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**BILL ANALYSIS**

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House Bill 4613 (as passed by the House)  
Sponsor: Representative Rob VerHeulen  
House Committee: Appropriations  
Senate Committee: Appropriations

Date Completed: 6-12-17

**CONTENT**

The bill would enact the "Trial Court Funding Act" to create the Trial Court Funding Commission with the Department of Treasury. The Commission would be required to review and recommend changes to the trial court funding system in light of *People v. Cunningham* (a Michigan Supreme Court decision discussed below). The Commission also would be required to review and recommend changes to the methods by which courts impose and allocate fees and costs, suggest statutory changes necessary to implement suggested changes, and file a final report with the Governor, the Senate Majority Leader, and the Speaker of the House of Representatives regarding its activities. The report would have to include the results of the Commission's review, recommendations for changes, and recommendations for further legislative actions. The Commission would exist until the report was filed, which would have to occur within two years after the effective date of the Act.

The Commission would consist of 14 members appointed by the Governor. Two members would have to be selected by each of the following: the Governor, the Speaker of the House of Representatives, the Senate Majority Leader, and the State Bar of Michigan. One member would have to be selected by each of the following: the Michigan Municipal League, the Michigan Townships Association, the Michigan Association of Counties, the State Court Administrative Office, the Michigan Judges Association, and the Michigan District Judges Association. An individual appointed to the Commission would be required to have significant experience or involvement in the courts of the State, possess good moral character, and have not been charged with a felony or misdemeanor involving a controlled substance, theft, dishonesty, or fraud. Members of the Commission would serve without compensation, but would have to be reimbursed for their actual and necessary expenses.

The first meeting of the Commission would have to be called within 30 days after the members had been appointed, and subsequent meetings would be determined by the Commission. The Commission would be subject to the Open Meetings Act and the Freedom of Information Act.

The proposed Act would take effect 90 days after it was enacted, and would be repealed on the date the Commission's final report was filed or two years after the effective date of the Act, whichever occurred first.

**BACKGROUND**

The Michigan Supreme Court decided *People v. Cunningham* (496 Mich 145) on July 18, 2014. The issue before the Court was whether a section of the Code of Criminal Procedure provided courts with the independent authority to impose costs upon criminal defendants. The Supreme

Court held that it did not. Instead, the Court held that this section authorized courts to impose only those costs that the Legislature had separately authorized by statute.

Under the Section 1k of Chapter IX (Judgment and Sentence) of Code of Criminal Procedure, if a defendant pleads guilty or no contest or if the court determines after a hearing or trial that the defendant is guilty, the court must impose certain minimum State costs. The court also may impose any fine; the expenses of providing legal assistance to the defendant; an assessment authorized by law; and reimbursement of the State or a local unit for expenses incurred in responding to certain violations.

In addition, in the language that was before the Court in *People v. Cunningham*, Section 1k authorized the court to impose any cost any "in addition to the minimum state cost". Relying on that language, the circuit court imposed \$1,000 in unspecified court costs, in addition to the required minimum State cost of \$68. The Court of Appeals affirmed and the Michigan Supreme Court reversed.

Subsequently, Public Act 352 of 2104 amended Section 1k of Chapter IX, effective October 17, 2014. Instead of imposing any cost "in addition to the minimum state cost", a court may impose any cost "authorized by the statute for a violation of which the defendant entered a plea of guilty or nolo contendere or the court determined that the defendant was guilty".

In addition, until 36 months after Public Act 352 took effect (i.e., until October 17, 2017), a court may impose "any cost reasonably related to the actual costs incurred by the trial court without separately calculating those costs involved in the particular case". These costs include, but are not limited to, salaries and benefits for relevant court personnel, goods and services necessary for the operation of the court, and necessary expenses for the operation and maintenance of court buildings and facilities.

In an enacting section, Public Act 352 stated, "This amendatory act is a curative measure that addresses the authority of courts to impose costs under section 1k of chapter IX of the code of criminal procedure...before the issuance of the supreme court opinion in People v Cunningham...".

### **FISCAL IMPACT**

The bill would have a small negative fiscal impact on the State and no fiscal impact on local government. Members of the Commission would serve without compensation, but would have to be reimbursed for their actual and necessary expenses. The costs would depend on the actual reimbursements requested by Commission members for expenses.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.