

REVISED JUDICATURE ACT OF 1961 (EXCERPT)
Act 236 of 1961

600.8274 Detroit judicial council; creation; employees of former state judicial council in thirty-sixth district court; employer; authority; collective bargaining; appointment, supervision, discipline, or dismissal of employees; chief judge as principal administrator; transfer of employees; effect of existing collective bargaining agreement; annual leave; state employees' retirement system.

Sec. 8274.

(1) The city council of the city of Detroit, by resolution, may create the Detroit judicial council. The council shall be created not later than September 30, 1996, and, if created, shall begin exercising its powers and duties effective October 1, 1996.

(2) The Detroit judicial council, if created, shall be a successor agency to the state judicial council and, effective October 1, 1996, shall be the employer of the employees of the former state judicial council assigned to serve in the district court in the thirty-sixth district. The composition of the Detroit judicial council and its powers and duties shall be as prescribed by resolution of the city of Detroit.

(3) If the Detroit judicial council is not created pursuant to subsection (1), the employees of the former state judicial council serving in the thirty-sixth district of the district court shall become employees of the city of Detroit, effective October 1, 1996.

(4) The employer designated under subsection (2) or (3), in concurrence with the chief judge of the district court in the thirty-sixth district, has the following authority:

(a) To establish personnel policies and procedures, including, but not limited to, policies and procedures relating to compensation, fringe benefits, pensions, holidays, leave, work schedules, discipline, grievances, personnel records, probation, and hiring and termination practices.

(b) To make and enter into collective bargaining agreements with representatives of those employees.

(5) If the employer designated under subsection (2) or (3) and the chief judge of the district court in the thirty-sixth district are not able to concur on the exercise of their authority as to any matter described in subsection (4)(a), that authority shall be exercised by either the employer or the chief judge as follows:

(a) The employer has the authority to establish policies and procedures relating to compensation, fringe benefits, pensions, holidays, and leave.

(b) The chief judge has authority to establish policies and procedures relating to work schedules, discipline, grievances, personnel records, probation, hiring and termination practices, and other personnel matters not included in subdivision (a).

(6) The employer and the chief judge each may appoint an agent for collective bargaining conducted under subsections (4) and (5).

(7) The chief judge of the district court in the thirty-sixth district may elect not to participate in the collective bargaining process for the employees in that court.

(8) Except as otherwise provided by law, the chief judge of the district court in the thirty-sixth district shall appoint, supervise, discipline, or dismiss the employees of that court in accordance with personnel policies and procedures developed pursuant to subsection (4) or (5) and any applicable collective bargaining agreement. Compensation of the employees serving in the district court in the thirty-sixth district shall be paid by the city of Detroit, except as otherwise provided by this act.

(9) The role of the chief judge under this section is that of the principal administrator of the officers and personnel of the court and is not that of a representative of a source of funding. The state is not a party to the contract. Except as otherwise provided by law, the state is not the employer of court officers or personnel and is not liable for claims arising out of the employment relationship of court officers or personnel or arising out of the conduct of court officers or personnel.

(10) All employees of the former state judicial council serving in the district court in the thirty-sixth district shall be transferred to, and appointed as, employees of the appropriate employer designated under subsection (2) or (3), subject to all rights and benefits they held with the former court employer. An employee who is transferred shall not, by reason of the transfer, be placed in any worse position with respect to worker's compensation, pension, seniority, wages, sick leave, vacation, health and welfare insurance, or any other terms and conditions of employment that the employee enjoyed as an employee of the former court employer. The rights and benefits protected by this subsection may be altered by a future collective bargaining agreement or, for employees not covered by collective bargaining agreements, by benefit plans as established and adopted by the employer designated under subsection (2) or (3). An employee who is transferred shall not be made subject to any residency requirement by the employer designated under subsection (2) or (3).

(11) The appropriate employer designated under subsection (2) or (3) shall assume and be bound by any existing collective bargaining agreement held by the former state judicial council and, except where the existing collective

bargaining agreement may otherwise permit, shall retain the employees covered by that collective bargaining agreement. A transfer of court employees shall not adversely affect any existing rights and obligations contained in the existing collective bargaining agreement.

(12) Annual leave which an employee of the district court in the thirty-sixth district has accumulated before October 1, 1996, shall be transferred with the employee as a result of the employee becoming an employee of the employer designated under subsection (2) or (3). Before January 1, 1997, the state shall pay to the city of Detroit the value of annual leave accumulated before October 1, 1996 in excess of 160 hours for each state judicial council employee who becomes an employee of the employer designated under subsection (2) or (3). The value of annual leave accumulated that is paid to the city of Detroit shall include the annual payroll factor of 23.62% for FICA and retirement for the state fiscal year beginning October 1, 1995.

(13) The appropriate employer designated under subsection (2) or (3) shall pay to the state employees' retirement system, on a quarterly basis, an amount based upon the contribution rates determined under section 38 of the state employees' retirement act, Act No. 240 of the Public Acts of 1943, being section 38.38 of the Michigan Compiled Laws, in the manner prescribed by the state employees' retirement system.

History: Add. 1996, Act 374, Eff. Oct. 1, 1996 ;-- Am. 1996, Act 388, Eff. Oct. 1, 1996

Constitutionality: The Michigan Supreme Court held in *Judicial Attorneys Association v Michigan*, 459 Mich 291; 597 NW2d 113 (1999), that MCL 600.593a (3)-(10) and parallel provisions of MCL 600.591, 600.837, 600.8271, 600.8273, and 600.8274 violate the separation of powers clause of Const 1963, art 3, Â§ 2 and are unconstitutional. 1996 PA 374 provided that a local council created pursuant to the act or Wayne County became the employer of the employees of the Third Circuit and Recorder's Courts. The Court ruled that because subsections (3)-(10) of MCL 600.593a are not a sufficiently limited exercise by one branch of another branch's power that they impermissibly interfere with the judiciary's inherent authority to manage its internal operations and, therefore, are unconstitutional because they violate the separation of powers clause of Const 1963, art 3, Â§ 2.