House
Legislative
Analysis
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VISITING JUDGES: PAY, BENEFITS

House Bills 4551 and 4552 with committee amendments
First Analysis (5-6-87)

Sponsor: Rep. Perry Bullard
Committee: Judiciary

THE APPARENT PROBLEM:

The state constitution allows the supreme court to authorize persons who were elected and formally served as judges to perform judicial duties for limited periods or specific assignments. The statutory framework for assigning a retired judge to a period of active judicial service is provided by the Revised Judicature Act. Several problems have surfaced with that act.

In 1964, amendments to the Revised Judicature Act and the Judges' Retirement Act required a retired judge to waive 1/250th of his or her annual retirement benefits for each day served on judicial assignment. In 1972, the attorney general ruled that judges who were members of the judges' retirement system prior to 1964 did not have to waive retirement benefits. In response to the ruling, the state stopped requiring visiting retired judges to waive retirement benefits, irrespective of when they became members of the retirement system. This error was noted in a recent audit and the attorney general's office confirmed that judges who joined the system after 1964 must waive retirement benefits while serving on judicial assignment. The Department of Management and Budget has notified the State Court Administrative Office that it will begin requiring waivers on July 1.

Judges argue that if retired judges must give up retirement pay while on assignment, it will be too difficult to find retired judges willing to serve and help to ease badly clogged dockets. Amendments to the Revised Judicature Act are necessary to forestall implementation of the waiver requirement, and to remedy various inconsistencies within the law and between the law and current practice.

THE CONTENT OF THE BILLS:

House Bill 4551

The bill would amend the Revised Judicature Act to delete provisions requiring a retired judge on temporary judicial assignment to waive retirement benefits. The act says that assigned retired judges are to receive either a daily rate of 1/250 of the annual salary for the office to which he or she is assigned, or, if assigned to a probate bench, $100 per day for each day or part of a day spent discharging duties. Under the bill, any assigned judge would receive whichever was the larger of (a) $100 per day, or (b) the difference between the portion of the annual salary paid for the judicial office during the time the retired judge served on assignment and the retirement benefit paid to the retired judge during that time.

The bill would eliminate language that appears to limit assignment of retired judges to situations where a vacancy existed. (The supreme court has for some time been assigning judges regardless of whether a vacancy existed.)The act says that a retired judge from a court of record may be assigned to any court of record; the bill would allow any retired judge to be assigned to any court.

MCL 600.225 et al.

House Bill 4552

The bill would amend the Judges' Retirement Act to delete a requirement that a judge's annuity be suspended while he or she is on assignment to judicial duties.

MCL 38.818

Neither bill could take effect unless both were enacted.

FISCAL IMPLICATIONS:

The House Fiscal Agency says that the bills would have minimal, if any, fiscal impact for state or local units of government. (5-5-87)

ARGUMENTS:

For:

By removing financial disincentives, the bills would help overburdened courts to attract retired judges willing to serve on temporary assignment. A retired judge would not have to give up retirement pay while serving, and pay for probate bench assignments would no longer be limited to levels significantly lower than those allowed for other courts. This latter change would especially help the Wayne County Probate Court at a critical time when its normal complement of eight judges has been reduced to five through retirement, death, and disability.

Against:

Retirement pay represents compensation for past service. It is unfair to expect a retired judge assuming active duties to accept a salary that is reduced by the amount of retirement pay being received.

Response: If a retired judge on assignment could receive full salary plus retirement benefits, he or she could in principle make more money by retiring than by remaining in office. There is no need for the pay for temporary judicial duties by retired judges to be more than the regular salary received by active judges.

Against:

The bill should provide some guidelines for assignment of retired judges. A former district judge may be the best qualified for district court assignments and a former circuit judge for circuit assignments.

Response: The constitution says that the judicial power of the state is vested in one court of justice. One of the ways that principle is put into practice is in doing away with the idea of a hierarchy of judges. Someone with judicial experience and temperament should be qualified to perform judicial duties in any court, whether district, circuit, or Court of Appeals. Judicial assignments are within the purview of the State Court Administrative Office, which has been using all the retired judges of courts of record as a pool for those courts for some time.

OVER

Against:

The bills could worsen court funding problems by forcing additional judicial expenses on local units of government. The state is supposed to fund a portion of judicial assignments, but has not been doing so.

Response: Supreme court policy is that if a local unit of government wants an additional judge to be assigned to it, that unit must pay the expenses. That is not an unfair policy. Moreover, the bills would not bar the practice occurring in some jurisdictions of local governments negotiating pay scales with retired judges.

For:

By allowing any retired judge to be assigned to any court, House Bill 4551 would allow the pool available for judicial assignment to be enlarged by those judges who are retired municipal judges. Since the only municipal judgeships exist in a half-dozen communities in the Detroit area, the additional judges available would tend to be in the very area where the need for help with crowded dockets is the greatest. The supreme court's authority to develop an assignment policy would not be infringed upon, however, because the bill would not require municipal judges to be added to the pool.

POSITIONS:

The Michigan Judges Association supports the bills. (5-5-87)

A representative of the Michigan District Judges Association testified in support of the bills. (5-5-87)

The Probate Judges Association supported the bills as introduced, but does not have a formal position on the committee amendment to House Bill 4551 at this time. (5-6-87)