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LOSE RET. BENEFITS FOR CRIME

House Bill 4645 (Substitute H-5)
First Analysis (10-27-93)

Sponsor: Rep. Deborah Whyman
Committee: Public Retirement

THE APPARENT PROBLEM:

Laws governing the operation of the various public employee retirement systems administered by the state generally provide that retirement benefits are not subject to execution, garnishment, attachment, bankruptcy or insolvency laws, or "other process of law." The purpose of these prohibitions generally has been to protect retirement benefits from creditors. After changes were made to these laws in 1985, however, pension rights became subject to divorce and child support judgments; also, legislation adopted in 1991 made public retirement benefits subject to eligible domestic relations orders regarding child support, alimony or marital property rights of a spouse. Unfortunately, nothing within any of the laws governing public employee retirement systems currently provides for retirement benefits of a vested member to be forfeited if he or she is convicted of a felony involving misuse of public funds. Within the last year, several state employees--notably those connected with the House Fiscal Agency--have been accused of misuse of public funds and yet, under current law, when they are eligible they will still be able to receive full retirement benefits. Some people believe legislation is needed to allow the state to claim retirement benefits in cases involving misuse of public funds or similar criminal activity arising out of service as a public employee.

THE CONTENT OF THE BILL:

The bill would create a new act, the Public Employee Retirement Benefits Forfeiture Act, that would specify that a member or retiree of a public employee retirement system who entered a "no contest" plea accepted by a court for a felony that arose out of working as a public employee would be considered to have breached the public trust; in such a case, his or her rights to a retirement benefit and all accumulated contributions standing to the person's credit in the retirement system would be subject to claim by the state. A public retirement system could not pay any retirement benefit to an

affected person commencing with the date the retirement system governing body received a court order as provided for in the bill.

A judge of a court having jurisdiction, when pronouncing judgment against and passing sentence upon a member/retiree under the bill's provisions, could order one or more of the following:

- * That the member's/retiree's retirement benefit, under a retirement system established by the person's employer at the time the criminal act(s) that resulted in a commission of a felony had been committed, would be subject to claim.
- * That the member's/retiree's accumulated contributions standing to his or her credit in an account established for that purpose in the retirement system would be subject to claim.
- * That the retirement system's actuary would have to calculate the actuarial present value (as of the date of the court's order) of the retirement benefit, if any, payable to the member/retiree at normal retirement age under that retirement system.
- * That the retirement system would have to pay to the court from retirement system assets an amount equal to the actuarial present value.
- * That the retirement system would have to pay to the court accumulated contributions, including earnings on them, standing to the person's credit, if any, in the account established for that purpose in the retirement system.
- * That the court clerk would have to establish an interest-bearing account into which amounts paid to the court by the retirement system would have to be placed.
- * That the court clerk would have to pay out of the interest-bearing account all amounts that the court ordered, including but not limited to (in the

House Bill 4645 (10-27-93)

following order of priority) 1) costs for maintaining family members; 2) restitution; 3) fines and costs; 4) costs of confinement at any public facility; 5) damages; 6) costs of administering the account; and 7) any other amounts ordered by the court.

* That, after the member/retiree had been released from custody of a public facility, had completed any probation or parole term, was no longer under the court's jurisdiction, and all amounts ordered paid by the court had been satisfied, the balance remaining in the interest-bearing account established by the court clerk, including interest, would have to be paid to the person whose retirement benefits would be subject to claim under the bill's provisions. If no amount remained in the account, however, the member/retiree would not be entitled to any money under this provision.

The court clerk would have to deliver the court order to the retirement system and would have to comply with the order and administer the account as provided in the bill. Under the bill, the retirement system would have to comply with a court order and pay from retirement system assets the amount equal to the actuarial present value determined pursuant to the order and any accumulated contributions no later than 60 days after receipt of the order. Also, a retirement system would have to comply with any subsequent court orders based on an appeal of an order previously submitted to the retirement system. A retirement system that complied with a court order would be released and discharged from any and all liability pertaining to retirement benefits that arose on account of the former member's/retiree's service to the employee upon payment to the court clerk of all amounts provided for in the bill.

FISCAL IMPLICATIONS:

The Office of Retirement Systems (formerly, the Retirement Bureau), within the Department of Management and Budget, says the bill would not affect state budget expenditures. (10-26-93)

ARGUMENTS:

For:

When a person is hired by the state or some other agency supported by taxpayer dollars, he or she is expected to perform his or her functions with honor and integrity. In essence, a public employee--regardless of what he or she does--is entrusted not

only to work hard in public service but to help guard the integrity of the public employment system to which he or she belongs. It seems only fair that anyone who, as a public employee vested in the state's retirement system, commits a felony involving misuse of public funds or some sort of financial gain to him- or herself from public money should have his or her retirement benefits taken away. By giving the state claim to a convicted retirement system member's pension money, the bill not only would serve to promote justice but also would help the state defray its costs when such a crime is committed against it. Most importantly, though, the bill would send a strong message to public employees that committing such crimes could cost them most or all of what they may have worked many years faithfully to secure for themselves in retirement.

For:

The bill would ensure that maintenance of family members of a convicted member/retiree would be first on a priority list of items for which pension money claimed by the state under a court order would have to be used. Thus, these innocent victims of such a tragedy could be spared the loss of, perhaps, their only source of sustenance.

Against:

The bill would subject public employees convicted of felonies involving misuse of public money to double punishment for the same crime. A public official who is a member of the retirement system and who was convicted of a felony is currently subject to criminal penalties that could be imposed by a court, including fines, jail terms and community service. In addition, once a person has been convicted of a felony he or she is marked for life and often denied employment after having served a prison term. To also take away retirement benefits, which most likely were earned for many years of legitimate work in the public sector, could steer the person into destitution--which in the long run could cost the state even more than it otherwise might gain by retaining their retirement benefits. And taking away a convicted member's pension money and other retirement benefits would be completely unfair to innocent family members who depended on the person for their livelihood.

Response:

Whether any pension money would be claimed or withheld by the state under the bill would be completely up to a sentencing judge. Thus, a public official who was convicted of a felony involving

misuse of public funds or some financial gain to him- or herself could lose a portion or all of his or her retirement benefits as part of the initial sentence, which seems completely just. On the other hand, the bill would provide protection for family members of a convicted member by placing them first on a priority list of items for which forfeited retirement benefits claimed under the bill's provisions would have to be used under a court order.

Against:

Retirement system members would not necessarily lose their pensions as specified in the bill unless all the specific retirement acts governing public employees were amended to conform with the bill's provisions. A number of bills that would amend these acts are still pending before the House Public Retirement Committee. Further, the state constitution currently specifies that accrued retirement benefits of public employees are a contractual obligation and cannot be "diminished or impaired"; thus, additional legislation is needed that would submit a proposal on the matter to a statewide referendum in order to provide an exemption to this provision.

Response:

The other bills that make up this package, all of which are tie-barred to House Bill 4546 and would amend the separate public employee retirement acts, and House Joint Resolution O, which would amend the state constitution, apparently will be taken up again soon by the House Public Retirement Committee, and it is expected they will be reported to the full House.

Against:

The bill would create the "Public Employee Retirement Benefits Forfeiture Act [emphasis added]," and yet nothing within the language of the bill specifies that a member convicted of a felony involving a breach of the public trust would, in fact, forfeit his or her retirement benefits. Instead, the bill merely provides that his or her retirement benefits would be "subject to claim" by the state. Also, earlier versions of the bill would require a sentencing judge to order one or more penalties, whereas Substitute H-5 merely provides that a judge "may" order one or more of them. The bill would be more effective if it were amended to specifically provide for forfeiture of a member's retirement benefits for a felony conviction and to require a judge to impose certain penalties.

POSITIONS:

The Department of Management and Budget supports the concept of forfeiture of retirement benefits for persons convicted of a breach of the public trust and is reviewing Substitute H-5, but has no formal position yet. (10-26-93)

The United Technical Employees Association, which represents state employees who work as technicians in 17 state departments, opposes the bill. (10-26-93)

The Retirement Coordinating Council for Michigan Public School and State Employees opposes the bill. (10-26-93)