

ELIGIBLE DOMESTIC RELATIONS ORDER

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House Bill 4054 (Substitute H-1)

Sponsor: Rep. Kurt Heise

Committee: Judiciary

Complete to 2-27-13

A SUMMARY OF HOUSE BILL 4054 AS REPORTED BY COMMITTEE 2-20-13

The bill would amend a section of law that pertains to pension rights in public retirement systems during divorce proceedings. The bill would create 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.

House Bill 4054 would amend the Eligible Domestic Relations Act (MCL 38.1702). Currently, the act requires a domestic relations order (EDRO) 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 EDRO.

One of those 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" would 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 file an amended domestic relations order with the retirement system.

However, by the time the amended domestic relations order is ready to be filed, 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. The participant's retirement allowance effective date would 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.

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.

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.

POSITIONS:

A representative of the Family Law Section of the State Bar of Michigan testified in support of the bill. (2-14-13)

The Office of Retirement Services, Department of Technology, Management & Budget indicated support for the bill. (2-14-13)

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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.