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**BILL ANALYSIS**

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

Date Completed: 3-31-17

**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 the election or appointment of a person to a judicial office after he or she reaches 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**

The Constitution's age limit for the election or appointment of judges is discriminatory and arbitrary, and removing the restriction would be in the best interests of the judiciary and the public. There are few circumstances in which it is acceptable to terminate an otherwise competent professional just because he or she has reached a certain age, and serving as a judge is not one of those instances. Indeed, the Federal judiciary has countless examples, both past and present, of judges serving capably and effectively well past 70 years of age, and three of the U.S. Supreme Court's eight current justices are at least 78 years old.

Arbitrarily forcing judges into retirement ends the careers of some fine jurists. If the purpose of the age restriction is to protect the public from judges who are unfit to preside, there are adequate measures already in place to accomplish that goal. The Judicial Tenure Commission can conduct investigations and recommend that the Supreme Court remove judges for cause. There also are constitutional provisions that authorize the Legislature to remove civil officers by impeachment (for corrupt conduct in office or for crimes) and authorize the Governor to remove a judge from office on concurrent resolution of two-thirds of the members of the Senate and House for reasonable cause that is not sufficient ground for impeachment.

While judges who are no longer able to serve the public properly should be removed from office, principles of fairness should be upheld for people who serve in the judiciary and are willing and able to continue in that role, regardless of their age.

### **Supporting Argument**

Although there might have been sound reasons at one time for restricting the age at which a person may be elected or appointed to judicial office, major improvements in life expectancy and health have occurred since that provision was first added to Michigan's 1908 Constitution in 1955. At the time the restriction was implemented, 70 years of age was just about the average life expectancy for Americans. Currently, it falls short of average life expectancy by approximately eight years. In addition, these figures reflect life expectancy at birth. The older a person is, the longer his or her expected life span is. According to the National Center for Statistics, the average life expectancy for a 65-year-old in 2010 was an additional 19.1 years, and for a 75-year-old it was 12.1 more years. That is, a 65-year-old can expect to live to the age of 84, while a 75-year-old can expect to live to 87. More than 60 years after the age limit on judicial service was added to the Michigan Constitution, it is unnecessary and unreasonable.

**Response:** While 70-year-olds today are generally more fit and capable than 70-year-olds might have been 60 years ago, perhaps the age restriction should be raised rather than eliminated. According to information provided by the State Court Administrator on a similar proposal in 2013, 21 states had an age-70 restriction on judges and 11 more had an age limit between 72 and 75. There were 17 states that did not have an age limit, but not all of those states 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 court judges and Court of Appeals judges, and eight years for Supreme Court justices, and it may be difficult for anyone to predict whether a person elected past the age of 70 would remain 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, 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 suggested 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.

### **Supporting Argument**

The constitutional prohibition against electing a judge who has reached 70 years of age takes away the voters' power to choose the person whom they deem most fit to fill that role. The age restriction implies that the electorate cannot be trusted to determine who should serve the public from the bench. Limiting who may serve also results in a loss of available talent to serve on the bench. In addition, the constitutional provision is arbitrary not only because it sets an artificial age limit but because it applies only to candidates for judicial offices. There is no similar provision in the State Constitution or statute that prohibits service in other public offices after a certain age.

**Response:** It is the current system of favoring incumbents in judicial election that dilutes the pool of available talent to serve in the judiciary. Extending the careers of judges beyond the current constitutional age limit would further limit the pool of candidates willing to seek election to judicial office. In addition, although there is no maximum age restriction on other offices, the Constitution does place age requirements on who may run for certain positions and limits how long some may serve. Legislators must be at least 21 years old, and the Governor and Lieutenant Governor must be at least 30. State Representatives are limited to three two-year terms, and State Senators, the Governor, the Lieutenant Governor, the Attorney General, and the Secretary of State may not serve more than two four-year terms. Public institutions can benefit from membership turnover. The judicial age limitation essentially serves as a term-limit provision for judges, ensuring periodic turnover in the courts.

### **Opposing Argument**

Michigan's system of judicial elections confers what essentially amounts to permanent tenure upon those who sit on the bench. Incumbency designation on the ballot for sitting judges, combined with the expense of mounting a serious campaign, is a powerful disincentive to potential challengers and makes it highly unlikely that a sitting judge will lose his or her position by election. If the age limitation were removed from the Constitution, some judges would retain their positions well into their 80s or even 90s despite physical and mental health declines (such as heart disease, stroke, or dementia) that often can accompany aging. The stress and intellectual demands placed on judges, particularly those presiding over high-stakes jury trials, are considerable. In order to preside over proceedings adequately, judges need sufficient mental agility to think and react quickly, recognizing the nuances and subtleties of the law and court procedures. Loss of short-term memory as part of the ageing process is well recognized, and could put elderly judges--and those who are being judged--at a disadvantage.

### **Opposing Argument**

Legislation enacted in recent years provides for reductions in the number of judgeships based on attrition. Judicial positions in several jurisdictions are to be eliminated when a vacancy occurs or when a sitting judge no longer seeks election or re-election. These reductions in judicial resources are based on projected lower caseloads in the affected courts and are anticipated to provide fiscal savings to the State and local units of government. Abolishing mandatory retirement would undermine these efforts to economize.

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.

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. If any judge who is currently serving in a judgeship slated for elimination 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 government by postponing the elimination. Many judges choose to retire before their 70th birthday, so the number of judges 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: Ryan Bergan

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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.