

# Legislative Analysis



## ELIGIBLE DOMESTIC RELATIONS ORDER

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House Bill 4054 as enrolled  
Public Act 32 of 2013  
Sponsor: Rep. Kurt Heise

House Committee: Judiciary  
Senate Committee: Judiciary

### First Analysis (8-21-13)

**BRIEF SUMMARY:** The bill amends a section of law that pertains to pension rights in public retirement systems during divorce proceedings. The bill creates a mechanism by which a domestic relations order that did not qualify as an "eligible" domestic relations order (EDRO) due to a disqualifying defect could be corrected in a timely manner and also clarifies that a domestic relations order must be filed before the participant's pension payments begin or before the participant's death, whichever occurs first.

**FISCAL IMPACT:** To the extent that the bill could increase the number of EDROs, which allow alternate payees to receive pension benefits even after a retiree is no longer living, it would create additional costs for state and local pension systems.

### THE APPARENT PROBLEM:

When a married couple divorces, their combined assets must be divided. This includes any pensions either party may be entitled to receive or are currently receiving. If one or both parties are active participants of a public retirement system, meaning that the person has not yet entered retirement and has not yet received a pension check, a special type of court order must be filed with the state or local retirement system. This court order, known as an *Eligible Domestic Relations Order* or EDRO, contains directions from the court to the retirement system as to how the public pension benefits are to be divided once the participant enters retirement and begins to draw pension benefits.

Besides adhering to any requirements under the public retirement system, an EDRO must also meet all requirements in the EDRO Act. Some feel the EDRO Act should be amended to address some identified weaknesses. For instance, because an EDRO must be filed (which means that the domestic relations order is determined by the retirement system to be an *eligible* domestic relations order) while the member is still alive, it has been suggested the act be clarified to emphasize this requirement.

In addition, there have been complaints that public retirement systems are slow at times in processing EDROs. In some cases, the public retirement system has identified mistakes, or defects, in a domestic relations order that disqualified the document from being accepted as an EDRO. However, by the time the participant and the alternative payee (for instance, the former spouse) were notified of the error, the established

retirement date had already been reached and the amended document could not be accepted. Legislation has been offered to address this situation (by providing a 60-day period during which a domestic relations order could be corrected).

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

House Bill 4054 amends the Eligible Domestic Relations Act. Currently, the act requires a domestic relations order to be filed with a state or local public retirement system when a member of the system divorces and the parties agree that the member's pension will be divided. The order, which provides direction as to how the pension is to be divided, must meet the requirements of the act. After receiving the order, the retirement system must determine whether it qualifies as an eligible domestic relations order (EDRO).

One of the requirements is that the domestic relations order be filed before the effective date of the participant's retirement allowance. The bill would revise this provision to clarify that the domestic relations order must be filed with the retirement system before the participant's retirement allowance effective date or the participant's death, whichever occurs first. (New language is underlined.) "Filed with the retirement system" is defined to mean that the retirement system has determined that the domestic relations order submitted for filing is acceptable as an EDRO.

In addition, under current law, if a public retirement system determines that a domestic relations order is not an EDRO (because one or more of the required elements to be an eligible EDRO is not met), the retirement system must promptly notify the participant and the alternate payee of that determination and the reasons why it is not an EDRO. The participant, alternate payee, or court may then file an amended domestic relations order with the retirement system. However, by the time the amended domestic relations order is filed, but before the retirement system reaches a determination, the participant's retirement allowance effective date may have passed.

Therefore, House Bill 4054 would add a new provision requiring that upon the retirement system's receipt of the domestic relations order, the participant's retirement allowance effective date must be stayed and could not occur until either of the following occurred:

- The retirement system accepted the domestic relations order for filing as an EDRO. In this instance, the participant's retirement allowance effective date will occur as if the retirement allowance effective date had not been stayed.
- Sixty days have passed starting on the date the retirement system gives the participant and alternate payee notice that the retirement system will not accept the domestic relations order for filing as an EDRO because of a disqualifying defect.

During the 60-day period, the parties could submit an amended domestic relations order that would qualify for filing as an EDRO. Notice of rejection of any amended domestic relations order would have to be given in the same manner set

forth above, but there could be only one 60-day period and only with respect to rejection of the first domestic relations order.

If the 60-day period is applicable and the parties submit in a timely manner a domestic relations order that is acceptable as an EDRO, but that determination is not made until after expiration of the 60-day period, the participant's retirement allowance effective date is further stayed until the retirement system makes the determination. If the participant dies or the parties fail to submit a qualifying domestic relations order before expiration of the 60-day period, the retirement system could not accept for filing as an EDRO any domestic relations order pertaining to that participant.

If a participant submits a retirement application, but the retirement system determines that a previously submitted domestic relations order intended to qualify as an EDRO doesn't qualify, the participant and alternative payee would have to be notified by the retirement system as to why the domestic relations order doesn't qualify as an EDRO (if such notice has not already been provided). In a case in which Section 10 of the act requires notice be given, the participant's retirement allowance effective date is stayed as provided.

An amended EDRO may be filed by the participant and alternate payee at any time before the participant's retirement allowance effective date, or death, whichever occurs first. In this instance, the retirement allowance effective date will not be stayed upon the submission of the domestic relations order. If the parties fail to submit a domestic relations order that qualifies as an EDRO before the participant's retirement allowance effective date or death, the latest EDRO filed with the retirement system governs. Further, the EDRO could not be amended, vacated, or otherwise set aside after the retirement system had made the first payment under the EDRO or after the participant died, whichever occurred first.

All notices required to be given to the participant or alternate payee by the retirement system would have to be by first-class mail at the addresses for each listed in the domestic relations order. If no address is listed for the participant in the domestic relations order, a notice would have to be mailed to the last known address in the files. If no address is listed for the alternate payee in the domestic relations order, notice to the participant would constitute notice to the alternate payee. Notice is given if the retirement system complies with the bill's provisions and upon the date the notice is mailed.

MCL 38.1702

#### ***ARGUMENTS:***

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

The bill only applies to the division of future pension benefits when a participant of a public retirement system divorces and the parties agree to divide the pension. Thus, it

applies only to active or deferred members of a state or local retirement system (not a private employer). If a participant has already retired and has been receiving pension benefits, a different domestic relations order would need to be filed.

Because a participant must submit a domestic relations order that qualifies as an EDRO before the start of his or her retirement, there have been instances where notice that the domestic relations order was rejected as an EDRO due to an error did not provide the participant sufficient time to correct the defect before retirement began. The retiree must then go through a different process in order to divide the pension benefits.

The bill would address this concern by creating a 60-day period during which a participant could submit an amended, or corrected, domestic relations order. If the participant's retirement date fell during this 60-day period, the domestic relations order could still be approved as an EDRO because the retirement date would be "stayed", meaning that it would be as if the retirement date had not yet passed. However, if the participant did not respond in a timely manner and the 60-day period expired, or the participant died during the 60-day period, the retirement system could not accept an amended domestic relations order as an EDRO.

A domestic relations order can be submitted for acceptance as an EDRO at any time before the participant dies or reaches the date retirement benefits begin. The bill clarifies that if an EDRO has already been filed with the retirement system (meaning that a domestic relations order had already been accepted as a qualifying EDRO), but the participant and alternate payee (e.g., the former spouse) wish to amend that EDRO, they may do so at any time before the retirement effective date or the participant's death, whichever occurs first. If the participant dies or reaches his or her retirement date after submitting the amended domestic relations order but before it was approved, the last EDRO on file with the retirement system would prevail. An EDRO could not, under any circumstances, be amended, vacated, or set aside after the participant died or the retirement system made the first pension benefit payment under the EDRO, whichever occurred first.

These clarifications and the new mechanism to give participants an appropriate time period to correct errors should help further streamline the process of submitting a domestic relations order and having it approved as an EDRO. Further, for members of a retirement system administered by the State of Michigan, the Office of Retirement Services recommends use of its online EDRO as a means to reduce errors and ensure compliance with the retirement statutes. The document is available at the ORS website.

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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.