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PSERS: POST-RETIREMENT EARNINGS LIMIT

House Bill 4340 (Substitute H-1)
First Analysis (6-10-03)

Sponsor: Rep. Bruce Caswell
Committee: Senior Health, Security and Retirement

THE APPARENT PROBLEM:

Under the Public School Employees Retirement Act, certain restrictions are placed on the practice of retirees becoming re-employed by a "reporting unit" (a public school, intermediate school district, charter school, community college, etc.). These include a limit on the amount that can be earned without affecting the retiree's pension. If a retiree becomes employed by a reporting unit, the retiree's pension is reduced if earnings exceed either: a) 1/3 of the retiree's final average compensation (increased 5 percent per year), or b) the maximum earnings permitted under the federal Social Security Act. The pension is reduced by the full amount that earnings exceed the lesser of the two limitations. Retirement systems typically impose post-retirement earnings limitations (as does the IRS) to prevent the abuse of the system by what is sometimes called "double-dipping", i.e., allowing a person to retire, collect a full pension, and immediately return to work for the same employer in some form, such as a contractual employee, and to simultaneously be paid both a salary and a pension.

Public Act 68 of 1999 amended these provisions to create certain exceptions to the earnings limitation for post-retirement employment with "reporting units" in the case of an emergency situation. During the deliberations on that legislation, the salary cap was said to be an obstacle to using retired personnel to fill, even on a limited basis, certain high-demand teaching positions, such as special education positions or substitute teaching positions. Reportedly, school districts across the state were experiencing difficulties filling teaching positions with skilled and qualified teachers, and this was particularly a problem in the Detroit School District. Further, as the Detroit Reform School Board was beginning to work on overhauling the administration of that district, one of its goals was to address the shortage of certified instructors in Detroit classrooms. At the request of Detroit school officials, the Engler administration recommended a relaxation in the restrictions on earnings that affect public school employee retirees. It was felt that this would allow Detroit and other districts to bring in skilled, experienced teachers to fill critical teaching positions. The provisions applied to retirees who retired before July 1, 1999 and were set to expire on July 1, 2002.

Public Act 30 of 2001 extended these provisions of the 1999 legislation to July 1, 2006 and applied the provision to retirees who retired before July 1, 2000. It also expanded the provision to apply to administrators and stationary engineers as well as to teachers and principals. However, school districts across the state continue to experience teacher shortages, particularly in certain subject areas. Legislation has been offered to once again extend the eligibility to include more retirees.

THE CONTENT OF THE BILL:

House Bill 4340 would amend the Public School Employee Retirement Act to expand the exceptions to the earnings limitation for retirees placed in the statute by Public Act 68 of 1999 and Public Act 30 of 2001. It would make the exceptions apply to retirees who retired on or before July 1, 2002, rather than on or before July 1, 2000. Further, the bill would specify that beginning July 1, 2004, the exceptions would apply to retirees who retired on or before July 1, 2003.

MCL 38.1361

BACKGROUND INFORMATION:

Under the 1999 and 2001 amendments, until July 1, 2006, the earnings limit does not apply to post-retirement employment by a reporting unit (e.g., a school district), under certain limited circumstances. There are two specific exceptions that apply in the case of an emergency situation -- not including a labor dispute -- that necessitates the hiring of a retiree in order to prevent depriving students of an education. The emergency employment cannot exceed three years, and the retiree is not eligible to use the service or compensation attributable to the post-retirement employment for a recomputation of her or her retirement allowance. Under current law, the emergency exceptions only apply to retirees who retired before July 1, 2000.

• The first exception is for a reporting unit that has an approved emergency situation. In such a case, the chief executive officer or superintendent of the reporting unit must notify the state superintendent of public instruction of the existence of such an emergency situation, including documentation showing that, for the 1998-99 school year, more than eight percent of all classes in the district were taught by full-time substitute teachers who were not certified in the subjects or grade levels which they taught. Within 30 days after receiving such notification, the Department of Education is to notify the district of its approval or disapproval of the emergency situation. If approved, the district may employ a retiree as a teacher, principal, administrator, or a stationary engineer and such employment does not affect the retiree's pension.

• The second exception is for a reporting unit who needs to hire a retiree to teach in a "critical shortage discipline". The state superintendent was required to compile a listing of such disciplines by July 1, 1999, and update the listing annually.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have no fiscal implications for state or local governments. (6-6-03)

ARGUMENTS:

For:

By extending the exceptions made by the 1999 and 2001 legislation, the bill would continue a policy that has assisted school districts in filling certain positions that have been difficult to fill, such as in special education, math, science, language and technical fields. The bill would allow the continuation of the practice of allowing retired teachers and school personnel to fill critical positions for a short period of time, without affecting the retirement allowance of those individuals. And in some cases, such an exception will allow a district to continue to offer a program that otherwise would have to be discontinued for lack of a teacher.

Response:

Some people would like to see these exceptions expanded even more. For example, some would advocate expanding the pool of eligible candidates by exempting people who retire by July 1, 2003, rather than July 1, 2002 as the bill would do, from the earnings limitation. Since this provision appears to give schools greater flexibility in meeting staffing needs, others would like to see the sunset date of July 1, 2006 removed altogether.

Rebuttal:

According to a representative from the Office of Retirement Services, the Internal Revenue Service requires that a bona fide period of separation occur after retirement. Though not defined, the practice has been to require that period to be at least one year, as the bill would do. Therefore, the bill would apply to those school employees who had retired prior to July 1, 2002; a school employee retiring between July 2, 2002 and July 1, 2003 could only be rehired by a school district after July 1, 2004.

As to eliminating the sunset date altogether, there is a concern that doing so may inadvertently create an incentive for teachers to retire and then come back to work. So far, there is no evidence as to a mass exodus from teaching so that the retirees can come back under this provision, but as long the sunset exists, the issue will have to be revisited. At that time, the data can be reviewed to see if any harm is being done to the retirement system.

POSITIONS:

The Michigan Education Association supports the bill. (6-6-03)

The Michigan Association of Retired School Personnel supports the bill.

The Office of Retirement Services within the Department of Management and Budget is neutral on the bill. (6-5-03)

Analyst: S. Stutzky

■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.