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SFA**BILL ANALYSIS**

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Senate Joint Resolution R (Substitute S-1 as passed by the Senate)
Senate Bill 1132 (Substitute S-1 as passed by the Senate)
Sponsor: Senator William Van Regenmorter
Committee: Judiciary

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CONTENT

Senate Joint Resolution R (S-1) proposes an amendment to the State Constitution of 1963 to provide for the merger of the probate court and the circuit court and to make other amendments regarding the operation of the judicial branch of State government. The joint resolution would have to be submitted to the people of the State at a special election on August 4, 1998. Senate Bill 1132 (S-1) would amend the Revised Judicature Act (RJA) to provide the implementing legislation for Senate Joint Resolution R. The bill would not take effect unless Senate Joint Resolution R became part of the State Constitution.

Senate Joint Resolution R (S-1)

Overview

The joint resolution would do all of the following:

- Abolish the probate court and transfer that court's jurisdiction to the circuit court.
- Require legislation providing for the election of at least one judge with jurisdiction over family matters in each county.
- Allow the future abolishment of courts by operation of law.
- Prohibit a judge from engaging in the practice of law during his or her judicial term.
- Designate the district court as a court of record.
- Revise provisions pertaining to judicial circuits.
- Change provisions pertaining to the periodic revision of the number of judgeships and judicial circuits.
- Revise provisions pertaining to judicial salaries.
- Revise the composition of the Judicial Tenure Commission.

Abolish Probate Court

Section 1 of Article VI of the State Constitution provides that, "The state's judicial power is vested exclusively in one court of justice, 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...each house." The joint resolution would delete "one probate court" from that provision. The probate court and each office of probate judge would continue to exist until abolished or transferred to the circuit court as provided in the joint resolution. The joint resolution also would delete Sections 15 and 16 of Article VI, which provide for the probate court and judges of the probate court.

Under the joint resolution, the office of probate judge in each county that had a population of more than 5,000 but less than 15,000, according to the 1990 Federal census, and that was not part of a probate court district, would continue to exist until that office was replaced by law with another judicial office of a court of record, elected exclusively within that county, or until noon on January 1, 2011, whichever occurred first. At that time, the office would be abolished and the jurisdiction of the probate court would be transferred to the circuit court for that county. On or before January 1, 2000, the jurisdiction of the probate court in any other county, except Keweenaw County, would have to be transferred by law to the circuit court for that county. Each probate judge for a county with a population of 15,000 or more then would become a circuit judge of the judicial circuit encompassing the county in which he or she resided, for the balance of the term of office to which the probate judge was elected or appointed.

The Legislature would have to enact legislation to provide that at least one judge whose jurisdiction included family matters as provided by law would be elected exclusively in each county. For

purposes of this provision, the Legislature could consider the Counties of Houghton and Keweenaw as one county.

The State Constitution requires that, under the name of each incumbent justice or judge who is a candidate for nomination or election to the same office, the designation of that office appear on the ballot. The joint resolution would include in that provision all circuit judges who were probate judges and were transferred to circuit court upon the abolition of the probate court.

In addition, the joint resolution specifies that, whenever an office of probate judge was abolished in a county with a population of more than 5,000 but less than 15,000, an incumbent probate judge of the office being abolished who became a candidate for another judicial office of a trial court that included that county would have printed on the ballot, under his or her name, the designation of the probate court being abolished. This provision would apply only to the biennial primary and general elections in the year 2000.

Future Abolition of Courts

The joint resolution specifies that, except as provided for the abolition of the probate court, courts in existence on the date the joint resolution was adopted would retain their powers and jurisdiction, except as provided by law, until they were abolished by law.

Whenever a judicial office, other than a probate court judgeship, was altered or abolished by operation of law, the Legislature could provide that an incumbent judge in that office who became a candidate for another judicial office within the county or counties comprising all or part of the judicial office being altered or abolished could have printed on the ballot, under his or her name, the name of the judicial office being altered or abolished, unless the law altering or abolishing the office provided for another designation.

Legal Practice

The joint resolution would prohibit a judge from engaging in the practice of law during his or her term as a judge. Any judge who was engaged in the practice of law on the date of the adoption of the joint resolution, however, could continue to practice law until the end of the term of office that he or she was then serving.

Court of Record

The State Constitution provides that the Supreme Court, the Court of Appeals, the circuit court, the probate court, and other courts designated as such by the Legislature are courts of record and must have a common seal. The joint resolution would delete the probate court from, and add the district court to, that provision.

Judicial Circuits

The State Constitution requires the State to be divided into judicial circuits along county lines. One or more circuit judges must be elected in each judicial circuit. The joint resolution would delete provisions requiring that sessions of the circuit court be held at least four times each year in every county organized for judicial purposes and that each circuit judge hold court in the county or counties within the circuit in which the judge was elected and in other circuits as may be provided by rules of the Supreme Court.

The joint resolution specifies, instead, that a judicial circuit that comprised more than one county could be divided into election divisions along county lines, as provided by law. A circuit judge elected from an election division, however, would have the authority to preside within the entire judicial circuit.

The State Constitution provides that the circuit court has original jurisdiction in all matters not prohibited by law; appellate jurisdiction from all inferior courts and tribunals, except as otherwise provided by law; power to issue, hear, and determine prerogative and remedial writs; supervisory and general control over inferior courts and tribunals within their respective jurisdictions in accordance with rules of the Supreme Court; and jurisdiction of other cases and matters as provided by rules of the Supreme Court. The joint resolution would delete the circuit court's jurisdiction over other cases and matters as provided by rules of the Supreme Court.

Revision of Judgeships and Circuits

The State Constitution provides that the number of judges may be changed and circuit courts may be created, altered, and discontinued by law and that this must be accomplished on recommendation of the Supreme Court, to reflect changes in judicial activity. Under the joint resolution, those actions *could* be accomplished on the Supreme Court's recommendation. In addition, the joint resolution specifies that, every odd-numbered year, the Supreme Court would have to make recommendations to the Legislature as to whether the number of judges should be changed and

circuits should be created, altered, or discontinued.

The State Constitution also provides that no change in the number of judges or alteration or discontinuation of a circuit can have the effect of removing a judge from office during the judge's term. The joint resolution would include in that provision an alteration or discontinuation of an election division.

The Constitution requires the nomination and election of circuit judges in the circuit in which they reside. The joint resolution would provide for circuit judges' election in the circuit or election division in which they reside. In circuits having more than one judge, their terms of office must be arranged by law to provide that not all terms will expire at the same time. The joint resolution would refer to circuits or election divisions in that provision. The joint resolution also specifies that the length of a circuit judge's initial term could be varied by law to allow for the staggering of the expiration of judges' terms within a judicial circuit or an election division.

Judicial Salaries

The State Constitution provides that salaries of Supreme Court justices, of the judges of the Court of Appeals, of the circuit judges, and of the probate judges within a county or district, must be uniform. The joint resolution specifies, instead, that salaries of judges of the Court of Appeals would have to be uniform; salaries of the circuit judges would have to be uniform; and salaries of district judges would have to be uniform. It also specifies that the salaries of all judges would have to be determined as provided by law.

In addition, the joint resolution would delete a provision allowing each circuit judge to receive from any county in which the judge regularly holds court an additional salary as determined, from time to time, by the county's board of supervisors. The deleted provision requires that, in any county in which an additional salary is granted, it be paid at the same rate to all circuit judges regularly holding court in that county.

Judicial Tenure Commission

The State Constitution established a Judicial Tenure Commission (JTC), consisting of nine members selected for three-year terms. Four members of the JTC must be judges elected by the judges of the courts in which they serve, with one being a Court of Appeals judge, one a circuit judge, one a probate judge, and one a judge of a court of

limited jurisdiction; three members of the JTC must be members of the State Bar elected by the members of that organization, one of whom must be a judge and two of whom may not be judges; and two members of the JTC are appointed by the Governor. The members appointed by the Governor may not be judges.

Under the joint resolution, three members of the JTC would have to be judges elected by judges of the courts in which they serve, with one being a Court of Appeals judge, one being a circuit judge, and one being a judge of a court of limited jurisdiction; three members of the JTC would continue to be members of the State Bar elected by the Bar's membership; two members of the JTC would have to be appointed by the Governor; and one member would have to be appointed by the Supreme Court. Members appointed by the Governor and the Supreme Court could not be judges, retired judges, or members of the State Bar.

Senate Bill 1132 (S-1)

Overview

The bill would do all of the following:

- Provide for the abolition of the probate court and the transfer of its jurisdiction to the family division of the circuit court (family court).
- Allow part-time probate court judges to continue in that capacity until January 1, 2011, or until otherwise replaced as provided in the bill, whichever occurred first. (Beginning with the November 2000 election, these judges would serve two-year terms.)
- Revise provisions pertaining to the salary of a part-time probate judge.
- Transfer full-time probate judges to the circuit court.
- Alter some judicial circuits and establish county-wide election divisions in multicounty judicial circuits.
- Alter some judicial districts of the district court and transfer one district judge to the circuit court.
- Repeal two sections of the RJA.

Abolish and Merge Probate Courts

Full-Time Probate Judges. The bill specifies that, on January 1, 2000, the jurisdiction of the probate court in all counties other than Alcona, Arenac, Baraga, Benzie, Crawford, Iron, Kalkaska,

Keweenaw, Lake, Missaukee, Montmorency, Oscoda, Ontonagon, and Presque Isle (the counties with part-time probate judges) would be transferred to the family court for that county and the probate judge for that county would become a circuit judge of the circuit encompassing the county in which he or she resided, for the balance of the term of office to which he or she had been elected or appointed.

Part-Time Probate Judges. At noon on January 1, 2001, the jurisdiction of the probate court in Keweenaw County would be transferred to the family court for that county and the office of probate judge in that county would be abolished. In the other counties with part-time probate judges, beginning with the November 2000 general election and ending with the November 2008 general election, the terms of office of each probate judge would be two years. The jurisdiction of these courts would be transferred to the family court and the office of probate judge abolished at the end of a probate judge's term preceding the new term of a circuit judge elected exclusively within that county.

In the event of a vacancy in office of one of those probate judges due to death, resignation, removal from office, or ineligibility for the office, and if a circuit judge would be elected exclusively within that county at the end of the probate judge's term of office, the jurisdiction of the probate court for that county would be transferred to the family court effective on the date of the vacancy. At that time, the office of probate judge in that county would be abolished. If an incumbent part-time probate judge failed or were unable to file an affidavit of candidacy for reelection, withdrew an affidavit of candidacy, or changed residence to another county, and if a circuit judge would be elected exclusively within that county at the end of the probate judge's term of office, the jurisdiction of that probate court would be transferred to the family court effective on the date of the end of the term of office of that judge. At that time, the office of probate judge in that county would be abolished.

At noon, January 1, 2011, the jurisdiction of any probate court in any county that currently has a part-time probate judge that had not already been transferred to the circuit court, would be transferred to the family court. At that time, the office of probate judge in that county would be abolished.

Part-Time Probate Judges' Salaries. Part-time probate judges receive an annual salary of \$20,000. Of that minimum salary, \$6,000 must be

paid by the county and the balance paid by the State as a grant to the county. The county, in turn, must pay that amount to the part-time probate judge. Under the bill, if Senate Joint Resolution R became part of the State Constitution, in counties having part-time probate judges, except for Keweenaw County, beginning January 1, 2001, the county board of commissioners could set the portion of the judge's annual salary paid by the county at an amount not to exceed \$31,600, at which time the \$20,000 annual salary would be increased by the same amount, not to exceed a total of \$45,600.

Judicial Transfer and Circuit Revisions

The bill specifies that, in each judicial circuit, the number of judges authorized for the circuit would increase due to the transfer of probate court jurisdiction to circuit court. That is, sitting probate judges would become circuit judges. The bill also specifies that the first term of each circuit judgeship created by the bill's transfer of probate court jurisdiction to circuit court could be less than six years.

Some judicial circuits would be altered by the bill:

- The Eighth Circuit, which currently consists of Ionia and Montcalm Counties, would consist only of Montcalm County, effective January 1, 2000. The bill would create the Fifty-Eighth Circuit, which would consist solely of Ionia County, effective on that date.
- Presque Isle County would be moved from the Twenty-Sixth Circuit, which also includes Alpena, Alcona, and Montmorency Counties, to the Fifty-Third Circuit, which currently consists solely of Cheboygan County.
- Gratiot County would be removed from the Twenty-Ninth Circuit and would form a new Fifty-Ninth Circuit, if an incumbent judge in the Twenty-Ninth Circuit who lived in Clinton County failed or were unable to file an affidavit of candidacy, withdrew an affidavit of candidacy, or changed residence from Clinton County to Gratiot County, or in the event of a vacancy in office of a Twenty-Ninth Circuit judge from Clinton County due to death, resignation, removal from office, or ineligibility for the office.
- The Thirty-Third Circuit, which currently consists of Charlevoix County and has one judge, would include Charlevoix and Emmet Counties and have three judges, effective January 1, 2000. Charlevoix would be the circuit's first division and have one judge;

Emmet would be the second division and have two judges. (The Fifty-Seventh Circuit, which currently consists of Emmet County and has one judge, would be eliminated.)

In addition, the bill provides for the splitting of multicounty circuits into election divisions along county lines, either on the bill's effective date or when a vacancy occurred whereby each county could elect a circuit judge exclusively within that county. Some election divisions would temporarily consist of two counties, but, eventually, each county would form a separate election division, in order to fulfill the requirement of Senate Joint Resolution R that each county have a judge elected exclusively within that county whose jurisdiction would include family matters. (The joint resolution provides an exception for Houghton and Keweenaw Counties, however, and specifies that, for purposes of this requirement, those two counties be considered as one. Senate Bill 1132 (S-1), then, would include Houghton and Keweenaw Counties in a single circuit court election division.)

The RJA provides that if a new judicial circuit is proposed by law, that new circuit may not be created and any circuit judgeship proposed for the circuit may not be authorized or filled by election unless each county in the proposed circuit approves the new circuit and each new judgeship and files a copy of an authorizing resolution with the State Court Administrator no later than the 16th Tuesday preceding the August primary. The RJA states that by proposing a new judicial circuit and one or more circuit judgeships for the circuit, the Legislature is not creating that circuit or any judgeship in it. The bill specifies, however, that the reformation or creation of judicial circuits, the creation of new circuit judgeships, and the elimination of probate judgeships and probate districts pursuant to the bill, would not require local approval under the RJA.

District Court Revisions

The bill would eliminate the Ninety-Second District and elevate that district's judge to a circuit court position. Mackinac County would be moved from the Ninety-Second District to the Ninety-First District; Luce County would be moved from the Ninety-Second District to the Ninety-Third District.

The Ninety-First District currently consists of Chippewa County and has one judge. Under the bill, effective January 1, 2000, that district would consist of Chippewa and Mackinac Counties and would have one judge.

The Ninety-Second District currently consists of Mackinac and Luce Counties and has one judge. Under the bill, effective January 1, 2000, the incumbent judge of that district would become a judge of the first division of the Eleventh Circuit, for the remainder of the term to which the judge had been elected or appointed. The Ninety-Second District would be abolished. (The Eleventh Circuit consists of Alger, Luce, and Schoolcraft Counties; effective January 1, 2000, that circuit would be divided into election divisions and Luce County would comprise the circuit's first division.)

The Ninety-Third District currently consists of Schoolcraft and Alger Counties and has one judge. Under the bill, effective January 1, 2000, that district would consist of Schoolcraft, Alger, and Luce Counties and have one judge.

Repealers

The bill would repeal a section of the RJA that authorized the reformation of the Thirty-Third Circuit and the creation of the Fifty-Seventh Circuit, if approved by the Counties of Charlevoix and Emmet (MCL 600.549i). The section was added by Public Act 138 of 1994 and authorized Emmet County's removal from the Thirty-Third Circuit to form a new Fifty-Seventh Circuit. With authorization to divide circuits into election divisions, pursuant to Senate Joint Resolution R, Senate Bill 1132 (S-1) would reconsolidate those two circuits into one.

The bill also would repeal a section of the RJA that specifies that, if the State Constitution permits the creation of election districts in a county for county-wide judicial office or if, by a final nonreviewable judgment, a court determines that the Federal Voting Rights Act requires election districts rather than at-large election for county-wide judicial office, the county board of commissioners has authority to create election districts to conform with those requirements (MCL 600.9948). The section was added by Public Act 374 of 1996, which abolished the Detroit Recorder's Court and merged it with the Third Circuit, which consists of Wayne County.

MCL 600.502 et al. (S.B. 1132)

Legislative Analyst: P. Affholter

FISCAL IMPACT

Senate Joint Resolution R (S-1)

Senate Joint Resolution R (S-1) would have an indeterminate impact on the State and local units of

government. Provisions regarding judicial salaries could have an impact on the State regarding payment of fringe benefits for trial court judges, which are currently paid by local units. Savings could result depending on implementation legislation and the total number of judges who remained under the restructured court system. Savings also would result from administrative efficiencies resulting from the elimination of probate court.

Senate Bill 1132 (S-1)

The bill would have an indeterminate impact on 13 counties with part-time probate judges depending on when jurisdiction of those probate courts would be transferred to the family division of circuit court prior to January 1, 2011.

Fiscal Analyst: B. Bowerman

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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.