



**House
Legislative
Analysis
Section**

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RETIREMENT FOR INCAPACITATED JUDGES

House Bill 5446 as introduced
First Analysis (2-14-90)

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Sponsor: Rep. Bart Stupak
Committee: Judiciary

Mich. State Law Library

THE APPARENT PROBLEM:

In order to qualify for a disability retirement, a judge must either have eight years of service credit, or be at least 65 years of age and have six years of service credit. Someone with eight years' service qualifies for a regular retirement annuity of 50 percent of final applicable salary. Someone with six or seven years' service who has reached 65 may receive a prorated annuity calculated using a formula that provides 37.5 percent of final salary for someone with six years' service and 43.75 percent for someone with seven years' service. Judges may choose a survivor benefit plan instead of the straight life annuity that terminates upon the retiree's death.

These provisions leave uncompensated a judge who has served for seven years but has not reached retirement age. A judge who has served seven years and then becomes disabled may merit a disability retirement, and but the law would have to be changed to accommodate such a situation. The Judges' Retirement Act temporarily provided such accommodation from July 1, 1987 to June 30, 1988. Many believe that the act should do so again.

THE CONTENT OF THE BILL:

The bill would amend the Judges' Retirement Act to provide for the disability retirement of a member with seven or more years of service, irrespective of age. The bill would apply for the period from April 1, 1990 to September 30, 1990 only. Upon written application of a retirement system member, the chair of the judicial tenure commission, or the chief justice of the supreme court, a member who had seven or more years of service credit and became physically or mentally totally and permanently incapacitated to perform his or her judicial duties would be retired if a medical examination confirmed the disability. The retiree would receive a pension or survivor's benefit reduced by one-eighth of the amount that would otherwise apply, meaning that the retiree would receive 50 percent of applicable salary, reduced by one-eighth.

MCL 38.816

FISCAL IMPLICATIONS:

The Bureau of Retirement Systems in the Department of Management and Budget says that the bill would have minimal fiscal implications. (2-13-90)

ARGUMENTS:

For:

The bill would provide for the retirement on reasonable benefits of a judge who becomes incapacitated. It would thus remove from the law a disincentive to postpone retirement until after the eight years were served, and simultaneously provide compassionate treatment to judges who might have to retire before that time.

Against:

In further widening the gap between judges' retirement and other state retirement systems, the bill suggests a poor public policy. Unlike the judges' retirement system, other systems make a distinction between duty and non-duty disability, and require a ten-year vestment before allowing retirement on a non-duty disability (that is, a disability not incurred in the line of duty).

Against:

The bill might do better to reduce the minimum term of service further or do away with it altogether. A minimum period of six years would be the same length of time as a lower court judicial term; thus, adopting six years as the vestment requirement would remove a disabled judge's incentive to run for reelection. Even better would be to provide for some sort of retirement annuity upon incapacitation regardless of the time served on the bench, and thereby encourage any judge who becomes too ill to perform his or her duties to retire.

POSITIONS:

The Michigan District Judges Association has not taken a position on the bill, but based on previous positions on similar legislation, does not anticipate any objections. (2-14-90)

The State Court Administrative Office has no objections to the bill. (2-13-90)

The Bureau of Retirement Systems opposes the bill. (2-13-90)

H.B. 5446 (2-14-90)

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