



**House
Legislative
Analysis
Section**

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JUDGES' RETIREMENT

House Bill 4808 as passed by the House
Sponsor: Rep. Richard A. Young

House Bill 4809 as passed by the House
Sponsor: Rep. William R. Bryant, Jr.

House Bill 4811 as passed by the House
Sponsor: Rep. Raymond M. Murphy

House Bill 6297 as enrolled
House Bill 6298 as passed by the House
Sponsor: Rep. Michael J. Griffin

Second Analysis (1-14-91)
Committee: Judiciary
Senate Committee (HB 6297): Government
Operations

THE APPARENT PROBLEM:

Michigan law provides for two judicial retirement systems, the Probate Judges' Retirement System (PJRS), which has been closed to new membership since January 1, 1983, and the Judges' Retirement System (JRS), which provides a retirement system for the justices and judges of the supreme court, the court of appeals, circuit courts, district courts, Detroit Recorder's Court, and various state officials. The JRS also includes probate judges taking the bench after January 1, 1983, and more senior probate judges who opted to transfer their membership from the PJRS under Public Act 508 of 1982. Benefits and financing vary between the two systems, and between the two systems and the one established by the State Employees Retirement Act, which offers some benefits, such as cost-of-living increases and health insurance coverage, that the judges' retirement systems do not. In addition, Michigan judicial retirement plans are said to compare poorly to those in other states. As judges often sacrifice the higher pay of private law practice in order to serve on the bench, many believe that good retirement benefits are especially important in attracting qualified attorneys to the bench and in compensating judges for their years of public service. Legislation has been proposed to improve parity between the various retirement systems, and to make various related changes in funding, justice services, and clerical services.

THE CONTENT OF THE BILLS:

House Bills 4808, 4809, and 4811 would raise court fees, increase member contributions for the judges and probate judges retirement systems, and revise the funding of the retirement systems to pay for several benefit improvements. In addition, House Bill 4808 would create the Due Process Costs Fund, to receive a portion of fee increases, with proceeds to be distributed among the courts to pay the costs of jurors, transcripts, indigent defenses, and judges sitting on temporary assignment. House Bill 4808 also would create the Legal Aid Societies Fund, to receive a portion of fees and be distributed among nonprofit corporations providing civil legal services to indigents.

House Bills 6297 and 6298 would require circuit court recordkeeping services to be provided by employees under the

supervision and control of the clerk of the court, who is constitutionally mandated to be the county clerk.

The bills would take effect January 1, 1991. None could take effect unless all were enacted. (**Note:** Of the five bills, only House Bill 6297 was enrolled; although it became law without the governor's signature, it cannot take effect because its companion bills were not enacted.)

House Bill 4808 would amend the Revised Judicature Act (MCL 600.2528 et al.) to increase court fees and create the Due Process Costs Fund and the Legal Aid Societies Fund. The motion fee that applies in counties with a population of 100,000 or more would be increased from \$10 to \$20, and a \$20 motion fee would be instituted in counties of less than 100,000. Of each motion fee, \$3 would go into the Judges' Retirement System (JRS), and \$7 would go to the state treasurer for the restricted purpose of funding the state-financed trial courts. The \$3 of each motion fee would supplement other fee revenue allocated for the JRS. Under the bill, all of the fee money designated for the JRS would go into the annuity reserve fund, rather than only that amount (in addition to other publicly financed contributions) necessary to meet actuarial requirements. Language allocating any balance to state-financed trial courts would be deleted (this money is known as the "trial court deduct").

Various filing fees would be increased by \$20, with the increase being allocated to the new Due Process Costs Fund. The fund also would receive a portion of district court fees, which would be increased as described below. The state court administrator would distribute the total amount available in the fund each fiscal year among the courts of the state. Each judicial circuit, recorder's court, judicial district, and county probate court would be reimbursed proportionately for costs of jury fees and reimbursements, transcript fees, indigent defenses, and salaries and expenses paid to judges sitting on temporary assignment.

Various district court fees would be increased. Civil filing fees would be increased as follows: In a matter of over \$3,000, the fee would be increased from \$32 to \$47; for matters of \$600 to \$3,000, the fee would be increased from \$22 to \$32; and, for matters of

less than \$600, the fee would increase from \$12 to \$17. At present, \$2 of each fee goes into the Community Dispute Resolution Fund, 45 percent goes to the annuity reserve fund of the JRS and the balance goes to the district control unit. Under the bill, the annuity reserve fund would receive 30 percent, the district control unit 36 percent, and the Due Process Costs Fund the balance. (The contribution to the Dispute Resolution Fund would be unaffected.) Fees assessed as costs for civil infraction determinations also would be increased; those fees would rise from \$5 to \$7 each. At present, the legislative retirement system receives six percent of these fees, the JRS nine percent, and the general fund the balance. Under the bill, the contributions to legislative retirement and judges' retirement would be reduced to four percent and seven percent, respectively, with 29 percent being allocated to the Legal Aid Societies Fund; the general fund would continue to receive the balance.

Money in the Legal Aid Societies Fund would be distributed to nonprofit corporations providing free civil legal services to indigents. Eligibility and procedures would be prescribed by the bill; to receive funding, a legal aid society would have to receive or have received funding under the federal legal services corporation act (in Wayne County, the Legal Aid and Defenders Association would be included among eligible legal aid societies). Ten percent of the fund would go to societies providing services on a statewide basis, including support and training for local legal aid societies and general services on a statewide basis for populations with special legal needs. The remaining 90 percent would be apportioned among counties served by legal aid societies; apportionment would be based on the proportion of indigents in the population. The fund and distributions from it would be administered by the state treasurer.

House Bill 4809 would amend the Probate Judges Retirement Act (MCL 38.916 et al.) in the following ways:

- Effective October 1, 1991, members who retired between January 1, 1967 and December 31, 1985 would receive annuity supplements of 5 to 23 percent, with the largest supplement to those who retired earliest. Members who retired before 1967 would receive a supplement of 24 percent. The supplement would be paid by January 1, 1992. The annuity with supplement would be the basis on which future adjustments would be calculated.
- Annuities payable to retirees and their beneficiaries would be increased by three percent per year beginning with October 1, 1991 or the first October 1 that was at least three years after the effective date of retirement. The increase would be calculated by taking three percent of the amount of annuity payable as of the date of the increase without application of this provision. The annual increase could not exceed \$300. The limit on an annuity as a percentage of final salary would not apply to the annuity as increased by this provision.
- Beginning October 1, 1991, the retirement system would pay 75 percent of the premiums for health care coverage the same as that provided under the State Employees' Retirement Act. The coverage would apply to retirees, spouses, dependents, and beneficiaries. A member who chose this coverage would have to cancel any other coverage provided by another publicly supported retirement system. Someone who retired before January 1, 1991 would have until July 1, 1991 to enroll in coverage under the bill.
- Each member would be required to contribute an additional one percent of his or her salary beginning January 1, 1991; the contribution rate would be increased from seven to eight

percent. The limit on a judge's annual contribution would be increased from \$980 to \$2,500.

- Various probate court filing fees would be increased to \$30 from the present \$15. At present, all fees go into the probate judges retirement system. Under the bill, they would be divided proportionately between the probate and regular judges' retirement systems.
- The bill would offer members of recently terminated county retirement systems the opportunity to buy into the 3.5 percent benefit formula, rather than retiring under the 3.0 percent benefit formula that otherwise applies to someone who was a member of both a county retirement system and the probate judges retirement system.

House Bill 4811 would amend the Judges' Retirement Act (MCL 38.811 et al.) in the following ways:

- At present, "longevity" provisions call for benefits equal to three percent per year for each year up to year twelve, when the annuity jumps to 50 percent of final salary. A retiree can receive 2-1/2 percent of final salary for each year of service up to four additional years, thus bringing the straight life annuity to 60 percent of final salary. Beginning January 1, 1991, a current member's straight life annuity would in addition be increased by one percent of the member's final salary multiplied by the years of service, up to six additional years, thus bringing the maximum figure to 66 percent for 22 years of service. New straight life annuity calculations would apply to judges who joined the retirement system after noon on January 1, 1991. These members would be paid a retirement annuity equal to three percent of the member's final salary multiplied by the number of years of service. No more than 22 years of service could be counted.
- The act contains various provisions allowing judges to convert a portion of their state salary standardization payment (a payment by the state to the local government employer to supplement judges' salaries) to their state base salaries to be counted as compensation under the JRS. Beginning January 1, 1993, a judge would have to convert the balance or all of the state salary standardization payment unless he or she opted out by notifying the retirement board by July 1, 1993, or within 30 days after taking office, whichever was later. Absent such a notice, the final average compensation figure used to calculate the judge's local pension would be reduced by the amount of the standardization payment. A member who chose to convert the standardization payment would have to pay the actuarial costs of the additional benefits to be provided. This portion of the bill would apply only if corresponding amendments were made to the Municipal Employees Retirement Act, Public Act 156 of 1951, and Public Act 443 of 1980.
- Effective October 1, 1991, members who retired between January 1, 1972 and January 1, 1986 would receive annuity supplements of five to 18 percent; members who retired before 1972 would receive a supplement of 19 percent. The supplement would be paid by January 1, 1992. The annuity with supplement would be the basis on which future adjustments would be calculated. The supplement would not apply to those who were members of the retirement system before September 8, 1961.
- Annuities payable to retirees and their beneficiaries would be increased by three percent per year, beginning October 1, 1991 or the first October 1 that was three years after the effective date of retirement, whichever was later. The amount of increase would be three percent of the annuity that would be payable as of the date of the increase without the application of this provision. The annual increase would be limited to \$300. This annual increase would not be available to retirees who were

members before September 8, 1961. The limit on annuity as a percentage of final salary would not apply to the annuity as increased by this provision.

- As of January 1, 1991, the bill would increase the rate of contribution for all members to 8 percent of the salary paid the state. Current contribution rates vary from 3.5 to seven percent depending on circumstances. For 36th district judges who do not participate in the retirement system established by the City of Detroit, the district control unit — which is the City of Detroit — would have to annually contribute the member's salary multiplied by the difference between eight percent and the annual percentage level the board requires to fund the system.
- Beginning January 1, 1991, the retirement system would pay 75 percent of the insurance premium for health care coverage that was the same as the coverage provided under the State Employees Retirement Act. Supreme court justices, judges of the court of appeals, and certain state officials would continue to have their premiums fully paid. If coverage under the bill was chosen, any coverage provided by a another publicly-supported retirement system would have to be canceled. A member who retired before January 1, 1991 would have until July 1, 1991 to elect to have coverage under the bill.
- The act contains a two-part benefit formula for 36th District Court judges who formerly were judges in the Detroit Common Pleas Court. The bill would condition this annuity on withdrawal from a county retirement plan on or after September 12, 1986. However, the bill also would allow 36th district judges to have their annuities computed in the same manner as other judges' annuities, but reduced by the amount of straight life annuity attributable to the same judicial service and paid by another publicly supported retirement plan. This latter annuity option would not be available to former common pleas court judges who withdrew from the county retirement plan on or after September 12, 1986.

House Bill 6297 would amend the Revised Judicature Act (MCL 600.571 and 600.592). It would specify that in each judicial circuit other than Wayne county, recordkeeping services would be provided by employees under the supervision and control of the clerk of the court, who under the constitution is the county clerk. The clerk and the chief or only judge of the circuit would have to develop standards for the delivery of recordkeeping services. If they failed to do so within 90 days after the bill took effect, the state court administrator would participate in the development. The state court administrator also would participate when it took more than 90 days for the clerk and the judge to reach an agreement on a modification of standards. The bill would not affect existing or future collective bargaining agreements between the county and the employees providing recordkeeping services. Except for the provision regarding modifications, similar provisions already are in effect for the Wayne County Circuit Court; the bill would include the provision regarding modification of standards in the separate provisions that exist for Wayne County Circuit Court.

House Bill 6298 would amend Public Act 369 of 1919 (MCL 725.33) to specify an executive court administrator for the Wayne County Circuit Court and the recorder's court would jointly be designated as prescribed in Section 567 of the Revised Judicature Act (House Bill 6297 originally proposed to amend that section).

FISCAL IMPLICATIONS:

Fiscal estimates were derived from information provided by the House Democratic Research Staff and the Bureau of Retirement Systems. According to that information, additional annual costs

for the PJRS under House Bill 4809 would be about \$205,510, less about \$36,830 to be generated by the proposed contribution rate increase, for a remaining cost to the system of about \$168,680. For the JRS under House Bill 4811, cost increases would be about \$2.1 million, less about \$649,605 in contribution rate increases for a remaining cost of \$1.4 million. The combined JRS and PJRS costs of \$1.6 million would be offset by an estimated \$657,000 in increased probate filing fees under House Bill 4809, \$472,800 in newly-earmarked motion fee revenue under House Bill 4808, plus money saved by elimination of the trial court deduct under House Bill 4808. (The trial court deduct is the amount of circuit court filing fee revenue that is allocated for state-financed trial courts after the needs of the JRS annuity reserve fund have been met; that figure has been declining in recent years. In fiscal years 1989-90 and 1988-89, the amount was \$1.094 million; in 1987-88, \$1.43 million; in 1986-87, \$1.35 million; in 1985-86, \$1.52 million; and in 1984-85, \$1.83 million.) Fee increases under House Bill 4808 are expected to generate about \$5.6 million annually for the Due Process Fund, about \$1.9 million for the Legal Aid Societies Fund, and about \$1 million for state-financed trial courts (this last amount is what would replace revenue reallocated by elimination of the trial court deduct). (1-14-91)

ARGUMENTS:

For:

It is considered axiomatic that judges can generally be making more money elsewhere, so that it becomes especially important to assure them of financial security through a good retirement system, and to offer benefits that will help to attract qualified candidates to office. What may surprise some, however, is that some judges (or their surviving spouses) are receiving pensions as low as two or three thousand dollars a year. Provisions for the supplemental benefit increases will be a boon to these people. In addition, the bills will improve consistency between various judicial benefits, between the judicial retirement systems and the state employees' system, and between Michigan and other states. These improved benefits should help to continue to attract qualified people to the bench, yet not increase costs for the state. It is expected that increases in member contributions, together with revenue from increased court fees and elimination of the trial court deduct, will pay for the proposed benefit improvements. Fee increases also will help to fund certain costs, such as jury costs, associated with due process of law; the Due Process Costs Fund could serve as one step toward the long-awaited state financing of the courts and a fuller realization of the constitutional mandate for one court of justice. These increases should also improve the administration of justice by providing funding for Legal Aid Societies that provide civil legal services to indigents.

Against:

Criticism of the bills is likely from several points of view. The judicial retirement systems are widely perceived to be extremely generous, so to improve their benefits now may be to invite objections, especially as it appears that the public would bear a large share of the increased cost of benefit improvements. While a portion of the costs would be assumed by the judges through increased contributions to the retirement system, a much larger amount would be paid by the public in the form of court fee increases allocated to the retirement systems; that money would be allocated both directly through earmarking fee revenue for the retirement systems and indirectly through fee increases that would provide state-financed trial courts with revenue to replace that to be retained by the JRS. In this last aspect, the elimination of the trial court deduct, the package may

be on shaky ground; the amount that the JRS has been turning over to state-financed trial courts has been declining in recent years, and it would not be prudent to rely on this money for long-term funding of the benefit improvements.

In contrast, some may find that the bills fall short of needed reform and argue that judges deserve better. In one respect, the bills could even be a step backward: the current ability to get a 50 percent annuity at 12 years of service is an accommodation of the uncertainties of elective office and the relatively late age at which many judges gain the bench; however, House Bill 4811 would replace current longevity provisions with a three percent per year longevity, thus providing only a 36 percent annuity upon 12 years of service. In addition, increasing member contributions to the degree proposed by the bills may be unnecessarily burdensome for sitting judges, and delaying until 1993 the ability of judges to fully convert their standardization payment means that many judges now near retirement will be adversely affected. For these and other reasons, many judges and their supporters may seek further modifications in the proposals. Finally, some may object to some of the provisions that are more tangential to judges' retirement. Increasing state-imposed court fees to distribute the proceeds to private advocacy organizations, for example, may strike some as inappropriate.

For:

According to the Constitution, county clerks are the keepers of circuit court records, but it occasionally happens that conflicts arise between judges and clerks over the management and maintenance of court records and documents. House Bills 6297 and 6298 would reiterate the constitutional role of the county clerk and require the court and the clerk in each county to develop a mutually agreeable plan for the delivery of recordkeeping services. If they could not do so, the state court administrator would step in. The bills thus help to solve any lingering or future problems with the management of circuit court records.

Response: The bills could be seen by some to interfere with the autonomy of the courts. Many judges believe that they should be able to retain oversight and control of circuit court records and recordkeeping functions.

POSITIONS:

The Legal Services Association of Michigan supports the bills. (1-11-91)

The Michigan District Judges Association supports House Bills 4808, 4809, and 4811, but has reservations about the elimination of the ability to receive a 50 percent annuity upon 12 years of service, and the failure to provide an opportunity for judges who had made certain benefit elections in the past to participate at the full level. (1-10-91)

The Michigan Judges Association supports House Bills 4808, 4809, and 4811, but has some concerns about using court fees for non-court purposes. (1-10-91)

The Michigan Probate Judges Association supports the concept of the bills, but has some reservations regarding the size of the increase in contributions for the sitting judges in the Probate Judges Retirement System. (1-11-91)

The Michigan Retired Judges Association supports the concept of House Bills 4808, 4809, and 4811. (1-10-91)

The Michigan Association of Circuit Court Administrators supports House Bill 4808 and opposes in principle House Bills 6297 and 6298. (1-11-91)