



**House  
Legislative  
Analysis  
Section**

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**CO. RETIREES: PROVIDE OPTIONS**

House Bill 5533 as enrolled  
Sponsor: Rep. Joe Young, Sr.  
Second Analysis (7-30-90)

**RECEIVED**

**OCT 08 1990**

House Bill 5575 as enrolled  
Sponsor: Rep. Kay Hart  
Third Analysis (7-30-90)

Mich. State Law Librarian

House Committee: Senior Citizens and Retirement  
Senate Committee: Judiciary

**THE APPARENT PROBLEM:**

Under most public retirement plans in Michigan, a member may elect to receive either a) a regular retirement allowance, ending upon the member's death, or b) a reduced retirement allowance, payable throughout the lives of the retiree and his or her retirement allowance beneficiary. Several years ago, it was revealed that in some unfortunate situations spouses of members who had elected to receive a regular retirement allowance were unaware — until the member died — of the full implications of this choice: that they were no longer entitled to any retirement benefits. In response, both the State Employees and Public School Employees Retirement Systems took precautions to assure that a member's spouse was aware of the selection by requiring the signature of both spouses when a member elected to receive a regular allowance. Not all county retirement systems, however, have these provisions. It has recently come to light that in Wayne County the widow of a member who retired in 1981 discovered upon his death in 1989 that he had elected to receive a regular retirement allowance, and that she would receive no further benefits. (Wayne County now requires spousal consent when a member elects to receive a regular retirement allowance.) It has been proposed that the law governing county pensions be amended to provide a "window" that would permit the Wayne County Employees Retirement System to pay a retirement allowance to this widow.

It is also felt that the law governing county pensions contains an inequity toward those members who purchase service credit for military leave, since it requires that they have at least ten years of credited service. This provision has remained in some statutes, because, presumably, ten years of service was once the standard requirement for vesting eligibility in most retirement systems, although members may purchase service credit for employment in other types of government service after only eight years of county employment. In addition, the act has further restrictions: members may only purchase service credit for military duty performed before June 1, 1980 or, if after June, 1980, during a time of war or emergency conditions. It is felt that the act should be amended to permit county boards of commissioners the option of deleting the ten year service requirement for those who wish to purchase service credit for military duty, and to remove the restrictions.

**THE CONTENT OF THE BILLS:**

The bills would amend Public Act 156 of 1851 to provide the following:

Retirement Allowance to Surviving Spouse. A county that provided an optional form of retirement allowance

payment would be permitted to pay a retirement allowance to the surviving spouse of a deceased member of a county retirement plan. Under the bills, the surviving spouse (defined in the bills as the person to whom the deceased retiree was married on the effective date of his or her retirement and on the date of his or her death) could receive an allowance if the member:

- Retired after May 1, 1981, but before November 12, 1985.
- Elected to receive his or her retirement allowance in life payments to the retiree.
- Died after November 1, 1989 but before December 31, 1989.

The provision would require the adoption of a resolution by the county board of commissioners. The board of commissioners would be required to compute the retirement allowance in the same manner as if, on the day before the retiree's death, the deceased retiree had elected to receive a reduced retirement allowance in life payments to the retiree with full continuation to the retirement allowance beneficiary, and had nominated the surviving spouse as the retirement allowance beneficiary.

Military Service Credit. At present, under the act, a county employee may purchase service credit for up to five years of active military service served before June 1, 1980, or during a time of war or emergency after June 1, 1980. The purchase must be approved by the county board of commissioners, and the employee must have ten years of credited service. The bills would amend the act to delete this ten year requirement. The bill would also permit a member who entered any armed service of the United States to purchase service credit for periods of continuous active duty lasting 30 days or more, provided that the following conditions were met:

- The purchase received the approval of the county board of commissioners by an affirmative vote of a majority of its members, and the board of commissioners established a written policy to provide uniform application of the provision.
- The member had at least the number of years of credited service needed to vest under the plan, not including any military service purchased.
- The member paid the retirement system five percent of his or her annual compensation, multiplied by the period of service credit being purchased.

Under the bills, fractional months of armed service and military service that had previously been used to purchase service credit could not be used to calculate the amount of service credit to be purchased. In addition, armed service

H.B. 5533 & 5575 (7-30-90)

credit purchased by a member could not exceed either five years, or the difference between five years and previous armed service credit received by the member. Service credit would not be granted for periods of armed service that were, or could be, used to obtain or increase a benefit from another retirement system.

MCL 46.12a

### **FISCAL IMPLICATIONS:**

According to the Retirement Bureau, the bills would not affect state expenditures. (7-30-90)

### **ARGUMENTS:**

#### **For:**

The bills would rectify the unfortunate situation that sometimes occurs when a surviving spouse, either through deception or through ignorance of the law, is denied the pension benefits that he or she had assumed continue. Most courts acknowledge that the retirement allowance of one partner should be considered joint marital property. Most retirement systems have recognized that a retiree should not be able to choose a retirement allowance option that excludes his or her spouse, without the consent of the spouse. Most have amended the rules governing their systems to require that decisions regarding pensions be shared with a spouse. It is only fair that Wayne County should be given the opportunity to correct this oversight in its retirement rules.

#### **For:**

The bills would permit the Wayne County Employees Retirement System to pay a retirement allowance to the spouse of a member who retired between May 1, 1981, and November 12, 1985, and who died between November, 1989, and December 31, 1989. The bills would therefore serve only as a response to a particular case, and would not establish a precedent for similar situations.

**Response:** Even though the provisions of the bills are optional, and would apply only to the spouses of members who not only retired during a specific time period, but who also died during a certain time period, the bills could still set a precedent that could prove to be costly to county retirement systems. Some 30 counties have independent retirement systems, and could conceivably be pressured by members to adopt similar provisions.

#### **Against:**

The statutes that govern the various retirement systems specifically provide that the election of a payment option may not be changed on or after the effective date of a retirement allowance, since members who receive a regular retirement allowance receive a substantially higher monthly benefit than they would receive under a reduced retirement allowance. The bills would therefore grant an unfair benefit to one person out of many who might have claimed equal consideration. In addition, many members who elect to receive a regular retirement allowance do so because, as is the case in this situation, they are entitled to health and retirement benefits from another pension or retirement system — benefits that their spouses will continue to receive after their death.

#### **For:**

The concept of granting service credit for purposes of increasing a member's retirement allowance has precedent in Michigan's public retirement systems. Members may

purchase service credit for time spent on parental leave, for employment with the federal government, for sabbatical leave, or for time that an employee is absent from work due to work related injuries, for example. In order to purchase service credit, a member must fulfill a few, but not many, requirements. The service credit purchased usually may not be used to satisfy the minimum years of service required to receive a retirement allowance, and service, under most systems, may not be credited if it would be credited under another retirement system. Under most retirement systems, a member may purchase service credits to increase his or her retirement allowance as long as the member is vested. It is only fair that those who leave employment with a county in order to serve their country in the military have the same rights as other employees, and that the act be amended to delete the ten year service requirement.