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## JUDGES RETIREMENT: EXTEND FILING PERIOD FOR SUPPLEMENT

House Bill 5037 as enrolled  
Public Act 190 of 2003  
Second Analysis (1-15-04))

Sponsor: Rep. Jim Howell  
House Committee: Judiciary  
Senate Committee: Judiciary

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

Recently enacted legislation allowed for a one-time supplemental increase in the retirement allowances of retired judges (and beneficiaries of deceased retirees) who retired after January 1, 1980 and before January 1, 1993, if certain conditions were met. To receive the supplement, retirees had to sign and file a waiver to any claims in an action that was, at the time of the legislation, in federal court. The deadline to file the waiver was April 1 of this year. Apparently, some retirees did not receive notice of the waiver agreement or a copy of the waiver in time to meet the April 1 deadline. More details follow.

Judges who were elected or appointed prior to March 31, 1997 are in a defined benefit retirement system administered by the Office of Retirement Services within the Department of Management and Budget and under the direction of a statutorily constituted board. (Judges elected or appointed after that date are in a defined contribution plan.) The pension benefit for a retired judge varies based on years of service and other criteria, and the retirement system provides a disability retirement allowance and a death benefit to surviving spouses or dependent children. A subsidized health premium benefit is provided only to court of appeals judges and supreme court justices; other members may enroll in the health plan but must pay the entire premium. However, unlike most retirement benefit plans, there are no post-retirement cost of living adjustments in pension benefits for retired judges (except that retirees who were active members before September 8, 1961 have their benefits adjusted as active judges' salaries change, but reportedly, this is a very small group, estimated at from 10 to 30 living retirees).

In recognition of the fact that the Judges Retirement Act does not provide for post-retirement benefit increases (or COLAs) for the great majority of retired judges, the legislature has, on three prior occasions, provided one-time supplements to boost the base

retirement payments of those who have been retired the longest (and therefore are receiving the lowest benefits). Public Act 11 of 1993 made one-time increases for members of the former Probate Judges Retirement System, and Public Act 350 of 1996 made similar one-time increases for members of the former Judges Retirement System. (Legislation in 1992 consolidated the former Judges' and Probate Judges' Retirement Systems into one retirement system). Both acts applied to those who retired prior to 1980.

The third and most recent piece of legislation, Public Act 675 of 2002, provided similar supplements for those who retired after 1980 and before 1993. However, at that time, a group of active and retired Michigan judges were suing the state and the Judges Retirement System in both state and federal courts, alleging various violations of equal protection and other constitutional issues, with regard to the way benefits are paid under the Judges Retirement Act. The plaintiffs in *Ernst v Roberts* [Case No. 01-CV-73738-DT (ED-MI)] alleged a violation of their equal protection rights because the act does not provide for annual percentage increases in the retirement allowances paid to retirees, even though certain other retirement plans for state and governmental employees do; therefore, they asked the court for various remedies. Drawing on an 1890 case that states that the 11<sup>th</sup> amendment to the U.S. Constitution bars suits against a state by citizens of any state, the U.S. District Court for the Eastern District of Michigan dismissed the complaint on September 30, 2002.

A related state case, which originated in 1994 and dealt with many of the same issues as *Ernst*, was also still pending in the Michigan Supreme Court. In *Harvey v State of Michigan* (Case No. 121672), retired district court judges asserted that the Judges Retirement Act violated the Equal Protection Clause of the Michigan Constitution in that it allows the state

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to provide a greater retirement allowance to 36<sup>th</sup> District Court judges (Detroit) than to out-state district judges. Under the act, the pension for a judge in the 36<sup>th</sup> District is based on his or her former total salary, though the pension for a district judge elsewhere in the state is based on only a portion of his or her former total salary. In July of this year, the court held in *Harvey* that the contested portions of the Judges Retirement Act passed the rational-basis scrutiny test and therefore the act was constitutional.

However, since the outcomes of the court cases were unknown at the time that the bill which became Public Act 675 was being considered, some suggested that the proposal to provide a one-time post retirement increase for retired judges only be available for those retirees who waived any claim to damages in the *Ernst* case. (For more information, see the House Legislative Analysis Section's analysis of enrolled House Bill 4675 of 2002 dated 1-13-03.) Unfortunately, some eligible retirees and beneficiaries received the notice of the waiver and a copy of the waiver after the April 1<sup>st</sup> deadline expired. Legislation has been offered to correct this situation by extending the deadline for submission of the waiver.

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

Public Act 675 of 2002 amended the defined benefit provisions of the Judges Retirement Act to provide a supplemental increase in the retirement allowances of retirees (and beneficiaries of deceased retirees) who retired after January 1, 1980 and before January 1, 1993, if those retirees and beneficiaries waived their claims in the case of *Ernst v Roberts*. (For more information, see the enrolled analysis of House Bill 4675 by the House Legislative Analysis Section dated 1-13-03.)

To be eligible for the supplemental retirement benefit, a retiree or beneficiary had to file a waiver of any claims under *Ernst* between January 1, 2003 and April 1, 2003. House Bill 5037 would amend the same section of the Judges Retirement Act to extend the deadline for filing a fully executed waiver agreement with the retirement system until January 30, 2004 for those who meet the criteria for the benefit supplement but did not file a full executed waiver agreement by the April 1, 2003 deadline set by Public Act 675. The bill would specify that the supplement would be paid to these retirees before April 1, 2004.

The bill also amended the act so that the supplement would be available to those who retired before January 2, 1993 (rather than before January 1, 1993).

MCL 38.2512

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

According to the House Fiscal Agency, no additional fiscal impact by the bill is estimated. As of September 30, 2002, the Judges Retirement System was more than 100 percent funded. (9-23-03)

### ***ARGUMENTS:***

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

Public Act 675 of 2002 allowed for a one-time supplemental increase in the base pension amount for judges (and beneficiaries of deceased retirees) who retired after January 1, 1980 and before January 1, 1993. In light of a then-pending challenge in federal court to the constitutionality of certain provisions of the Judges Retirement Act, language was added to the 2002 legislation to require retirees to sign a waiver to claims under one of the lawsuits. The waiver had to be filed with the retirement system no later than 5 p.m. on April 1, 2003. Failure to sign the waiver or to file it by the deadline resulted in the person being ineligible to receive the pension supplement.

According to Department of Management and Budget staff, though almost 200 notices with the waiver forms were mailed by February 23, 2003, 47 notices and waiver forms were not mailed to eligible participants until March 27, 2003 - just a few days before the cutoff. Though information on how many waiver forms were submitted to the retirement system by the deadline is not available, the office received fewer than 10 waiver forms between 7 and 14 days after the deadline. It is reasonable to assume that at least some, if not all, of these late waiver forms were part of the 47 packages that were mailed close to the deadline. It is also reasonable to assume that at least some of the people who did not return a signed waiver form did so because the notice and waiver came after the deadline had expired.

The bill seeks to correct the situation by extending the filing deadline. Many of these retirees receive small pensions (reportedly, some as low as \$3,000 a year) and so could benefit greatly in having eligibility for the benefit supplement restored. Further, the bill is not expected to result in increased state expenditure.

***Against:***

Public Act 675 of 2002 required a retired judge or his or her beneficiaries to sign a waiver giving up any rights to a claim under *Ernst v Roberts*. That case has subsequently been dismissed by the federal district court. Information as to the status of an appeal to the 6<sup>th</sup> Circuit Court is unavailable. Therefore, since it is unlikely that any remedy would be forthcoming from this action or the case that was before the state supreme court (the court recently rendered a decision against the judges/plaintiffs), some would like to see the language in the act regarding the waiver be removed and the deadline extended to include all remaining eligible participants. It is argued that the pool of eligible persons is relatively small and that they receive modest pensions and so could benefit by an increase. Further, according to an analysis by the House Fiscal Agency on the enrolled bill that became PA 675, though that act created an unfunded liability of \$2.5 to \$3 million, the Judges Retirement System is over-funded and the additional cost (even if all eligible retirees applied for the benefit increase) could be absorbed through the surplus, making it unlikely that employer contributions would be required in the near future.

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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.