December 5, 2018

The Honorable Jim Runestad, Chair, and Members of House Committee on Judiciary

Statement Submitted by Bruce A. Timmons, Okemos MI

Fundamentally, I support the general concept of merger of district court districts such as is proposed in HB 6344. But I have reservations about some of its provisions.

Since I was unable to learn what version of **HB 6344** might be before House Judiciary this morning, and the last version I have seen was a substitute **(H-1)**, my remarks and concerns are submitted in that context. Most of my comments relate to drafting quirks or omissions in this bill. These are not fatal to the bill but leave important questions unanswered that previous merger statutes did answer or reinvent the wheel.

None of the prior 7 mergers of Districts of the Third Cass "created" a new district as HB 6344 (original bill or H-1) purports by language to do. In all prior instances the district (or districts as in Kalamazoo) of the third class was merged into the existing and continuing county-funded district. Each of the prior statutes showed the county-funded district of the second class being redesignated as a district of the first class, with an increase in the number of judgeships, while the provision establishing the district (or districts) of the third class was stricken. That is what is really happening per HB 6344.

However, under HB 6344 (H-1), page 2, subsection (4)(B) "ALL FULL-TIME EMPLOYEES OF THE **FORMER** FIFTY-FOUR-A, FIFTY-FOUR-B, AND **FIFTY-FIFTH** DISTRICTS MUST BE **TRANSFERRED** TO THE FIFTY-FOURTH DISTRICT **CREATED** UNDER THIS SUBSECTION." That is what the bill says and it does not accurately reflect what is happening. Under all prior mergers of this type post-Headlee, including the most recent merger in Genesee County, **MCL 600.8177**, has provided that the employees of the disappearing districts of the third class ARE TRANSFERRED TO the county-funded district. The employees of the county-funded district are **not transferred** anywhere. **They are not "former" employees**.in any sense. The current county-funded district is **not abolished**. **No new** district is "created". That was conscious and intentional in the past mergers.

I respectfully suggest that the framework used in the past ought to be followed in the case of the merger of Ingham district court districts and therefore that District 55 should be the continuing district. MCL 600.8177 (1), (2), and (3) address what (H-1), subsection (4) (B) and (C) unnecessarily duplicate. Bill could incorporate a reference to Sec. 8177 (1), (2), and (3); it would even shorten the bill. The election part is different, so 8177(4) would not be included in that cross-reference.

(It has been stated that District 54 never existed. Not so. **District 54** was originally Lansing and East Lansing, with election divisions. See EHB 2763, 1968 PA 154.The Legislature divided District 54 into 54A and 54B in the 1970's. Re-using #54 would not cause a legal issue. Legislature previously re-used D-59.)

HB 6344 or (H-1) would create election divisions and move toward an at-large county election but neither version addresses important election issues. Neither version is clear whether the switch to at-large elections require all judges to face election that year or continue to serve until their respective terms expire, then face an at-large election. That may be assumed but should be stated. When at-large elections begin, there is no provision addressing the staggering of terms of judgeships so that terms of approximately 1/3 of the combined bench will expire each election cycle.

The proposed Ingham merger is similar in many respects to the merger of district court districts in Kalamazoo County. Prior to 1999, Kalamazoo was divided into county-funded 8th district and a city-funded district 9th district divided into election divisions of Kalamazoo and Portage. Merger began with 1997 PA 161, with the county-funded 9th District as the survivor, with 3 election divisions – Kazoo city, Portage, and out-county Kazoo. 2005 PA 237 (SB 193) eliminated the election divisions and provided:

Enacting section 2 of **Act 237 of 2005** provides: "Enacting section 2. Upon the effective date of this amendatory act, all incumbent district judges elected or appointed to the first, second, and third election divisions of the eighth district and serving at 11:59 p.m. on January 1, 2007 shall serve as judges of the reconstituted eighth district until the expiration of the terms for which they were elected or appointed."
Enacting section 3 **of Act 237 of 2005** provides: "Enacting section 3. To stagger the terms of 7 district judges in the eighth district court district so that approximately 1/3 of those terms expire every 2 years, the candidate for district judge receiving the highest number of votes in the 2010 general election only shall receive a term of 8 years if both of the following conditions apply:"(a) That candidate is among the persons listed together on the ballot seeking election to 1 or more existing judgeships for which the incumbent judge is seeking election."(b) That candidate is not seeking election to fill the unexpired portion of a term."

Language comparable to enacting section (2) could be added to (H-1), Subsection (5), and a variation of enacting section 3 above could accommodate the staggering of terms *if needed*.(depends on when the terms of 8 judges expire). In this term-limited era, no one may remember to address the latter issue at the end of 8 years of election divisions. While 2005 PA 237 addressed expiring and staggering of terms in boilerplate because they were not continuing provisions, including these provisions in the body of Sec. 8125 is probably advisable so they don't get forgotten as years pass.

Does the phrase "**any other event** that occurred in" (emphasis added) in subsections (7), (8), and (9) apply to ordinance matters and/or traditional civil matters? The intent of that phrase is not clear. Clarity of language would be advised.

There is no precedent for selecting jurors into election divisions. Not only unprecedented but I would submit a dubious precedent to start. I would caution against expediency of the moment. I have heard that some language may be added to address apparent conflicts with juror selection procedures under RJA Chapter 13, that do not seem to encompass election divisions in MCL 600.1307a(1)(a) or MCL 600.1324(3) – but indirectly. It has been customary to amend conflicting statutes directly.
The Committee might want to ask: How many jury trials occur annually in Ingham County for misdemeanors (or in civil matters if jury provision applies to civil) in the 3 current districts?

To avoid any sense that selection of jurors by election division is a jurisdictional issue, I would suggest not using "jurisdiction" in subsections (7) and (8); term is not used in subsection (9). I would suggest that subs (7) and (8) end simply with "THAT CITY AND TOWNSHIP" and "CITY" respectively. Compare subsection (9).

Thank you for the opportunity to comment on HB 6344.