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## JUDGES RETIREMENT AMENDMENTS

### House Bill 5857 (Substitute H-2) First Analysis (5-20-98)

**Sponsor: Rep. Nick Ciaramitaro**  
**Committee: Public Retirement**

#### ***THE APPARENT PROBLEM:***

Public Act 523 of 1996 amended the Judges Retirement Act to create a new defined contribution retirement program. Entry into the new program was mandatory for those who became members of the system on or after March 31, 1997, and was optional for those who were members of the retirement system at the time the new program was adopted. (Pre-1997 members may remain in the existing defined benefit program; they are required to make an irrevocable election, by May 31, 1998, choosing whether to enter the new defined contribution program.) Public Act 523 was part of a package of legislation that also converted the state-funded retirement systems for state employees and legislators to a defined contribution system. The legislation moved rapidly through the legislature late in the 1995-96 legislation session; it has been pointed out that some provisions of the legislation that amended the Judges Retirement Act were technically incorrect. There is some urgency to correct these technical problems before the May 31, 1998 deadline for members of the system to convert their retirement assets into the new plan. Further, it is suggested that the choice between the two types of retirement plans -- defined benefit as well as defined contribution -- be available to new members of the Judges Retirement System (and members of the state employees system, as proposed in House Bill 5807), as well as to those who were in the system before March 31, 1997.

#### ***THE CONTENT OF THE BILL:***

House Bill 5857 would amend the Judges Retirement Act to allow members to choose between the defined benefit program and the defined contribution program, and would make other amendments, as follows.

Choice of benefit program. The bill would amend the act to provide a choice between the defined benefit retirement plan and the defined contribution plan for those who became members of the retirement system on or after March 31, 1997. Members entering the

system on or after the effective date of the bill would have 30 days after beginning employment to choose between "Tier 1" (the traditional defined benefit retirement program) and "Tier 2" (the new defined contribution plan). The choice would be an irrevocable election, and if a person did not file the election during the 30-day period, he or she would be considered to have elected Tier 1.

Further, all current participants in Tier 2 would have 60 days after the effective date of the bill to terminate participation in Tier 2 and elect to become a member of Tier 1. The choice would be irrevocable, and anyone enrolled in Tier 2 who did not make an election within the 60-day period would continue to be a member of Tier 2.

An election made under the bill would require the signature of the spouse of the member, if married, though the retirement board could waive this requirement if the spouse's signature could not be obtained because of extenuating circumstances.

The bill specifies that if the bill or any portion of the bill would cause the retirement system to be disqualified for tax purposes by the Internal Revenue Service, then the portion that would cause the disqualification would not apply.

Definition of "employer". The bill would clarify that, for retirement purposes, a participant's "employer" would be the state, rather than the local reporting unit.

Determination of salary. The bill would amend the act to add language specifying how a member's salary amount (for purposes of calculating employer contributions under Tier 2) would be determined. A member could choose between two options for the salary amount for the calculation: either 100 percent of his or her salary paid by the state, both directly and indirectly; or the portion of his or her salary that is considered compensation under the existing Tier 1

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plan. (This provision is said to take into consideration the salary standardization system for trial court judges, whose compensation comes from a combination of state and local sources.) For members becoming qualified participants in Tier 2 on or after March 31, 1997, the bill specifies that the first option would apply. Further, for probate court judges, the bill specifies that the base salary for retirement purposes would be the salary amount paid under the Revised Judicature Act.

Terminating members. The bill would add language that would allow members who were vested in Tier 1 on March 30, 1997 and who terminated employment between January 1 and June 30, 1998 to transfer their pension benefits from Tier 1 to Tier 2. The decision to transfer to Tier 2 would be irrevocable. A member would have to apply to the retirement board between January 1, 1998 and June 30, 1998, and the state treasurer would have to transfer a lump sum amount to the member's Tier 2 account within 60 days after employment was terminated. The bill would specify the basis for determining the actuarial present value of such a member's benefits, including the member's contributions and an employer's contribution amount based on the member's credited service and final salary. Further, the bill specifies that the calculation would be based on eight percent effective annual interest, a 50 percent male/female gender neutral blend of the mortality tables used to project retiree longevity, and a benefit commencement age based on credited service [using the youngest of: 1) age 60; 2) age 55 with 18 or more years of credited service; or 3) the member's current age with 25 or more years of credited service]. These calculations would be based on estimated salary and years of service; the bill would require the retirement board to recompute these amounts based on actual credited service and salary amounts within 90 days after the transfer.

Participation in other public retirement plans. Under the act, a participant cannot participate in any other public retirement plan for simultaneous service for the same employer. The bill would specify that this would not apply in the case of a participant who selected the option to have only that amount of salary that is considered compensation under Tier 1 counted as salary for Tier 2.

Further, the bill would specify that, as a condition of participating in Tier 2, a member could not receive a retirement allowance or other benefit from any other public sector retirement plan while holding the position that qualifies him or her to participate in Tier

2. A member who violated this provision would forfeit his or her right to employer contributions under the act. The member's employer would have to immediately suspend employer contributions. However, a participant who was a nonvested member in another retirement plan before joining Tier 2 would not be prohibited from withdrawing his or her contributions from that plan at the time of joining Tier 2. The bill specifies that a public retirement plan could not use this provision to alter or diminish an individual's right to health care benefits or a vested right to a pension for service as a judge before the person became a participant in Tier 2.

Disability pension, survivor's benefits. A participant in Tier 2 with eight or more years of credited service who became physically or mentally disabled to perform his or her duties would be granted a supplemental benefit as if he or she had retired with a disability pension under Tier 1. Likewise, the surviving spouse of a participant who died while in office and who had eight or more years of service would be eligible for a supplemental benefit as under Tier 1. The supplemental benefit would be offset by the value of the person's Tier 2 account.

Tie-bar. The bill is tie-barred to House Bill 5807, which would amend the State Employees Retirement Act to allow members to choose between the defined benefit and defined contribution retirement plans.

MCL 38.2104 et al.

### ***FISCAL IMPLICATIONS:***

According to the House Fiscal Agency, certain provisions of the bill would result in higher state costs and could slightly reduce local retirement costs. The fiscal year 1998-99 executive budget included \$476,000 for defined contribution costs based upon current law. Under the bill, and assuming that 10 percent of judges would convert to the new system, costs would be approximately \$778,000, which would be an obligation of the general fund. If 50 percent of judges converted, then the costs could total \$2.472 million. (5-19-98)

### ***ARGUMENTS:***

#### ***For:***

Because judges' salaries are paid by a combination of state and local funds, the language of the retirement system legislation needs to be tailored to their particular situation, rather than echoing the language

that applies to state employees. The bill would clarify that, for retirement purposes, the state would be considered to be the employer of judges, rather than local governments. Further, the bill contains language to clarify which salary amount the Tier 2 employer contributions would be based on, and corrects several technical problems with the 1996 legislation. Several provisions that are included in the state employees defined contribution plan, such as disability and survivor's benefits similar to those provided under the defined benefit provisions, and the ability for terminating employees to convert their retirement assets into the Tier 2 system before leaving service, would be added to the judges' act.

Representatives of the Department of Treasury testified that the department supports the technical changes the bill would make, but opposes the option for new members to choose the defined benefit program and the tie-bar to House Bill 5807. (5-19-98)

**For:**

The bill would add language to the Judges Retirement Act to allow new members of that system (after March 31, 1997) the choice between defined contribution and defined benefit plans, as that choice is provided under current law to those who entered the system before that date. This is only fair.

**Response:**

Some believe it is unfair to tie potentially controversial changes (such as the option to choose between the two benefit plans and the tie-bar to House Bill 5807) to this bill that is urgently needed to correct technical problems in the judges retirement system. Without these technical changes, the IRS may disqualify the judges pension plans, putting many people at risk of serious tax consequences.

**POSITIONS:**

A representative of the Michigan District Judges Association testified in support of the bill, and has no position on the tie-bar to House Bill 5807. (5-19-98)

A representative of the Michigan Probate Judges Association testified that the association supports the technical changes the bill would make, and takes no position on the option for new members to choose the defined benefit program and the tie-bar to House Bill 5807. (5-19-98)

A representative of the Michigan Judges Association testified in support of the technical changes, and asked that the choice provisions and the tie-bar to House Bill 5807 be removed. (5-19-98)

Analyst: D. Martens

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.