

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**April 14, 2009**

**TO:** Honorable Todd Hunter, Chair, House Committee on Judiciary & Civil Jurisprudence

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB2207** by Gonzales (Relating to retirement qualifications for appellate judges.), As Introduced

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB2207, As Introduced: a negative impact of (\$355,886) through the biennium ending August 31, 2011.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five-Year Impact:**

<b>Fiscal Year</b>	<b>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</b>
2010	(\$177,943)
2011	(\$177,943)
2012	(\$177,943)
2013	(\$177,943)
2014	(\$177,943)

**All Funds, Five-Year Impact:**

<b>Fiscal Year</b>	<b>Probable Savings/(Cost) from General Revenue Fund 1</b>	<b>Probable Savings/(Cost) from Judicial Fund 573</b>
2010	(\$177,943)	(\$76,261)
2011	(\$177,943)	(\$76,261)
2012	(\$177,943)	(\$76,261)
2013	(\$177,943)	(\$76,261)
2014	(\$177,943)	(\$76,261)

**Fiscal Analysis**

The bill would amend Government Code by adding Section 839.102(g), which would allow an appellate court judge who has served at least 12 years on an appellate court and the member's age and service equal or exceeds 70 to use prior state judicial service to increase the creditable service percentage used to calculate retirement benefits in the Judicial Retirement System of Texas Plan Two (JRS-II).

The bill would take effect September 1, 2009.

## **Methodology**

The Employees Retirement System (ERS), which administers JRS-II, has determined that one appellate court judge with 14 years of non-appellate service and an additional 26 appellate court judges with an assumed average of seven years of non-appellate service would be impacted by this bill.

Given the average member contribution rate of 5.99 percent, the bill's provisions would result in a state contribution rate increase from 16.83 percent to 17.21 percent to meet the actuarially sound contribution rate. This would result in an increase of \$508,409 in All Funds (\$355,887 in General Revenue-related Funds). ERS reports that the bill would result in a \$4.4 million increase in the projected August 31, 2009 unfunded accrued liability, and an increase in the actuarially sound contribution rate (from 22.82 percent to 23.20 percent). There would also be an increase in the total normal cost rate from 19.26 percent to 19.50 percent.

The February 28, 2009 actuarial valuation of JRS II shows it as an actuarially sound system, based on an Actuarial Value of Assets (AVA) of \$237.3 million. However, the Market Value of Assets (MVA) was \$157.5 million; so the AVA was 50.7 percent greater than the MVA. JRS II uses an uncommon smoothing methodology which is slower to recognize gains or losses than a traditional 5 year smoothing method; additionally it has no corridor around the MVA to make sure the AVA is close to the MVA. The Actuarial Standard of Practice (ASOP) 44 requires smoothing methods to produce AVAs whose values fall within a reasonable range around the corresponding market values. A strong case could be made that an AVA more than 30 percent in excess of the market value is not in a reasonable range, indeed many plans have adopted a corridor which would require the AVA to be within 80 percent and 120 percent of the market value.

Even if JRS II had an unusually wide 40 percent corridor, requiring the Actuarial Value of Assets to be within 40 percent of the market value, the February 28, 2009 valuation would have shown JRS II to be actuarially unsound with an infinite funding period. This makes a strong case that JRS II is currently actuarially unsound. If so, then Government Code 840.106, which prohibits certain benefit increases when the system is actuarially unsound, would prohibit passage of this bill without significant additional funding for JRS-II.

## **Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 327 Employees Retirement System

**LBB Staff:** JOB, MN, MS, DEH