



House
Legislative
Analysis
Section

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MERS: REVISE DISABILITY REQUIREMENTS

House Bill 4506 (Substitute H-3)
First Analysis (5-30-90)

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Sponsor: Rep. Kay Hart
Committee: Senior Citizens & Retirement

THE APPARENT PROBLEM:

Currently, the Municipal Employees Retirement System (MERS) contains no provisions for employers or employees to be actively involved in efforts to return disabled employees to work. Many disabled employees could return to work at some level, even if not in their original positions. Some may need a transitional assignment to build back tolerance for full time work; some could return to part-time work if they were permitted; while some may need to have special provisions made to accommodate their disabilities. Employers, however, have little incentive under current law to make these adjustments in their work force once they have severed their relationship with a disabled employee. At present, MERS may retire a member who becomes incapacitated, if certain conditions are met, including certification by a medical adviser that the disability has rendered the member incapable of continued employment with the municipality in any position, that the incapacity is likely to be permanent, and that the member should be retired. A disabled retiree under 60 years of age must undergo periodic medical examinations to ascertain that he or she is still disabled and incapable of resuming employment. If the medical examination shows that the retiree is no longer disabled and should return to work, however, the employer is under no obligation to offer employment equal to that held by the retiree before he or she became disabled. The employer may offer any job, at any pay level; and the retiree must either take the job, or lose all disability benefits. Alternatively — and this is the more common occurrence — the employer may say that no jobs are available. Labor and management representatives, in cooperation with the House Senior Citizens and Retirement Committee, have worked out a compromise to amend the Municipal Employees' Retirement Act to facilitate the return to work of those employees who can be rehabilitated.

THE CONTENT OF THE BILL:

The bill would amend the Municipal Employees Retirement Act to provide additional options for a member who becomes mentally or physically incapacitated, and to require an employer to offer trial periods of employment to a member who is receiving a disability retirement allowance, but who has been medically certified as being able to return to work.

Incapacitated Employees. Currently, the Municipal Employees Retirement System (MERS) may grant a disability retirement allowance to a member if a medical adviser has certified that the member should be retired because he or she is permanently incapacitated, and is incapable of performing any work offered by his or her previous employer. Under the bill, a member's disability would not need to be defined as "permanent." Instead, a disability retirement allowance could be granted to a member if the medical adviser certified — and the board concurred — that the disability was likely to continue for

two years or more, if the member did not accept employment offered by the employer, and if the member's employer certified to the retirement board that it was not able to employ the member in a position equal to the compensation level the member held at the time of the incapacity.

Trial Period of Employment. The bill would permit a disability retiree to be employed by a participating municipality, court, or other employer — at a level equal to 100 percent or more of the compensation level held at the time of his or her incapacity — for a trial period of not more than 120 days, upon prior approval of the retirement system. The disability retiree would not become a member of the retirement system during the trial period of employment, and his or her disability status would not be affected. Approval could be granted for up to two trial periods of employment in any five-year period, and the compensation paid would not be considered income for purposes of calculating the member's retirement allowance.

The bill would require that an offer of employment made to a disability retiree be made in writing, and that it include at least the following:

- A complete description of the job duties and responsibilities.
- The compensation that would be paid for that employment.
- A statement indicating whether the disability retiree's allowance would be suspended if he or she refused to accept the offer.
- A statement indicating that the disability retiree could contact the retirement system to verify any information contained in the offer.
- The name and the current address of the retirement system.

Suspension of Disability Retirement Allowance. The act permits the retirement board to require disability retirees under 60 years of age to undergo periodic medical examinations, and to discontinue the allowance of anyone who is certified by the medical adviser as being capable of resuming gainful employment with the employer from which he or she retired. The bill would amend the act to clarify this provision. Under the bill, payment of a disability retirement allowance would be suspended if, after receiving a medical examination at the board's request, the medical adviser certified — and the board agreed — that the disability retiree was capable of returning to — and had been offered — his or her previous position.

A disability retirement allowance would also be suspended for any period during which any of the following circumstances existed:

- a) The disability retiree refused to accept a trial period of employment offered by the participating municipality or court within three years after the date the member was

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retired for disability under the act, if the compensation offered for the trial period was at a level equal to 100 percent of the compensation level of the position held by the disability retiree at the time of the incapacity. The compensation level used would be determined according to the scale in effect for that position on the date the municipality or court offered the employment.

b) The disability retiree voluntarily accepted any employment offered by the participating municipality or court.

Other Provisions. Under the act, a disability retiree who does not again become a member with restoration of credited service becomes a vested former member. The bill would amend the act to delete this provision.

MCL 38.1524 et al.

FISCAL IMPLICATIONS:

According to the Retirement Bureau in the Department of Management and Budget, the bill would have no fiscal impact on the state. (5-19-90)

ARGUMENTS:

For:

Given the importance that society places on working, being displaced from work due to disability can be demoralizing to those affected. In the case of disabled municipal employees, the costs of this loss of human potential are borne by each municipality, and, ultimately, by the taxpayers. The bill would reduce some of the frustration experienced by disabled retirees who are motivated and capable of returning to work by establishing a system whereby they could at least try to do so without fear of losing their disability benefits. Under the bill, an employer would either have to offer the same job that the employee held before, or, if a different job were offered, would have to permit a 120-day trial period. If the employee found the job too difficult, then he or she could turn it down at the end of the trial period. Alternatively, for those disability retirees who avoid work while continuing to receive compensation, the bill would provide an inducement by offering more in compensation than the retiree receives in retirement disability benefits.

Against:

The bill's requirement that any offer of employment made to a disability retiree be made in writing, and include the compensation that would be paid, could ultimately work against the returning worker. If the employee bargaining unit later negotiated a wage increase, for example, the employee could find that he or she was legally constricted to the salary amount specified in the letter offering the employment. The bill should be amended to clarify that the compensation amount specified in an offer only apply during the trial period of employment.

Against:

Historically, benefits granted to one retirement system have soon been followed by demands for similar benefits from other retirement systems. The provision in the bill that would permit disability retirees to continue receiving disability retirement benefits, while also receiving 100 percent of their salary at the time of their incapacity, could therefore set a dangerous precedent. If private industry had to adopt such a program, many small companies could be forced out of business.

POSITIONS:

The Michigan State Fire Fighters Union supports the bill. (5-29-90)

The Municipal Employees Retirement Board supports the bill in concept, but is concerned about the precedent setting aspect of that provision of the bill that would permit an employee to work during a trial period of employment at a rate equal to 100 percent of his or her previous level of pay, and, at the same time, still receive disability retirement benefits. The board is also concerned that the act's requirement that an employer make an offer of employment to a disability retiree in writing be construed as a legal document that would restrict the employee to that rate of pay in the future. (5-29-90)

The Retirement Bureau in the Department of Management and Budget has no position on the bill. (5-29-90)

The Michigan Townships Association has no position on the bill. (5-29-90)

The Michigan Municipal League has not yet formulated a position on the bill. (5-29-90)