new activity or service (or to increase the level of activity or service) offered in the county beyond that required by existing law and (b) a voluntary acceptance by the county of all expenses and capital improvements that might result from the creation of a judgeship. However, the exercise of this option by a county would not affect the state's obligation to pay the same portion of the additional judge's salary as it pays to the other judges of the same trial court unit, nor would it affect the state's obligation to appropriate and disburse funds to the county for the necessary costs of state requirements established by a state law which became effective on or after December 23, 1978.

Each additional judgeship created under this part of the bill would be filled by election under the Michigan Election Law. The first term of each additional judgeship would be six years unless the law allowing the additional judgeship provided for a term of a different length.

County clerk. Under the 1963 constitution (and under earlier Michigan constitutions), the county clerk is designated as the clerk of the circuit court for each county organized for judicial purposes (Article VI, Section 14). Under the bill, the county clerk would become "keeper of records" for all county-funded trial courts (that is, except in district courts of the third class, in which case the clerk of that political subdivision would be keeper of the court records). Court records would have to be available to judges at any time.

Court employees. Three sections in the Revised Judicature Act give judges authority to appoint court employees: Section 591 requires the chief judge of a circuit court to "appoint the employees of the circuit court in each judicial circuit and fix their compensation within appropriations provided by the county board of

court and a district court) or a single court (the family/circuit court).

Any two or more contiguous counties, with voter approval, could decide to establish a multi-county trial court unit. Once created, multi-county units could be dissolved by the voters (a resolution of the county board of commissioners of each affected county would be required in order to place the question of dissolution on the ballot for the voters to vote on).

Trial court judges. Each trial court unit would have at least one circuit court judge, one district court judge, and one family court judge (unless the trial court unit had combined its courts as allowed under the bill). The names of candidates for each of the component courts of the trial court unit would appear on the ballot separately from the names of the candidates for the other two trial court unit component courts (again, unless the trial court the trial court had combined its component courts as allowed under the bill). Each trial court judge would serve in the court to which he or she was elected or appointed, with two exceptions:

(1) The judges of a trial court could recommend that one or more judges in the unit be transferred from one component court to another; if the supreme court approved the transfer, the judge(s) would be transferred and would become an incumbent of the court to which he or she was transferred.

(2) The bill also would reassign the current judges in Wayne County to the unit's new family court and to the three "divisions" of the new Third Circuit Court (see "Wayne County Courts" below).

The supreme court would appoint the chief judge of each trial court unit, who, in turn, would appoint all employees in that component court. Trial court unit judges would be required to administer the operation of the component courts in that trial court unit, and to adopt procedures for the assignment of judges between courts and the assignment and reassignment of cases. The judges of a unit would administer the courts jointly and, by majority vote, establish and implement administrative procedures for their unit. If the judges of a trial court unit couldn't agree on an administrative procedure, the procedure would be decided for that unit by the supreme court.

All assignments and reassignments of cases filed in a trial court unit would be made among the judges in that unit unless none were qualified and able to take a particular case. Judges would not be assigned from one trial court unit to another unless no judge within the unit needing help were able to provide the needed help.

The same fiduciary constraints that now apply only to probate judges would apply to all trial court judges. Thus, for example, no trial court judge could be a fiduciary or appraiser of an estate under the jurisdiction of the court in the county in which he or she was a judge, nor could a trial court judge be an attorney or counsel for or against a fiduciary appointed under his or her court. The court administrator would call a single statewide conference annually of trial court judges (instead of separate annual meetings of circuit court judges and of district court judges).

Judges' salaries. Currently, the salaries of supreme court justices (which are set by the State Officers' Compensation Commission) and appeals court judges are fully funded by the state, with appeals court judges' salaries being set at 96 percent of that of a supreme court justice. (Note: Public Acts 259 and 260 of 1995 revised the calculation of judges' salaries effective January 1, 1997. See below.) Salaries of trial court judges, however, vary depending on the level of the court in which they serve. The salary of a circuit court judge -- and of a Detroit Recorder's Court judge -- is set at 92 percent of that of a supreme court justice; the salaries of district court and probate court judges are set at 88 percent of that of a supreme court justice. (This percentage is sometimes called simply the "tie-bar.") The salaries of supreme court and court of appeals judges are completely funded by the state; the salaries of trial court judges consist of a state salary base (generally 50 to 60 percent of a judge's maximum salary) paid by the state, and a local supplement paid by local governments (the county or district control unit). However, the state reimburses local units for 90 percent of the difference between the base salary and the maximum salary. This state payment to the local units of government is known as the "standardization payment". So the state effectively pays 94 percent of trial court judges' salaries, with the remaining six percent being borne by the local units of government. By law, the total salary of a trial court judge cannot be more than the maximum salary allowed by the tie-bar.

Public Acts 259 and 260 of 1995 (enrolled House Bills 5457 and 5460) broke the so-called "tie-bar", specifying that beginning January 1, 1997, the salary of a judge of the court of appeals, and the salary of a circuit, probate, and district court judge paid by the state, could not be increased unless the legislature, by statute, set a higher salary. The acts set specific dollar amounts for judges' salaries paid by the state, and set limits on the amount of local supplements.

Under House Bill 5158, beginning on January 1, 1997, the state would fully fund all judges' salaries; the current ability of local units of government to

commissioners of the county or counties comprising the judicial circuit." Compensation of these circuit court employees is paid by the counties. Section 831 gives the chief probate judge of counties having two or more probate judges "the power of nomination, appointment, and removal of the several employees as provided by law for the probate court in that county." And Section 8271 requires district court judges to "appoint the employees thereof and fix their compensation within appropriations provided by the governing body of each district." Section 8271 also explicitly specifies that district court employees, when performing services in the courtroom, are subject to the control of the judge in the courtroom.

The bill would add a new section to the RJA to specify that the county board of commissioners would be the employer of the county-paid employees of the trial court unit for that county (defined as people employed in a trial court unit for a county who received any compensation as a direct result of an annual budget appropriation approved by the county board of commissioners of that county), including the circuit, district, and family courts. County boards of commissioners would be authorized to establish personnel policies and procedures, "including, but not limited to, policies and procedures relating to compensation, working hours, fringe benefits, holidays, leave, affirmative action, discipline, grievances, personnel records, probation, and hiring policies." County boards also would be authorized to make and enter into collective bargaining agreements with representatives of the county-paid trial court employees and to appoint agents for that collective bargaining. The bill also would amend the existing sections of the RJA dealing with the appointment of circuit, probate, and district court employees as follows: the chief judges of each component court in the trial court unit would continue to appoint the court's employees, but would no longer fix their compensation. Court employees would be employees of the county board of commissioners or governing body of the district control unit, which would not only pay the employees but set their compensation and determine their conditions of employment. Circuit and family court judges would have control over their employees ("when performing services in the courtroom"), just as is now the case with district court judges and district court employees. Beginning on January 1, 1999, the county clerk would no longer have employees in circuit court courtrooms.

The status of employees of the state judicial council (that is, employees of the Third Circuit Court and the 36th District Court) wouldn't change, though employees of the Wayne County friend of the court would be transferred to the Wayne County family court on January 2, 1999 and would be appointed by the chief judge of the Wayne County family court.

Evening and weekend sessions. The bill would allow trial courts to hold evening and weekend sessions.

Role of family and juvenile agencies. State and public agencies that provide help to families or juveniles -- including the friend of the court, the circuit court marriage counselor, and the staff of the former probate court -- would be required to help the component courts of the trial court units ("in accordance with their jurisdiction").

* * *

The new circuit court.

The circuit court, which currently is the constitutionally-designated single court of general jurisdiction, would become one of the three component courts of the trial court unit.

Jurisdiction. Currently, circuit courts have statutory jurisdiction in general over matters at common law ("as altered by the constitution and the laws of this state, and the rules of the supreme court"), equity, and as prescribed by rule of the supreme court (MCL 600.601). More specifically, the circuit court has jurisdiction in civil cases involving more than $10,000 (MCL 600.8301) and in domestic relations cases (which include actions for divorce, separate maintenance, marriage annulments, paternity, family support, injunctive relief, the custody of minors, the visitation of minors, and interstate child support actions). It has criminal jurisdiction over adult felony cases, juvenile felony cases waived from probate court (MCL 764.27), and certain serious misdemeanor cases. The circuit court also hears cases appealed from lower courts.

Under the bill, the circuit court would lose its current jurisdiction over domestic relations to the family court. It would have concurrent jurisdiction with the district court in all civil cases, regardless of the amount of money involved, and in cases of foreclosure on real estate and land contracts (currently under the exclusive jurisdiction of district courts). It also would have concurrent jurisdiction with both the family court and the district court over name changes.

Circuit court judges. Currently, the law requires that there be as many court reporters in each circuit court as there are judges, with court reporters being appointed by the governor after having first been recommended by

the judge(s) of the court to which the reporter is appointed. Under the bill, circuit court judges would appoint their reporters or recorders, who would serve at the pleasure of the judge they served (rather than at the pleasure of the governor). Vacancies in the office of reporter or recorder would be filling by the appointing judge (again, rather than by the governor).

Circuit court judges would continue to be reimbursed for their actual and necessary expenses when they held court in a county other than the county of their residence. Circuit judges whose case load was less than other circuit judges also would continue to be able to be authorized (by the supreme court or state court administrator) to assist other courts and perform other judicial duties for limited periods or specific assignments.

Third Circuit Court. Currently, the Third Circuit Court in Wayne County has 35 judges, while Detroit Recorder's Court has 29 judges. Beginning on January 2, 1999, the bill would divide the Third Circuit Court into three "divisions": a "circuit court-civil division" with 17 judges, and two criminal divisions, one for Detroit and one for the rest of Wayne County. The "circuit court-criminal division-Detroit" would have 29 judges, who would be the former Detroit Recorder's Court incumbents. The "circuit court-criminal division-county" would have 10 judges, transferred by the supreme court from the incumbent Third Circuit Court judges.

Until the supreme court transferred 8 of the 35 incumbent Third Circuit judges to the new Wayne County family court (see Family court below) and 10 of the incumbent circuit judges to the circuit court-criminal division-county, all 35 incumbent circuit judges in the third circuit would become judges of the Third Circuit Court-civil division.

The election district for the civil division of the reconfigured Third Circuit Court would be Wayne County. The election district for the Detroit criminal division of the Third Circuit Court would be the City of Detroit, and the election district for the county criminal division would be Wayne County except for Detroit.

Jurors for case trials in the family court or any division of the Third Circuit Court would be chosen from a countywide list. Vacancies in judgeships would continue to be filled by the governor according to the state constitution.

* * *

The new family court.

The current probate court would become the family court on January 2, 1999, and, in general, current references to the "probate court" would be changed to the "family court." All files, records, and pending cases of the probate court would be transferred to the family court in accordance with supreme court rules. The family court would have jurisdiction to hear and determine all cases transferred to it under the bill, and would exercise all authority with regard to them as though they had been commenced in it. All orders and judgments of the former probate court would be appealable in the same way and to the same courts as was true of the probate court.

Jurisdiction. Currently, the probate court has legal and equitable jurisdiction over proceedings concerning guardianships, conservatorships, and protective orders (see MCL 700.21); exclusive legal and equitable jurisdiction over proceedings regarding fiduciaries (see MCL 700.5 and 700.21); emancipation of minors (MCL 722.4); Mental Health Code proceedings, including civil admissions of mentally ill adults and emotionally disturbed minors (MCL 330.1468, 330.1498n et seq.); guardianships of developmentally disabled people and their estates (MCL 330.1604 et seq.); adoptions (MCL 710.21 et seq.); acknowledgments of paternity (see MCL 700.111); name changes (MCL 711.1); and various health-related manners (such as kidney transplants, health threats to others, waiver of parental consent for minors' abortions, and durable power of attorney for health care proxy). In addition, the juvenile division of the probate court has exclusive original jurisdiction over abused or neglected children under the age of 18. The probate court also has concurrent jurisdiction with the circuit court in divorce custody matters where the circuit court waives jurisdiction, and concurrent jurisdiction of 17- and 18-year-old juveniles.

The bill would give exclusive jurisdiction to the family court over domestic relations cases, delinquency, abuse and neglect, adoption, guardianships, the mentally ill, and probate. It would have concurrent (with the circuit and district courts) jurisdiction over name changes.

Family court judges. On January 2, 1999, each judge of the former probate court would become a judge of the family court and each probate court district would become a family court district.

The Wayne County family court would consist of 17 judges: On January 2, 1999, the 9 incumbent probate judges would become family court judges, while the supreme court ("as soon as practical after January 1, 1999") would transfer 8 from the current circuit court. The election district for the Wayne County family court would be Wayne County.

* * *

The new district court.

Jurisdiction. Currently, the district court has exclusive jurisdiction in civil actions involving amounts up to $10,000 and over civil infraction actions, regardless of the offender's age (MCL 600.8301). It also administers land contract and mortgage foreclosures (MCL 600.5726), and has equitable jurisdiction over forfeiture proceedings brought under Chapter 47 of the RJA (MCL 600.8303), equitable jurisdiction concurrent with the circuit court in small claims cases (cases involving up to $1,750, MCL 600.8302), and concurrent jurisdiction with municipal courts over landlord-tenant disputes (MCL 600.5704). The district court currently has criminal jurisdiction over misdemeanors punishable by a fine or imprisonment up to one year; ordinance and charter violations punishable by fines or imprisonment; arraignment, fixing of bail and the accepting of bonds; and preliminary examinations in all felony cases and in certain misdemeanor cases that are within the circuit court's jurisdiction (MCL 600.8311).

Under the bill, the district court would keep its current criminal jurisdiction, but would have concurrent jurisdiction with the circuit court over all civil cases, regardless of the amount of money involved, and over land contract and mortgage foreclosures.

Appeals. Currently, with one exception, appeals from the district court are to the circuit court for the county in which the judgment is rendered. The exception is the 36th district, which consists of the City of Detroit. All appeals in misdemeanor or ordinance violation cases tried in the 36th district court, or in felony cases over which the 36th district court has jurisdiction before trial, currently are to Detroit Recorder's Court. Under the bill, appeals from all district courts would go to the circuit county in which the judgment was rendered.

New district courts. The bill would abolish the five existing municipal courts (MCL 600.9938a) in Eastpointe (in Macomb County), Grosse Pointe, Grosse Pointe Park, Grosse Pointe Farms, Grosse Pointe Shores, and Grosse Pointe Woods (in Wayne County). [Note: Apparently there is some dispute over whether there are five or six municipal courts in addition to Detroit Recorder's Court, which usually is classed as a circuit court-level court. The village of Grosse Pointe Shores operates what apparently is a municipal court even though there is no statutory authority for villages, as opposed to cities, to operate municipal courts (see MCL 600.9928); in addition, unlike the five other municipal courts, the municipal judge is not elected by voters of the village but is assigned to the court.] The district court act (Public Act 154 of 1968) established the District 38 court in the city of East Detroit (which has since changed its name to "Eastpointe") [MCL 600.8122], and the District 32-b court in the cities of Grosse Pointe Woods, Grosse Pointe Park, Grosse Pointe, and Grosse Pointe Farms, and the village of Grosse Pointe Shores [MCL 600.8121]. However, although these districts were created by the district court act, the cities in these districts opted to keep their municipal courts instead of moving to a district court system. Under the bill, beginning on January 1, 1996, the five existing municipal courts would be abolished and district courts would begin to function in Districts 32-b and 38. All causes of action transferred to the new district courts would be as valid ("and subsisting") as they were in the municipal courts from which they were transferred, and all orders and judgments entered in the municipal courts before January 1, 1996, would be appealable to the same courts and in the same way as before January 1, 1996. Employees of the abolished municipal courts would have the same rights and privileges (and to the same extent and effect) as currently apply under the RJA to employees of other courts abolished by the district court act. Thus, for example, full time employees of the abolished municipal courts would be transferred to the new district court and all other full-time employees of the abolished courts would have preferential employment rights in the district court; seniority rights, annual and sick leave, and longevity pay and retirement benefits would be preserved "in a manner not inferior to their prior position"; and retirement benefits accrued by employees in the abolished courts would remain the obligation of the municipalities (or other agencies of government), while district court employee retirement systems would have to provide retirement benefits to employees of abolished courts at least equal to those provided by the former abolished courts.

* * *

Court fees and funding. Currently, various court revenues are distributed, according to a number of detailed schema, to a variety of places: the state

general fund, the local funding unit, the state court fund, the Community Dispute Resolution Fund, the judges' retirement fund, and the legislative retirement fund. In addition, Public Act 189 of 1993 not only created the state court fund and a number of new fees, it also increased certain court fees and specified how proceeds from the state court fund are to be distributed. The act also eliminated controversial language that had provided for state funding of outstate trial court operational expenses (phased in over a five-year period of time) and instead added a requirement that the state fund at least 31.5 percent of all trial court operations, subject to certain offset provisions.

The bill would repeal the current provisions requiring the state to fund at least 31.5 percent of trial court operations and would eliminate the current complicated distribution of court-collected revenues. Instead, most court-collected revenue would be divided between the local funding units and the state, with the local units getting two-thirds of the revenues and the remaining one-third going to the state. (This division of would apply to all court-collected revenues except for mediation and arbitration fees, crime victim rights fees, and one-third of the fines and costs for ordinance violation that are paid to political subdivisions whose ordinances were violated.) The bill also would detail a complicated formula for distributing the one-third of the court-collected revenues that would go to the state. One-fourth of these revenues would go to the state court fund, with distribution to the outstate trial courts being based on a weighted caseload formula developed by the state supreme court. (The bill also would change distributions from the state court fund from a fiscal year basis to a calendar year basis, beginning January 1, 1997. It also would eliminate the fixed five percent of the state court fund that goes to the state court administrator for oversight, data collection, and court management assistance by the State Court Administrative Office.) The remaining three-fourths of the revenues going to the state would be divided among five other state funds as follows: the Highway Safety Fund, the Secondary Road Patrol fund, and the Michigan Justice Training Fund each would get 9.5 percent of this portion of the revenues, the Community Dispute Resolution Fund would get two percent, and the balance would go to the state general fund.

* * *

Mediation and arbitration of civil actions. The bill would require that the plaintiff and defendant in civil actions choose one or more of three ways of resolving the case within 126 days after the action had been filed: binding mediation, binding arbitration, or trial with mandatory nonbinding mediation and sanctions under the Michigan court rules. The defendant and plaintiff would indicate their choice to the clerk of the court on an "election" form (created by the state court administrator and provided by the clerk) in a sealed envelope. The clerk would compare the forms submitted by each party, and the case would be resolved by the first method chosen by both parties. If there were no agreement between the two parties' selections, the case would go to trial with mandatory nonbinding arbitration.

The bill would repeal the existing chapter of the RJA on tort action mediation (Chapter 49a) and instead add two new chapters, one on mediation (Chapter 49b) and one on arbitration (49c).

Binding mediation. The bill would repeal, and reinstate with some changes, the provisions of Chapter 49a ("Tort Action Mediation") of the Revised Judicature Act as Chapter 49b. Generally, the bill would repeal (without replacing) current provisions allowing judges to be members of mediation panel and the current procedures for parties to accept or reject a panel's evaluation and the procedures following the acceptance or rejection of a mediation panel's evaluation (including trials following rejection of an evaluation).

Under the bill, mediation would be binding, and judgments would be entered in the amount of the mediation panel's evaluation (including all fees, costs, and interest to the date of judgment). A mediation panel's evaluation would be reviewable by the circuit court for the county in which the dispute arose, but only if the mediation panel was without or exceeded its jurisdiction or if the evaluation wasn't supported by competent, material, and substantial evidence on the whole record, or was procured by unlawful means such as fraud or collusion. Every civil action -- except in cases of divorce and medical malpractice (which the bill would require be conducted under the medical malpractice mediation chapter of the RJA) -- that parties chose to mediate would be mediated under the new chapter's provisions. The fact that a review of a mediation proceeding was pending wouldn't automatically stay the order of judgment entered in the amount of the mediation panel's evaluation.

Binding arbitration. The bill's arbitration provisions parallel its mediation provisions. Arbitration would be binding on all parties who chose it, and -- except in cases of divorce and medical malpractice -- every civil action that parties chose to arbitrate would be arbitrated under the new chapter's provisions. Except for the explicit exclusion of attorneys from arbitration panels,

the bill's arbitration provisions would follow its mediation provisions, including the amount of the fee ($75) and penalty ($60) for failing to submit the required materials to the arbitration clerk.

Medical malpractice mediation. The bill also would amend two sections of the RJA chapter on medical malpractice mediation (Chapter 49) along lines similar to its tort action mediation amendments. That is, it would delete existing provisions (a) requiring judges to whom actions are assigned to refer the action to mediation by written order not less than 91 days after the filing of the answer(s); (b) regarding actions (or defenses) determined to be frivolous; and (c) regarding procedures following acceptance or rejection of a mediation evaluation. The bill also would delete the existing provision that a judgment be entered in the amount of the mediation panel's evaluation (including all fees, costs, and interest to the date of judgment) if all the parties accept the evaluation; instead, the bill would simply say that a judgment would be entered in the amount of the mediation panel's evaluation.

* * *

Legal aid funding. Public Act 189 of 1993 (enrolled House Bill 4873) allocated a fixed 23 percent of the balance of the state court fund (after the annual $1.6 million annual payment to outstate trial courts) to civil legal services for indigents, to begin four years after the act went into effect (for the first four years, $2 million of this 23 percent is allocated annually to the court of appeals to help alleviate its backlog).

Under the bill, the state would assume the cost of appeals by indigent defendants in felony cases and also would reimburse counties and district control units, subject to certain conditions, for the following "due process" costs they incurred: transcript fees, guardians ad litem, interpreter fees, and advertising fees for notices in probate or family courts. This reimbursement would be subject to annual legislative appropriations and a prorated reimbursement if amounts submitted by local funding units for reimbursement exceeded the amount appropriated for that year.

* * *

Repeals. Effective January 1, 1999, the bill would repeal the acts creating the Detroit Recorder's Court (Local Act 326 of 1883) and municipal courts of record (Public Act 369 of 1919), which effectively refers only to Detroit Recorder's Court.

The bill also would repeal Chapter 49a (Tort Action Mediation) of the Revised Judicature Act and certain other sections of the act, including those that provide for the transfer of municipal judges (Section 225a) and for the 1981 administrative unification of the Third Circuit Court and Detroit Recorder's Court (Sections 563, 564, 567, 592, 593, 1417); the section providing for the removal of actions begun in the circuit court to the district court (Section 641); sections dealing with the state judicial council (Sections 9102, 9103); certain probate court sections (Sections 805, 808, 809, 810, 819, 826, 829, 845); and the section providing for the appropriation of state funds for 31.5 percent of outstate trial court operational expenses (Section 9947).

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, House Joint Resolution S would have an indeterminate fiscal impact on the state and local governments. House Joint Resolution T would result in an increase in state costs. The resolution would dedicate .75 percent of the gross state income tax revenue to support public libraries; this amount is estimated at $48 million. Library funding for fiscal year 1994-95 was $42.8277 million (from penal fines and appropriations). House Bill 4184 would have no fiscal impact. House Bill 5421 would result in an indeterminate increase in state costs. House Bill 5425 would have no fiscal impact. (11-30-95)

With regard to House Bill 5158, the agency reports that it is anticipated that the package will be revenue neutral for the state and for local governments; however, a detailed fiscal analysis is not yet available. (1-10-96)

ARGUMENTS:

For:

Recently, the debate over the restructuring and funding of the state court system has become embodied in specific proposals by both the legislative and judicial branches of government. While the issues of court restructuring and funding are not identical, much of the recent debate in Michigan has been fueled by fiscal considerations. More specifically, much of the debate has focused on the fact that for the past fifteen years the state, which funds judges' salaries, also has funded trial court operations in only one county -- Wayne County -- out of the state's 83 counties. Considerable public dissatisfaction has been expressed over the fact that while the state "fully" funds the operations of the three Wayne County trial courts -- the Third Circuit Court, Detroit Recorder's Court, and the 36th District Court -- so-called "outstate" (i.e. other than Wayne County) trial court operations receive no state funds. However,

outstate local funding units do in fact receive some state reimbursement for their trial court operations (for example, for juror attendance and travel costs, for drunk driving cases handled by district courts, to the circuit court for certain additional jurisdictional duties, and, more recently, for pilot projects of the 21st Century Commission Report and from the state court fund established by P.A. 189 of 1993). At the same time, Wayne County spokespeople emphasize that while the 1980 legislation resulted in the state paying the salaries of court employees and some of the other operational expenses of the trial courts, the state still doesn't pay for all of their three trial courts' operational expenses. (In fact, according to testimony by the Wayne County executive, only 40 percent of the county's trial courts' operating budget is funded by the state.) Nevertheless, it does remain true that the Wayne County trial courts receive a greater percentage of their operating budget from the state than any other state trial courts. And even though a legislature cannot bind future legislatures to appropriate funds, Public Act 438 of 1980 did indicate the legislature's intention to fully fund all trial courts in the state, beginning with the Wayne County and Detroit trial courts.

As criminal and civil caseloads increase in number and complexity across the state, placing ever greater budgetary demands on local units of government, there are ever greater political incentives to look either for new sources of funding -- such as the state -- or for greater possible structural and organizational efficiencies, or for both. And the state's continued selective funding of the Wayne County trial court operations has come to many to seem increasingly problematic.

The judicial branch of state government has long advocated for full state funding of all state courts, at least for the "core" or "essential" costs of the court system. The argument generally is that in order to provide fair and equal justice to all citizens, there must be equity in court funding. Since the current court system is funded through a mix of state and local funds, with the local units of government providing much of the nonstate funding for the courts, and since the ability of local units to fund their courts is uneven, the argument is that fair and equal administration of justice is difficult to achieve without a single source -- the state -- assuming the funding of the (essential) costs of the system. Thus, for example, in a 1985 Michigan Bar Journal article titled "Full State Financing: The Price of Equal Justice," then-Chief Justice G. Mennon Williams argued for full state financing of judges' salaries as the first step toward an overall program for full state court financing. Chief Justice Williams began his article by arguing that "[w]ith full state financing of judicial salaries, there is fair and equal administration of justice. Unfortunately, full state financing is yet to be achieved. Justice requires equal pay for equal work." Referring to Public Act 438 of 1980, Chief Justice Williams notes that "[t]he legislation for such a reform is already in place, but the necessary funding has not been appropriated." He recognizes that "[al]though funding for total (emphasis in original) state assumption of the trial courts may be logical and ideal, political realities may make it less practical than a step-by-step approach" in which the state could begin to solve "[t]he inequities and strains on fair and equal justice produced by the present system of financing" by starting with full state funding of state salaries. House Bill 5158 would put in place this first step in equalizing court funding.

Even if the state did begin to assume more of the costs (or at least "core" costs, though there also is debate about what this term encompasses) most proponents of court reform also believe that the total costs of the current system could be reduced by structural and administrative changes, particularly by structurally unifying or consolidating the existing trial courts. The current court system exhibits many obvious inefficiencies: conflicting and overlapping jurisdictions, unequal court caseloads, a lack of meaningful public accountability on the part of judges, uneven capabilities for handling and processing information, and duplicative administrative and support staffing. One of the topics most often discussed in court reform is the problem caused by arbitrary and fragmented jurisdictional barriers to efficient and effective resolution of problems, especially of family problems as they are brought before the courts. As Chief Justice James Brickley noted in his September 1995 presentation to the legislature, "Currently there are trial courts with jurisdiction defined by subject matter (e.g., the probate court and the Court of Claims), trial courts with jurisdiction defined by the size of the dispute (e.g. district court), and trial courts with jurisdiction defined by geography (e.g. Recorder's Court and the municipal courts). Because parts of the same dispute must be adjudicated by different judges in different courts, the present system poses unnecessary barriers to the most effective and sensible treatment of families who come before the court." The current configuration of the court system also results in duplicative and redundant administrative structures, staffing, and facility use. A unified trial court system would allow for flexibility in the use of personnel resources (both of judges and of support personnel), promotion of a more equitable and balanced division of judges' caseloads, procedural and administrative simplification, and more flexible and efficient use of facilities and equipment. All of these benefits of consolidation can contribute not only to lowering budgetary costs, however. Maximizing the

efficiency and effectiveness of judicial and other court resources can improve the court system's services and responsiveness to the state's citizens. In short, court restructuring not only can save money, it can improve the quality of justice, which, after all, must be the ultimate goal of any judicial system. As a U.S. Department of Justice "Program Brief" on court unification notes, "The ultimate goal of court unification is the realization of the democratic ideal of 'uniform justice' through provision of the structural and organizational framework, management tools and processes, and adequate and efficiently deployed resources necessary to expedite resolution and disposition of matters before the courts, both within the judicial process and through court-annexed alternate dispute resolution mechanisms."

The bill would address the current problems with the division of domestic relations matters between the circuit and probate courts by reconfiguring the existing trial court system into a single trial court of general jurisdiction divided generally into three divisions or "component" courts, one of which would be a family court (from the current probate court), with jurisdiction over all family matters. The bill also would increase the flexibility of the trial court structure, promoting more equitable workloads and easing problems with case backloads by allowing for easier reallocation of judges within trial court units as needed, while still allowing for judges to develop certain kinds of specialized expertise within their component courts. Equalization of trial judges' salaries would further promote flexibility in workload reallocation within units by eliminating any problems of status and prestige now inherent in a system with "higher" and "lower" trial courts and attendant disparities in judges' compensation.

By having the state fully fund all judges' salaries, as well as expand state funding to pay for certain additional "due process" costs, the bill would respond to calls for ensuring equal justice to all citizens through state funding of certain essential court functions, while at the same time reducing the fiscal burdens on local units of government. Keeping most court-collected revenue locally not only would offset the local unit's funding costs, in keeping with the concept that the users of a particular court should pay for that use, it also would help avoid possible problems that the state might have with Headlee revenue caps if those revenues were sent to the state for redistribution locally.

The bill also would begin to resolve some long-standing issues with regard to the relationship of the county clerks to the courts and with regard to the status of court employees. The bill would specify that county clerks would be the "keepers of records" for trial courts (and would have to make court files available to judges at all times) and would specify that county boards of commissioners would be the employers of county-paid trial court employees. Since the state's first constitution, county clerks have provided services both to the county and to the court. The 1835 constitution established the county clerk as the "Clerk to all the Courts of record to be held in each county," language which remained unchanged in the 1850 state constitution. The 1963 constitution also makes the county clerk ("or other officer performing duties of such office as provided in a county charter") the clerk of that county's circuit court. This arrangement made eminent sense when judges travelled a circuit and couldn't easily carry out the administrative and recordkeeping functions of the circuit court. As a 1981 Michigan Bar Journal article noted, "Since the county clerk was maintaining county records and files, it was natural to delegate the judicial ministerial functions to the county clerk's office. Circuit court documents could then be filed and maintained daily at a fixed location in each county, instead of at those select times the circuit judge was in the county." However, over the years this once apparently clear relationship of the county clerk to the courts has become considerably less clear, and questions have arisen over the dual status of the county clerk. This situation has one elected official in one branch of government (the county clerk) working in some sense under another elected official of another branch of government. Presumably, under the bill, this relationship would be better defined, and therefore less controversial than at present.

Similarly, historically, there also has been controversy over the status of court employees. Court employees are hired ("appointed") by judges, who are statutorily authorized to set their compensation. However, it is the local governments who pay court employees' salaries and compensation. This anomalous situation would be changed by the bill, which would specify that county boards of commissioners would be the employers of county-paid trial court employees and would fix their compensation and working conditions, as well as engage in collective bargaining with them. At the same time, the bill would reinforce the supreme court's administration of the trial court units by specifying that the supreme court would appoint the chief judges of trial court units.

The bill also would address another ongoing perceived problem with the current judicial system by having the supreme court create a "judicial performance commission" to develop standards for evaluating the performance of all judges in the state. The results of these evaluations would be made public, and if the standards weren't developed and applied by 1998, the

bill would require that judges in each trial unit publicly post quarterly lists of cases filed and finalized in their courts, and the number of full trial days held. This would provide a way for ordinary people to evaluate the judges they elected, and would provide another tool, in addition to the Judicial Tenure Commission, for addressing problem judges and increasing judicial accountability.

For:
There is virtually consensus on the value of a statewide computer system for the courts that would link them efficiently and effectively with other necessary governmental agencies and entities. Yet currently no such system exists and in its absence a veritable crazy-quilt of public and proprietary systems is being adopted by various courts and local governments. House Bill 5421 would establish a much-needed mechanism, a "state court information management commission," to research and make recommendations on how to design and implement a computerized information management system that would link the court system with other relevant state and national agencies and entities. The existing computerized information gathering and management capabilities of the various courts and various state and local government agencies are varied, fragmented, and often incompatible (when they exist). Given the enormous efficiencies that could be effected if such a system were in place, and the piecemeal implementation of computerized systems by the various local governments and courts, such a commission would provide an efficient forum for rationalizing, implementing, and maximizing the effectiveness of, an indispensable tool for the court system.

Response:
The commission, which would be created to make recommendations about a statewide computer system for the state courts, would be housed in the Legislative Council. But surely the judicial branch of government -- not one of its co-equal branches -- would be the logical branch of government to house such a commission and to decide on what kind of statewide court automation system would be most appropriate. The judiciary is best qualified to decide on what would work best for its needs, and should take the lead on any such enterprise. Surely the other branches of state government wouldn't expect the judiciary to house a commission to decide on a legislative or executive computer system.

Reply:
As a 1995 Court Technology Bulletin points out, statewide automation requires a significant concentration of funding as well as a long-term commitment of funds. It only makes sense that since the legislative branch will obviously be involved in funding such a system that it, as well as the other members proposed for the commission, be involved.

For:
The House Legislative Analysis Section Analysis of Public Act 438 of 1980 (dated 9-22-80) pointed out that "As passed by the legislature in 1976, the Open Meetings Act required courts to keep their meetings open to the public when they exercised their rule-making authority or deliberated or decided upon the issuance of administrative orders. However, the Michigan Supreme Court invalidated this provision of the act on the grounds that it constituted 'an impermissible intrusion into the most basic day-to-day exercise of the constitutionally derived judicial powers' and thus violated the separation of powers mandated by the Michigan Constitution. [In re "Sunshine Law," 1976 Public Act 276 (1977) 400 Mich. 660]" The 1980 legislation amended the Revised Judicature Act to require the supreme court to adopt procedures to ensure that, when a majority of the justices of the supreme court or of the judges of a multi-judge court meet to discuss or decide upon court rules or administrative orders, the meeting must be open to the public. Many people outside of the judiciary believe that the judicial branch of government should be subject to the same public scrutiny and accountability regarding administrative, budgetary, and financial matters as the legislative and executive branches are held to under the Open Meetings Act and the Freedom of Information Act. House Bills 5425 and 4184 would do just that.

Against:
While there is widespread agreement that the court system needs to be reformed and that the current funding of the courts is inequitable, there seems little reason to rush to implement a restructuring of the courts and of their funding without first gathering necessary data and proceeding at a more measured and considered pace. Based on recommendations of the Commission on the Courts in the 21st Century final report, since 1993 the legislature has funded five pilot projects, administered through the State Court Administrative Office, designed to test various elements of court unification. The legislature appropriated $347,378 in fiscal year 1993-94 for the projects, and $449,200 in fiscal year 1994-95. Surely the data and experience from these pilot projects (three more counties were added in 1995) in implementing court reorganization would prove valuable in guiding the current debate and in helping shape the ultimate direction that is adopted. Already, for example, data collected in the first seven months of the Washtenaw County project demonstrate a dramatic reduction (43 days) in the average time from filing to disposition in felony cases. The second phase

of that project, begun in June 1995, is focused on adjusting the civil and divorce case assignment systems to help ensure more timely hearings and firm trial dates. Wouldn't it be worthwhile for the legislature, which has funded these projects, to wait for the conclusion of these pilot projects and for the data they generate before making significant court restructuring decisions?

Against:

The proposed legislation, while sharing some points in common with the supreme court's proposal to restructure the court system, appears to diminish the judiciary's control over itself as a separate and equal branch of government. Not only would the proposed legislation pick out the judiciary's computer system, it makes court employees accountable to county boards of commissioners, who would set court employees' terms and conditions of employment. The bill also would continue to designate the county clerk as the keeper of court records, when the courts should keep their own records. Having the legislative branch of government provide employees for, and keep the official records of, the judicial branch appears to violate the separation of powers established by the constitution. The legislative branch of state government doesn't provide the executive branch with its employees, nor does it keep the executive branch's official records. Why should this be so with the judiciary? Judicial accountability requires that the judiciary have control over its employees and judicial independence requires that the judiciary keep its own records. Court employees should be judiciary, not legislative, employees and the judiciary should keep its own records.

Against:

A problem with the proposed legislation is the uncertainty and complexity of the funding. The burden for funding the courts under the bill would continue to rest with the local funding units, but because there is not yet detailed information on the fiscal implications of the bill's complex funding formula, there is no guarantee that counties will have the funds to meet the bill's requirements. Concern has been expressed by counties that the House Bill 5158 could result in a revenue shortfall to the counties of up to $32 million under one estimate. Whether or not this estimate is accurate, fiscal information on the complex proposed funding formula should be available before it is implemented.

Against:

The bill would abolish the Detroit Recorder's Court, a historic court that traces its existence back to the creation of the Mayor's Court of 1824. If this court were to be abolished, it is possible that the current minority representation on this court could be significantly decreased at a time when numerous studies of future courts emphasize the demographic changes in the population that indicate the importance of diversity on the bench as the population grows older and more ethnically and culturally diverse. Although seldom explicitly addressed in most public debates, dissatisfaction with the perceived inequity of state funding for Wayne County trial court operations frequently carries with it overtones of longstanding racial and regional differences between the Detroit metropolitan area and the rest of the state. This can perhaps be seen most clearly in the repeated calls for the elimination of Detroit Recorder's Court, whose 29 judges are African-American. The supreme court plan calls for the retention of Recorder's Court, saying that "[f]or over 150 years, this uniquely valuable court has provided efficient and responsive justice in the state's largest metropolitan area," noting further that "the combined efforts of the judges of the Recorder's Court and of the Wayne County Circuit Court have served this state well when backlog problems have arisen in one of the courts."

Response:

House Bill 5158 would create a unique trial court unit for Wayne County, one which should preserve the important element of racial diversity that currently exists in Detroit Recorder's Court. Under the bill, Wayne County would have one circuit court, the Third Circuit Court, but that court would have three divisions: one civil division for the whole county and for which the election district would be the whole county, and two criminal divisions, one for the City of Detroit, with Detroit as the election district for the new "circuit court-criminal division-Detroit," and the other for the rest of the county, with the rest of the county as the election district for the "circuit court-criminal division-county." By preserving Detroit as the election district for this unique circuit court configuration, the bill should preserve the current Recorder's Court composition.

Against:

A number of other concerns have been raised:

-- The process for considering the proposed changes has been so rapid -- and the issues so complex -- that those with significant interest and involvement in changes in the court system haven't had time to understand what is being proposed, much less understand its implications and articulate legitimate concerns.

-- The proposed legislation would continue to perpetuate inequitable funding of state trial courts because it would continue state funding of the operations of the Third (Wayne County) Circuit Court and the 36th (Detroit)

District Court, whose employees would continue to be employees of the state judicial council.

-- Since one of the problems with deciding on how to restructure the current system is the lack of uniform, public data upon which to base such proposals, it would seem to make sense to proceed with developing and implementing the statewide computer system proposed by House Bill 5421 before proceeding with the more extensive and prescriptive changes being proposed.

POSITIONS:

The Michigan Association of County Clerks supports House Bill 5158, House Bill 5425, House Bill 4184, and the resolutions, and has no position on House Bill 5421. (12-12-95)

The Referees Association of Michigan (which represents circuit court and probate court referees) supports the package. (12-11-95)

The Appellate Defender Commission supports the provisions in the legislation that would provide state funding for all assigned appeals. (12-11-95)

The National Organization for Women supports the concept of a family court with separate election of family court judges. (12-13-95)

The Family Law Section of the State Bar of Michigan supports House Bill 5158, but is concerned that the bill does not provide for a sufficient number of family court judges to handle the caseload. (12-11-95)

The State Bar of Michigan supports the resolutions but is taking no position on the bills. (12-11-95)

The Michigan Association of Counties supports House Bill 5421, House Bill 4184, House Bill 5425, and both resolutions, and supports the concept of court restructuring, but opposes the funding provisions of House Bill 5158. (12-11-95)

The Michigan District Judges Association supports consolidation of trial courts but opposes House Bill 4184 and House Bill 5425. (12-11-95)

The Michigan Federation of Private Child and Family Agencies supports the creation of a family court but has no formal position on the package at this time. (12-11-95)

The American Federation of State, County, and Municipal Employees has no formal position at this time. (1-8-96)

The State Court Administrative Office has no formal position at this time. (1-8-96)

The Michigan Probate Judges Association has no formal position at this time. (1-9-96)

The Michigan Judges Association (which represents circuit court, Recorder's Court, and appeals court judges) opposes House Bill 5158. (12-11-95)

The Detroit NAACP opposes House Bill 5158. (12-11-95)

The Michigan Association of Circuit Court Administrators supports the concept of a family court but opposes House Bill 5158 and House Bill 5421. (12-11-95)

The Michigan Association of County Administrative Officers opposes House Bill 5158. (12-11-95)

The Michigan Court Administration Association opposes House Bill 5158 and House Bill 5421. (12-11-95)

Judicial Management Systems (a vendor of computer systems) opposes House Bill 5421. (12-12-95)

The Michigan Library Association has concerns about whether the constitutional language changes in House Joint Resolution T will maintain the current level of funding for libraries under the constitution. (12-11-95)

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.