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BILL ANALYSIS

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House Bill 4551 (Substitute S-3 as reported)

Sponsor: Representative Perry Bullard

House Committee: Judiciary

Senate Committee: Judiciary

Date Completed: 10-20-87

Mich. State Law Library

RATIONALE

The State Constitution allows the Michigan 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 active judicial service is provided by the Revised Judicature Act which, since 1964, has required retired judges to waive their retirement benefits for each day they serve 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, the State stopped requiring assigned retired judges to waive retirement benefits, irrespective of when they became members of the retirement system. This practice 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. Although the Department of Management and Budget had notified the State Court Administrative Office that it would begin requiring waivers last July, the Department has suspended the waiver of benefits pending the outcome of legislation to eliminate the waiver requirement.

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.

CONTENT

The bill would amend the Revised Judicature Act (RJA) to:

- Delete the requirement that retired judges waive their retirement benefits while on temporary judicial assignment.
- Revise the salary that is paid to retired judges on assignment.
- Eliminate language that limits assignment of retired judges to situations in which a judicial vacancy exists.

The RJA provides that an assigned retired judge is to receive either a daily rate of 1/250 of the annual salary for the office to which the judge is assigned, or, if assigned to a probate bench, \$100 per day for each day or part of a day spent discharging judicial duties. Under the bill, any assigned retired judge would receive the greater of a) \$100 per day, or part of day spent in the discharge of judicial duties, or b) the difference between 1/200 of the annual salary paid for the judicial office during the retired judge's service, and 1/200 of the retirement allowance paid to the judge during the time he or she serves in the office; the total could not exceed 1/250 of the salary paid for the office.

The bill is tie-barred to Senate Bill 382, which would amend the Judges' Retirement Act to delete the requirement that a retired judge's annuity be suspended while the judge is on assignment.

MCL 600.226 and 600.829

SENATE COMMITTEE ACTION

The Senate Judiciary Committee adopted a substitute that altered the salary paid to retired judges on assignment. Under the House-passed version, a judge would receive the larger of a) \$100 per day, or 2) the difference between the portion of the annual salary paid for the judicial office for the time the retired judge served, and the retirement benefit paid to the retired judge. Under the Senate substitute, a judge would receive the larger of a) \$100 per day, or b) the difference between 1/200 of the annual salary for the judicial office, and 1/200 of the retirement allowance paid to the judge during the assignment, not to exceed 1/250 of the salary paid for the office.

FISCAL IMPACT

The bill would prevent the State from decreasing the payment of benefits from State retirement systems by forcing retired judges to waive their benefit rights. However, because the bill would validate what has been standard practice, there would be no increase in expenditures as a result of this bill. The bill would lower costs for local governments by an indeterminate amount. The amount of the decrease would depend on how many assigned retired judges would receive reduced compensation because of the bill and the amount of the reduction for each of those judges.

ARGUMENTS**Supporting Argument**

By removing financial disincentives, the bill 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. The bill also would ensure that, for each day served on assignment, a retired judge was paid the same amount that would be paid to a permanent judge for that office, if that salary exceeded \$100 per day. At the same time, the bill would cap the daily rate at 1/250 of the annual salary for the judicial office, so that the assigned judge would not be receiving more than a permanent judge would be paid (unless \$100 per day would exceed that daily rate).

Opposing Argument

Retirement pay represents compensation for past service. It is unfair to expect a retired judge assuming active duties

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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 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.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.