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**SFA****BILL ANALYSIS**

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House Bills 5108 through 5114 (as enrolled)  
Sponsor: Representative Jerry Vander Roest (H.B. 5108)  
Representative Joanne Voorhees (H.B. 5109)  
Representative Sandra Caul (H.B. 5110)  
Representative Jim Howell (H.B. 5111)  
Representative Alexander Lipsey (H.B. 5112)  
Representative Cameron Brown (H.B. 5113)  
Representative Samuel Thomas III (H.B. 5114)

House Committee: Appropriations  
Senate Committee: Appropriations

Date Completed: 4-2-02

## **CONTENT**

**House Bill 5108 would create the "Public Employee Retirement Benefit Protection Act" to place in statute an antialienation clause, which would prohibit the assignment or attachment of public pension benefits. The antialienation clause would apply to all public pensions in the State, including pensions of: State employees, public school employees, fire fighters and police officers, judges, State Police, and legislators. House Bills 5109-5114 would amend the retirement system act for each of these pensions to eliminate the current antialienation clause and instead make each act subject to the provisions of the proposed Act. Also, language in each act stating that benefits and distributions are subject to court orders in divorce proceedings and eligible domestic relations orders would be deleted, as these provisions would be contained in the proposed Act.** House Bill 5109 would amend the State Employees' Retirement Act. House Bill 5110 would amend the Public School Employees Retirement Act. House Bill 5111 would amend the Fire Fighters and Police Officers Retirement Act. House Bill 5112 would amend the Judges Retirement Act. House Bill 5113 would amend the State Police Retirement Act. House Bill 5114 would amend the Michigan Legislative Retirement System Act.

House Bill 5108 is tie-barred to all of the other bills, which are tie-barred to House Bill 5108.

House Bills 5108 and 5109 also are tie-barred to House Bill 5732, which proposes an early retirement plan for State employees.

Following is a more detailed description of House Bill 5108, as well as provisions in House Bill 5109, 5110, 5112, and 5114 in addition to the amendments described above.

### **House Bill 5108**

The proposed Public Employee Retirement Benefit Protection Act specifies that the rights of a member, deferred vested member, designated beneficiary, refund beneficiary, or retiree to a retirement benefit could not be assigned. The Act also would protect the benefits from execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other processes of law.

As under current law, the rights of a member would continue to be subject to forfeiture under the Public Employee Retirement Benefits Forfeiture Act and subject to an award by a court during divorce proceedings under an eligible domestic relations order (EDRO) or under any other domestic relations order of a court pertaining to alimony or child support. The bill also specifies that rights to benefits would be subject to claims made under the State Correctional Facility Reimbursement Act. In addition, loans to a member or retiree still would be permitted if the system concluded that the person was

otherwise eligible for a loan. Further, the bill would not prevent a retirement system administrator from correcting records and seeking to recover overpayments made to a retiree or a member.

In addition, the bill would allow for the creation of an "arrangement and fund" within each of the retirement systems. The arrangement and fund would allow accrued benefits of a system's members to be paid out of the fund for benefits that are otherwise not payable due to limitations in Section 415 of the Internal Revenue Code. Assets in an arrangement and fund would have to be kept separate from the pension assets of the participating units. If the governing body of a retirement system voted to create an arrangement and fund, the fund would have to be established and administered in accordance with Section 415(m) of the Internal Revenue Code.

#### **House Bill 5109**

The bill states that in the case of the death of a State retiree, the pension would be paid to minor children if there were no surviving spouse. Also, the bill contains an appropriation for FY 2001-02 of \$2.1 million to cover the administrative costs of the early retirement plan under House Bill 5732.

#### **House Bill 5110**

The bill would allow the Public School Employees Retirement System to create an arrangement and fund to allow benefits that exceed the IRS limits to be paid to retirees pursuant to the provisions outlined in House Bill 5108. The Internal Revenue Code limits the amount of pension that may be paid to a retiree from pension assets; thus, in order to pay a retiree the amount of pension (that he or she is entitled to receive) that is in excess of the IRS limits, the retirement system would have to establish an arrangement and fund consisting of nonpension assets.

The bill also would create the Health Advance Funding Subaccount for the purpose of receiving deposits in years when the assets for normal retirement benefits are funded at 100% or more. In years when normal costs are fully funded, employer contributions could be deposited into the new subaccount. Funds from the subaccount could not be spent until the actuarial liability for health benefits was

fully funded. Also, the Department of Management and Budget, with the approval of the Senate and House Appropriations Committees, would be permitted to transfer amounts from the Health Advance Funding Subaccount to the employer's accumulation fund (the fund set aside for the pensions of future retirees) to cover any underfunding that might arise for normal retirement costs.

The bill would make additional changes to ensure that the retirement system remained in a tax-exempt status.

#### **House Bill 5112**

The bill would require all currently sitting judges to make a 2% of salary contribution for health care benefits.

Under current law, a portion of certain fines, fees, and assessments (court revenues) is deposited by the State Treasurer into the reserve for employer contributions to pay for normal pension costs. If pension costs are fully funded, this revenue is instead deposited into the Court Fee Fund. Based on the FY 1999-2000 JRS Annual Report, the normal pension obligation for the Judges Retirement System is more than fully funded at 135%; therefore, court revenues are deposited into the Court Fee Fund. Once the court revenues are transferred into the Court Fee Fund, an amount not to exceed \$2.2 million annually is transferred into the Court Equity Fund. This Fund is used to reimburse local trial courts for general operating costs. Finally, if any funds remain in the Court Fee Fund after the transfer to the Court Equity Fund is made, the excess Court Fee Fund dollars may be appropriated from that Fund to pay for operational expenses of trial courts.

House Bill 5112 would change the way funds from the Court Fee Fund are distributed. First, court revenues transferred into the Fund would no longer be considered pension assets for any purpose. The bill would change the transfer of funds to the Court Fee Fund by funding the following items, in the following order:

1. Arrangement and Fund Payments - If the retirement board of the Judges Retirement System established an arrangement and fund as described in the Public Employee Retirement Benefit Protection Act (proposed by House Bill 5108), the benefits

required to be paid from that fund would be paid from the money in the Court Fee Fund. An arrangement and fund would allow benefits that exceed the IRS limits to be paid to retirees.

2. Health Care Benefits - After any required payments had been made to cover arrangement and fund payments, the State Treasurer would have to transfer a portion of any remaining funds in the Court Fee Fund to the reserve for health benefits in the Judges Retirement System. The amount of funds that would have to be transferred would be equal to the amount necessary to pay for health care benefits for the subsequent fiscal year that exceeded the amount available from employee contributions. (Only Supreme Court justices and Court of Appeals judges receive health care benefits paid for by the JRS.) Currently and for the past several years, the employee contributions have not been sufficient to cover all of the health care costs for retirees; thus, the system has been running a deficit for the past several years in order to pay for health care costs. For this reason, the bill would allow up to \$100,000 annually to be used to pay for health care costs not paid from the reserve for health benefits since fiscal year 1996-97. The current deficit in the reserve for health benefits is estimated at \$343,000.
3. Court Equity Fund - Upon meeting the requirements of the payments to the arrangement and fund and the reserve for health benefits, the State Treasurer would have to transfer a portion of any remaining funds, up to a maximum of \$2.2 million annually, to the Court Equity Fund. As under current law, funds transferred to the Court Equity Fund would be used to reimburse local trial courts for general operating costs.
4. Remaining Court Fee Funds - Following the transfer of funds for items 1, 2, and 3 above, any funds remaining in the Court Fee Fund would not be transferred to the General Fund. Instead, remaining funds could be appropriated to pay for the operational costs of trial courts.

The bill would make additional changes to ensure that the retirement system remained in a tax-exempt status.

## **House Bill 5114**

The bill would allow the Legislative Retirement System to create an arrangement and fund to allow benefits that exceed the IRS limits to be paid to retirees pursuant to the provisions outlined in House Bill 5108.

The bill also would make changes to ensure that the retirement system remained in a tax-exempt status. In addition, the bill would add a definition of "surviving spouse" to ensure that a surviving spouse is the person to whom the retiree is legally married.

MCL 38.1b et al. (H.B. 5109)  
38.1304 et al. (H.B. 5110)  
38.556 & 38.559 (H.B. 5111)  
38.2105 et al. (H.B. 5112)  
38.1643 (H.B. 5113)  
38.1008a et al. (H.B. 5114)

### **FISCAL IMPACT**

Except for House Bills 5109 and 5112, the bills would have no fiscal impact on State or local government.

House Bill 5109 would appropriate \$2.1 million to pay for the administrative costs associated with the early-out retirement plan proposed by House Bill 5732.

House Bill 5112 would have the following fiscal impact: Court Fee Fund revenue in FY 2001-02 and FY 2002-03 is estimated at approximately \$7.85 million. The Governor's Recommendation for FY 2002-03 would appropriate \$9.1 million in the Judiciary budget from the Court Fee Fund (estimated FY 2002-03 revenue and balances from previous years). To the extent that the bill would create prior set-asides for employee retirement Arrangement and Fund and the reserve for health care benefits, a revenue shortfall would result in the Judiciary budget.

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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.