

Legislative Analysis



PUBLIC SCHOOL EMPLOYEES' RETIREMENT: ALLOW RETIREES TO WORK IN SCHOOLS

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House Bill 5760 (Substitute H-1)

Sponsor: Rep. David Palsrok

Committee: Education

First Analysis (3-24-06)

BRIEF SUMMARY: The bill would allow teachers who had retired before April 1, 2006 to be rehired under certain conditions. The provision would sunset on July 1, 2011.

FISCAL IMPACT: The bill would have no fiscal impact on state or local government.

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.

Public Act 5 of 2004 again extended these provisions of the 1999 legislation by expanding the exceptions to the earnings limitation for retirees who retired on or before July 1, 2003 (rather than July 1, 2000).

According to the Office of Retirement Services, during 2004, 249 retirees returned to work, and 156—more than 60 percent—were employed in shortage areas. Further, the Department of Education's most recently published annual list of "shortage areas" (dated September 16, 2005) also includes administrators—principals, assistant principals, superintendents, and school guidance counselors—as well as teachers in 34 subject areas. See Background Information below. Legislation has been offered to once again extend the eligibility to include more retirees.

THE CONTENT OF THE BILL:

House Bill 5760 (H-1) would amend the Public School Employees Retirement Act (MCL 38.1361) to extend for five years a provision that allows retired teachers and other school personnel to work as school employees without a reduction in their pensions, if they work in a school district with an approved emergency situation. The provision in the act that permits this expires July 1, 2006. The bill would change that date to July 1, 2011.

The bill specifies that these provisions would apply only for retirants who retired on or before April 1, 2006. The current provisions applied only to those retirants who retired before July 1, 2003.

Currently under the law, if a retired public school employee is receiving a retirement allowance (other than a disability allowance), certain conditions follow. For example, he or she is not entitled to a new final average compensation or additional service credit unless additional services are performed equivalent to five or more years of service credit. Further, the retirant's retirement allowance must be reduced when earnings exceed certain thresholds.

Currently, until July 1, 2006, these provisions of the law do *not* apply to retirees who return to work in approved emergency situations. However, those retirees who return cannot be employed under an emergency situation for more than six years, nor are they eligible to use any service or compensation attributable to the employment for a re-computation of their retirement allowances. [Under the law, an "approved emergency situation" is one in which a school administrator provides written documentation showing that more than eight percent of all classes in the district during the 1998-99 school year were taught by full-time substitute teachers who were not certified in the subjects or

grade levels in which they taught.] House Bill 5760 would retain all of these provisions, but extend them for five years, until July 1, 2011.

BACKGROUND INFORMATION:

Earnings Limit. 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 re-computation 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.

Michigan Department of Education Critical Teacher Shortage Areas 2005-2006

Principal	Computer Science	Marketing Distribution
Assistant Principal	Construction Trades	Mathematics
Superintendent	Electronics	Medical Assisting
School Guidance Counselor	Emotionally Impaired	Mentally Impaired
Agriscience & Natural Resources	English	Music
Autism	Food Management	Nursing Occupations
Auto Body Repair	Graphics Printing	Physical Education
Auto Mechanics	Hearing Impaired	Radio & TV Production
Bilingual Spanish	Law Enforcement	Reading
Business Services	Learning Disabilities	Science (chemistry, physics, biology, earth science)
Child Care & Guidance	Machine Shop	Speech & Language Impaired
Spanish	Visually Impaired	
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ARGUMENTS:

For:

By extending the exceptions made by the 1999, 2001, and 2004 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.

Against:

There is a concern on the part of the Office of Retirement Services that this bill may inadvertently create an incentive for teachers and administrators to retire and then come back to work. That is because it is drafted to apply to those who retire in the future—by April 1, 2006. It would be wiser to amend the bill so that it applies only to those who retired by July 1, 2005 (in keeping with past practice when the law was amended in 1999, 2001, and 2004), or perhaps to those who retired before January 1, 2006. 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 Department of Education supports the bill. (3-22-06)

The Michigan Association of School Boards supports the bill. (3-22-06)

The Macomb Intermediate School District supports the bill. (3-22-06)

The Michigan Education Association supports the bill. (3-22-06)

The International Union of Operating Engineers supports the bill. (3-22-06)

The Ottawa, Kalamazoo, and Muskegon Intermediate School District support the bill. (3-22-06)

The Northern Michigan Schools Legislative Association supports the bill. (3-22-06)

The Michigan Association of School Administrators supports the bill. (3-22-06)

The Office of Retirement Services is neutral on the bill. (3-22-06)

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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.