



**House
Legislative
Analysis
Section**

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

THE APPARENT PROBLEM:

Under the federal Retirement Equity Act (REA) and Employee's Retirement Income Security Act (ERISA), all sources of income — including pensions and retirement income — are attachable for the payment of child support, alimony, property settlement, or separate maintenance under a domestic relations order issued by a court. Until 1985, laws governing the operation of Michigan's various public employee retirement systems, however, generally provided that retirement benefits were not subject to execution, garnishment, attachment, bankruptcy or insolvency laws, or "other process of law." The purpose of these prohibitions was to insulate retirement benefits from creditors. However, some Michigan courts broadly interpreted the prohibition to apply to an employee's or retiree's spouse and children, as well. In order to bring the state retirement systems (those for state police, state employees, fire and police officers, municipal employees, probate judges, legislators, public school employees, and judges) into conformity with the private sector, Public Acts 34 to 41 of 1985 were enacted to provide that retirement benefits would be subject to divorce or separate maintenance judgments and child support orders, and to permit the retirement system to withhold payment of benefits from the person to whom they were due. In addition, Public Acts 42 and 43 of 1985 amended the divorce statute, to require that employees' retirement benefits be included as an asset in the marital property settlement and be subject to child support orders; and that divorce judgments specify the rights of a spouse in any pension, annuity, or retirement benefits, vested or unvested.

The above changes have, to some extent, brought laws governing the state retirement systems into conformity with federal laws. However, there are still restrictive provisions in the statutes governing the state systems that many feel should be removed to provide compliance with federal law. Under state law, for example, a former spouse may receive a portion of a divorced's member's retirement allowance, but only when the member actually retires, and only as long as the member remains alive. Should the member decide to delay his or her retirement, the former spouse has no legal recourse, and if the divorce occurs before the member retires and the member then dies before retirement, no benefits may be paid to the former spouse.

THE CONTENT OF THE BILLS:

House Bills 4855 and 5332 would amend the Public School Employees Retirement Act (MCL 38.1346 et al.) and the State Employees Retirement Act (MCL 38.196 et al.), respectively, to make technical amendments and to require pensions to be subject to eligible domestic relations orders

RETIREMENT DIVORCE PROVISIONS

House Bill 4855 (Substitute H-2)

Sponsor: Rep. Nick Ciaramitaro

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House Bill 5332 (Substitute H-2)

Sponsor: Rep. Mary C. Brown

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Committee: Senior Citizens and Retirement

in relation to child support, alimony, or marital property rights of an "alternate payee" (a spouse under a judgment of separate maintenance, or a former spouse, child, or other dependent of a retirement system member). The provisions of the bill would apply to a member or deferred member's retirement allowance or optional benefit, to regular or reduced retirement allowances, and to the pensions and benefits of former deceased members and those who had received disability or duty disability allowances. Payment of a benefit would begin on the member's retirement allowance effective date.

Eligible Domestic Relations Orders. Under the bill, the right of an alternate payee to an actual interest in a share of a benefit that was or would become payable to a member under a qualified domestic relations order could not be considered immune from legal process. The provisions of the bill would apply to domestic relations orders filed with the retirement system before (as well as after) the effective date of the bill if the retirement system were already making payments, or to the extent that the domestic relations order were consistent with the provisions of the bill.

Under the bill, an alternate payee (the member's spouse, under a judgment of separate maintenance, former spouse, child, or other dependent named in an eligible domestic relations order) would be entitled to an actual interest in a share of a benefit that was or would become payable to a member if provided in a domestic relations order that met the following requirements:

- The order contained the name, last known address, and social security number of the member and of the alternate payee.
- The order stated the amount or percentage of the benefit to be paid to the alternate payee — including the proportional share, if any, of future retirement allowance adjustments — or the manner under which the retirement system is to determine the amount or percentage, including the proportional share, if any.
- The order stated that it applied to the Michigan School Employees' Retirement System, or the State Employees Retirement System, and that the system would make payments.
- The order did not require the retirement system to provide a type or form of benefit or a payment option not otherwise provided by the act, and did not require the system to provide an increased benefit.
- The order did not require the payment of a benefit that was required to be paid to another alternate payee under a previously filed eligible domestic relations order.

The retirement system would be required to establish a reasonable procedure to determine if a domestic relations order were eligible, and to notify the member and the

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alternate payee named in the order of its decision. Payment to an alternate payee named in a domestic relations order would begin on the first day of the month following the month in which the domestic relations order were determined to be eligible, or the first day of the month following the month in which a benefit were payable under the order, whichever were later. Should the determination be made that a domestic relations order were not eligible, an amended order could be filed with the retirement system. Nothing in the bill could be constructed as a prohibition against a participant, alternate payee, or court from filing an amended domestic relations order.

Forms of Payment. Under the bill, an eligible domestic relations order could provide for the payment of a benefit to an alternate payee, effective on the retirement allowance effective date of the participant. The bill would require that the payment of the benefit be in one of the following forms:

- Payment of a reduced retirement allowance for the life of the participant, with the payment continued throughout the lifetime of the alternate payee upon the participant's death.
- Payment of a reduced retirement allowance for the life of the participant, and payment of one-half of the reduced allowance continued throughout the lifetime of the alternate payee upon the participant's death. Should the alternate payee predecease the participant, the alternate payee's benefit would be payable to the participant.
- Payment of the alternate payee's share of the benefit converted to a straight life annuity for the life of the alternate payee. If the participant were entitled to an unreduced benefit, then the alternate payee's straight life annuity would be based upon the participant's unreduced retirement allowance; if the participant were only entitled to a reduced retirement allowance, then the alternate payee's straight life annuity would be based upon the participant's reduced retirement allowance.

Under the bill, an alternate payee who elected to receive payments when the member reached the "earliest retirement age," but before separation from service, would only be entitled to the actuarial equivalent of the amount that would have been received if he or she had elected instead to wait until the member reached age 60. If the participant retired before age 60, however, the retirement system would be required to recalculate the actuarially reduced amount, and if the recalculated amount were more than the amount currently being paid, then the recalculated amount would be paid, effective the first day of the month immediately following the month during which the member retired. An eligible domestic relations order could also provide for a former spouse to receive benefits as a surviving spouse. If the amount or percentage of the benefit to be paid to a spouse under a judgment of separate maintenance, or to a former spouse as the surviving spouse, were less than the entire amount he or she would have received as the surviving spouse, then the surviving spouse or other beneficiary would be entitled to receive that portion of the retirement allowance not payable to a spouse or to a former spouse.

The bills are tie-barred to Senate Bill 812, which would amend the divorce statute to permit court orders that had been entered before the bills' effective date to be amended to comply with the above provisions.

FISCAL IMPLICATIONS:

According to the Retirement Bureau, the bills would incur significant costs, although there would be no impact on retirement funds. It is estimated that at least three FTE positions would have to be added to provide clerical staff and a retirement counselor or technician to evaluate domestic relations orders and to respond to requests for calculations. The proposed amendments are labor intensive: under the current system, the bureau does not have the capability to write two or more checks on one person's file; split retirement benefit payments are now processed and prepared manually. Also, when a domestic relations order is received it must be carefully evaluated to determine if it complies with the appropriate retirement act. This often involved interaction between the bureau's counselor and attorneys. In addition, current informational handbooks would have to be updated and mailed. (2-16-90)

ARGUMENTS:

For:

The bills would rectify current laws that probably violate the constitutional guarantee of equal protection, when public employees are treated differently from those in the private sector. The bills would conform to the spirit of the federal laws concerning pensions and retirement income and clearly establish that pensions earned by public employees would be subject to marital property settlements and child support orders, a practice routinely followed when the divorcing parties are employed in the private sector. For most families a pension is the second most valuable asset acquired during marriage — after the family home — and should be recognized as belonging to both a member and his or her spouse, and calculated as available income when calculating child support payments. Under the bills, a former spouse would be guaranteed benefits at a known date, whether the member retired or not, and regardless of whether he or she died before retirement.

Response: In order to provide equality between the state's pension plans and those in the private sector, legislation should be introduced to amend the retirement system acts that affect state police, fire and police officers, municipal employees, probate judges, legislators, and judges.

POSITIONS:

The Bureau of Retirement Systems in the Department of Management and Budget supports the bills. (2-16-90)

The Family Law Section of the State Bar of Michigan supports the bills. (2-16-90)

The State Employees Retirement Association (SERA) supports the bills. (2-16-90)

The Retirement Coordinating Council for Michigan Public School and State Employees has no position on the bills. (2-16-90)

The Michigan Association of Retired School Personnel has no position on the bills. (2-16-90)

The State Bar of Michigan has no position on the bills. (2-16-90)