



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

BILL



ANALYSIS

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

Senate Joint Resolution F (as reported without amendment)
Sponsor: Senator Steven Bieda
Committee: Judiciary

Date Completed: 1-30-13

RATIONALE

Michigan's constitution prohibits a person from being elected or appointed to a judicial office after reaching the age of 70 years. Some people believe the age limit is an unnecessary restriction on a person's service as a judge or justice. A task force that examined Michigan's judicial selection process recommended that the age restriction be removed by an amendment to the State Constitution, and others agree with this suggestion.

CONTENT

The joint resolution would amend Article VI, Section 19 of the State Constitution to delete the prohibition against a person being elected or appointed to a judicial office after reaching 70 years of age.

If approved by a two-thirds vote of each house of the Legislature, the joint resolution would have to be submitted to the people of the State at the next general election.

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

While there may have been sound reasons at one time for restricting the age at which a person may be elected or appointed to judicial office, there have been major improvements in life expectancy and health since that provision was first adopted in Michigan's 1906 constitution. More than 100 years later, the age limit on judicial service seems unnecessary and unreasonable. In

addition, the constitutional provision appears to be arbitrary because it applies only to judicial office. There is no similar provision in the State Constitution or statute that prohibits service in other public offices after a certain age.

Response: While 70-year-olds today are generally more fit and capable than 70-year-olds might have been 50 or 100 years ago, perhaps the age restriction should be raised rather than eliminated. According to the State Court Administrator, 21 states have an age-70 restriction on judges and 11 more have an age limit between 72 and 75. There are 17 states that do not have an age limit, but not all of them have elected judges. Several of the states with an elected judiciary and no age limit, however, have defined benefit pension plans that may discourage judges from staying on the bench beyond the age of 70. (All judges taking the bench in Michigan since 1996 are in a defined contribution retirement plan.) In addition, most judicial elections in Michigan are uncontested and the procedure for removing a judge is lengthy and expensive. Michigan judicial terms are six years for trial judges and Court of Appeals judges, and eight years for Supreme Court justices, and it may be difficult for anyone to project whether a person elected past the age of 70 would still be capable of handling the job five or seven years into the future.

Supporting Argument

The Michigan Judicial Selection Task Force, a politically and professionally diverse group that examined other states' models of judicial selection and made recommendations for reforming Michigan's judicial selection process, has recommended the removal of the age-70 limitation.

According to the "Michigan Judicial Selection Task Force Report and Recommendations", issued in April 2012, "The Task Force believes that this limitation is arbitrary in nature and serves no legitimate public interest." The report also suggests that the "provision warps the judicial selection process in our state". To increase the pool of qualified judicial candidates, and to ensure that competent judges are not arbitrarily dismissed from eligibility for re-election, the age restriction on appointment or election to judicial office should be deleted from the State Constitution. If approved by the Legislature, the joint resolution would give Michigan voters an opportunity to make this change.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The resolution, if adopted by the electorate at the next general election, would have limited fiscal impact. The salaries of judges are uniform for each tier of the court system, meaning that judges with long terms of service earn the same as newly elected judges. A judge staying on the bench longer would not cause the State to pay a higher salary, because when a judge does retire, the replacement judge receives the same salary.

There could be a minor fiscal impact related to judges who are currently serving in judgeships that are slated to be eliminated. In late 2011 and early 2012, the Michigan Legislature passed a package of bills to eliminate more than 40 judgeships. Governor Snyder signed these bills into law and they became Public Act 300 of 2011 and Public Acts 16-23 and 34-38 of 2012. The bills call for the judgeships to be eliminated by attrition, meaning no currently seated judge will be forced out. Only once a judge declines to seek re-election or retires (whether by choice or due to the age-70 rule), then the judgeship he or she had served in will be eliminated.

Each eliminated judgeship saves the State approximately \$160,000 per year (which represents the salary, FICA (Social Security/Medicare taxes), and a 7% contribution to a defined contribution retirement plan). There are also some associated savings for local units of government, which are responsible for

paying for the judge's fringe benefits and staff. Of the approximately 35 judges who are currently serving in judgeships slated for elimination, if any of them decided to take advantage of the removal of the age prohibition and run for re-election past his or her 70th birthday, he or she could delay some savings to State and local governments by postponing the elimination. Many judges choose to retire before their 70th birthday, so the number of judges (among the approximately 35) who would stay in their current judgeship and choose to work well beyond their 70th birthday would likely be small.

Finally, the resolution, if adopted, could have an ambiguous, but again likely minor, fiscal impact on the judicial retirement system. More than 70% of judges are now a part of the defined contribution retirement plan, so pension-relevant factors such as years of service and life expectancy in retirement (which could be affected by the resolution) do not affect the State costs in most cases.

Fiscal Analyst: Dan O'Connor

A1314\ssirfa

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.