

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF SAGINAW**

EARL D. BOOTH,
Plaintiff,

Case No.: 13-019433-CZ-3
Honorable Janet M. Boes

v.

MICHIGAN DEPARTMENT OF
CORRECTIONS,
Defendant

**EMERGENCY EX PARTE MOTION FOR
TEMPORARY RESTRAINING ORDER**

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**EMERGENCY EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER
PENDING HEARING FOR A PRELIMINARY INJUNCTION DUE TO
UNCONSTITUTIONALITY OF PA 164 (SB 652, the "ACT")**

NOW COMES Plaintiff Earl Booth, through counsel, and moves for an emergency temporary restraining order against Defendant, its counsel, and others from filing any transfer notice to deprive this Court of jurisdiction due to the unconstitutionality of Public Act 164 (also known as SB 652, hereinafter the "Act"), signed by the Governor late in the day November 12, 2013, for the following reasons:

1. On April 8, 2013, Plaintiff filed a five-count Freedom of Information Act lawsuit against the Michigan Department of Corrections, a state department/agency. See Register of Actions.
2. The Michigan FOIA statute specifically grants circuit courts, like this Court, the authority to hear cases involving challenges to denials of FOIA requests. See MCL 15.240.

3. Upon the filing of said lawsuit, this Court assumed jurisdiction over this matter as entrusted to it by MCL 15.240(1)(b) (“[c]ommence an action in the circuit court to compel the public body's disclosure of the public records within 180 days after a public body's final determination to deny a request...” emphasis added).

4. Since that time, the Court has granted summary disposition pursuant to MCR 2.116(C)(10) on two counts and summary disposition against a theory advanced by Defendant as to Count I. See Register of Actions.

5. This Court has also denied Defendant's request to dismiss this lawsuit. See Register of Actions.

6. On October 24, 2013, Republican State Senator Rick Jones introduced Senate Bill 652 in the Michigan Senate transferring the Court of Claims duties from the Ingham County 30th Circuit Court to the Michigan Court of Appeals. See **Exhibit TRO-1**.

7. Thirteen days later, the Senate and Michigan House fully passed the bill with lightning speed (by November 6, 2013). See **Exhibit TRO-1**.

8. Upon signature of the Governor, Senate Bill 652 became Public Act 164 of 2013. **Exhibit TRO-13**.

9. PA 164, signed into law by the Governor late on November 12, 2013, has also been granted and given immediate effect. See **Exhibit TRO-13**.

10. Numerous judges, attorneys, and legal professionals have opposed the law as having been the result of partisan politics, and without any need or reasonable legislative basis. See e.g. **Exhibit TRO-3 through TRO-12**.

11. In addition to transferring the Court of Clams from the 30th Circuit Court to the Court of Appeals, the Act also expanded the jurisdiction of the Court of Claims to seemingly include FOIA and OMA cases and make such jurisdiction exclusive. See **Exhibit TRO-2**, Section 6419(1) and Section 6419(1)(a).

12. The inclusion of the language in Section 6419 granting exclusive jurisdiction to the Court of Claims is in direct conflict with the language Section 10 of FOIA which grants circuit courts specific jurisdiction to hearing FOIA denial claims.

13. MCL 15.240 provides that “If a public body makes a final determination to deny all or a portion of a request, the requesting person may... [c]ommence an action in the circuit court to compel the public body's disclosure of the public records within 180 days after a public body's final determination to deny a request...”)

14. The Court of Claims, which traditionally hears cases seeking *monetary* damages claims against the state or state officials, will now have “exclusive” jurisdiction

to hear any state action involving a “demand for monetary, equitable or declaratory relief, or any demand for an extraordinary writ... notwithstanding any other state law that says otherwise.”

15. Oddly, all pending cases which are subject to the new exclusive jurisdiction of the transferred Court of Claims are transferred by “upon notice of the state or a department or officer of the state...” **Exhibit TRO-2, Section 6404(3).**

16. Plaintiff, through counsel, wishes to challenge the constitutionality of this law in the context of this case by the Act disrupting the jurisdiction always under the control of and before this Court.

17. First, the Act violates due process in that Act fails to have a justified rational legislative purpose to apply the Act retroactively as applied to the transfer of already pending cases not previously before the Court of Claims, including this case, as required by *Romein v General Motors*, 426 Mich 528 (1990).

18. Second, the Act unconstitutionally fails the Reenact-Publish Clause of the Michigan Constitution which requires “section or sections of the act altered or amended shall be re-enacted and published at length.” Const 1963, art 4, § 25.

19. The Act improperly insert words from its language (i.e. the Court of Claims) into the language FOIA statute (i.e. the circuit court) without re-enactment or republishing of the FOIA statute—creating mischief and confusion in violation of constitutional procedural obligations.

20. The Act amends the jurisdictional grant of authority to the Circuit Court in MCL 15.240 by implication in granting new jurisdictional authority to the Court of Claims without re-enacting and publishing MCL 15.240 rather than merely transferring the Court of Claims to a different court system.

21. Third, the Michigan Legislature, by creating a new court of limited jurisdiction for OMA and FOIA cases, has failed to garner the constitutionally needed two-thirds vote of the members elected to and serving in each house to create this limited jurisdiction trial court containing these new powers. Const 1963, Art VI, §1.¹

22. Michigan law has never had a specialty court of limited jurisdiction as to FOIA and OMA cases in its history.

23. The Act was passed by the Michigan House of Representatives, by a vote of 57 yeas and 51 nays; this constitutes only approximately 52% of the elected

¹ “The judicial power of the state is vested exclusively in one court of justice which shall be divided into one supreme court, one court of appeals, one trial court of general jurisdiction known as the circuit court, one probate court, **and courts of limited jurisdiction that the legislature may establish by a two-thirds vote of the members elected to and serving in each house.**”

members of the State House and only approximately 53% of elected members serving at the time of the vote. **Exhibit TRO-1.**

24. As such, the Michigan Legislature has failed to fulfill the needed 2/3rds voting pursuant to Const 1963, Art VI § 1 to create a court of limited jurisdiction as to FOIA and OMA cases to deprive this Court of original jurisdiction granted by MCL 15.240 and 600.605 (“Circuit courts have original jurisdiction to hear and determine all civil claims and remedies, except where exclusive jurisdiction is given in the constitution or by statute to some other court or where the circuit courts are denied jurisdiction by the constitution or statutes of this state”).

25. Plaintiff will suffer irreparable harm in the long delay of the long-time delay of the creation of a trial-level court with the appellate-only practices of the Court of Appeals despite the Legislature’s requirement that FOIA cases, like this one, be “assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way.” MCL 15.240(5).

26. Moreover, the risk of notice of this issue will itself precipitate adverse action, as the likely response from Defendant and/or its counsel will be the filing of the transfer notice thereby depriving this Court of jurisdiction premised on an unconstitutional legislative act.

27. Given how secretly and quickly the Michigan Legislature has introduced, rammed through not one but two legislative committees, and a full vote of the entire Michigan Legislature in less than two weeks shows notice should not be required, as notice was not on the minds of the State when attempting to remove jurisdiction of this case from this Court.

28. Plaintiff’s counsel has emailed a copy of this motion to Defendant’s counsel and consistent with MCR 3.310(B)(1)(b) asserts that notice of the unconstitutionality of the Act will itself precipitate adverse action by the filing of the transfer notice thereby depriving this Court of jurisdiction premised on an unconstitutional legislative act.

MEMORANDUM OF LAW

A temporary restraining order (TRO) may be issued by this Court. MCR 3.310(B). MCR 3.310(B)(1)(a) requires a showing of immediate and irreparable harm before a TRO may be issued without advance notice to the other party. *Id.* A TRO without written or oral notice to the adverse party or the adverse party’s attorney if: (1) it clearly appears from specific facts shown by affidavit or by a verified complaint that immediate

and irreparable injury, loss, or damage will result to the applicant... from the risk that notice will itself precipitate adverse action before an order can be issued; (2) the applicant's attorney certifies to the court in writing the efforts, if any, that have been made to give the notice and the reasons supporting the claim that notice should not be required; and (3) a permanent record or memorandum is made of any nonwritten evidence, argument, or other representations made in support of the application. The purpose of a TRO is to prevent irreparable injury, loss, or damage.

RELIEF REQUESTED

WHEREFORE, Plaintiff requests this Court, given the unconstitutionality of the Act, requests the entry of a temporary restraining order enjoining implementation of the Act by Defendant, the state, or any department or officer of the state as permitted by Section 6404(3) and direct Clerk of the Court to refuse any filing of any notice related to PA 164 (SB 652) which purports to deprive this Court jurisdiction over this case until further order of the Court until this Court may adjudicate the allegations of unconstitutionality of the Act, on the basis described herein, which deprives this Court of a case-and-controversy properly pending before it. Further, the Court is requested, consistent with MCR 3.310, issue an order to show cause, to be scheduled within 14 days, why the issued temporary restraining order should not be converted into a preliminary injunction pending resolution of this constitutional challenge to the ruling-changing action of Defendant.

RESPECTFULLY SUBMITTED:

Philip L Ellison

OUTSIDE LEGAL COUNSEL PLC
BY PHILIP L. ELLISON (P74117)
Attorney for Plaintiff

Date: November 12, 2013

**STATE OF MICHIGAN
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EARL D. BOOTH,
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MICHIGAN DEPARTMENT OF
CORRECTIONS,
Defendant

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AFFIDAVIT OF PHILIP L. ELLISON

State of Michigan)
County of Saginaw) ss.

Philip L. Ellison, being duly sworn, states:

1. I am counsel of record for Plaintiff Earl D. Booth.
2. I make this affidavit as a legal practitioner in this State.
3. It is my belief that upon the enactment of Senate Bill 652 into law, Defendant, on its own or through others, will attempt to wrest the proper jurisdiction of this case from this Court and transfer it to the new Court of Claims at the Michigan Court of Appeals using the procedures provided by this new law.
4. Plaintiff will suffer immediate and irreparable harm in being denied his right to have his case assigned for hearing and trial or for argument at the earliest practicable date and expedited in every way, given that the new Court of Claims has no trial-court level infrastructure in place including, as of current, any judges, any court reporters, or any courtroom, which will delay Plaintiff's access to records he is entitled to and needs.

5. Plaintiff will suffer immediate and irreparable harm in being denied his rights provided by the state constitutional against such legislative mischief and partisanship.
6. If sworn, I could testify competently to the facts contained within this affidavit based upon my personal knowledge.

//copy on file with court clerk contains original signature//

Philip L. Ellison, Affiant

Date

Signed and sworn to before me, this ____ day of November, 2013 by Philip L. Ellison

Notary's Signature: _____

Notary's Name: _____

Notary public, _____ County, State of Michigan

Acting in County of _____, Michigan

My commission expires: _____

(SEAL)
if required

**STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF SAGINAW**

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MICHIGAN DEPARTMENT OF
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Defendant

**TEMPORARY RESTRAINING ORDER
AND ORDER TO SHOW CAUSE**

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**ORDER GRANTING PLAINTIFF'S EX PARTE MOTION
FOR A TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE**

AT A SESSION OF THE ABOVE COURT
HELD IN THE CITY AND COUNTY OF SAGINAW
ON THIS 13TH DAY OF NOVEMBER, 2013

PRESENT:
HONORABLE JANET M. BOES, CIRCUIT COURT JUDGE

This matter coming before the Court on Plaintiff's emergency ex parte motion for a temporary restraining order and after having considered the foregoing and being otherwise duly advised in the premises,

THE COURT FINDS that it is necessary to enter this Temporary Restraining Order ("TRO") with limited notice to Defendant because immediate and irreparable injury, loss, or damage can result to Plaintiff from the delay required to effect notice and otherwise to maintain the status quo until a hearing can be held as to whether a preliminary injunction shall be entered.

IT IS HEREBY ORDERED, on **NOVEMBER 13, 2013**, at _____ a.m./p.m. that Defendant Michigan Department of Corrections, and all of its agents, servants, representatives, employees, attorneys, and those person(s) in active concert or

participation with it who receive actual notice of this Order by personal service or otherwise, including the State itself and any/all department or officer of the state, are hereby temporarily enjoined, restrained, and prohibited, directly or indirectly from transferring or attempting to transfer the above-referenced case to the Court of Claims within the Michigan Court of Appeals and/or taking any action or further action, or giving any legal effect to PA 164 (SB 652) as it applies to the above-referenced case only.

IT IS HEREBY FURTHER ORDERED that the Clerk of the Court shall refuse any filing of any notice related to PA 164 (SB 652) which purports to deprive this Court jurisdiction over this case until further order of the Court.

This order shall remain in full force and effect until this court specifically orders otherwise.

THE COURT HEREBY FINDS that prior notice to the Defendant was not given because the risk of notice of this issue will itself precipitate adverse action, as the likely response from Defendant and/or its counsel will be the filing of the transfer notice thereby depriving this Court of jurisdiction premised on a legislative act alleged to be unconstitutional.

IT IS HEREBY FURTHER ORDERED that the parties shall appear before this Court on _____, 2013 at _____ a.m./p.m. to conduct a show cause hearing as to whether a preliminary injunction shall be entered.

IT IS HEREBY FURTHER ORDERED that a copy of this Order, together with any ex parte papers filed in this matter, shall be served upon Defendant or its authorized agent/counsel at least _____ days prior to the above-noticed hearing. Service may be effectuated by hand-delivery, by sending a copy by US mail, or by any other method reasonable calculated to provide notice to Defendant.

DATE: _____

HONORABLE JANET M. BOES
CIRCUIT COURT JUDGE

Deputy Clerk

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Rick Jones - (primary) Jack Brandenburg, James Marleau

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Courts; judges; court of claims; provide for certain number of court of appeals judges to serve as court of claims judges, and expand jurisdiction. Amends secs. 308, 841, 6404, 6407, 6410, 6413, 6419, 6421 & 8304 of 1961 PA 236 (MCL 600.308 et seq.) & repeals sec. 6419a of 1961 PA 236 (MCL 600.6419a).

Bill Document Formatting Information

(gray icons indicate that the action did not occur or that the document is not available)

Documents



Senate Introduced Bill

Introduced bills appear as they were introduced and reflect no subsequent amendments or changes.



As Passed by the Senate

As Passed by the Senate is the bill, as introduced, that includes any adopted Senate amendments.



As Passed by the House

As Passed by the House is the bill, as received from the Senate, that includes any adopted House amendments.



Senate Enrolled Bill

Enrolled bill is the version passed in identical form by both houses of the Legislature.

House Fiscal Agency Analysis



House Committee Summary (11-04-13)

This document analyzes: **SB0652**

Senate Fiscal Analysis



COMMITTEE SUMMARY (Date Completed: 10-29-13)

This document analyzes: **SB0652**



FLOOR SUMMARY (Date Completed: 10-30-13)

This document analyzes: **SB0652**



SUMMARY AS PASSED BY THE SENATE (Date Completed: 11-4-13)

This document analyzes: **SB0652**

History (House actions in lowercase, Senate actions in UPPERCASE)

Date ▲	Journal	Action
10/24/2013	SJ 87 Pg. 1659	INTRODUCED BY SENATOR RICK JONES



10/24/2013	SJ 87	Pg. 1659	REFERRED TO COMMITTEE ON JUDICIARY
10/30/2013	SJ 89	Pg. 1697	REPORTED FAVORABLY WITH SUBSTITUTE S-1
10/30/2013	SJ 89	Pg. 1697	COMMITTEE RECOMMENDED IMMEDIATE EFFECT
10/30/2013	SJ 89	Pg. 1697	REFERRED TO COMMITTEE OF THE WHOLE WITH SUBSTITUTE S-1
10/30/2013	SJ 89	Pg. 1683	REPORTED BY COMMITTEE OF THE WHOLE FAVORABLY WITH SUBSTITUTE S-1
10/30/2013	SJ 89	Pg. 1683	SUBSTITUTE S-1 CONCURRED IN
10/30/2013	SJ 89	Pg. 1683	PLACED ON ORDER OF THIRD READING WITH SUBSTITUTE S-1
10/30/2013	SJ 89	Pg. 1685	RULES SUSPENDED
10/30/2013	SJ 89	Pg. 1685	PLACED ON IMMEDIATE PASSAGE
10/30/2013	SJ 89	Pg. 1689	PASSED; GIVEN IMMEDIATE EFFECT ROLL CALL # 471 YEAS 26 NAYS 11 EXCUSED 1 NOT VOTING 0
10/30/2013	HJ 93	Pg. 1704	received on 10/30/2013
10/31/2013	HJ 94	Pg. 1726	read a first time
10/31/2013	HJ 94	Pg. 1726	referred to Committee on Government Operations
11/5/2013	HJ 95	Pg. 1740	reported with recommendation without amendment
11/5/2013	HJ 95	Pg. 1740	referred to second reading
11/5/2013	HJ 95	Pg. 1741	read a second time
11/5/2013	HJ 95	Pg. 1741	placed on third reading
11/6/2013	HJ 96	Pg. 1756	read a third time
11/6/2013	HJ 96	Pg. 1756	passed; given immediate effect Roll Call # 373 Yeas 57 Nays 52
11/6/2013	HJ 96	Pg. 1756	inserted full title
11/6/2013	HJ 96	Pg. 1756	returned to Senate
11/7/2013	SJ 93	Pg. 1742	HOUSE INSERTED FULL TITLE
11/7/2013	SJ 93	Pg. 1742	FULL TITLE AGREED TO
11/7/2013	SJ 93	Pg. 1742	ORDERED ENROLLED
11/12/2013	Expected in SJ 94		PRESENTED TO GOVERNOR 11/8/2013 @ 1:06 PM
11/13/2013	Expected in SJ 95		APPROVED BY GOVERNOR 11/12/2013 @ 12:26 PM
11/13/2013	Expected in SJ 95		FILED WITH SECRETARY OF STATE 11/12/2013 @ 4:11 PM
11/13/2013	Expected in SJ 95		ASSIGNED PA 0164'13 WITH IMMEDIATE EFFECT

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STATE OF MICHIGAN
97TH LEGISLATURE
REGULAR SESSION OF 2013

Introduced by Senators Jones, Brandenburg and Marleau

ENROLLED SENATE BILL No. 652

AN ACT to amend 1961 PA 236, entitled “An act to revise and consolidate the statutes relating to the organization and jurisdiction of the courts of this state; the powers and duties of the courts, and of the judges and other officers of the courts; the forms and attributes of civil claims and actions; the time within which civil actions and proceedings may be brought in the courts; pleading, evidence, practice, and procedure in civil and criminal actions and proceedings in the courts; to provide for the powers and duties of certain state governmental officers and entities; to provide remedies and penalties for the violation of certain provisions of this act; to repeal all acts and parts of acts inconsistent with or contravening any of the provisions of this act; and to repeal acts and parts of acts,” by amending sections 308, 841, 6404, 6407, 6410, 6413, 6419, 6421, 6422, and 8304 (MCL 600.308, 600.841, 600.6404, 600.6407, 600.6410, 600.6413, 600.6419, 600.6421, 600.6422, and 600.8304), section 308 as amended by 2012 PA 333, sections 841 and 8304 as amended by 2012 PA 338, section 6410 as amended by 1986 PA 308, and sections 6419 and 6421 as amended by 1984 PA 212; and to repeal acts and parts of acts.

The People of the State of Michigan enact:

Sec. 308. (1) The court of appeals has jurisdiction on appeals from the following orders and judgments, which are appealable as a matter of right:

(a) All final judgments from the circuit court, court of claims, and recorder’s court, except judgments on ordinance violations in the traffic and ordinance division of recorder’s court and final judgments and orders described in subsections (2) and (3).

(b) Those orders of the probate court from which an appeal as of right may be taken under section 861.

(2) The court of appeals has jurisdiction on appeal from the following orders and judgments that shall be reviewable only upon application for leave to appeal granted by the court of appeals:

(a) A final judgment or order made by the circuit court under any of the following circumstances:

(i) In an appeal from an order, sentence, or judgment of the probate court under section 863(1) and (2).

(ii) In an appeal from a final judgment or order of the district court appealed to the circuit court under section 8342.

(iii) An appeal from a final judgment or order of a municipal court.

(iv) In an appeal from an ordinance violation conviction in the traffic and ordinance division of recorder’s court of the city of Detroit, if the conviction occurred before September 1, 1981.

(b) An order, sentence, or judgment of the probate court, if the probate court certifies the issue or issues under section 863(3).

(c) A final judgment or order made by the recorder’s court of the city of Detroit in an appeal from the district court in the thirty-sixth district under section 8342(2).

(d) A final order or judgment from the circuit court or recorder's court for the city of Detroit based upon a defendant's plea of guilty or nolo contendere.

(e) Any other judgment or interlocutory order as determined by court rule.

(3) An order concerning the assignment of a case to the business court under chapter 80 shall not be appealed to the court of appeals.

(4) The court of appeals has exclusive original jurisdiction over any action challenging the validity of section 6404, 6410, 6413, or 6419.

Sec. 841. (1) The probate court has jurisdiction and power as follows:

(a) As conferred upon it under the estates and protected individuals code, 1998 PA 386, MCL 700.1101 to 700.8206.

(b) As conferred upon it under the mental health code, 1974 PA 258, MCL 330.1001 to 330.2106.

(c) As conferred upon it under this act.

(d) As conferred upon it under another law or compact.

(2) In a judicial circuit in which the probate court is affected by a plan of concurrent jurisdiction adopted under chapter 4, the probate court has concurrent jurisdiction with the circuit court or the district court, or both, as provided in the plan of concurrent jurisdiction, except as to the following matters:

(a) The circuit court has exclusive jurisdiction over appeals from the district court and from administrative agencies as authorized by law.

(b) The circuit court has exclusive jurisdiction and power to issue, hear, and determine prerogative and remedial writs consistent with section 13 of article VI of the state constitution of 1963.

Sec. 6404. (1) The court of claims consists of 4 court of appeals judges from at least 2 court of appeals districts assigned by the supreme court. A court of appeals judge while sitting as a judge of the court of claims may exercise the jurisdiction of the court of claims as provided by law.

(2) All matters pending in the court of claims as of the effective date of the amendatory act that added this subsection shall be transferred to the clerk of the court of appeals, acting as the clerk of the court of claims, for assignment to a court of appeals judge sitting as a court of claims judge pursuant to section 6410. The transfer shall be effective on the effective date of the amendatory act that added this subsection.

(3) Beginning on the effective date of the amendatory act that added this subsection, any matter within the jurisdiction of the court of claims described in section 6419(1) pending or later filed in any court must, upon notice of the state or a department or officer of the state, be transferred to the court of claims described in subsection (1). The transfer shall be effective upon the filing of the transfer notice. The state or a department or officer of this state shall file a copy of the transfer notice with the clerk of the court of appeals, who shall act as the clerk of the court of claims, for assignment to a court of appeals judge sitting as a court of claims judge pursuant to section 6410.

(4) If a judge assigned to serve on the court of claims is disabled, disqualified, or otherwise unable to attend to a matter, another judge assigned to sit as a judge of the court of claims may continue, hear, determine, and sign orders and other documents in the matter.

(5) In case a court of appeals judge designated to sit as the judge of the court of claims dies before signing a judgment and after filing a finding of fact or rendering an opinion upon proof submitted and argument of counsel disposing of all or part of the issues in the case involved, a successor as judge of the court of claims may proceed with that action in a manner consistent with the finding or opinion and the judge is given the same powers as if the finding of fact had been made or the opinion had been rendered by the successor judge.

(6) A judge assigned as a judge of the court of claims shall be assigned for a term of 2 years and may be reassigned at the expiration of that term.

(7) The term of a judge of the court of claims expires on May 1 of each odd-numbered year.

(8) When a judge who is sitting as a judge of the court of claims leaves office or is otherwise unable to serve as a judge of the court of claims, the supreme court may assign a court of appeals judge to serve for the remainder of the judge's term on the court of claims.

(9) The supreme court shall select a chief judge of the court of claims from among the court of appeals judges assigned to the court of claims.

Sec. 6407. The court shall hold at least 4 sessions in each year. Sessions of the court of claims may be held in the various court of appeals districts in the state as the supreme court administrator may determine. The department of technology, management, and budget shall furnish the court with suitable space and equipment.

Sec. 6410. (1) The clerk of the court of appeals shall serve as the clerk of the court of claims.

(2) A plaintiff may file a cause of action in the court of claims in any court of appeals district.

(3) The clerk of the court of claims shall, by blind draw, assign a cause of action filed in the court of claims to a court of appeals judge sitting as a court of claims judge.

(4) For making copies of records, proceedings, and testimony and furnishing the same at the request of the claimant, or any other person, the clerk of the court of claims or any reporter or recorder serving in the court of claims shall be entitled, in addition to salary, to the same fees as are by law provided for court reporters or recorders in the circuit court. No charge shall be made against the state for services rendered for furnishing copies of records, proceedings, or testimony or other papers to the attorney general.

(5) Process issued by the court may be served by any member of the Michigan state police as well as any other officer or person authorized to serve process issued out of the circuit court.

Sec. 6413. The court of claims shall sit in the court of appeals district where a court of appeals judge serving as a judge of the court of claims sits, unless otherwise determined by the chief judge of the court of claims.

Sec. 6419. (1) Except as provided in sections 6421 and 6440, the jurisdiction of the court of claims, as conferred upon it by this chapter, is exclusive. All actions initiated in the court of claims shall be filed in the court of appeals. The state administrative board is vested with discretionary authority upon the advice of the attorney general to hear, consider, determine, and allow any claim against the state in an amount less than \$1,000.00. Any claim so allowed by the state administrative board shall be paid in the same manner as judgments are paid under section 6458 upon certification of the allowed claim by the secretary of the state administrative board to the clerk of the court of claims. Except as otherwise provided in this section, the court has the following power and jurisdiction:

(a) To hear and determine any claim or demand, statutory or constitutional, liquidated or unliquidated, ex contractu or ex delicto, or any demand for monetary, equitable, or declaratory relief or any demand for an extraordinary writ against the state or any of its departments or officers notwithstanding another law that confers jurisdiction of the case in the circuit court.

(b) To hear and determine any claim or demand, statutory or constitutional, liquidated or unliquidated, ex contractu or ex delicto, or any demand for monetary, equitable, or declaratory relief or any demand for an extraordinary writ that may be pleaded by way of counterclaim on the part of the state or any of its departments or officers against any claimant who may bring an action in the court of claims. Any claim of the state or any of its departments or officers may be pleaded by way of counterclaim in any action brought against the state or any of its departments or officers.

(c) To appoint and utilize a special master as the court considers necessary.

(d) To hear and determine any action challenging the validity of a notice of transfer described in section 6404(2) or (3).

(2) The judgment entered by the court of claims upon any claim described in subsection (1), either against or in favor of the state or any of its departments or officers, upon becoming final is res judicata of that claim. Upon the trial of any cause in which any demand is made by the state or any of its departments or officers against the claimant either by way of setoff, recoupment, or cross declaration, the court shall hear and determine each claim or demand, and if the court finds a balance due from the claimant to the state, the court shall render judgment in favor of the state for the balance. Writs of execution or garnishment may issue upon the judgment the same as from the circuit court of this state. The judgment entered by the court of claims upon any claim, either for or against the claimant, is final unless appealed from as provided in this chapter.

(3) The court of claims does not have jurisdiction of any claim for compensation under either of the following:

(a) The worker's disability compensation act of 1969, 1969 PA 317, MCL 418.101 to 418.941.

(b) 1937 PA 329, MCL 419.101 to 419.104.

(4) This chapter does not deprive the circuit court of this state of jurisdiction over actions brought by the taxpayer under the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78, upon the circuit court, or proceedings to review findings as provided in the Michigan employment security act, 1936 (Ex Sess) PA 1, MCL 421.1 to 421.75, or any other similar tax or employment security proceedings expressly authorized by the statutes of this state.

(5) This chapter does not deprive the circuit court of exclusive jurisdiction over appeals from the district court and administrative agencies as authorized by law.

(6) This chapter does not deprive the circuit court of exclusive jurisdiction to issue, hear, and determine prerogative and remedial writs consistent with section 13 of article VI of the state constitution of 1963.

(7) As used in this section, "the state or any of its departments or officers" means this state or any state governing, legislative, or judicial body, department, commission, board, institution, arm, or agency of the state, or an officer, employee, or volunteer of this state or any governing, legislative, or judicial body, department, commission, board, institution, arm, or agency of this state, acting, or who reasonably believes that he or she is acting, within the scope of his or her authority while engaged in or discharging a government function in the course of his or her duties.

Sec. 6421. With the approval of all parties, any matter within the jurisdiction of the court of claims described in section 6419(1) may be joined for trial with cases arising out of the same transaction or series of transactions that are pending in any of the various trial courts of the state. A case in the court of claims that has been joined with the approval of all parties shall be tried and determined by the judge even though the trial court action with which it may be joined is tried to a jury under the supervision of the same trial judge.

Sec. 6422. (1) Practice and procedure in the court of claims shall be in accordance with the statutes and court rules prescribing the practice in the circuit courts of this state, except as otherwise provided in this section.

(2) The supreme court may adopt special rules for the court of claims.

(3) All fees in the court of claims shall be at the rate established by statute or court rule for actions in the circuit courts of this state and shall be paid to the clerk of the court of claims.

Sec. 8304. In a district court district in which the district court is affected by a plan of concurrent jurisdiction adopted under chapter 4, the district court has concurrent jurisdiction with the circuit court or the probate court, or both, as provided in the plan of concurrent jurisdiction, except as to the following matters:

(a) The circuit court has exclusive jurisdiction over appeals from the district court and from administrative agencies as authorized by statute.

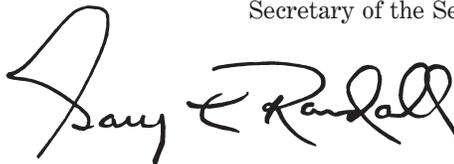
(b) The circuit court has exclusive jurisdiction and power to issue, hear, and determine prerogative and remedial writs consistent with section 13 of article VI of the state constitution of 1963.

Enacting section 1. Section 6419a of the revised judicature act of 1961, 1961 PA 236, MCL 600.6419a, is repealed.

This act is ordered to take immediate effect.



Secretary of the Senate



Clerk of the House of Representatives

Approved

.....
Governor



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Robert Sedler, a law professor who specializes in constitutional issues, told the Free Press Thursday it is a mistake to take lawsuits out of trial courts and move them directly to an appellate court, as Senate Bill 652 does. / Wayne State University

By **Paul Egan**
Detroit Free Press

LANSING — A bill awaiting Gov. Rick Snyder's signature that bumps certain lawsuits against the state directly to the Michigan Court of Appeals is bad public policy, says a constitutional law expert at Wayne State University.

Robert Sedler, a law professor who specializes in constitutional issues, told the Free Press Thursday it is a mistake to take lawsuits out of trial courts and move them directly to an appellate court, as Senate Bill 652 does.

Once signed, the bill will immediately move about 100 Court of Claims cases out of Ingham County Circuit Court to four Michigan Court of Appeals judges selected by the Michigan Supreme Court to sit as Court of Claims judges.

The bill also expands the jurisdiction of the Court of Claims, meaning an unknown number of other lawsuits against the state now being heard in circuit courts around the state, could also be moved to the revamped Court of Claims.

Among cases now in Ingham County Circuit Court that could be moved to the new Court of Claims are an Open Meetings Act lawsuit over the closing of the Capitol during the right-to-work debate and a lawsuit seeking to identify anonymous donors to Snyder's New Energy to Reinvent and Diversify (NERD) [Fund](#), which he recently announced he plans to close.

There were multiple calls today and Wednesday for Snyder to veto the bill, which took a fast track through the state Legislature. It was introduced Oct. 24 and given final passage on Wednesday.

Mark Schauer, the lone Democratic candidate for governor, accused GOP lawmakers of "rigging the court system" and "a [power grab](#)."

Senate Minority Leader Gretchen Whitmer, D-East Lansing, said in the Senate that Snyder is using the bill to shield his administration from scrutiny while "trampling the constitutional rights of citizens."

Lansing Bureau

The sponsor, Sen. Rick Jones, R-Grand Ledge, said the bill is “common sense legislation” because Court of Appeals judges are elected by a much broader swath of Michigan’s population than the 3% who elect Ingham County judges.

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“I think we did good work here this week,” Jones said.

Sedler said he would have to study the legislation more closely to give an opinion on whether it is unconstitutional, as many have argued. But he says it’s inconsistent with the constitution’s “one court of justice,” which establishes one trial court in the circuit courts.

“This is very bad policy,” he said.

Snyder spokeswoman Sara Wurfel said she doesn’t know when the governor will sign the bill.

Snyder still needs to receive the bill and do a final review and analysis, she said.

“But as you know, he’s indicated that he believes there’s strong policy merit in this and having greater representation across state, especially in cases of statewide significance,” Wurfel said.

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Staff writer Kathleen Gray contributed to this report.

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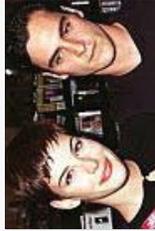
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State of Michigan
Ingham County Circuit Court

Senate Bill 652 – JUDGE ROSEMARIE AQUILINA TALKING POINTS

- **Makes Swiss Cheese out of the State of Michigan Constitution:**
 - Violation of Separation of Powers
 - Violation of Right to a Trial
 - Violation of Access to the Court
 - Violation of Due Process
- **Takes Away Appellate Rights of the Parties:**
 - Can't Appeal to the Court of Appeals—it is a lateral body and a conflict of interest
 - Only Appeal is to the Supreme Court who takes Appeals by Application of Leave to Appeal
 - There is NO APPEAL BY RIGHT
 - THE STATUTE AND THE COURT RULE ALLOW FOR AN APPEAL BY RIGHT, BUT SB 652 HAS NO MECHANISM FOR THAT
 - The Supreme Court is shrouded by "Dark Money" so the Inference of Impropriety which all Courts and Judges Seek to Avoid Cannot Be Avoided—They Can Only Take Cases by Leave From Their Contributors—Which Are Hidden, *So Attorneys Cannot Ask for Recusal*. A violation of Ethics, which will remain hidden from discovery.
 - Only Addresses Special Interests because of "Dark Money" and the lost rights of Appeal.
 - Convenient Administration of Justice is obliterated.
- **Expensive to Taxpayers and to Litigants:**
 - No analysis has been done of the cost savings since Court of Claims was centralized in Ingham County and the DATA IS AVAILABLE.
 - THERE IS NO LINE ITEM FOR THE MILLIONS THIS BILL WILL COST TAXPAYERS.
 - LITIGANTS will not be able to afford attorney fees—YES it costs significantly more for an attorney to argue cases before Court of Appeals Justices.
 - Legislators can't regulate how much attorneys can charge and attorneys have the right to charge more before the Court of Claims with Court of Appeals Justices.
 - Attorneys representing the State of Michigan primarily work in Lansing as do many witnesses. This will be a significant cost in time and travel.
 - There is an expensive computer program that must be purchased and maintained and training must be ongoing.
 - COURT OF APPEALS JUDGES BECOME TRIAL JUDGES with Multiple Hearings AND Discovery Has NOT Been Planned For in This Bill—Scheduling Orders, Emergency Motions and Access to the Judges will be needed. How will this be accomplished? It will be VERY EXPENSIVE under this SB 652.

- **CHILLING EFFECT**

- The passage of SB 652 creates an inherent danger and clear message that the next time the legislature doesn't like a ruling from the bench, they will legislate.
- Furthermore, this may have a chilling effect on Judges who believe this backlash will hurt them politically to include being singled out by the Supreme Court who makes decisions about cases we rule on, who becomes Chief Judge, and other important issues—is that the kind of judges you want in this state?

- **A MONEY PIT**

- **THERE IS NO DOUBT SB 652 will COST MILLIONS TO THE TAXPAYER and *THERE IS NO FUNDING MECHANISM* in the Bill. SB 652 should be referred to **APPROPRIATIONS**.**
- Because this is a clear legal issue, SB 652 should also be referred to **JUDICIARY**.

- **WHAT SHOULD THE LEGISLATURE DO?**

- **Cleanup Campaign Finance and the "Dark Money!"**
- **Protect the Constitution and Separation of Powers and all rights afforded to the People of this Great State You Swore to Uphold.**
- **Protect Constituents' Right to a Fair Legal System with all Appellate Rights intact and with the transparency the legal system deserves to operate under at all levels.**

- **REMEMBER THE OATH YOU TOOK WHEN ELECTED: TO UPHOLD THE CONSTITUTION OF THE UNITED STATES AND THE STATE OF MICHIGAN**

- ***That is the Only Oath You Made.***
- ***Please remember your constituents and keep your promise.***

Remember Legislators, Someday, It May Be You Who Need To Come Before Judges.

Don't YOU Want A Clean, Constitutional Process?



State of Michigan
Ingham County Circuit Court

Senate Bill 652 An Analysis

November 5, 2013

House Government Operations Committee

1) Appeal Issue

-S.B. 652 is attempting to remove the Court of Claims from the jurisdiction of the Ingham County Circuit Court to the Court of Appeals.

-Under S.B. 652 Sec. 6404(1), the Court of Claims would consist of four (4) Court of Appeals Judges from at least two (2) Court of Appeals districts assigned by the Michigan Supreme Court.

-Pursuant to MCR 7.203(A)(1), if the Circuit Court produces a final judgment or order acting as the Court of Claims, a party had an Appeal of Right to the Court of Appeals for review of that final judgment or order.

-S.B. 652 provides no guidance on a new appellate process for the Court of Appeals acting as the Court of Claims. The following are three scenarios:

- In one scenario, the Court of Appeals keeps its Appeal of Right jurisdiction and reviews its own decisions or decisions of its colleagues, creating a conflict of interest.
- In a second scenario, S.B. 652 is amended to allow an Appeal of Right to the Michigan Supreme Court. Currently, pursuant to MCR 7.301(2), review by the Michigan Supreme Court of a case pending in or after decision by the Court of Appeals is governed by MCR 7.302, which is an appeal by *Application of Leave to Appeal*, meaning that the Michigan Supreme Court can choose to take the case, depending on the issues involved.
 - MCL 600.308 Appeal of Right
- The last scenario is appellate jurisdiction is left unchanged and there is no adequate appellate process for parties beyond the original case in the Court of Claims. This would happen because the Court of Appeals could not review itself without creating a conflict of interest on an appeal of right, and if the Michigan Supreme Court denies a leave to appeal, the Court of Appeals is the final decision maker pursuant to MCR 7.302(H)(3).

2) Money Issue

-Senator Rick Jones argues S.B. 652 will reduce State funding reimbursements to the Ingham County Circuit Court by approximately \$500,000 per year.

-However, with the Court of Appeals acting as the Court of Claims, the structure changes from a centrally located set of Courts to a shifting set of Courts. Under S.B. 652 Sec. 6410(5) the Court of Claims will sit in the Court of Appeals district where a court of appeals judge (acting as a judge for the Court of Claims) is sitting. This will require the Attorney General to travel to wherever the Court of Claims is sitting at any given time pursuant to S.B. 652 Sec. 6407. This will also require Plaintiffs to travel all over the state, rather than to a centrally located area, depending on where the Court of Claims is sitting.

-Secondly, though S.B. 652 Sec. 6421(3) establishes fees in the Court of Claims will be at the rate established by statute or court rule for circuit courts of this state, the additional fees have not been discussed. Attorneys charge far higher rates when preparing and taking a case to the Court of Appeals. The Court of Appeals is not equipped to handle full cases dealing with the entering of evidence, witness testimony, and trials, so more money will be spent to accommodate this transition. Court of Appeals Judges will have to travel from their respective districts multiple times, and to multiple places, to sit on the Court of Claims.

-Lastly, Michigan does not have a compulsory counterclaim procedure or compulsory joinder of claims. So, if the Court of Appeals becomes the Court of Claims, a Plaintiff may be suing the State in an action, but simultaneously be suing their insurance company arising out of the same transaction or occurrence. Because of this new structure, Plaintiffs would have to file two separate actions in two separate courts, increasing filing costs, travel costs, attorney fees, and use of judicial resources.

- In fact, the Michigan Court of Appeals held in *Freissler v State*, 53 Mich App 530; 220 NW2d 141 (1974), that joinder of plaintiff's action in Court of Claims against State and State Highway Commission for injuries sustained in automobile accident with her action in circuit court against county and county road commission arising from same automobile accident would promote convenient administration of justice.

3) S.B. 652 6404(2)

-S.B. 652 Sec. 6404(2) transfers all pending cases in the current Court of Claims to the Court of Appeals effective the date of the amendatory act that added this subsection. This section also allows any later filed Court of Claims matters to be transferred to the Court of Appeals.

-Essentially, S.B. 652 Sec. 6404(2) takes several controversial issues away from Judges elected by the People and hands them over to Judges that were hand-picked and appointed by the party being sued, the State. These controversial issues include the

Detroit Bankruptcy, the appointment of the Emergency Manager Kevin Orr, the Teacher's Pensions, OMA, NERD Fund, and many more.

-Not only does it remove controversial cases from elected Judges, it also strips the Circuit Court of any of its declaratory and equitable powers in those cases that are pending, filed in the future, and even those cases that are already under advisement. So not only does the Court of Appeals have to transition into a trial court, it would allow itself to hear cases that have already been heard in the Circuit Court and announce its own rulings, increasing costs and changing reasonable decisions of judges without applying any standards or review.

- This is highly disruptive to cases. For example, there are current Court of Claims cases that the Circuit Court currently has under advisement and is in the process of drafting a final decision.

-Senator Rick Jones will most likely argue this is to alleviate an already crammed Circuit Court docket. However, not one (1) Circuit Court Judge was contacted about the Court of Claims being a burden on the docket. Only 160 Court of Claims matters were filed in 2012, and 132 are pending in 2013, with 36 being stayed. This is an insignificant percentage of the docket (less than 2%), and is not a sufficient reason to take jurisdiction away from the Circuit Court.

4) Political Move

-This seems to be a ploy for a Republican led government to take matters filed against the State of Michigan out of the hands of impartial, or democratic leaning, judges (who often rule against the State) and put them in the hands of hand-picked judges appointed by the same Republican government. If they were worried about travel and costs, S.B. 652 would allow Plaintiffs to file a Court of Claims matter in their own district and have it heard by that district's Court of Appeals Judge, not a floating district headed by a Republican judge. Instead, they seem to be intentionally keeping Court of Claims cases from being heard in areas that are Democratic leaning.

STATE OF MICHIGAN
IN THE COURT OF CLAIMS

XXXXXXXXXX,

Plaintiffs,

v

XXXXXXXXXX,

Defendant.

SCHEDULING CONFERENCE ORDER

Honorable Rosemarie E. Aquilina

Docket No: XX-XXXXXX-MT-C30

At a session of said Court held in the City of
Lansing, County of Ingham, State of Michigan,
this ____ day of _____, 2013.

PRESENT: The Honorable Rosemarie E. Aquilina
30th Judicial Circuit Court Judge

IT IS HEREBY Stipulated and Agreed to the following:

1. Plaintiff's Expert Witnesses must be named no later than by: _____.
Defendant's Expert Witnesses must be named no later than by: _____.
All Other Witnesses must be named no later than by: _____.

**AFTER THESE DATES, EXCEPT FOR REBUTTAL WITNESSES, ADDITIONAL WITNESSES MAY
TESTIFY ONLY UPON MOTION FOR GOOD CAUSE**

2. Discovery shall be completed on or before: _____.

*PURSUANT TO MCR 2.301, ADDITIONAL DISCOVERY PERMITTED BEYOND THIS
DATE ONLY UPON A MOTION FOR GOOD CAUSE.*

3. Motions to Amend Pleadings shall be filed and heard by: _____.

4. Motions for Summary Disposition shall be filed and heard by: _____.

NOTICE:

- a. MCR 2.116 MOTIONS must be scheduled at least 10 weeks in advance of when you want the motion heard. Please schedule with the Judicial Assistant at 517-483-6526.
- b. There shall be no adding matters to be heard without permission of the Judicial Assistant i.e. each separate motion must be scheduled separately.
- c. Any motion longer than one half hour (15 minutes each side) may be scheduled or moved by the court to a day other than on Wednesday's Motion Docket.
- d. Filing and serving a Summary Disposition Motion and/or responsive pleading time frames shall be STRICTLY ADHERED TO. See MCR 2.116.

5. Motions in Limine shall be filed and heard no later than two weeks prior to Trial.

6. Judge's Copies of all Motions and Briefs shall be provided to the Judge through her Judicial Assistant seven (7) days prior to the date the motion is to be heard. Failure to do this may result in a rescheduling or in the non-consideration of the documents filed late.

7. The parties may submit this case to Facilitative Mediation pursuant to MCR 2.411.
The parties may be charged a fee by the facilitative mediator for untimely cancellations.

- a. The mediator stipulated to is: _____.
- b. The Court shall appoint a mediator and send notice to the parties upon failure to name a mediator or by agreement of the parties.

8. **Case Evaluation (MCR 2.403)** may be scheduled after _____ before a **TORT/COMMERCIAL/LABOR & EMPLOYMENT Panel. (CIRCLE TYPE PANEL NEEDED)**

Adjournments of Case Evaluation are not favored and shall be granted only if a specific replacement date has been obtained from the ADR Clerk (517) 483-6500 ext. 6718. A new date may be scheduled only upon a showing of extraordinary circumstances and with explicit directions contained in an Order signed by the Judge. Any adjournments granted after the dates when briefs are due under MCR 2.403 shall require payment of a new case evaluation fee. Additional blocks of time may be requested by contacting the ADR clerk at least 28 days prior to the case evaluation date and must be accompanied by the additional fee.

9. **Community Dispute Resolution (MCR 5.143)** may be scheduled at the parties request by contacting the Case Manager at (517) 485-2274.
10. **Settlement/Status Conference** pursuant to MCR 5.143, may be scheduled at the parties' request, either in person or by telephone by contacting the Judicial Assistant at (517) 483-6526 or by Court order.
11. If this is a **Court of Claims** case: Plaintiff must file a **MOTION TO CONSOLIDATE** or certify in writing not more than 60 days after an Answer is filed by Defendant, why this case cannot be consolidated with any "companion" Circuit Court Case.
12. Trial will be scheduled after _____, 20__ by the Case Processing Coordinator who will schedule both **Pre-Trial and Trial** dates. These dates may be changed by the Court by stipulation of the parties and approval of the Court. **CLIENTS MUST BE PRESENT AT PRETRIAL AND TRIAL.**
- a. The parties request a Jury Trial* _____; estimated length of Jury Trial _____.
*Only if consolidated

Proposed Jury Instructions shall be agreed to by Counsel no later than 2 weeks before trial and presented to the Court no later than the day of trial. The Court will decide any conflict by Motion, or on the day of Jury Selection/Trial, as appropriate.

- b. Bench Trial _____; estimated length of Bench Trial _____.
13. **ALL STIPULATED AMENDMENTS** to this Order shall be submitted to this Court and shall include new dates for the Court's approval and signature, however, parties may stipulate to adjourn the Pre-Trial/Trial once without prior Court approval. After that, good cause must be shown to the Court and written permission received with a new scheduled date.
14. **Failure to comply with this Court's Order, time and notification requirements, and MANDATORY ADR may result in Contempt of Court sanctions.**

STIPULATED BY:

Attorney for Plaintiff

Attorney for Defendant

ORDER

THIS HONORABLE COURT having reviewed the Stipulation of Counsel and being satisfied, now therefore, IT IS SO ORDERED.

**Hon. Rosemarie E. Aquilina (P37670)
30th Circuit Court Judge**

PROOF OF SERVICE

I certify that copies of this Order were served upon all counsel/parties of record via First Class U.S. Mail, and the ADR Clerk and Case Processing Coordinator via County Courier on: _____.

Judicial Assistant to Judge Aquilina



APPELLATE PRACTICE SECTION
Respectfully submits the following position on:

*
SB 0652

The Appellate Practice Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest.

The position expressed is that of the Appellate Practice Section only and is not the position of the State Bar of Michigan.

To date, the State Bar does not have a position on this matter.

The total membership of the Appellate Practice Section is 667.

The position was adopted after an electronic discussion and vote. The number of members in the decision-making body is 23. The number who voted in favor to this position was 16. The number who voted opposed to this position was 0.

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November 1, 2013

State of Michigan House of Representatives
Committee on Government Operations
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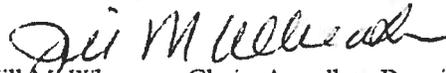
Re: SB 652

The Appellate Practice Section of the State Bar is comprised of attorneys who devote all or much of their practice to representation of clients in matters before the appellate courts. The Council of the Appellate Practice Section has voted to take a position in opposition to Senate Bill 652.

The Court of Claims is now a function of the Ingham County Circuit Court. SB 652 would transfer Court of Claims cases to a newly reconstituted Court of Claims consisting of four Court of Appeals judges appointed by the Supreme Court. The Section is concerned that this proposed legislation may have an adverse impact on the fair and efficient administration of appellate justice in Michigan. There is a general concern that Court of Appeals Judges are best equipped to handle disposition of appellate matters, and it would be inefficient to require four of them to serve in dual roles as both appellate and trial court judges – a role which may cause additional delays in the adjudication of appeals. The number of Court of Appeals judges will be reduced in coming years by four judges by attrition. Further dividing the attention of four remaining judges by having them serve in the dual roles may adversely affect the Court of Appeal's ability to timely decide its cases.

The Section is also concerned about how appeals from decisions of a newly constituted Court of Claims will be handled. MCL 600.308(1)(a) provides that final judgments of the Court of Claims are appealable of right to the Court of Appeals. This raises the question of how decisions of Court of Appeals judges can be reviewed by other Court of Appeals judges; how panels will be selected to hear and decided these appeals; and the necessity for disqualification of Court of Appeals judges from hearing such appeals. Simply put, having a court review, on appeal, decisions from itself, is unprecedented.

Members of the Section hope to testify at upcoming hearings regarding the legislation, and are willing to work with the Committee and any other interested legislators to address these, and other concerns regarding the Bill.


Jill M. Wheaton; Chair, Appellate Practice Section

APPELLATE PRACTICE SECTION

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Nov. 1, 2013

Committee on Gov't. Operations

Page 2

cc: Gov. Rick Snyder
Speaker of House Jase Bolger
House Democratic Leader Tim Greimel
Senate Majority Leader Randy Richardville
Senate Minority Leader Gretchen Whitmer
Senator Rick Jones

HONORABLE LAURA BAIRD
INGHAM COUNTY CIRCUIT JUDGE
FAMILY DIVISION



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State of Michigan
INGHAM COUNTY CIRCUIT COURT



November 5, 2013

RE SB 652

[http://www.legislature.mi.gov/\(S\(3xdp10ajavjzlw453ojtdv45\)\)/mileg.aspx?page=getObject&objectName=2013-SB-0652](http://www.legislature.mi.gov/(S(3xdp10ajavjzlw453ojtdv45))/mileg.aspx?page=getObject&objectName=2013-SB-0652)

Dear MJA Members,

October 24, SB 652 was introduced in the State Senate by Sen. Rick Jones. The bill removes the Court of Claims from the 30th Circuit Court, Ingham County. This will create a new Court of Claims as a part of the Court of Appeals. The Supreme Court will appoint the Judges serving in the new Court of Claims. The bill applies to all future and **pending** lawsuits.

October 29, the bill passed the Senate Judiciary Committee on a straight party line vote with testimony provided in favor by Sterling Corporation, Robert LaBrant and opposed by former Republican House Judiciary Attorney, Bruce Timmons.

October 30, the Senate suspended Senate rules, passed SB 652 on a straight party line vote and gave the bill immediate effect.

MJA and SCAO are reported to be neutral on the bill.

November 5, SB 652 is to be addressed by the House Government Operations Committee at noon. The committee members are Pete Lund (R), Bradford Jacobsen (R), Mike Shirkey (R), Rudy Hobbs (D), and Tim Greimel (D). It is expected to pass on a party line vote today.

The Ingham County Circuit Court unanimously opposes the bill. Contrary to characterizations, all Ingham County Circuit Court Judges do not have partisan roots as Democrats.

The following bar associations eloquently oppose the bill and have submitted letters to that effect: Ingham County Bar Association, Oakland County Bar Association, SBM Negligence Law Section, Michigan Association for Justice, and others. I have attached these letters below. Please note the letters include offers by various associations to help change the current Court of Claims but not via this fast-tracked and poorly developed bill.

Individual members of MJA Executive Board oppose the bill including myself, MJA Treasurer, Bylaw Chair and Vice-President Elect; Judge Tracey Yokich, MJA Legislative Chair and Treasurer Elect; and others. Judge Yokich and I are also former legislators.

The bill has been likened to situations where there are judicial reductions in certain counties. While SB 652 may well result in judicial reductions in Ingham County, the major problem is the enormous likelihood of unforeseen consequences and the blatant partisan attempt to find a forum to hear pending and future cases where there is a likelihood the court will reach a result favorable to Republicans.

Part of what is truly alarming and suspect with the speed in which SB 652 is moving through our Legislature is the fact that it proposes to immediately remove all pending Court of Claims cases. It is without a doubt a partisan bill in all aspects.

One reason MJA has stated for maintaining its position of neutrality is to not compromise our chances for a compensation increase. Certainly we cannot be hostages to a hope for increased compensation when we alone are among Michigan citizens who possess the education, knowledge, training and experience to recognize the true nature of this bill.

I would urge you to voice your opinion on this bill by contacting your local state representative ([http://www.legislature.mi.gov/\(S\(lqy5vlqtya0me05543tstfnv\)\)/mileg.aspx?page=legislators](http://www.legislature.mi.gov/(S(lqy5vlqtya0me05543tstfnv))/mileg.aspx?page=legislators)) and the Office of the Governor (<http://www.michigan.gov/snyder/0,4668,7-277-57827-267869--00.html>).

Thank you for your anticipated interest in SB 652.

Sincerely,

A handwritten signature in cursive script that reads "Laura Baird". The signature is written in dark ink and is positioned above the typed name.

Honorable Laura L. Baird



ESTABLISHED 1934

1760 S. TELEGRAPH ROAD • SUITE 100 • BLOOMFIELD HILLS, MI 48302.0181 • 248.334.3400 • 248 334.7757 fax • www.ocba.org

November 4, 2013

Via E-mail

The Hon. Robert P. Young, Jr.
Chief Justice
Michigan Supreme Court
3034 W. Grand Boulevard, Suite 8-500
Detroit, Michigan 48202

Re: Senate Bill 652

Dear Chief Justice Young:

We write to you to request the involvement of the State Court Administrative Office in providing data relevant to consideration of Senate Bill 652, which the Oakland County Bar Association opposes in its present form. The OCBA has advocated that action on the bill be delayed to allow for additional hearings and input from lawyers, judges, litigants and the general public who may be affected by the proposed changes.

Because the bill has proceeded rapidly through the Legislature without any apparent input from the State Court Administrative Office, it appears that crucial input from the judicial branch has been missing concerning the bill's implications and its effect on the operation of the court system. Important questions that might otherwise have been explored before or during the committee stage appear to have gone unanswered. Questions on which the State Court Administrative Office may be able to provide valuable data and information include those raised by the following aspects of Senate Bill 652:

- 1) The bill appears to shift all injunctive and equity actions against the State from Circuit Courts to the new Court of Claims in the Court of Appeals, as well as all Court of Claims cases that are currently pending in any Circuit Court. This shift could have a significant impact on the Court of Appeals, as statistics available to the State Court Administrative Office presumably would show.

PRESIDENT • JAMES G. DURIAN | PRESIDENT-ELECT • THOMAS H. HOWLETT | VICE PRESIDENT • DAVID CARL ANDERSON | TREASURER • DAVID C. ANDERSON
SECRETARY • VICTORIA A. VALENTINE | EXECUTIVE DIRECTOR • LISA STADIG ELLIOT | ABA DELEGATE • GORDON S. GOLD

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KIEFF A. BROOKS | KAVEH KASHEF | HON. CYNTHIA T. WALKER | ELIZABETH L. LUCKENBACH

- a. How much of the four designated Court of Appeals judges' time is projected to be consumed by current and future Court of Claims matters?
 - b. What impact, if any, would the designation of four Court of Appeals judges as Court of Claims judges have on the current Court of Appeals backlog and the length of time for decisions to be rendered in the Court of Appeals?
- 2) The bill also appears to expand the jurisdiction of the new Court of Claims into matters in which claimants have a right to a jury trial. The State Court Administrative Office should be able to assess the impact of jury trials on the operation of the Court of Appeals.
 - a. What would the impact of jury trials be on the case scheduling and docketing process of the Court of Appeals?
 - b. What physical modifications to Court of Appeals locations would be required to facilitate juries and jury trials?
- 3) With the understanding that any legislative reform of court operations should include consideration of convenience to the public, the State Court Administrative Office presumably has data that would be helpful in assessing whether the bill as written would further this goal.
 - a. What is the geographic distribution of the origin of Court of Claims cases, as the jurisdiction of the Court of Claims is presently defined, and as it would be defined under SB 652?
 - b. With SB 652 permitting Court of Appeals judges from as few as two Court of Appeals districts to comprise the entire bench of the Court of Claims, are there other ways to reconstitute and operate the Court of Claims that would more effectively address considerations of public convenience?
- 4) Currently, Court of Claims judges have authority to consolidate parallel cases pending in the Court of Claims and Circuit Courts by having the circuit judge in the parallel case sit as a judge of the Court of Claims. SB 652 would eliminate that and require the consent of all parties for such consolidation to occur.
 - a. What does the State Court Administrative Office data tell us about how often cases are currently consolidated in the way that would be permissible only by consent of all parties under the new bill?
 - b. What is the projected impact on the caseload of Circuit Court and the Court of Claims, and the projected impact on cost to the parties, including the state, in circumstances when parties do not consent to consolidation?
- 5) The bill suggests that an attorney special master rather than a judge could hear damage and injunctive claims.
 - a. Is the State Court Administrative Office aware of other jurisdictions that use special masters in such circumstances?

b. How are the costs of a special master to be assessed, and can the State Court Administrative Office provide an estimate of what such costs might be?

The changes to the state court system that proposed SB 652 would appear to effectuate are so substantial, the ambiguities so significant, and the speed with which this legislation is progressing so unusual, that there are likely other equally important questions to be explored in addition to those identified above.

An appropriate individual from the State Court Administrative Office could assist in providing data to the Legislature and the Governor to help avoid pitfalls and unintended consequences as improvements are considered for the Court of Claims process. Providing information available from the State Court Administrative Office would provide a means for the judicial branch to be included in this legislative effort to change the operation of the state court system.

Thank you for your consideration.

Sincerely,



James G. Derian
Oakland County Bar Association, President

cc: Justices, Michigan Supreme Court
William Murphy, Chief Judge, Court of Appeals
Judges, Court of Appeals
Officers of Michigan Judges Association
Bill sponsor and co-sponsors
House Government Operations Committee members
Senate and House Judiciary Committee members
Governor Rick Snyder
Michael F. Gadola, Esq.
Brian D. Einhorn, Esq., State Bar of Michigan President
Janet Welch, State Bar of Michigan Executive Director



NEGLIGENCE LAW SECTION

November 1, 2013

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State of Michigan
House of Representatives
Committee on Government Operations
Anderson House Office Building
124 North Capitol Avenue
P.O. Box 30014
Lansing, MI 48909-7514

Re: SB 652

Dear Committee Members:

The Negligence Law Section of the State Bar is interested in the current Court of Claims legislation pending before your Committee, passed through the Senate as SB 652 (2013). We are a voluntary organization that represents over 2,000 plaintiff and defense attorneys in Michigan. The governing council is comprised of an equal number of plaintiff and defense attorneys, in order to achieve a balanced perspective of civil law in Michigan. Though our views do not necessarily represent the State Bar, our members actively practice in the Court of Claims in various aspects of litigation and have insight into the issues before your Committee.

In formulating its position, Council has considered the multiple impacts of SB 652, some of them likely unintended, including:

- The language of the legislation read in conjunction with the canons of statutory construction;
- The testimony and rationale proffered by its proponents;
- The effect Court of Claims litigation has on our State, including injured citizens and governmental agency operations, including the Judiciary;
- The local and statewide fiscal impact of the legislation, including costs of implementation;
- Issues of judicial economy, resources and specialization within various Courts;
- The public interest in preservation of a stable system of civil justice;



NEGLIGENCE LAW SECTION

Chairperson

Steven B. Galbraith
600 Woodward Avenue Ste. 1975
Detroit, MI 48226
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- Access to judicial resources by litigants and counsel, and;
- The Bill's overall impact on Michigan's *juris prudencia*.

Vice Chair

Jody L. Aaron
Buhl Building
535 Griswold St. Ste. 2052
Detroit, MI 48226
(313) 421-8300

After significant analysis and deliberation by the Council, the following position was adopted by consensus:

Secretary

Michael R. James
11 1st Street
Mount Clemens, MI 48045
(586) 979-6500

POSITION: OPPOSED TO SBM 652 IN ITS PRESENT FORM AND SUBSTANCE

Treasurer

Ven R. Johnson
Buhl Building
535 Griswold Street Ste. 2052
Detroit, MI 48226
(313) 321-8300

We have identified a number of substantive, procedural and practical issues with the proposed legislation that will be explained more fully through Council members' testimony. However, the Section would like to work with the stakeholders to develop alternate means for addressing the concerns identified by the Bill's sponsor and the Sterling Corporation during the Senate Judiciary hearing. For example, rather than enlarging the original jurisdiction of the Court of Appeals into a Court of Claims trial court, together with all the ensuing problems this would create, to instead identify appropriate circuit courts through the State, such as Oakland, Kent and Grand Traverse Counties, to assign selected Court of Claims cases for adjudication. Multi-county trial location venues could be readily accomplished utilizing the existing administrative consolidation mechanism used in current mixed-claim cases, *i.e.* State of Michigan and individual joint tortfeasor cases.

Council

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Grand Rapids

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Farmington Hills

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Ann Arbor

Jennifer M. Grieco
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Detroit

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Farmington Hills

Michael J. Sullivan
Southfield

Wolfgang Mueller
Berkley

Please contact this writer or other Council Representatives listed above for more information. We look forward to working with you on this important Bill and to providing you with additional information at the hearing.

Sincerely yours,

Steven B. Galbraith
Chair, SBM Negligence Law Section

Ex-Officio

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STATE OF MICHIGAN
CIRCUIT COURT
SIXTEENTH JUDICIAL CIRCUIT

HON. TRACEY A. YOKICH
CIRCUIT COURT

Representative Pete Lund
Michigan House of Representatives
P.O. Box 30014
Lansing, Michigan 48909-7514

November 5, 2013

RE: Senate Bill 652 (S-1) – Court of Claims Jurisdiction

Dear Chairman Lund:

Greetings! We write in opposition to SB 652 (S-1) scheduled for hearing on November 5, 2013 in your committee which transfers jurisdiction for the Court of Claims from the Thirtieth Circuit Court in Ingham County to the Court of Appeals.

Our primary concern is that the Court of Appeals lacks the resources to fully assume this responsibility. Although staffed by many capable jurists, the appellate court does not have the necessary infrastructure to act as a trial court. As you are aware because of your expansive background in local and state government, there are significant differences in the resources necessary to operate a trial court including access to properly outfitted courtrooms. At a time when we are all focused on better, smarter use of our public resources, this seems to be counterproductive to our attempts to “right size” the judiciary. Giving the Court of Appeals such significant responsibilities at a time when we are reducing the number of jurists will surely affect the timeliness of appellate review on all other matters for our constituents.

Second, in reviewing SB 652 (S-1), we are unsure who will have the authority to review final orders from the Court of Claims. It is rare in our judiciary for judges serving together to review one another’s decision.

Finally, SB 652 (S-1) has moved so quickly through the legislative process, we are unsure of the “ills” it seeks to correct. Perhaps there is another approach that can be considered that maintains our collective commitment to access for all to a fair and impartial judiciary. If we can be of any assistance, please do not hesitate to contact us directly.

Best regards,

Tracey A. Yokich
Circuit Judge

Diane M. Druzinski
Circuit Judge

John C. Foster
Chief Circuit Judge

Peter J. Maceroni
Circuit Judge



November 5, 2013

State of Michigan
House of Representatives
Committee on Government Operations
Anderson House Office Building
124 North Capitol Avenue
P.O. Box 30014
Lansing, MI 48909-7514

RE: Statement in Opposition to SB 652 (Reassignment of Court of Claims)

Dear Chairman Lund and Committee Members:

The Michigan Association for Justice is strongly opposed to the Court of Claims legislation pending before your Committee, passed through the Senate as SB 652 (2013). We respectfully request that you view the adverse impact of this legislation in its larger context and vote in opposition. SB652 would vastly enlarge Court of Claims jurisdiction and:

Eliminate the right to a jury trial in a large number of cases including civil rights claims under the ELCRA.

Further eliminate the right to jury trials by expanding the definition of the State to include individual employees, cases that are currently under the jurisdiction of the circuit courts.

Promote secrecy in government and shield the State from FOIA and Open Meetings Act cases.

The MAJ is a voluntary organization that represents over 1,600 attorneys in Michigan. Our membership is comprised of attorneys from all areas of the law including administrative agency, trial court and appellate practice. A number of our members, including ourselves, actively practice in the Court of Claims in various aspects of litigation and have direct insight into the issues before your Committee. As a professional legal association representing a large cross-section of the bar, the MAJ recognizes its obligation to assist the Legislature with important issues of law that would substantially affect the orderly administration of justice in the courts of this state.

The MAJ has carefully considered SB652 including the purported rationale claimed by its proponents together with the position statements in opposition to the Bill from a number of bar associations including the Negligence Law and Appellate Practice Sections of the State Bar of Michigan, and the Oakland County Bar Association. We join those distinguished bipartisan



organizations in strongly opposing SB652. The enactment of SB652 would create a constitutional crisis.

The reassigned and enlarged Court of Claims jurisdiction as proposed in §6419(1)(a) and (b) to include all statutory and equitable claims would promote secrecy in government and provide a shield for the State from FOIA and Open Meetings Act cases. Further, the enactment of this provision would eliminate the right to a jury trial in a large number of cases including, among many others, the Elliott Larsen Civil Rights Act (ELCRA), MCL 37.2101, the Persons with Disabilities Civil Rights Act (PDCRA), MCL 37.1101 and the Whistleblowers Protection Act (WPA), MCL15.361. As well the legislation would strip the right to jury trial in any action brought by the State against an individual, group or business who brings an action in the Court of Claims. §6419(1)(b)

Significantly, the expansive definition of "the State" proposed by § 6419(7) to include individual employees would eliminate the right to jury trial against these defendants. Under existing law these cases are under the jurisdiction of the circuit courts, not the Court of Claims. Further, the immediate transfer of these cases could result in retroactive application of this deprivation of rights and would be tantamount to enactment of an *ex post facto* law.

Reassignment of the Court of Claims from trial judges to certain hand-picked Court of Appeals judges, operating in a system not designed for this role, is contrary to every notion of fundamental fairness at the core of our state and nation. Even beyond the due process and separation of powers issues self-evident with this agenda driven scheme, the true impact of this Bill is fraught with adverse consequences for Michigan citizens.

Reassignment of the Court of Claims to the Court of Appeals is certain to have an adverse fiscal outcome on governmental operations, and is directly contrary to responsible and efficient use of judicial resources. It would increase the likelihood of multiple cases being litigated at the same time versus consolidation of all claims in one action. In cases involving claims against multiple parties, both State and private plaintiff's would file their private claims in Circuit Court to preserve their right to jury trial and be compelled to file a separate case in the Court of Appeals regarding State related claims. The net result would be duplicative litigation and excessive strain on judicial resources.

The Bill is also contrary to the public interest in preservation of a stable system of civil justice, access to judicial resources by litigants and counsel, and would have a negative overall impact on Michigan's *juris prudence*.

Contrary to the testimony presented in support of the Bill, the Ingham County Circuit Court is NOT the only Court that handles Court of Claims cases. Indeed, Court of Claims cases are adjudicated by circuit courts across the state under the consolidation provisions of §6421. The Bill seeks to abrogate the stable, efficient joinder system of §6421 and replace it with joinder only if all parties stipulate, even those co-defendants whose interests may be directly opposite of the state.



The Bill would have the disruptive effect of retroactively transferring these pending cases from counties around the state. This would adversely impact litigants, lawyers and the administration of justice. Significantly, it would mean that parties would be forced litigate issues in multiple venues and proceed to disjointed appeals.

And on the other side of that double-edged sword, through the application of collateral estoppel and other legal doctrines, the Bill would serve to disenfranchise some claimants, sometimes the state, from being able to have full access to justice. In some cases, the right to jury trial against the individual co-defendant would be eliminated once the non-consolidated bench trial makes a determination on certain issues, thus *de facto* depriving citizens of their fundamental right to jury trial under Article I, § 14 of the Michigan Constitution.

Enactment of SB 652 would cause significant adverse consequences to due process. It abrogates meaningful appellate review because the appeal of a Court of Claims ruling would be from a Court of Appeals judge acting as a Court of Claims judge to a Court of Appeals panel. SB 652 fails to recognize or account for potential multiple impacts on other statutes. For example, it fails to consider the impact on MCL 600.308 (final judgments Court of Claims appealable by right to the Court of Appeals) or the immediate application of MCL 600.6431 (Court of Claims notice provision, pleading requirements) which would likewise serve to deprive Michigan citizen's of meritorious claims and deprive them of due process under law.

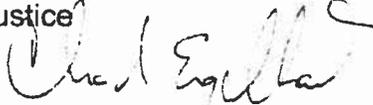
The MAJ echoes the offer of the State Bar sections and the OCBA to work with the stakeholders to develop intelligent, principled means for addressing the concerns identified by the Bill's sponsor and the Sterling Corporation during the Senate Judiciary hearings.

We are also concerned about the procedural manner in which this Bill has been handled legislatively with virtually no time for those impacted to respond in the Senate and little in the House. We respectfully request that you allow for additional hearings and input from lawyers, judges, litigants and the general public who may be affected by the proposed changes so that you can make an informed decision that is in the true best interest of your constituents.

We look forward to working with you on this important Bill and to providing you with additional information at the hearing.

Respectfully Submitted,
Michigan Association for Justice


Stephen Goethel
Executive Board Member


Chad Engelhardt
Executive Board Member



November 5, 2013

State of Michigan
House of Representatives
Committee on Government Operations
Anderson House Office Building
124 North Capitol Avenue
P.O. Box 30014
Lansing, MI 48909-7514

RE: Statement in Opposition to SB 652 (Reassignment of Court of Claims)

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The MAJ is a voluntary organization that represents over 1,600 attorneys in Michigan. Our membership is comprised of attorneys from all areas of the law including administrative agency, trial court and appellate practice. A number of our members, including ourselves, actively practice in the Court of Claims in various aspects of litigation and have direct insight into the issues before your Committee. As a professional legal association representing a large cross-section of the bar, the MAJ recognizes its obligation to assist the Legislature with important issues of law that would substantially affect the orderly administration of justice in the courts of this state.

The MAJ has carefully considered SB652 including the purported rationale claimed by its proponents together with the position statements in opposition to the Bill from a number of bar associations including the Negligence Law and Appellate Practice Sections of the State Bar of Michigan, and the Oakland County Bar Association. We join those distinguished bipartisan organizations in strongly opposing SB652.

Reassignment of the Court of Claims from trial judges to certain hand-picked Court of Appeals judges, operating in a system not designed for this role, is contrary to every notion of fundamental fairness at the core of our state and nation. Even beyond the due process and separation of powers issues self-evident with this agenda driven scheme, the true impact of this Bill is fraught with adverse consequences for Michigan citizens.

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And on the other side of that double-edged sword, through the application of collateral estoppel and other legal doctrines, the Bill would serve to disenfranchise some claimants, sometimes the state, from being able to have full access to justice. In some cases, the right to jury trial against the individual co-defendant would be eliminated once the non-consolidated bench trial makes a determination on certain issues, thus *de facto* depriving citizens of their fundamental right to jury trial under Article I, § 14 of the Michigan Constitution.

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The MAJ echoes the offer of the State Bar sections and the OCBA to work with the stakeholders to develop intelligent, principled means for addressing the concerns identified by the Bill's sponsor and the Sterling Corporation during the Senate Judiciary hearings.

We are also concerned about the procedural manner in which this Bill has been handled legislatively with virtually no time for those impacted to respond in the Senate and little in the House. We respectfully request that you allow for additional hearings and input from lawyers, judges, litigants and the general public who may be affected by the proposed changes so that you can make an informed decision that is in the true best interest of your constituents.



We look forward to working with you on this important Bill and to providing you with additional information at the hearing.

Respectfully Submitted,
Michigan Association for Justice

Stephen Goethel
Executive Board Member

Chad Engelhardt
Executive Board Member

Bill to move the Court of Claims has many flaws.

Legislation to move Michigan's Court of Claims from Ingham County Circuit Court to the Michigan Court of Appeals should be slowed down. In its current form, the bill could do financial harm to Ingham County and may well provide less convenient, slower process for those pursuing legal action against the state.

The bill raced through the state Senate last month and Gongwer News Service reported the House may act quickly this week. Yet critics have identified several flaws that should be carefully addressed, not ignored in a race to pass SB 652.

Ingham County's Circuit Court judges currently hear cases involving claims against the state worth more than \$1,000. That's about 100 cases a year. But critics believe language in SB 652 expands the Court of Claims' jurisdiction beyond its current definition and would result in many cases now handled in local circuit courts being sent to one of four Court of Claims judges who would be assigned within the Court of Appeals, including civil rights, environmental, open meetings and freedom of information cases.

Appellate judges are paid more than circuit judges. Even if the Court of Appeals has seen a falling caseload in recent years, such an expansion of the Court of Claims could well cost the state additional money. Also, appellate attorneys worry that the new Court of Claims will be slower to resolve cases.

Indeed, the State Bar of Michigan's appellate section opposes the bill. One concern is that circuit courts are trial courts, while appellate courts are not. Opponents also note that using Court of Claims judges across the state may not create the geographic convenience that its supporters tout. Since the judge for each case will be selected by a blind draw, someone who files a Court of Claims case close to home may find the case assigned to a judge who is far away. Lansing is a central location and offered predictability that the new system would not.

Finally, the impact on Ingham County, which budgets about \$450,000 for Court of Claims activities, should be considered. While the state reimburses costs, scaling back on short notice will be difficult, creating an unfair financial burden to Ingham County's taxpayers.

GOP strategists are seizing an opportunity to get the Court of Claims away from a Circuit Court bench that, while elected on nonpartisan ballots, is perceived by some as favoring Democrats and liberal causes. The speed at which this bill is moving suggests a political agenda rather than a better government agenda.

It falls to Gov. Rick Snyder to insist that the bill doesn't create unpleasant consequences for litigants, add extra costs for the state or impose a financial penalty on a county that has hosted the Court of Claims for five decades.

An LSJ editorial



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Statement in Opposition to SB 652 – November 5, 2013

Submitted by Bruce A. Timmons

First some history because I was on House staff when this legislation was enacted:

Immediately before 1978, the Court of Claims had a clerk and records in Lansing.

Circuit judges, who had the time, could volunteer, for a month. Actual trial time was much less.

Caseload began to exceed the availability of circuit judges willing to volunteer because their own dockets were also growing. The caseload was approaching the need for a full-time judge.

Lansing is the seat of government. The state agencies being sued have their principal office in Lansing. The assistant attorneys general who defend these cases have their offices in Lansing.

Lansing is also centrally located. Most citizens in this state live within a 2-hour drive of Lansing when they come to pursue their claim. That is not true for Grand Rapids or Detroit.

Ingham Circuit was a practical solution, not a political one. The bill was passed by a Democratic House, supported by a Democratic Attorney General, and signed by a Republican Governor to give court of claims cases to a court, a majority of whose judges were Republican.

I don't recall Ingham asking for the privilege. The task was given to them before Headlee. The number of judges was increased by 1. The Legislature annually contributes to the expense of the court of claims in the Judiciary Budget – \$186,900.00 for FY 2013-14, 2913 PA 59 (EHB 4328), Art. XII, Sec. 303.

We have 3 state trial courts. Why do we need a fourth trial court?

Court of Appeals is NOT a trial court. It is not equipped or structured to be a trial court. It hears arguments on legal issues – it does not take testimony. It doesn't have court reporters. Many of the judges were not trial judges. The courtrooms do not have space for a jury trial if the court of claims case can or should be joined with a related claim involving parties other than the state who are entitled to a jury. Joinder rules allow them to be tried at the same time by the same circuit judge.

Senate Judiciary heard the history of monetary claims against the state prior to 1978. That testimony was silent as to the real purpose of the bill. SB 652 expands the jurisdiction of the court of claims to include a "demand for monetary, equitable, or declaratory relief or any demand for an extraordinary writ against the state ... notwithstanding another law that confers jurisdiction of the case to circuit court." Those additional matters have always been under the jurisdiction of the circuit court and not just limited to the Ingham Circuit. Have proponents informed you what those matters are? Beware.

The bill allows the court of appeals to refer a matter to a "Special Master" who could be an attorney, not a judge. Do we now want damage and injunctive actions heard by someone who is not subject to the election by the people? How does joinder of cases occur if the court of claims matter is assigned initially to a special master? The bill is a very vague and inconclusive about that.

Circuit court is accustomed to daily dockets and emergency petitions. The Court of Appeals hears matters a few days of each month and functions in 3-judge panels. It is not equipped for a longer proceeding of a single case that could disrupt already scheduled oral argument dockets.

If a party loses in the Court of Appeals, to what court does that party appeal? To the Court of Appeals (see page 1 of the bill). "What, I just lost there!" Now one might argue that the appeal would be heard by a different 3-judge panel, but 100% of the general public will see no difference – they will only see that the court to which they will appeal is the same one that just rejected their claim. Perception matters and in this instance, the bill can't and won't pass the smell test – to them it's rigged. →

SB 652 provides that judges assigned must come from at least 2 court of appeals districts. That suggests that someone expects 3 to come from one district, like Kent Co, and 1 favorable judge from Oakland. Why not have 1 judge from each district? Someone clearly does not want that possibility – it probably would be too great a risk that the judge from the district with Wayne County might get a particular case.

Remember the old admonition: Be careful what you wish for! SB 652 may become the most liberal legislation enacted this year. Why? Someday the worm will turn and Democrats will hold the reins of power. When that happens, business organizations and individuals asserting a claim against the state or challenging statutes and executive actions will find themselves before 1 of 3 judges from Wayne County or 1 from Lansing. Good luck!

In Senate Judiciary it was claimed that the bill would enable citizens to have their claims heard closer to home. The bill provides for just the opposite – that the hearing would be where the judge sits, not where the plaintiff resides. Given the scheme of assignment of judges, it is quite likely that a claimant from Wayne, Oakland, Macomb or St. Clair would be driving over to Grand Rapids for the hearing – closer to 3 hours away. That is not convenient to the litigant – nor, for that matter, to the agency official (if called upon to testify) or the assistant AG assigned to defend the state.

This bill is on a fast track and, respectfully, on the wrong track.

The public and special interests may not like some of the decisions that have been made by the Governor and Legislature over the past 3 years, but they do, perhaps begrudgingly, understand that those decisions are what policy-making branches of government are about and those who win elections get to determine policy.

But SB 652 does something different – it tampers with the court system to which challenges of those decisions may be brought and clearly attempts to bias the system against any threat of a legal challenge. This lets the government select the forum.

I would concur with proponents of SB 652 that there is more than a perception problem with the current arrangement, including the claim that one county of 3% of the population of the state should not have disproportionate role in determining legal challenges to state policy. The critics have a justifiable complaint. But two wrongs do not make a right.

I may have a better alternative. Not necessarily the best option because others with better understanding of the court system than I may have a more satisfactory one. My suggestion would be to provide for the assignment of circuit judges from around the state on a short-time basis, perhaps as an exchange with an Ingham judge, as part of the mix for hearing court of claims matters, even if expanded to include equity matters – similar to the functioning of the court of claims early in the 1970's. It addresses the concern that only Ingham judges here these matters. It would not require a radical, illogical restructuring of the courts. It would retain the central location for records, staff, litigants, agency personnel, and AG attorneys.

If SB 652 were to become law as now written, it will prove to be an embarrassment down the road. It is also quite uncharacteristic for us Republicans who proclaim a healthy skepticism about government. This bill is not a citizen initiative. It is a product **of government, by government, for government.**

Thank you for your attention and patience.

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11:10 AM MON NOVEMBER 11, 2013

Ingham judge blasts Court of Claims move

By CURRENT STATE

0:58 | 15:26

A controversial bill that would move a key Michigan court is expected to be signed into law soon by Governor Rick Snyder. The measure would transfer the operations of the state's Court of Claims to the Michigan Court of Appeals.

The court of claims hears legislation introduced by Sen. Rick Jones (R-Grand Ledge) would move the Court of Claims from Ingham County to the Michigan Court of Appeals. Backers of Senate Bill 652 maintain it's expensive and wrong that only 3% of the state's population elect the Ingham county judges who preside over Court of Claims cases.



http://media1.publicbroadcasting.net/wkar/files/201311/courthouse_flickr_cmu_chem_prof.jpg
[Enlarge image](#)

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Opponents blast the measure as blatantly political “judge shopping” and say many important considerations were not addressed during its brief journey through the legislature.

[Ingham County Circuit Court](http://cc.ingham.org/_Judge_Bill_Collette) (http://cc.ingham.org/_Judge_Bill_Collette) (<http://cc.ingham.org/GeneralInformation/Judges/HonorableWilliamECollette.aspx>) believes the real reason for the transfer is to remove the power from circuit courts to litigate issues regarding constitutional challenges against the activities of the Snyder administration.

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Snyder signs controversial bill moving Michigan Court of Claims: 'Let's keep improving things'

snyder.jpg

Michigan Gov. Rick Snyder (*MLive File Photo*)

Jonathan Oosting | joosting@mlive.com By Jonathan Oosting | joosting@mlive.com

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on November 12, 2013 at 5:13 PM, updated November 12, 2013 at 5:37 PM

LANSING, MI -- Michigan Gov. Rick Snyder on Tuesday signed into law **a controversial bill** that will change the legal venue for lawsuits filed against the state and government officials.

Public Act 164 will end the Ingham County Circuit Court's tenure as Michigan's Court of Claims, a role it has served since the late 1970s. Instead, four Court of Appeals judges selected by the Michigan Supreme Court will preside over major litigation against the state.

Democratic leaders -- who have called the move a political ploy to protect problematic laws approved by the Republican-led Legislature -- joined a handful of legal experts and newspapers calling on the governor to **veto the bill**. It was introduced just three weeks ago before speeding through both chambers.

But Snyder, speaking with reporters following a public signing of an unrelated law, said he had already signed the Court of Claims bill, but he noted that he expects follow-up legislation that will address one specific concern.

"This was not something in the constitution," Snyder said of Ingham County's jurisdiction. "This was something that was statutory, and prior to forty years ago, it was something different. So let's keep improving things in Michigan."

Snyder and other Republicans say the bill will ensure that cases of statewide significance will be heard by judges elected by a greater share of Michigan residents. Court of Appeals judges are elected in four equally-apportioned districts.

"I view this as positive legislation because it really allows statewide representation in terms of judges across the state as opposed to the three-percent of the population that's represented by Ingham County Judges," Snyder said.

The governor expects introduction of a "trailer bill" on Wednesday designed to ensure the right to a jury trial in certain cases before the Court of Claims.

House Republican spokesperson Ari Adler said that the follow-up bill will address a concern that some members -- but not all -- had with Senate Bill 652.

"There have been concerns raised about jury trials being allowed under SB 652," Adler said. "There are some who think that's not a problem, that the bill does not preclude jury trials. We are looking at legislation to ensure it is very clear that jury trials are still allowed."

Democrats have questioned Snyder's argument that the new court will represent more Michigan residents, pointing out that the four Court of Appeals judges will be selected by the Michigan Supreme Court, currently home to a 5-2 majority of GOP nominees.

State Rep. Jeff Irwin, D-Ann Arbor, introduced an amendment that would have had the judges selected by "blind draw," but the Republican majority shot down that amendment and several others during debate on the House floor last week.

Irwin questioned why Snyder would sign a bill while acknowledging it needed at least one fix, and he suggested that the new law has several other "fatal flaws."

In addition to state litigation currently before Ingham County, the new-look Court of Claims will also handle challenges to Michigan's Open Meetings, Freedom of Information and Elliot-Larsen Civil Rights acts, which citizens can currently file in any circuit court in the state.

"They've been able to spin this issue as if they're taking away cases from Ingham County and giving it the Court of Appeals," Irwin said. "No, no, no, no, no. You're taking away from Ingham County and every other county where citizens currently have the right to bring a cause of action on a raft of different statutes. That's all been taken away."

*Jonathan Oosting is a Capitol reporter for MLive Media Group. **Email him**, find him on **Google+** or follow him on **Twitter**.*

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