



**House
Legislative
Analysis
Section**

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PUBLIC PENSION PROTECTION ACT

House Bill 5108

Sponsor: Rep. Jerry Vander Roest

House Bill 5109

Sponsor: Rep. Joanne Voorhees

House Bill 5110

Sponsor: Rep. Sandra Caul

House Bill 5111

Sponsor: Rep. Jim Howell

House Bill 5112

Sponsor: Rep. Alexander C. Lipsey

House Bill 5113

Sponsor: Rep. Cameron Brown

House Bill 5114

Sponsor: Rep. Samuel Buzz Thomas

Committee: Appropriations

Complete to 10-5-01

A SUMMARY OF HOUSE BILLS 5108-5114 AS INTRODUCED 10-2-01

The bills would amend the statutes governing pension systems for state employees, public school employees, firefighters and police officers, judges, state police, and legislators to eliminate the so-called “anti-alienation” clause, and instead make these retirement systems [and all other public retirement systems] subject to the provisions of a new Public Pension Protection Act.

(Generally, under an anti-alienation clause of a pension plan, benefits cannot be assigned or “alienated” [transferred], and they are not subject to attachment, garnishment, levy, execution, or other legal process. The state statutes governing public pension systems each contain such a clause, and also make exceptions for the division of marital assets, payment of child support obligations, and forfeiture of assets due to certain criminal convictions. The Municipal Employee Retirement System Act, under which some municipalities and courts offer retirement plans for their employees, and Public Act 156 of 1851, which allows county boards of commissioners to establish retirement systems for county employees, do not contain anti-alienation clause language. In addition, local governments have broad powers to establish retirement systems for their employees under their general statutory and charter operating authority. These independent retirement plans may or may not contain anti-alienation clauses.)

House Bill 5108 would create the new act. It would specify that the right of a member (including a current or vested former member, deferred member, designated beneficiary, or refund beneficiary) or retiree to a retirement benefit *could not* be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law, and could not be assigned. A “retirement benefit” would include an annuity, a retirement allowance, an optional benefit, a postretirement benefit, a benefit received from a defined contribution plan, defined benefit plan, deferred compensation plan, disability plan, life insurance plan, all money, investments and income of the various funds created under a public employee retirement system, and any other right accruing to a member under a retirement system. A “retirement system” would include a public employee retirement system established by the state or a political subdivision of the state.

However, as under current law, the right of a member or retiree to a benefit *would* be:

- subject to forfeiture under the Public Employee Retirement Benefits Forfeiture Act; and
- subject to an award by a court during divorce proceedings, under an eligible domestic relations order, or under any other domestic relations order of a court pertaining to alimony or child support. As under current law, if an award or court order required a retirement system to withhold payment of a retirement benefit or requires the system to make a payment of a retirement benefit for the purpose of meeting the member’s or retiree’s obligations to a spouse, former spouse, or child, the withholding or payment provisions of the order would be effective only against amounts that become payable to the member or retiree, unless otherwise provided by an eligible domestic relations order. However, this limitation would not apply to the accumulated contributions of a person who terminates employment before becoming vested in a retirement system.

In addition, the bill would specifically provide that rights to benefits *would* be subject to claims made under the State Correctional Facility Reimbursement Act. (The State Correctional Facility Reimbursement Act states that a prisoner’s pension benefits may be subject to his or her statutory obligation to reimburse the state for the costs of incarceration; however, the pension acts do not specifically mention this obligation. The state supreme court has held, in *State Treasurer v. Schuster*, 1998, that the State Correctional Facility Reimbursement Act has priority over the anti-alienation clause of the Public School Employees’ Retirement Act, and therefore that pension benefits payable under that act are subject to the reimbursement act.)

The bill states that it is not intended to prohibit a member or retiree from receiving a loan from a retirement system if the system concluded that the persons was otherwise eligible for a loan.

Further, nothing in the bill would prevent a retirement system administrator from correcting records and seeking to recover overpayments made to a retiree or member.

House Bills 5109-5114 would amend the acts governing the various retirement systems. It would delete language that specifies that retirement benefits from defined benefit programs and distributions from defined contribution programs are not subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law, and are unassignable except as otherwise provided by law. Instead, the each bill would specify that these

benefits and distributions would be subject to the Public Employee Retirement Benefit Protection Act (as proposed in House Bill 5108). The bills would also delete from the respective acts language that specifies that benefits and distributions are subject to court orders in divorce proceedings and eligible domestic relations orders (as that language would be re-enacted in the new act).

House Bill 5109 would amend the State Employees' Retirement Act (MCL 38.31 et al.). House Bill 5110 would amend the Public School Employees Retirement Act (MCL 38.1346 and 38.1385). House Bill 5111 would amend the Fire Fighters and Police Officers Retirement Act (MCL 38.556 and 38.559). House Bill 5112 would amend the Judges Retirement Act (MCL 38.2308 et al.). House Bill 5113 would amend the State Police Retirement Act (MCL 38.1643). House Bill 5114 would amend the Michigan Legislative Retirement System Act (MCL 38.1057 and 38.1080).

Tie-bars. House Bill 5108 is tie-barred to each of the other bills in the package, and House Bills 5109-5114 are each tie-barred to House Bill 5108.

Analyst: D. Martens

■ 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.