

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 6-24-21

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.

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, and a court of appeals judge can exercise the jurisdiction of the court of claims while sitting as a judge of the court of claims.

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 would be able to exercise the jurisdiction of the court of claims while sitting as a judge of the court of claims.

In assigning the judges of the circuit court who will 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.
- Not 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 described in section 6419(1),¹ 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, pursuant to HB 4223, below. After a matter is assigned to the judge of the circuit court, the clerk of the circuit court where the matter is assigned would act as the clerk of the court of claims for that matter.

A judge assigned to serve on the court of claims would be assigned 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, and could be reassigned at the end of that term.

¹ See MCL 600.6419(1): <http://legislature.mi.gov/doc.aspx?mcl-600-6419>

The bill would require that the local funding unit and the clerk of the circuit court where a judge who is assigned to serve on the court of claims presides be notified of the assignment 60 days before the judge's term begins.

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 objects, 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

House Bill 4223 would restrict the instances where the clerk of the court of appeals would 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:

- Receiving a filing for a cause of action as described below or for filing a notice of intention to file a claim under section 6431 of the act.²
- By blind draw, assigning 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 attention of the clerk in a matter before the case is assigned 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 in which the matter will be heard. After a matter is forwarded, the clerk of the circuit court where the matter is assigned would act as the clerk of the court of claims for that matter.

The bill would also provide that the court of claims would have to sit in the circuit court where the judge of the circuit court 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 that the state reimburse the counties in which the court of claims sits for the reasonable and actual costs incurred by those counties for implementing jurisdictional duties in the circuit court imposed on the counties by Chapter 64 (Court of Claims) of the act. The counties in which the court of claims sits would have to submit the counties' itemized costs quarterly to the State Court Administrative Office (SCAO). After determination by the state court administrator of the reasonableness of the amount to be paid,

² <http://legislature.mi.gov/doc.aspx?mcl-600-6431>

payment would have to be made under the accounting laws of Michigan. The state court administrator's determination of reasonableness 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.

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 SCAO, the amount of additional costs is not known at this time.

POSITIONS:

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

- Michigan Court of Appeals (5-25-21)
- Michigan Court of Claims (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)

Legislative Analyst: Emily S. Smith
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.