

**SFA**

BILL ANALYSIS

Senate Fiscal Agency

• Lansing, Michigan 48909

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Senate Bill 565

Sponsor: Senator Gilbert J. DiNello

Committee: Judiciary

Date Completed: 2-15-90

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SUMMARY OF SENATE BILL 565 as introduced 10-4-89:

The bill would amend the Public School Employees Retirement Act to specify that a Public School Employees' Retirement System (PSERS) retirement allowance, optional benefit, or any other benefit to a PSERS "participant" (i.e., member, deferred member, or retirant) would be subject to a "qualified domestic relations order". The bill would define "domestic relations order" as a court order, decree, or judgment made pursuant to Michigan's domestic relations law and pertaining to the provision of alimony, child support, or marital property rights of a spouse, former spouse, child, or other dependent of a PSERS participant. A "qualified" domestic relations order would be one to which all of the following applied:

- The name and last known address of both the PSERS participant and the "alternate payee" were stated. (An "alternate payee" would be a "spouse, former spouse, child, or other dependent of a participant named in a qualified domestic relations order".)
- The order specified the amount or percentage of the benefit that would have to be paid to an alternate payee, or specified the manner under which that amount or percentage was to be determined.
- The order stated that it applied to the PSERS and identified the number of payments or the period of time to which the order applied.
- It did not require the PSERS to provide a form or type of benefit not otherwise available under the Act, and did not require the PSERS to provide an increased benefit.
- The order did not require the PSERS to pay to an alternate payee a benefit that was required to be paid to another alternate payee under a prior qualified domestic relations order.

Payment to an Alternate Payee

The bill specifies that an alternate payee would be entitled to a share of a benefit otherwise payable to a PSERS participant, if a qualified domestic relations order so provided and were filed with the PSERS. The bill also provides that the "creation, assignment, or recognition of a right of an alternate payee to an actual interest in a share of a benefit" would not be a "prohibited assignment" under the Act. The PSERS would have to administer the benefit payments according to the order.

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A qualified order could provide for the payment after the PSERS participant qualified for retirement, but before the participant separated from public school service. If an alternate payee elected to receive his or her interest before the participant separated from service, the alternate payee would be entitled only to the actuarial equivalent of the benefit to which he or she would be entitled upon the participant's retirement. The PSERS would have to recalculate the amount of payment after the participant's retirement, however. If that recalculated amount were greater than the amount paid in the earlier benefit option, the recalculated amount would have to be paid to the alternate payee beginning on the first day of the month following the participant's retirement date.

The bill also would allow a qualified domestic relations order to provide that a former spouse of a PSERS retirant would be considered a spouse for the purpose of receiving a retirement allowance under the Act's provisions allowing a surviving spouse to collect the retirement benefits due a PSERS member who died after qualifying for benefits but before his or her retirement date. Similarly, a qualified order could provide that a former spouse of a PSERS retirant would be considered a surviving spouse for the purpose of receiving the member's retirement benefits if the member died as a result of an injury or illness that arose out of and in the course of the deceased's employment and for which workers' disability compensation was paid. If the amount of the benefit to be paid to a former spouse designated as the surviving spouse were less than the entire amount payable, the member's actual surviving spouse would be entitled to receive the remaining portion of the benefit.

In addition, the bill would permit a qualified domestic relations order to provide for the election of a payment option under the Act and require that a PSERS participant designate his or her former spouse as the "retirement allowance beneficiary". (The Act allows a PSERS member to elect to receive full benefits upon retirement, in which case the benefits cease upon the retirant's death, or to receive reduced benefits, in which case the retirement allowance beneficiary can collect benefits after the retirant's death.) The amount payable to a former spouse as a retirement allowance beneficiary would have to be computed as specified in the qualified domestic relations order. If the amount payable to the former spouse were less than the entire amount payable to a retirement allowance beneficiary, a beneficiary designated by the PSERS participant would be entitled to receive the remaining portion of the allowance.

#### Qualification Determination

The bill would require the PSERS to establish a procedure to determine if a domestic relations order was "qualified" under the bill. The PSERS would have to notify promptly the alternate payee and participant that it had received the order, and include a description of the procedure for determining whether it was a qualified order.

Within a reasonable period after receipt of the order, the PSERS would have to determine whether it was a qualified order. If the PSERS determined that the order was qualified, the alternate payee and participant would have to be notified promptly, and the retirement system would have to begin the benefit payment as specified by the qualified domestic relations order on the first day of either the month following the date the order was determined to be qualified or the month in which a benefit was payable under the qualified order, whichever was later. If the PSERS determined that the domestic relations order was not

qualified, the PSERS promptly would have to notify the participant and alternate payee of the reasons why the order was not a qualified order. Such a determination would not prohibit an alternate payee, a participant, or a court from filing with the PSERS an amended domestic relations order.

The bill specifies that a domestic relations order filed before the bill's effective date would be considered a qualified order if it met all of the bill's requirements. This provision would not prevent an alternate payee, a participant, or a court from filing an amended domestic relations order.

MCL 38.1346 et al.

Legislative Analyst: P. Affholter

#### FISCAL IMPACT

This bill would not increase the funding requirements of the Public School Employees' Retirement System, but could cost the Bureau of Retirement \$180,000 annually. The amount of benefits retained under current practice is a windfall for the System and is not included in projections of member benefit obligations. (The System may retain benefits when a divorced member dies before receiving pension benefits.) The Bureau of Retirement in the Department of Management and Budget could incur a significant increase in workload if this bill were enacted in its current form. The Bureau estimates that it would receive about 1,000 Domestic Relations Orders each year. Three positions would be needed and assistance from the Attorney General and the actuary should be anticipated. Total added cost could amount to \$180,000 each year.

Fiscal Analyst: K. Lindquist

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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.