

# Legislative Analysis



## POLICE AND FIRE RETIREMENT SYSTEM TRUSTEES

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### House Bill 4917

**Sponsor: Rep. Fred Durhal**

**Committee: Labor**

**Complete to 2-5-10**

## A SUMMARY OF HOUSE BILL 4917 AS INTRODUCED 5-12-09

House Bill 4917 would amend the Public Employment Relations Act (Public Act 336 of 1947), which concerns the collective bargaining rights of public employees. The bill deals with the board of trustees of the police or firefighters pension or retirement system in a city with a population of 500,000 or more (Detroit).

Under the bill, if collective bargaining between that city and its police and firefighting employees results in a requirement that the board of trustees of the pension or retirement system contain one or more representatives of members of the pension or retirement system or of the collective bargaining unit, then the method of selecting those representatives could not be the subject of collective bargaining. (It would be considered a "prohibited subject.") Instead, the retirement or pension system board would adopt rules and regulations to govern the election of the representatives. Those rules would have to provide that the representatives be elected by a majority vote of all *active and retired members* of the police or fire department who belong to the pension or retirement system, and assure that each retired and active member has an equal vote.

The bill specifies that retired members of the pension or retirement system would have no right to nominate candidates to the pension or retirement board, although they would have the right to vote on the candidates nominated by the active members.

The bill specifies it applies to any collective bargaining agreement or to any extension of an existing collective bargaining agreement that takes effect on or after the date the bill takes effect.

MCL 423.215

### FISCAL IMPACT:

The bill would have no impact on the state revenues or expenditures. As written, the bill currently only applies to the City of Detroit Police and Fire Retirement System (DPFRS)<sup>1</sup>, and the collective bargaining authority of the city's police officers and fire fighters. The bill currently does not apply to the general retirement system of the City of

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<sup>1</sup> For further information on the two retirement systems of the City of Detroit (the General Retirement System and the Police and Fire Retirement System), including minutes of the two boards of trustees, annual reports, and independent audit reports see, [<http://www.rscd.org>].

Detroit, nor does it apply to other municipal retirement systems. Any direct impact on the city (from the standpoint of electing members to the DPFRS board) would not likely be significant, although the bill would impose some additional cost increases on the city, which would be borne by the retirement system itself as part of its regular general and administrative expenses.<sup>2</sup>

Under the current contract provisions, only *active* police officers and fire fighters are eligible to vote for their representatives on the board of trustees (and, even then, only in the same general rank class, i.e. above Lieutenant or Lieutenant and below). The bill, following prior court rulings and past practice, continues to provide that the composition of the DPFRS board is subject to collective bargaining under the PERA. In this regard, the bill would have no direct impact on the number of DPFRS trustees representing members of the system, or who, generally, those member-trustees are. However, the bill specifically excludes from the collective bargaining process, bargaining on how those member-trustees are to be selected (elected). The bill would open up eligibility to vote for police and fire member-trustees to *retirees* as well, although the authority to nominate member-trustees would remain the province of the active members. Again, the number of member-trustees, whether they are police officers or fire fighters, whether they are active or retired members, or whether they hold a certain rank would continue to be subject to collective bargaining.

According to the 2008 Annual Report of the DPFRS, there were 4,078 active members and 8,442 retired members of the retirement system (for a total of 12,520), as of June 30, 2008.<sup>3</sup> Opening up voting to retired members would effectively triple the potential number of voters, which would increase the costs of selecting member-trustees due to the printing and processing additional ballots, although such costs aren't likely to be significant. The bill also directs the DPFRS board to adopt rules and regulations governing the election of member-trustees. To the extent such rules currently do not exist, the bill would impose additional requirements on the board, although any related cost impact on the board isn't likely to be significant either.

Currently the DPFRS is governed by an 11-member board of trustees, consisting of:<sup>4</sup>

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<sup>2</sup> According to the independent audit report of the DPFRS, the general and administrative expenses of the DPFRS for 2007-08 totaled \$4,033,993.

<sup>3</sup> The independent audit report for 2007-08 notes that, as of June 30, 2008, the DPFRS had 4,179 active members and 8,510 retired members.

<sup>4</sup> The current contract with the Detroit Police Officers Association provides for a 12-member board of trustees that consists of, as ex-officio members, the city's finance director, budget director, and corporation counsel, rather than the Police Chief and Fire Commissioner. The composition of the DPFRS board was altered under an August 2003 Act 312 arbitration award in MERC Case No. D01 D-0568, *In the Matter of the Arbitration Between: City of Detroit and Detroit Police Officers Association*, [<http://turf.lib.msu.edu/awards/pdfs/awards/r1983.pdf>]. Reportedly the contract with the Detroit Fire Fighters Association includes an 11-member board and, for that reason, the board continues to be an 11-member board. See, also, *Detroit Chief Financial Officer v. City of Detroit Policemen and Firemen Retirement System Board of Trustees*, Michigan Court of Appeals Docket No. 254516 (January 12, 2006), [[http://coa.courts.mi.gov/documents/opinions/final/coa/20060112\\_c254516\\_48\\_4o.254516.opn.coa.pdf](http://coa.courts.mi.gov/documents/opinions/final/coa/20060112_c254516_48_4o.254516.opn.coa.pdf)]. The decision was vacated by the Supreme Court (Docket No. 130564) on October 20, 2006, which remanded the case to Wayne County Circuit Court for entry of an order granting summary disposition to the defendants, [[http://coa.courts.mi.gov/documents/sct/public/orders/20061020\\_s130564\\_64\\_130564\\_2006-10-20\\_or.pdf](http://coa.courts.mi.gov/documents/sct/public/orders/20061020_s130564_64_130564_2006-10-20_or.pdf)].

1. The Mayor of Detroit, or a designee (ex-officio).
2. The President of the Detroit City Council or another member of the city council (ex-officio).
3. The City Treasurer or Deputy Treasurer (ex-officio).
4. The Police Chief, or another member of the Police Department (ex-officio).
5. The Fire Commissioner, or another member of the Fire Department (ex-officio).
6. Three firefighters who are members of the retirement system, elected by the firefighter members under rules and regulations established by the Fire Commissioner. Of the three fire fighter members,
  - a. Two members are to be elected from members holding the rank of Lieutenant or below.
  - b. One member is to be elected from members holding the rank above Lieutenant.
7. Three police officers who are members of the retirement system, elected by the police officer members under rules and regulations established by the Police Chief. Of the three police officer members,
  - a. Two members are to be elected from members holding the rank of Lieutenant or below.
  - b. One member is to be elected from members holding the rank above Lieutenant.

Member-trustees serve three-year terms, and are elected by active members within the same rank class (above Lieutenant, or Lieutenant and below).

In 1974, the Michigan Supreme Court ruled that changes in the police and fire retirement system are mandatory subjects of collective bargaining under the Public Employment Relations Act, 1947 PA 336.<sup>5</sup> Subsequent to that, in 1982, the state Court of Appeals ruled that the composition of the boards of trustees of the two retirement systems of the City of Detroit are also mandatory subjects of collective bargaining under the Public Employment Relations Act, as the composition of a retirement system impacts the "wages, hours, and other terms and conditions of employment."<sup>6</sup>

In 1996, voters in the City of Detroit adopted a new City Charter under the Home Rule Cities Act that added a 12th member to the DPFERS Board of Trustees. This member was to be "[a] retirant, receiving benefits under the retirement system who shall be a resident of the city and elected by retired firefighters and police officers under procedures as

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<sup>5</sup> See, *Detroit Police Officers Association v. City of Detroit*, 391 Mich 44, February 14, 1974.

<sup>6</sup> See *City of Detroit v. Michigan Council 25, American Federal of State, County, and Municipal Employees*, Docket No. 58569, 118 Mich App 211, October 7, 1982. At issue was the validity of a city ordinance that altered the composition of the two boards of trustees without prior collective bargaining with the police and fire unions.

established by ordinance."<sup>7</sup> It appears the retired member has not been added to the board. In response to a lawsuit brought by the Retired Detroit Police and Fire Fighters Association (RDPFFA), the state Court of Appeals, in a per curiam, unpublished opinion, ruled in February 2007 that "[c]harter provisions enacted pursuant to the Home Rule Cities Act cannot contravene the obligations imposed by PERA," which in this case applies to inclusion of the composition of the retirement system boards as a mandatory subject of collective bargaining.<sup>8</sup>

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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.

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<sup>7</sup> See, Article 11, Section 11-103 of the Detroit City Charter. The city charter currently provides that the board is to consist of three active members of the police department, three active members of the fire department and, as ex-officio members, the City Treasurer (or deputy), the Mayor (or designee), the City Council President (or another council member), the Police Chief (or designee), the Fire Commissioner (or designee), and a retired member. In May 2009, Detroit voters approved the creation of a charter commission to revise the 1997 city charter.

<sup>8</sup> See, *Retired Detroit Police and Fire Fighters Association v. City of Detroit*, Michigan Court of Appeals, Docket No. 272235, February 6, 2007 (unpublished), [[http://coa.courts.mi.gov/documents/opinions/final/coa/20070206\\_c272235\\_43\\_272235.opn.pdf](http://coa.courts.mi.gov/documents/opinions/final/coa/20070206_c272235_43_272235.opn.pdf)].