



**House
Legislative
Analysis
Section**

Manufacturer's Bank Building, 12th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

ENLARGE COURT OF APPEALS

RECEIVED

House Bill 5501 (Substitute H-2)

First Analysis (3-8-90)

Sponsor: Rep. David M. Gubow

Committee: Judiciary

MAR 21 1990

Mich. State Law Library

THE APPARENT PROBLEM:

The number of judgeships in the Court of Appeals is set by statute, and although the number has periodically risen over the years, the number of filings has as well. Public Act 279 of 1986 added six judges commencing January 1, 1989; the court went from 18 to 24 judges. However, the number of filings per year has increased from 7,966 in 1986 to 10,951. The 1989 caseload was an increase of 28 percent over the previous year's figure of 8,559; the number of civil filings was up 17 percent, while the number of criminal filings was up 39 percent. Even with the judgeships added in 1989, Michigan ranks highest in the nation in the number of filings per judge, a figure that is about three times the national median. Figures vary, but both the State Court Administrative Office and the State Appellate Defender's Office predict the numbers of new filings to continue to increase over the next few years. Those offices, along with the court itself, urge that the size of the court be increased.

THE CONTENT OF THE BILL:

The bill would amend the Revised Judicature Act to add one judgeship to each of the three judicial districts, bringing the size of the Court of Appeals to 27 judges. The new judges would be elected in the 1990 general November election to eight-year terms commencing January 1, 1991.

MCL 600.301, et al.

FISCAL IMPLICATIONS:

According to the Court of Appeals, each new Court of Appeals judgeship would cost the state about \$397,000 annually (the figure includes judicial salaries, fringe benefits, and staffing). There would be one-time costs for equipment of about \$133,000 per judge. (3-6-90)

ARGUMENTS:

For:

The Court of Appeals desperately needs the additional judges that the bill would provide. The rate of increase in numbers of filings has created severe burdens on a court that already has the heaviest workload in the country. Those burdens were little relieved by the addition of three appeals judges in 1989, as the new judges came to the court at a time when the court was having to eliminate the use of trial court judges to expand the number of three-judge panels hearing appeals; the court now uses only former appellate judges and justices to expand the number of panels. At 10,951, the number of new filings in 1989 was up 28 percent from what it had been in 1988, and is expected to continue to rise — by 20 percent in 1990, according to one estimate. The period from the time of filing to the time of disposition (which is now about a year and a half, roughly speaking) has been increasing fairly steadily over the years and will continue to do so without

the additional workforce the bill would provide. As it stands, the court's ability to keep apace with an ever-increasing workload is limited by its limited number of judges. The bill would provide some much-needed relief and help to forestall a worsening backlog of appeals.

Against:

Various factors appear to be contributing to the increase in filings: an increase in the numbers of arrests, especially drug arrests, leading to prison sentences; an October 1989 change in criminal court rules that compressed the time between asking for an attorney and filing an appeal, and which also made filing an appeal automatic upon the appointment of an attorney; and, recent successful efforts by the Wayne County Circuit Court to reduce the backlog in its civil docket. While the first factor shows no sign of abating, at least in the near future, the effect of the other two factors is likely to be minimal over the long term. Given the current budget crunch, it would be better for the court to explore and make use of various ways of improving efficiency.

Response: The court is working to improve its efficiency by, for example, looking into the use of "summary dockets" that enable staff to winnow out routine and simple cases for quick disposition by a panel. (The court at present must schedule every case for oral argument.) However, the court is already among the most efficient in the country. Most of the variables that affect its workload are not within its control. Under the recent change in court rules, for example, it now takes an affirmative action by an assigned counsel to prevent an indigent appeal from going forward; it seems likely that some appeals will go forward that in former days might have never been made. Statute also affects the court's caseload, by granting appeal as of right from decisions of various bodies such as the Michigan Tax Tribunal; if appeal were by leave, the court could limit the cases it hears from those bodies to cases of import or particular merit.

Against:

The bill is too restrained in the number of additional judges it proposes for the Court of Appeals. The need to keep cases moving through the system is urgent, and is becoming more so. Criminal laws have recently been changed to increase penalties, and law enforcement activity has intensified. The "war on drugs" represents a large part of this increased activity; every element of the criminal justice system is feeling the effects of the increased demands being placed on it. The percentage of cases being appealed has been holding constant, as has the conviction rate; it is the dramatic rise in numbers of arrests that has led to the increase in filings with the Court of Appeals. While some believe that the Court of Appeals should be able to absorb the increased burden by increasing reliance on staff, others are concerned that the quality of justice could suffer when experienced judges lack the time to adequately review and consider material prepared by sometimes inexperienced staff. The State Court Administrative Office recommended nine additional

H.B. 5501 (3-8-90)

judges to keep up with increasing caseloads; the bill should provide for them.

Response: Some believe that additional appellate judges should be added gradually, to ensure that elections are not confused by long ballots, and that the court is not disrupted by a large influx of judges new to appellate work.

POSITIONS:

The Court of Appeals supports the increase in judgeships at this time. (3-6-90)

The State Court Administrative Office supports increasing the number of judgeships in the Court of Appeals, but would prefer that the number be increased by nine, rather than the three proposed by the bill. (3-6-90)

The State Appellate Defender's Office supports increasing the number of judgeships, but would prefer to immediately enlarge the court by nine judges, rather than the three proposed by the bill. (3-6-90)