

FORFEITURE OF RETIREMENT BENEFITS FOR CERTAIN CRIMINAL SEXUAL CONDUCT

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House Bill 5338 as introduced
Sponsor: Rep. Michele Hoytenga
Committee: Judiciary
Complete to 3-9-20

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

House Bill 5338 would amend the Public Employee Retirement Benefits Forfeiture Act to provide that a public school employee who is convicted of or enters a nolo contendere plea for criminal sexual conduct against a student or a minor must forfeit certain retirement benefits under the Michigan Public School Employees' Retirement System (MPSERS).

Currently under the act, if after September 4, 2017, a member or retiree of a retirement system is convicted of or enters a nolo contendere plea accepted by a court for a *felony arising out of his or her service as a public employee*, he or she is considered to have breached the public trust and must forfeit his or her rights to an otherwise vested retirement benefit and all accumulated employer contributions, including earnings on the employer contributions, that stand to his or her credit in the retirement system of which he or she is a member or retiree at the time the felony was committed, if the retirement system was established by the entity affected by the felony. (A court may forfeit the rights to those benefits of a person who was convicted or entered a nolo contendere plea for such a felony before September 4, 2017.)¹

The act now defines *felony arising out of his or her public service as a public employee* as either of the following:

- A felony resulting from the misuse of public funds.
- A felony resulting from the receipt of a bribe or other financial benefit in that individual's capacity as a public employee.

The bill would amend *felony arising out of his or her public service as a public employee* to include a felony violation of the criminal sexual conduct provisions (Chapter LXXVI) of the Michigan Penal Code, if the individual was a *public school employee* and the victim was either less than 18 years of age or a pupil of a *reporting unit*. For purposes of the requirement that forfeiture applies only to the retirement system established by the entity affected by the felony, the bill would stipulate that MPSERS is affected by such a felony regardless of whether the victim was a pupil of the reporting unit where the individual was employed.

¹ September 4, 2017, was the effective date of 2017 PA 43, which among other things made forfeiture mandatory rather than optional at the court's discretion. See the HFA analysis of 2017 PA 43 (HB 4131): <https://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-4131-B86A917F.pdf>

Public school employee would mean an employee of a public local school district, intermediate school district, public school academy, or tax-supported community or junior college. Public school employee would include a public school employee on an approved leave of absence that does not exceed two years from the date the employee ceases to accumulate service credit. Public school employee would not include an employee who is hired but has not yet performed services for remuneration under an express or implied contract with a reporting unit. Under certain conditions specified in the Public School Employees Retirement Act, public school employee could include an employee of a district library or of Eastern Michigan University, Central Michigan University, Northern Michigan University, Western Michigan University, Ferris State University, Michigan Technological University, or Lake Superior State University.

Reporting unit would mean a public school district, intermediate school district, public school academy, tax-supported community or junior college, or university, or an agency having employees on its payroll who are members of MPSERS. Reporting unit would include a university only to the extent that the university has employees on its payroll who are members of MPSERS.

MCL 38.2702 and 38.2703

BACKGROUND:

A forfeiture order under the act must contain all of the following, as applicable:

- The portion of the member's or retiree's retirement benefit under a retirement system established by that individual's employer at the time the act or acts that resulted in the felony were committed that accrued to the member or retiree on or after the date the first act that resulted in the felony was committed is forfeited.
- The member's or retiree's accumulated contributions standing to that individual's credit in the individual account established for that purpose in the retirement system must be refunded to the member or retiree.
- Except for a retirement benefit that is a benefit from employer contributions to a defined contribution plan forfeited above, the retirement system shall pay to an individual, if any, who would otherwise be a beneficiary of the member or retiree whose retirement benefit is being forfeited under this act an actuarially equivalent monthly retirement allowance at the age the member or retiree would have become eligible for unreduced retirement benefits under that retirement system.
- The retirement system shall provide hospitalization and medical coverage insurance to the member or retiree whose retirement benefit is being forfeited under this act and to his or her beneficiaries in the same manner and under the same restrictions as is provided to other retirees and beneficiaries of that retirement system.

FISCAL IMPACT:

The bill would have an indeterminate fiscal impact but could create a savings for MPSERS, local reporting units, and the state.

Any cost savings would be contingent on the number and scope of forfeiture actions as a result of the new requirement that a public school employee who is convicted of or enters a nolo contendere plea for criminal sexual conduct against a student or a minor as noted above forfeit certain retirement benefits. There are no data available with which to estimate the number of potential forfeitures to which the new provisions might apply, and any savings would depend on the amount of employer contributions plus investment returns that had accumulated toward certain retirement benefits. Currently in a forfeiture situation, the state deposits forfeited defined contribution (DC) funds into a forfeiture account, which is the same account used to collect funds from employee DC accounts for employees who leave prior to vesting in their employer-paid benefits. These funds are then used to offset mandatory employer contributions, and thus create a savings to the state and local reporting unit. Funds retained by the pension system as a result of a forfeiture presumably would accumulate to the benefit of the whole pension plan.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.