



**House
Legislative
Analysis
Section**

Olds Plaza Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

LOSE RET. BENEFITS FOR CRIME

House Bill 4645 as enrolled
Public Act 350 of 1994
Revised Third Analysis (1-10-95)

Sponsor: Rep. Deborah Whyman
House Committee: Public Retirement
Senate Committee: Finance

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. Several state employees--notably those connected with the House Fiscal Agency--recently were convicted of various felonies involving the 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 provide for the forfeiture of 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 was convicted of or who entered a "no contest" plea 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 an otherwise vested retirement benefit and all accumulated contributions

standing to the person's credit in the retirement system could be subject to forfeiture. This provision, however, would only apply to the retirement system of which the person was a member or retirant at the time the felony had been committed and only to the retirement system established by the entity affected by the felony. A public retirement system could not pay any retirement benefit to a member or retirant whose retirement benefit was forfeited under the bill's provisions, or to a beneficiary of him or her, 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 all 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 forfeited.

* 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 forfeited.

* 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. The actuary would have to include in the calculation recognition of an eligible domestic relations order on file with the retirement system, any amount that had already been paid out of the retirement system

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on behalf of the member/retirant, or any other item considered appropriate by the 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 all 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 retirement system could not pay any other amount from the assets of the retirement system on behalf of the member/retirant.

* 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. The bill provides that if the court ordered amounts paid out of the account, it first would have to order amounts paid for costs to maintain family members of the member or retirant, if necessary. It then could order amounts paid from the account for one or more of the following: 1) restitution; 2) fines and costs; 3) damages; 4) costs of administering the account; 5) costs of confinement at any public facility; and 6) any other amounts considered appropriate 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 when he or she reached age 60 or, upon his or her death, to the person's estate, whichever came first. If no amount remained in the account, however, the member/retiree would not be entitled to any money.

If a judge entered an order as provided in the bill, 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. (1-4-95)

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.

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 keeping the person's 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 forfeited to 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. Conversely, the bill would require a court to give first priority to family members of a convicted member (if, for instance, they lacked other financial means) when it determined how any forfeited retirement benefits should be used.

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. Further, the bill could be challenged on constitutional grounds, as accrued retirement benefits of public employees are a contractual obligation of the state which, under the state constitution, cannot be "diminished or impaired." If the bill is to withstand a legal challenge, the state constitution would have to be amended to allow for exceptions to this provision.

Against:

Earlier versions of the bill would have required a sentencing judge to order one or more penalties, whereas the bill as enrolled merely provides that a judge "may" order one or more of them. The bill would be more effective if it specifically required a judge to impose certain penalties for a felony conviction.