

CIRCUIT COURT JUDGES TO SIT ON COURT OF CLAIMS

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House Bill 4222 (H-2) as passed by the House
Sponsor: Rep. Graham Filler

Analysis available at
<http://www.legislature.mi.gov>

House Bill 4223 as passed by the House
Sponsor: Rep. David LaGrand

Committee: Judiciary
Complete to 8-31-21

BRIEF SUMMARY: House Bills 4222 and 4223 would amend the Revised Judicature Act to provide for circuit court judges, rather than judges of the Court of Appeals, to sit as judges of the Court of Claims.

FISCAL IMPACT: The bills would have an indeterminate fiscal impact on the state and on local units of government. There likely would be costs associated with transitioning the Court of Claims from the Court of Appeals to the circuit court, and costs for ensuring electronic means for filing documents and maintaining an electronic docket in each case, but according to the State Court Administrative Office (SCAO), the amount of additional costs is not known at this time.

THE APPARENT PROBLEM:

The Court of Claims has jurisdiction over all civil actions brought against the state or its departments or agencies, including constitutional claims, prisoner litigation, tax-related suits, highway defect actions, medical malpractice suits, contract disputes, and other claims for monetary damages. Before the enactment of 2013 PA 164, the Court of Claims was a function of the circuit court for Ingham County and its jurisdiction was exercised by judges of that circuit. 2013 PA 164 moved the Court of Claims to the Michigan Court of Appeals.¹ The Michigan Supreme Court now assigns four judges of the Court of Appeals to serve on the Court of Claims, where each case is heard by a single judge. However, the Court of Claims is a trial court that hears the arguments of a case for the first time to determine the facts, and the Court of Appeals is an intermediate appellate court that reviews the facts of a case or procedures from a trial after a trial court has already heard the case. Many believe that housing a trial court in the Court of Appeals and having appellate judges sit as trial court judges is not an efficient use of judicial resources. The bills would move the Court of Claims from the Court of Appeals to the circuit court to address those inefficiencies.

THE CONTENT OF THE BILLS:

Currently under the act, the Court of Claims consists of four Court of Appeals judges assigned by the Michigan Supreme Court from at least two Court of Appeals districts. A Court of Appeals judge can exercise the jurisdiction of the Court of Claims while sitting as a judge of the Court of Claims.

¹ 2013 PA 164 (SB 652): <http://legislature.mi.gov/doc.aspx?2013-SB-0652>

House Bill 4222 would provide that the Court of Claims consists of four judges of the circuit court (instead of appeals court judges) as assigned by the Michigan Supreme Court. A judge of the circuit court could exercise the jurisdiction of the Court of Claims while sitting as a judge of the Court of Claims.

In assigning judges of the circuit court to sit as judges of the Court of Claims, the Supreme Court would have to ensure that all of the following are met:

- One judge of the circuit court in each of the four Court of Appeals districts is assigned to sit as a judge of the Court of Claims.
- At least one judge of the circuit court from a county with a population of less than 60,000 is assigned to sit as a judge of the Court of Claims.
- No more than two of the judges of the circuit court assigned to sit as judges of the Court of Claims are from counties that have populations of more than 500,000.

Additionally, all matters pending in the Court of Claims as of the effective date of the bill, including any matter within the jurisdiction of the Court of Claims as described in section 6419(1) of the act,² would have to be transferred to the clerk of the Court of Appeals, acting as the clerk of the Court of Claims, for assignment to the judge of the circuit court sitting as a Court of Claims judge under HB 4223, described below. After a matter was assigned to the judge of the circuit court, the clerk of that circuit court would act as the clerk of the Court of Claims for that matter.

A judge would be assigned to serve on the Court of Claims for a term of six years (an increase from the current two-year term) or until the end of his or her elected term, whichever is shorter. The judge could be reassigned at the end of his or her term of service on the Court of Claims.

The clerk and local funding unit of the circuit court of a judge assigned to serve on the Court of Claims would have to be notified of the assignment 60 days before start of the judge's term.

Currently, the term of a judge of the Court of Claims expires on May 1 of each odd-numbered year. The bill would remove this provision.

The state court administrator could assign a replacement judge to sit as a Court of Claims judge only if an assigned judge were disabled, disqualified, or otherwise unable to attend to a matter. The replacement judge would be assigned to sit as a Court of Claims judge for that matter only.

Finally, the bill would require the Court of Claims to provide an electronic means for filing documents and to maintain an electronic docket in each case. Unless a party objected, the Court of Claims would, whenever possible, have to conduct hearings on a video conferencing platform that allows for remote appearance by attorneys and parties.

The bill would take effect 90 days after its enactment.

MCL 600.6404

² That provision describes the court's jurisdiction. See <http://legislature.mi.gov/doc.aspx?mcl-600-6419>

House Bill 4223 would amend provisions that now require the clerk of the Court of Appeals to serve as the clerk of the Court of Claims. Under the bill, the clerk of the Court of Appeals would serve as the clerk of the Court of Claims only for the following purposes:

- To receive the filing of a cause of action as described below or the filing of a claim or notice of intention to file a claim under section 6431 of the act.³
- To assign, by blind draw, a cause of action filed in the Court of Claims to a judge of the circuit court sitting as a Court of Claims judge.
- All other matters requiring the clerk's attention before the case is forwarded as described below.

A plaintiff would have to file a cause of action in the Court of Claims in any Court of Appeals district. After issuing a summons, the clerk of the Court of Appeals would have to forward the cause of action to the clerk of the circuit court where the matter will be heard. That clerk would then act as the clerk of the Court of Claims for that matter.

The bill also would provide that the Court of Claims must sit in the circuit court where the circuit judge serving as judge of the Court of Claims sits, unless otherwise determined by the chief judge of the Court of Claims.

Finally, the bill would require the state to reimburse counties in which the Court of Claims sits for their reasonable and actual costs to implement Court of Claims jurisdictional duties in the circuit court. The counties where the Court of Claims sits would have to submit itemized costs quarterly to SCAO. Before payment could be made, the state court administrator would have to determine whether the amount to be paid was reasonable. This determination would be conclusive.

MCL 600.6410 and 600.6413

The bills are tie-barred to one another, which means that neither could take effect unless both were enacted.

ARGUMENTS:

For:

Since late 2013, some Court of Appeals judges have been hearing original actions filed in the Court of Claims in addition to their work as appellate judges.⁴ While by all accounts the Court of Appeals and its judges have risen capably to this challenge, many believe that housing a trial court (such as the Court of Claims) in an appellate court (such as the Court of Appeals) is simply not the best fit. Trial court judges (such as those of the circuit court) are intimately familiar with the procedures and laws that pertain to trying cases, including not only how to conduct the trial itself but also how to handle pretrial discovery matters, evidentiary hearings, and fact finding. Presiding over trials, and deciding the legal and procedural issues that arise in the course of a trial, is what these judges do. Appeals court judges, by contrast, generally handle appeals of trial court decisions and consider the legal questions that are raised in those appeals. While appellate judges might have trial court experience, they do not try cases and do not necessarily have a thorough working knowledge of all that a trial court does with regard to

³ See <http://legislature.mi.gov/doc.aspx?mcl-600-6431>

⁴ According to committee testimony, there were, on average, 285 Court of Claims filings a year during that time.

an original action. In addition, the staff that support trial and appellate courts have very different expertise and responsibilities, and trial and appellate courts use different filing systems. Even the courtrooms used by trial and appellate courts are not the same. According to committee testimony, the Court of Appeals does not have courtrooms that can properly handle trials (for example, by accommodating witnesses and court reporters), and since 2013 it has had to use circuit court courtrooms or make temporary changes to its own courtrooms to accommodate Court of Claims proceedings. Proponents argue that, by returning the Court of Claims to the circuit court, whose judges and staff have extensive day-to-day experience in conducting trials, the bills would eliminate inefficiencies from the Court of Claims and improve and streamline its organization and procedures.

In addition, according to committee testimony, the 2013 legislation that transferred the Court of Claims from the circuit court for Ingham County to the Michigan Court of Appeals was in part intended to provide greater geographical diversity for Court of Claims judges. (Court of Appeals judges represent four geographic districts.) As described above, the bills similarly include provisions intended to ensure that circuit court judges selected to hear Court of Claims cases are geographically diverse.

Against:

No arguments against the bills were presented in committee testimony.

POSITIONS:

Representatives of the following entities testified in support of the bills:

- Michigan Court of Appeals (5-25-21)
- Michigan Judges Association (5-25-21)
- Oakland County Bar Association (6-15-21)

The following indicated support for the bills:

- Chief Justice Bridget McCormack (5-25-21)
- State Court Administrative Office (5-25-21)
- State Bar of Michigan (6-15-21)

The Department of Attorney General indicated opposition to the bills. (5-25-21)

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Fiscal Analyst: Robin Risko

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