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## SERA: DISABILITY RETIREMENT

House Bill 4514 (Substitute H-2)  
First Analysis (11-16-93)

Sponsor: Rep. Justine Barns  
Committee: Public Retirement

### ***THE APPARENT PROBLEM:***

The State Employees' Retirement Act provides for state employees (or certain surviving family members) to receive a disability pension when they are disabled or die due to an injury or illness that occurs during employment with the state. The act differentiates between a "duty disability" (due to an injury or illness that is work-related) and a "nonduty disability" (resulting from an injury/illness that occurs away from work). An applicant for disability retirement must meet certain criteria to qualify for a disability pension; the criteria differ depending on whether or not the disability is work-related. Regardless of the type of disability incurred, a disability retiree must submit to a medical examination each year in the first five years after state employment ends, and must be examined at least once every three years thereafter. If a disability retiree who otherwise qualifies for a disability pension refuses to submit to an exam or, after being examined, is shown to be capable of performing some kind of reasonable job, he or she must resume work with the state and any pension granted must cease. State retirement officials point out that rehabilitation programs exist that could help disabled retirees return to the same position, or possibly a new one, with the state. Nothing in the act, however, currently provides for a disabled retiree to submit to any kind of a vocational rehabilitation evaluation nor authorizes the retirement board to direct a disabled retiree who might benefit from a rehabilitation program into such a program. In addition, some people believe that disability pension levels established in the act do not reflect today's salary levels and need to be adjusted, and that provision should be made for disability pensions to be annually adjusted upward to account for the effects of inflation. Legislation has been proposed to address these and other related issues.

### ***THE CONTENT OF THE BILL:***

Currently, the State Employees Retirement Act provides that a state employee, if certain criteria are met, may receive a disability pension regardless of his or her age or years of state service for an injury or illness that occurs on the job ("duty disability"). (Surviving family members may also qualify if death occurs due to an injury/illness.) When disability from a work-related illness or injury occurs for which the person is receiving weekly worker's compensation benefits, a member of the retirement system may apply for duty disability benefits and qualifies to receive them if:

- \* he or she becomes totally and permanently unable to perform any gainful employment due to the injury or illness;
- \* he or she is receiving worker's compensation because of the injury/illness;
- \* he or she has not met the age and service requirements for a regular pension (served at least 10 years and reached age 60);
- \* both the member's physician and the retirement system's physician certify the disability; and
- \* the retirement board approves a disability pension.

The act generally requires an application to be submitted within one year of the person's termination from state employment due to the disability or death in order for a member to qualify for disability retirement. Similar provisions apply for disability benefits to be paid for a disability or death resulting from an accident or illness that occurs away from work ("nonduty disability"), except that a member must have at least 10 years of service credit and cannot otherwise qualify for a regular pension due to his or her age and lack of service credit when the disability/death occurs.

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Provisions governing qualification for either a duty or nonduty disability pension generally would remain the same under the bill. The bill, however, would revise provisions that now require a member who qualifies for disability benefits to submit to a medical evaluation.

**Medical, vocational evaluation.** Currently, a member under age 60 who qualifies for disability retirement must submit to a medical evaluation annually during the first five years of disability retirement and at least once every three years thereafter. If he or she refuses to submit to the test as required the retirement board may revoke his or her rights to disability benefits. Also, a disabled retirant found to be physically capable of resuming employment must be restored to service with the state and his or her disability benefits must cease.

Under the bill, a qualifying disability retirant would have to submit either to a medical evaluation or a vocational evaluation, or both, once each year for six years (rather than five) after disability retirement began, and after the sixth year would not have to be tested at all. The retirement board would have to make reasonable accommodations regarding the location and method of the medical or vocational evaluation, considering where the disability retirant lived and his or her health. The board could recommend that the retirant participate in a vocational rehabilitation program as specified in the bill. Just as is the case now, refusal to submit to an evaluation if and when required could result in a retirant's disability allowance being revoked.

The bill would authorize the retirement board to pay from the funds of the retirement system the cost for a disability retirant to participate in a vocational rehabilitation program or a return-to-work program administered by the state. This could only occur if the amount payable for participation plus the amount of a special differential payment provided for in the bill, if any, was less than the "projected benefit total" (which would be the difference between 60 and the person's age at his or her projected reemployment date, multiplied by the annual disability benefit payable to him or her). If the board determined the disability retirant was no longer incapacitated for the state employment that he or she was performing immediately before termination began--or for which he or she was qualified for due to training or experience, or both--it would have to recommend that the state reemploy the disability retirant. (At present, a person under

these circumstances must be restored to state employment.) The retirement system, however, would have to continue paying the person a disability pension until he or she was reemployed.

The bill specifies that before a final determination could be made to qualify a member for disability retirement, the retirement board could require the applicant to submit to a written vocational evaluation prepared by a rehabilitation agency. The evaluation would have to contain all of the following:

- \* A description of the applicant's vocational limitations, if any, resulting from the personal injury or disease that was the basis of the claimed incapacity;
- \* A description of the applicant's potential, if any, for vocational rehabilitation;
- \* A recommendation regarding a vocational rehabilitation program, if applicable, for the applicant.

If the board determined that a disability applicant was otherwise qualified for a pension--but that potential existed for him or her to be rehabilitated for reasonable state employment compatible with his or her mental and physical condition--the applicant would have to be retired. The board could recommend that the retirant participate "in good faith" in a reasonable vocational rehabilitation program or a return-to-work program run by the state. The agency that provided a vocational rehabilitation or return-to-work program would have to report to the board periodically (as it required) regarding the retirant's progress in a program.

If the retirement board determined that the retirant was no longer incapacitated for the job with the state that he or she had performed before termination due to the disability, or for state work for which he or she was qualified, the retirant would have to be considered rehabilitated. If this occurred, the board would have to recommend that the state offer reasonable state employment to the retirant that would have to be compatible with his or her mental or physical condition. A rehabilitated retirant who accepted reasonable state work would not be entitled to a disability pension, and any pension being paid by the retirement system would have to end upon the person's effective date of

reemployment with the state. If the board, within six months after a retirant resumed state employment, determined that he or she continued to be totally incapacitated for state work, it could waive all or a portion of the disability retirement application requirements.

Differential payment if work resumed. If a rehabilitated retirant accepted the offered state employment, resumed state employment, and the compensation payable for the job was less than his or her adjusted final compensation, then the retirant system would have to pay the person a differential payment equal to the difference, if any, between the compensation amount payable for the accepted job and his or her adjusted final compensation. The differential payment, however, could not exceed the retirant's calculated disability pension.

Adjusted final compensation. Under the bill, "adjusted final compensation" would mean a disability retirant's final compensation plus a one-step increase at that classification, if any. This amount would have to be increased by three percent compounded annually for each year or major portion of one that expired after the pension's effective date and the date of the calculation for a one-step increase. The basic method used to calculate a disability pension, however, would essentially remain as it is currently.

Disability pension floor, options. The act now specifies that a disability pension payable to a retirant cannot exceed \$6,000 per year nor an amount that, when added to a retirant's worker's compensation benefits, exceeds his or her final compensation; also, a disability pension cannot be less than \$600 per year. The bill would delete both the \$600 floor and \$6,000 ceiling and, instead, specifies that if a disability retirant chose a regular "single life" pension (under which only the retirant receives an allowance until his or her death), he or she would have to receive a disability pension of at least \$6,000 annually.

Currently, the act does not specifically allow disability retirants to elect to receive a reduced pension (in which the retirant's pension initially is lower than it otherwise would be, but upon his or her death continues to be paid to a designated beneficiary at a reduced level). The bill would allow a disability retirant to elect to receive such a reduced pension or not (as regular retirees choose either "Option A" or "Option B"), and specifies that

if it was chosen the amount payable to him or her could not be less than the actuarial equivalent at the time of the choice of \$6,000 per year.

Survivors' pensions. The act now specifies that the total amount of a disability pension payable to a deceased member's qualifying survivors--generally, a spouse, child or dependent parent--cannot exceed \$2,400 annually. The bill, instead, provides that a surviving spouse could not receive a pension that was less than \$6,000 annually. This minimum would apply retroactively to pensions that were payable before the bill's effective date. Further, surviving children or parents who qualified for all or a portion of the deceased member's pension could not receive less than that portion of a \$6,000 annual allowance that each qualifying survivor was entitled to before the bill's effective date.

Credited service for duty disability. The bill includes a provision specifying that a duty disability pension for which a surviving spouse qualifies would have to be calculated based on the deceased member's amount of credited service. If, however, the deceased member did not have enough credited service for vesting in the retirement system, the necessary amount would have to be granted.

MCL 38.21 et al.

### ***FISCAL IMPLICATIONS:***

The Office of Retirement Systems within Department of Management and Budget says that, although the bill's fiscal implications are difficult to determine accurately, it expects that the bill would have negligible fiscal impact to the state. While the bill would increase the level of benefits that disability retirants would be entitled to, it also should encourage more disability retirants to reenter the state work force or other employment, which would reduce the state's financial obligation to pay benefits to them. (11-12-93)

### ***ARGUMENTS:***

#### ***For:***

The State Employees' Retirement Act enables state employees to apply for and qualify to receive a disability pension when they are injured or become ill while employed by the state. Among other things, the act requires a disability retirant to submit to a regular medical examination so that retirement officials can assess whether the person's disability

continues to prevent him or her from returning to a position with the state. While this requirement allows the state to ensure not only that an alleged disability initially exists but also that it continues to exist after disability retirement begins, retirement officials believe there are instances where retirants could benefit from vocational rehabilitation programs, either by having skills restored that were lost as a result of the disability or by learning new skills. The bill would require disability retirants to submit either to a medical or vocational evaluation, or both, and would authorize the retirement board to direct retirants who showed promise for improving damaged skills or developing new ones into vocational rehabilitation programs. Such programs have worked to retrain disabled workers in order to help them reenter the work force. The bill, however, would continue to protect the pensions of disability retirants as long as they were unable to return to work or, after following a recommended rehabilitation regimen and returning to state employment, were found to be incapable of performing any job function. And if a rehabilitation program helped a retirant return to work, the bill would require a "differential payment" to be paid to him or her if the new job's salary was less than his or her adjusted final compensation. By encouraging disabled retirants to return to work, the bill could reduce what the state otherwise would have to pay for their disability pensions.

***For:***

The bill would adjust minimum pension levels upward to ensure that former state employees who have retired early or current workers who one day may have to retire early due to a disability receive pensions proportional to the level of today's salaries. In addition, by deleting the \$600 floor and converting the current \$6,000 ceiling to a floor, the bill would ensure that the lowest-paid state employees, upon becoming disabled, would receive a disability allowance that better reflected today's cost of living. The bill also would provide disabled retirants a one-step increase for determining their base pensions, and would require this amount to be increased by three percent compounded annually. These provisions generally mirror what other public employee retirants receive and would ensure that disabled retirants' pensions keep pace with inflation. According to a spokeswoman with the Department of Management and Budget, the higher costs that would result from these changes should be offset by savings the department expects to realize due to more retirants reentering the state work force after

being rehabilitated. And finally, the bill includes other provisions that clarify the kinds of pensions that either disability retirants or their survivors are entitled to under current retirement guidelines.

***POSITIONS:***

The United Technical Employees Association, which represents state employees who work as technicians in 17 state departments, strongly supports the bill. (11-12-93)

The Retirement Coordinating Council supports the bill. (11-12-93)

Michigan Corrections Officers supports the bill. (11-12-93)

The Department of Management and Budget supports the concept of the bill, but has no formal position yet. (11-12-93)

The Department of Mental Health supports the concept of the bill. (11-10-93)