



**House
Legislative
Analysis
Section**

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

**MPSERS PENSION: EXCLUDE PAY
FROM PROF. SERVICES LEAVE**

**House Bill 5108 as enrolled
Public Act 268 of 1996
Second Analysis (8-20-96)**

**Sponsor: Rep. Kim Rhead
House Committee: Appropriations
Senate Committee: Appropriations**

THE APPARENT PROBLEM:

An employee of the state's public school system who becomes a member of the Michigan Public School Employees Retirement System (MPERS) receives a pension based on the number of years working in the system and the amount of the member's final average compensation. Members contribute a portion of their current earnings to the retirement system, which is used to cover part of the system's liability for retirees. However, under current law a member may take a leave of absence from working within the school system to work for a professional union representing school employees, and the pay they receive while on the leave must be counted in the calculation of his or her MPERS retirement benefits. Some people believe this poses problems for the system in two ways. First, it enables such members to significantly boost their pensions because what they earn representing the union can easily amount to twice what they earned as school employees. Second, during the period they are working for the union, contributions to the retirement system are made on their behalf by the union--but at a rate reflecting what they earned as school employees. Thus, the system has a small number of members whose level of contributions into it does not reflect their current earnings while it simultaneously assumes a larger liability than it otherwise would have had the members remained working as school employees. To help reduce the unfunded liability this particular problem imposes on MPERS, legislation has been proposed that would, beginning October 1, 1996, exclude from figures used to calculate a member's pension any amounts he or she earned while on leave from the public school district working for a professional employee union.

THE CONTENT OF THE BILL:

The bill would amend the Public School Employees Retirement Act to limit the amount of compensation that could be reported and included in the earnings record of a Michigan Public School Employees Retirement System

(MPERS) member who began a leave of absence for employee organization professional service or for professional services released time on or after October 1, 1996. The bill also would create a new definition of "compensation" that describes what could and could not be included in the compensation used to determine retirement benefits for a MPERS member.

Currently, all compensation paid to MPERS members by a school employee organization is reportable to the retirement system. The final average compensation (FAC) that determines retirement benefits is based on the average of 36 consecutive calendar months of highest earnings for MPERS Member Investment Plan (MIP) members, and 60 consecutive calendar months of highest earnings for regular MPERS members. Thus, if a member takes a professional services leave or professional services released time to work for an employee organization, and works for that organization for 36 or 60 consecutive months (depending on which plan the member belongs to), the total earnings from the employee organization that are reported to the retirement system will be used to determine the FAC if those earnings meet the highest earnings criteria.

Reportable compensation. Under the bill, a member who began a professional services leave or professional services released time on or after October 1, 1996, would have the reportable compensation paid by a school employee organization to him or her limited to the rate of compensation he or she was paid by the school district immediately preceding the date the professional services leave or professional services released time began. In addition, although increases in reportable compensation would be allowed, they would be limited to the normal and customary compensation increases that would have been paid to the member by the school district had the member remained in the same position held at the school district immediately

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preceeding the date he or she commenced the leave or released time.

Additionally, if a member were not working a full 12-month period for the school district immediately prior to beginning the leave/released time, and had been working a full 12-month period for the school employee organization, his or her rate of compensation paid by the school district immediately preceding the date he or she began the leave/released time could be increased proportionately to reflect the additional time worked for the school employee organization. This adjusted compensation, including the normal and customary compensation increases that would be allowed under the bill, would then be used to set the limit of the reportable compensation paid by a school employee organization to a MPSERS member.

Compensation redefined. The bill would add a new section that would redefine "compensation." For the most part, the definition is the same as current law; however, the new definition would be more specific. Salary and wages would include remuneration earned for all services performed as a public school employee. Compensation for sick leave would include weekly worker's disability compensation payments received for personal injury in the employ of and while employed by a reporting unit (school district). Compensation also would include merit pay as established by a reporting unit for the purpose of rewarding achievement of specific performance objectives.

Currently, certain payments are not included as compensation. The bill also provides that in cases in which the current job classification in the reporting unit had fewer than three members, the normal salary schedule for that job classification would be the normal salary schedule for the most nearly identical job classification in the reporting unit or in similar reporting units. The normal salary schedule used for this classification of employees would determine whether the increases from the previous year would be allowable increases for determining final average compensation. Also, the bill would require the retirement board to determine whether any form of remuneration paid to a member was identified in this statute, and whether any unidentified form of remuneration should be considered compensation reportable to the retirement system under the act.

MCL 38.1304 et al.

FISCAL IMPLICATIONS:

The Senate Fiscal Agency reports that the bill would not affect state government expenditures, as all retirement

contributions made to MPSERS are paid by local and intermediate school districts. Retirement benefits that are paid to MPSERS members who take a professional services leave or professional services released time are benefits that would be paid regardless of whether the employee had taken the leave or released time.

The agency also says local and intermediate school districts could realize a small decrease in the contributions made to MPSERS. Currently, all compensation paid to members by a school employee organization is reported to MPSERS; compensation paid by employee organizations, however, is sometimes much higher than what a member would have received at the school district. When a higher pension is paid to a member due to the higher compensation that was reported to MPSERS during the professional services leave or released time, the higher-than-expected pension creates additional unfunded liabilities, resulting in a higher contribution rate for the local and intermediate school districts. The bill would limit the amount of reportable compensation paid by a school employee organization to the amount the person would have received from the school district, which would keep pension payments in line with these amounts and reduce the amount of unfunded liabilities, thus lowering the contribution rate for local and intermediate school districts. The agency indicates that the dollar amount of this potential saving and the amount of decrease in the contribution rate cannot be determined as the factors needed to make this determination are unknown. (5-15-96)

ARGUMENTS:

For:

Current law makes it possible for members of the Michigan Public School Employees Retirement System to take a leave of absence in order to work for a labor union--usually, for the purpose of representing school employees for bargaining purposes--and to have what they earn from the labor group included in their final average compensation (FAC). Based on information provided to the House Appropriations Committee, this has led to situations where employees whose FAC was approximately \$50,000 after working 25 years for a school district took a professional leave of absence to work for a labor union another five years, boosting their FAC to \$100,000. Under such a scenario, the member would receive a monthly pension check twice what it otherwise would have been if he or she had retired with 30 years working as a school employee.

Not only that, the five years spent working for the labor union means a contribution on his or her behalf was not being made that reflected what the member was being

paid by the union. (The union contributes, but at the rate required for the member when he or she was working in the school system.) In this case, it results in an unfunded liability to the system of over \$200,000. The MPSERS board estimates there could be up to 20 such individuals currently in the system, amounting to an unfunded liability for the system of perhaps a few million dollars. While this may seem a miniscule amount in light of an estimated \$6 billion unfunded liability the system currently faces, this particular problem will only get worse if current law is not changed.

The bill would eliminate this problem by specifying that, beginning October 1, 1996, any pay earned by members from labor unions while they were on leave from the public school system could not be counted in determining their FAC; instead, the FAC would be determined by using the member's salary immediately prior to taking the leave. Members who were on leave working for a union prior to this date, but who had not yet retired, would be treated the same as someone who has already retired and is receiving a higher pension due to work performed for a labor union. Also, the bill would require the FAC of a member who took a union leave after the specified date to take into account the difference between working a nine-month school year and a full calendar year worked outside of the school system, and to include any normal and customary pay increases (i.e., raises or COLAs) that a member would have received if he or she had remained working in the public school system.

Against:

The bill unfairly targets school employees who have worked decades in the public school system only to decide late in their careers to represent teachers and other school personnel in contract bargaining and other labor issues. Many examples exist of school administrators who contribute to the unfunded liability problem by having non-salary compensation (i.e., insurance benefits, a district-provided vehicle) included in their FAC in order to boost their pension—a practice known as "spiking"—yet the bill fails to address this problem. Considering that most teachers and other labor employees easily earn less than half what those in management make upon retiring, it seems only fair to permit some of them to increase their FAC by working to improve the lot of other nonmanagement school personnel.

Response:

The spiking problem that exists among school superintendents and others in management positions is different because these people are contributing to the system while working within it. The practice certainly should be prohibited, but it would be better to address

this problem in separate legislation. Meanwhile, teachers and similar school employees who wish to leave a long career in the public school system to work as a school employee representative could, under the bill, continue to do so and be amply paid by a school labor union for their efforts. However, it is absurd to argue that such MPSERS members should be allowed to collect retirement benefits on work performed outside of the system while adequate contributions to it are not being made on their behalf.

Analyst: T. Iversen

■ 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.