

Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

SFA**BILL ANALYSIS**

Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

House Bill 5112 (Substitute S-2 as passed by the Senate)

Sponsor: Representative Alexander Lipsey

House Committee: Appropriations

Senate Committee: Appropriations

Date Completed: 3-19-02

CONTENT

House Bill 5112 (S-2), as passed by the Senate on March 13, 2002, would provide for an early retirement plan for Michigan judges under Plans 2-7 of the Judges Retirement System (JRS); Plan 1 members (Governor, Lt. Governor, Secretary of State, Attorney General, and Legislative Auditor General) would be excluded from taking an early retirement. In general, judges meeting certain criteria would be allowed to take an early retirement with an enhanced pension. The enhancement would allow retirees under this proposal to receive up to a maximum of 80% of their final average compensation compared with the current maximum of 60% of final average compensation. The maximum enhancement could range from \$22,168 for a District Court judge, up to \$32,922 for a Supreme Court justice. The amount of the enhanced benefit would be lower for retirees with between 16 and 24 years of credited service. The bill also would provide for a cost-of-living adjustment (known as a supplemented retirement allowance) for most currently retired judges. Members taking either an early retirement or a supplemented retirement allowance would be required to sign and submit a waiver agreement to any claims in the case known as *Ernst v Roberts*. In addition, the bill would make changes in the way money in the Court Fee Fund is distributed in the JRS, as well as enact technical changes that would allow the retirement system to maintain its tax-exempt status.

(Note: Plan 2 members are Supreme Court justices and Court of Appeals judges; Plan 3 members are Circuit, Recorder's, District (except 36th District), and Probate Court judges (except those in Plan 4, 6, or 7); Plan 4 members are partially paid Probate Court

judges; Plan 5 members are 36th District Court judges; Plan 6 members are Probate judges who were members of the former Probate Judges Retirement System (PJRS) under the 3% formula; and Plan 7 members are Probate judges who were members of the former PJRS who are not members of a county retirement plan.)

The bill is tie-barred to House Bill 5108, which would create the Public Employee Retirement Benefit Protection Act.

Following is a more detailed analysis of the major components of House Bill 5112 (S-2).

Early-Out Retirement

House Bill 5112 (S-2) would provide for an early retirement plan for an estimated 189 current members of the Judges Retirement System. Members of the JRS who met the eligibility requirements and currently serve as a justice of the Supreme Court, a judge of the Court of Appeals, or a judge of a Circuit, District, or Probate Court, could take an early retirement. The only JRS members excluded from the proposed early-out plan are Plan 1 members (Governor, Lt. Governor, Secretary of State, Attorney General, and Legislative Auditor General). In addition, both Tier 1 (defined benefit plan) and former Tier 1 JRS members who elected to become qualified participants in Tier 2 (defined contribution plan) who met the eligibility requirements could retire early under this proposal. All of the following requirements would have to be met by March 31, 2002, in order for a member to be eligible for this early retirement plan:

- The member would have to be at least 50 years of age with at least 16 years of credited service.

- The last six years of the member's credited service would have to be continuous service.
- Qualifying service could include service credit purchased by December 31, 2001, except Reciprocal service under Act 88 would be excluded as qualifying service.
- The member would have to execute and submit to the retirement system a waiver agreement to any claims in *Ernst v Roberts*.

Members meeting these requirements could retire by filing a written application with the JRS between March 25, 2001, and April 15, 2002. The member would have to state a retirement date that was between May 1, 2002, and September 1, 2002. A member would have until April 15, 2002, to withdraw his or her application. After April 15, the application would be irrevocable.

Benefit Calculations for *Defined Benefit* (Tier 1) Members. The retirement benefit calculations for a Tier 1 early-out retirant under this proposal would be a straight life retirement allowance as follows:

1. For Plan 2, 3, or 4 members, the retirement allowance would be 50% of the member's final average compensation (FAC) plus 2.5% of the member's FAC for each year of credited service in excess of 12 years, up to a maximum of 80% of FAC. The current limit is 60% of FAC.
2. For Plan 5 members, the retirement allowance would be equal to the amount calculated in item #1 above, minus the local judicial service credited before September 1, 1981. Again, the maximum benefit would be 80% of the member's FAC compared with the current limit of 60% of FAC.
3. For a Plan 6 member, the retirement allowance would be 3% of the member's FAC multiplied by the number of years of credited service, up to a maximum of 53-1/3% of the member's FAC for a State-paid retirement allowance. Also, a retirant would not be allowed to receive a retirement allowance that exceeded 80% of FAC in combined State and local retirement allowance. The current limit is 40% of the member's FAC for State only benefits and 66-2/3% of FAC for combined State and local benefits.
4. For a Plan 7 member, the retirement allowance would be calculated as the sum of the following:

- (a) 3.5% of the member's FAC multiplied by the years of credited service before January 1, 1983, for which the member made an additional 5% payment to the retirement system.
- (b) 3% of the member's FAC multiplied by the years of credited service before January 1, 1983, for which the member *did not* make the additional 5% payment to the retirement system.
- (c) 3.5% of the member's FAC multiplied by the years of credited service for service after December 31, 1982.

The retirement allowance limit for retirants under item (b) above would be 53-1/3% of the member's FAC compared with the current limit of 40% of FAC. The retirement allowance limit under this proposal for the sum of items (a), (b), and (c) would be 80% of FAC compared with the current limit of 66-2/3% of FAC.

Benefit Calculations for *Defined Contribution* (Tier 2) Members. A member who was a former member of Tier 1 and became a qualified participant of Tier 2 would receive a straight life retirement allowance benefit equal to the difference between:

- The early-out retirement allowance calculated above for Tier 1 members as of his or her effective date of retirement that the member would have been entitled to receive had he or she not switched from the Tier 1 plan to the Tier 2 plan (i.e., an 80% of FAC limit); and
- The retirement allowance calculated under a normal retirement under Section 503 as of his or her effective retirement date that the member would have been entitled to had he or she not switched from the Tier 1 plan to the Tier 2 plan (i.e., a 60% of FAC limit). Also, the retirement allowance would be calculated as if the member were immediately eligible for a retirement allowance and would not be reduced as required under Section 501 for a normal early retirement.

Supplemented Retirement Allowance

Members of the JRS who retired between January 1, 1980, and December 31, 1998, would receive a one-time increase to their base pension known as a supplemented retirement allowance. The amount of the supplement would range from 0.5% of the

pension to 8.0%, with those being retired the longest receiving the largest percentage increase. The increase in pension would be available to these retirees or their beneficiaries.

(Under current law, JRS retirees do not receive a cost-of-living annual adjustment. The only way to adjust a retired judge's pension is to do so legislatively. The last time the JRS pensions were adjusted was 1996 and that legislation affected only judges who retired between 1961 and 1979. Thus, judges who retired after 1979 have never received an adjustment to their pensions.)

Finally, in order to receive an adjustment under the provisions of the bill, a retired judge also would have to execute and submit to the retirement system a waiver agreement to any claims in *Ernst v Roberts*.

(*Ernst v Roberts* is a class action case brought on behalf of current and former trial court judges. Some of the plaintiffs and defendants in this case (or their predecessors) were parties in a previous action entitled *Michigan Judges Association (MJA) v Roberts*. Plaintiffs in *Ernst v Roberts* are pursuing, among other issues, claims expressly preserved in the Settlement Agreement regarding *MJA v Roberts*. Claims alleged include violations of the plaintiffs' equal protection rights under the United States and Michigan Constitutions due to the fact that 36th District Court judges receive a retirement allowance under the Tier 1 Plan that exceeds plaintiffs', and 36th District Court judges contribute a smaller percentage of their compensation for that retirement allowance. Plaintiffs also allege equal protection violations due to the fact that other State pension plans have annual percentage increases (COLA) and the Judges Retirement System does not, and "unjust disparities" in the actuarial present value calculations (APV) for judges who transferred from defined benefit to defined contribution. The plaintiffs also allege wasting trust and breach of fiduciary duties regarding employer contributions to the pension fund.)

Court Fees

Under current law, a portion of certain fines, fees, and assessments (court revenues) are deposited by the State Treasurer into the reserve for employer contributions to pay for normal pension costs. If pension costs are fully funded, this revenue is instead deposited

into the Court Fee Fund. Based on the FY 1999-2000 JRS Annual Report, the normal pension obligation for the Judges Retirement System is more than fully funded at 135%; therefore, court revenues are deposited into the Court Fee Fund. Once the court revenues are transferred into the Court Fee Fund, an amount not to exceed \$2.2 million annually is transferred into the Court Equity Fund. This Fund is used to reimburse local trial courts for general operating costs. Finally, if any funds remain in the Court Fee Fund after the transfer to the Court Equity Fund is made, the excess Court Fee Fund dollars may be appropriated from that Fund to pay for operational expenses of trial courts.

House Bill 5112 (S-2) would change the way funds from the Court Fee Fund are distributed. First, court revenues transferred into the Fund would no longer be considered pension assets for any purpose. The bill would change the transfer of funds to the Court Fee Fund by funding the following items, in the following order:

1. Arrangement and Fund Payments - If the retirement board of the Judges Retirement System established an "Arrangement and Fund" as described in the Public Employee Retirement Benefit Protection Act (proposed by House Bill 5108), the benefits required to be paid from that fund would be paid from the money in the Court Fee Fund. An Arrangement and Fund would allow benefits that exceed the IRS limits to be paid to retirees. The Internal Revenue Code limits the amount of pension that may be paid to a retiree from pension assets; thus, in order to pay a retiree the amount of pension (that he or she is entitled to receive) that is in excess of the IRS limits, the retirement system would have to establish an Arrangement and Fund consisting of nonpension assets, which the Court Fee Fund would be under House Bill 5112 (S-2).
2. Health Care Benefits - After any required payments had been made to cover Arrangement and Fund payments, the State Treasurer would have to transfer a portion of any remaining funds in the Court Fee Fund to the reserve for health benefits in the Judges Retirement System. The amount of funds that would have to be transferred would be equal to the amount necessary to pay for health care benefits for the subsequent fiscal year that exceeded the amount available from

employee contributions. Currently and for the past several years, the employee contributions have not been sufficient to cover all of the health care costs for retirees (only Supreme Court justices and Court of Appeals judges receive health care benefits paid for by the JRS); thus, the system has been running a deficit for the past several years in order to pay for health care costs. For this reason, the bill would allow up to \$100,000 annually to be used to pay for health care costs not paid from the reserve for health benefits since fiscal year 1996-97. The current deficit in the reserve for health benefits is estimated at \$343,000.

3. Court Equity Fund - Upon meeting the requirements of the payments to the Arrangement and Fund and the reserve for health benefits, the State Treasurer would have to transfer a portion of any remaining funds, up to a maximum of \$2.2 million annually, to the Court Equity Fund. As under current law, funds transferred to the Court Equity Fund would be used to reimburse local trial courts for general operating costs.
4. Remaining Court Fee Funds - Following the transfer of funds for items 1, 2, and 3 above, any funds remaining in the Court Fee Fund would not be transferred to the General Fund. Instead, remaining funds could be appropriated to pay for the operational costs of trial courts.

MCL 38.2105 et al.

FISCAL IMPACT

Early Retirement Provision

The cost of the early retirement provision included in House Bill 5112 (S-2) would depend on the number of judges who actually would file for early retirement. There are 189 judges who would meet the requirements for early retirement under the bill (50 years old with 16 years of service). If all of the judges who qualified were to retire, the additional annual cost to the Judges Retirement System would be approximately \$2.8 million. There are 65 judges who will have 24 or more years of service as of March 31, 2002. If only these judges retired, the cost to the retirement system would be \$1.5 million. The cost related to judges with 20 or more years of service would be \$2.5 million.

Court Fee Fund

Court Fee Fund revenue in FY 2001-02 and FY 2002-03 is estimated at approximately \$7.85 million. The Governor's Recommendation for FY 2002-03 would appropriate \$9.1 million in the Judiciary budget from the Court Fee Fund (estimated FY 2002-03 revenue and balances from previous years). To the extent that the bill would create prior set-asides for employee retirement Arrangement and Fund and the reserve for health care benefits, a revenue shortfall would result in the Judiciary budget.

Defined Contribution

The annual Judiciary budget includes an appropriation for the employer contribution (up to 7% of a judge's salary) for judges who participate in the defined contribution plan. Judges elected on or after March 31, 1997, are automatically included in the defined contribution plan at 100% of salary. For each judge taking an early retirement under the bill, there would be a cost impact on the annual Judiciary budget depending on whether the retiring judge is in the defined benefit plan or the defined contribution plan. Judges who transferred to the defined contribution plan from the defined benefit plan in 1997 were able to participate in the defined contribution plan at less than 100% of salary. The difference in participation level, along with the cost of replacing current defined benefit plan judges with defined contribution plan judges, would result in a State general fund cost of up to \$900,000 depending on the number of judges who opted for early retirement under the bill. It is important to note that the State's cost related to the employer share of defined contribution cost will occur at some time. This bill simply would accelerate the occurrence of that event. Eighteen of the 189 judges eligible for early retirement are 70 or older and are not eligible to run for re-election.

Supplemented Retirement Benefits

According to the State's actuary, the supplemented retirement allowance changes would cost the Judges Retirement System an estimated \$350,000 to \$375,000 annually.

Fiscal Analyst: Joe Carrasco, Jr.
Bill Bowerman

H0102\S5112a

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.