

Bruce A Timmons
June 1, 2021

The Honorable Graham Filler, Chair, House Committee on Judiciary
Members of the House Committee on Judiciary

Statement Regarding

HB 4656 (Cambensy) – Courts: circuit court; twenty-fifth circuit; restore second judgeship. Amends MCL [600.526](#)).

HB 4656 purports to give Marquette County two circuit judgeships.
The bill as introduced is not drafted properly to achieve that objective.

Quick history: During 2011-12, the Supreme Court recommended the elimination of about 40 judgeships (circuit, probate, and district) by attrition and the Legislature responded by passing over a dozen bills (some affecting multiple local courts) that implemented most of those recommendations. **HB 5106** (2012 PA 22) was enacted to reduce the 25th Circuit from 2 circuit judges to 1 upon the occurrence either of a vacancy or an incumbent not seeking reelection.

The contingency in **MCL 600.526** has occurred by a vacancy. The 25th Circuit now has only 1 circuit judge.

HB 4656 (and an identical **SB 356**) has been introduced to add back the second judgeship.

Procedurally, if a second circuit judgeship is to be added:

To have 2 circuit judgeships, the second must be added with county board approval as provided in **MCL 600.550**.

To achieve the addition of the second judgeship, the bill **must reference and be subject to MCL 600.550 – requiring county approval so the State is not on the hook for a mandated cost to local government under the Headlee Amendment.**

There are at least 15 instances where the Legislature has added a circuit judgeship since 1978 [when the Headlee constitutional amendment was adopted and took effect] and made creation of the judgeship dependent upon county approval per Sec.550.

(A similar provision exists for the addition of district judgeships in MCL 600.8175 and probate judgeships in MCL 600.805. Over the same span of time legislation authorized the creation of 4 district judgeships but only two received local approval: D3B/St. Joseph Co and D58/Ottawa Co.)

The addition of judgeships has been a rare occurrence in the past decade when the effort of the Supreme Court was to eliminate judgeships, so LSB drafters and legislative staff may not be familiar with past practice and the reasons for it. This is not a “restoration” as occurred under the specific terms of MCL 600.507 (Oakland) and MCL 600.517 (Macomb).

Below are two recent examples:

A. The addition of a third circuit judgeship in Livingston County, MCL 600.545, by **2018 PA 6: 600.545** Forty-fourth judicial circuit.

Sec. 545. The forty-fourth judicial circuit consists of the county of Livingston and has 2 judges. Subject to section 550, this judicial circuit may have 1 additional judge beginning January 1, 2019. If this judgeship is added to the forty-fourth judicial circuit, the initial term of office of the judgeship is 8 years.

History: Add. 1968, Act 127, Imd. Eff. June 11, 1968 ;-- Am. 1974, Act 145, Imd. Eff. June 7, 1974 ;-- Am. **2018, Act 6**, Imd. Eff. Jan. 26, 2018

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B. The addition of a tenth circuit judgeship in Genesee County, MCL 600.508, by **2006 PA 100: 600.508** Seventh judicial circuit; county; number of judges.

Sec. 508. The seventh judicial circuit consists of the county of Genesee and has 9 judges. Subject to section 550, this judicial circuit may have 1 additional judge effective January 1, 2007.

History: 1961, Act 236, Eff. Jan. 1, 1963 ;-- Am. 1965, Act 284, Imd. Eff. July 22, 1965 ;-- Am. 1966, Act 22, Imd. Eff. Apr. 20, 1966 ;-- Am. 1976, Act 125, Imd. Eff. May 21, 1976 ;-- Am. 2001, Act 253, Eff. Mar. 22, 2002 ;-- Am. 2006, Act 100, Imd. Eff. Apr. 6, 2006

Since the incumbent circuit judge in Marquette was just re-elected to a 6-year term, the last sentence in MCL 600.545 would not be required if the new judgeship for Marquette were added in the 2022 (or 2024) election; the term would be for the standard 6 years. The pattern in **MCL 600.508** would work best for HB 4656.

Given the short notice on Friday of today's agenda and a holiday weekend in between, I alerted the sponsor's office to my concern and policy staff but understandably was unable to learn whether the aforementioned concerns would be addressed, hence this Statement.

Policy Questions to consider:

- What has changed since 2012 that would warrant the addition of the second circuit judge? Increased caseload? A persistent backlog of cases? Development of specialty courts?
- Is this a county where judges – consistent with the premise of Article VI of the Michigan Constitution that judicial decisions are to be made by elected judges – hear more judicial matters instead of delegating those matters to QJO's* as occurs in other counties? When HB 5106 was pending in 2011, I the noted the following in a caucus analysis:

Note: The JRR (p 74) indicates this circuit has a judicial need of 4.3, but the JRR recommendation* would leave the county with 3 judges. This is a circuit where NCSC and JRR may be imputing QJOs* that do not exist. If those are not added, how would the remaining judges handle the caseload? Is this a county where reducing judgeships saves the state money and expects increased county expense?

[* Elimination of a district judgeship was not pursued. "QJO" means "quasi-judicial officer" – an appointed, not elected, position, namely a friend of the court referee, juvenile court referee, or district court magistrate.]

Testimony: Testimony that county could handle elimination of 1 judgeship but not 2. Question as to imputed QJOs via Strata 2 category. County has no circuit QJOs, .3 FTE probate QJO, and 1 non-attorney Magistrate (who could not do attorney FOC referee work). If county were willing to pay for attorney referee, the result would be a transfer of state expense (judge salary) to the county. County commissioner complained of unfunded mandates. Is this a county where caseload could not be managed without imputed QJOs that the county is unlikely to fund?

- Not for resolution in this bill, but worth pursuing in a broader inquiry: How is the "family court" performing after two decades as part of the Circuit Court, with many of the assigned judges being probate judges? How has elimination of district judgeships impacted the allocation of family court caseload between circuit and probate judges? To what extent are judicial decisions being delegated to unelected quasi-judicial officers?

Respectfully.

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