

**STATE TAKEOVER OF TROUBLED
PUBLIC PENSION SYSTEMS**

House Bill 5731

Sponsor: Rep. Mark Jansen

**Committee: Senior Health, Security and
Retirement**

Complete to 3-12-02

A SUMMARY OF HOUSE BILL 5731 AS INTRODUCED 2-21-02

The Local Government Fiscal Responsibility Act requires the governor to appoint a review team to take certain steps to alleviate serious financial problems of local units of government and school districts, under certain circumstances. The bill would amend the act to add a new article to add similar provisions that would apply to public pension systems experiencing severe financial distress.

Preliminary review. Under the bill, the state treasurer would be required to conduct a preliminary review of a state or local retirement system to determine the existence of a financial problem, if:

- the retirement system's board of trustees requested a review;
- the state treasurer determined or was made aware that the system's investment returns were significantly below the average investment returns for public pension plans in the state;
- the state treasurer received written notification that a beneficiary had not been paid;
- the board of trustees violated the requirements of the Public Employee Retirement System Investment Act; or,
- the state treasurer received a resolution from either the House of Representatives or the Senate requesting a review.

In conducting a preliminary review, the state treasurer would be required to notify the board of trustees of the review, and to meet with the board to receive, discuss, and consider information concerning the financial condition of the pension system. Within 30 days after beginning a review, the state treasurer would have to inform the governor whether the pension system had a serious financial problem.

Review team. Upon being informed of a serious financial condition of a pension system by the state treasurer, or upon the request of the board of trustees of a pension system for assistance in meeting the ordinary needs of the pension system, the governor would appoint a review team consisting of the state treasurer, the auditor general, nominees of the Speaker of the House of Representatives and the Senate Majority Leader, and other state officials or other persons with relevant professional experience.

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The review team would undertake a review of the financial condition of the pension system, and would have full power to examine the books and records of the system, to utilize the services of state agencies and employees, and to sign a consent agreement with the board of trustees. Such an agreement could provide for remedial measures considered necessary, including a long range financial recovery plan requiring specific actions. The agreement could include the use of state financial management and technical assistance as necessary to alleviate the financial problem, and could also provide for periodic fiscal status reports to the state treasurer. Such an agreement would have to be approved by the board of trustees to take effect.

The review team would have to report its findings to the governor within 60 days, or earlier upon the governor's direction. Upon request, the governor could grant one 30-day extension. A copy of the review team's report would also have to be sent to the board of trustees, the Speaker of the House of Representatives and the Senate Majority Leader. The review team's report would have to specify either that:

- the pension system *did not* have a serious financial problem, or
- that the system *did* have a serious problem but that a consent agreement had been adopted to resolve the problem, or
- that there was a *serious financial emergency* because a consent agreement had not been adopted.

Finding of financial emergency. Within 30 days after receiving the review team's report, the governor would have to make a determination of which of the above listed conditions applied. If the governor determined that a serious financial emergency existed, he or she would notify the board of trustees of the determination and provide a concise and explicit statement of the underlying facts supporting the findings, and provide notice that the board had 10 days to request a hearing. Following the hearing (or after the 10 days expired without request for a hearing), the governor would either confirm or revoke the determination of financial emergency. If confirmed, the governor would provide a written report of the findings of fact or the continuing or newly developed conditions or events that provide a basis for the determination of an emergency, and a concise and explicit statement of the underlying facts supporting the findings.

If at any time the state treasurer or the review team informed the governor that the board of trustees was not abiding by the terms of a consent agreement, the governor would be required to determine that a financial emergency exists in that retirement system.

The board of trustees of a pension system could appeal a determination of a financial emergency to the circuit court of the county in which it is located, or to the Ingham County circuit court. The court could not set aside a determination of an emergency unless it found that the determination was not supported by competent, material, and substantial evidence on the whole record; or, that it was arbitrary, capricious, or clearly an abuse or unwarranted exercise of discretion.

Emergency financial management. If the governor determined that there were a financial emergency, he or she would assign the responsibility for managing the emergency to the Local

Emergency Financial Assistance Loan Board created under the Emergency Municipal Loan Act. (The board consists of the state treasurer, the director of the Department of Consumer and Industry Services, and the director of the Department of Management and Budget.) The board would appoint an emergency financial manager, who would have to be chosen solely on the basis of his or her competence, and who could not have been an official of the affected retirement system for the five years immediately preceding his or her appointment. The manager would serve at the pleasure of the Local Emergency Financial Assistance Loan Board, and could receive compensation and reimbursement for expenses from the retirement system, as approved by the Local Emergency Financial Assistance Loan Board. The manager could also appoint staff and secure professional assistance necessary to implement the bill.

The emergency financial manager would be authorized to issue orders to the appropriate officials and employees of the retirement system necessary to accomplish the purposes of the bill, including orders for the timely and satisfactory implementation of a financial plan. The orders of the emergency financial manager would be binding on the officials and employees to whom they are issued.

Financial plan. In consultation with the board of trustees of the retirement system, the emergency financial manager would develop a written financial plan, providing for conducting the operations of the retirement system within the resources available, and for payment in full of the scheduled debt service requirements of all bonds and notes of the retirement system, and all other uncontested legal obligations.

After the initial development of the financial plan, the manager and the board of trustees would have to regularly reexamine the plan, and modify it if necessary to conform to estimates of available revenue.

The plan would be in a form and contain information as specified by the manager. The manager would have to make the plan public, but the plan would not be subject to public approval before it could be implemented.

Powers of emergency financial manager. The emergency financial manager would assume all powers of the board of trustees and could take any of the following actions:

- Analyze factors and circumstances contributing to the financial condition of the system and recommend steps to be taken to correct the condition.
- Amend, revise, approve, or disapprove the budget of the system, and limit the total amount appropriated or expended during the financial emergency.
- Require and approve or disapprove, or amend or revise a plan for liquidating all outstanding debt.
- Require and prescribe the form of special reports to be made by the finance officer of the system to its board of trustees, the system's creditors, the emergency financial manager, or the public.

- Examine all records and books of account, and require (under the procedures of the Uniform Budgeting and Accounting Act or the uniform system of accounting act, or both) the attendance of witnesses and the production of documents.

- Make, approve, or disapprove any contract, expenditure, or loan, the creation of any new position, or the hiring or firing of investment advisors, money managers, or other employees.

- Review payrolls or other claims against the system before payment.

- Exercise all of the authority of the board of trustees to renegotiate existing labor contracts and act as an agent of the board in collective bargaining with employees, and approve any contract or agreement.

- Employ or contract for auditors and other technical personnel necessary to implement the bill.

- Require compliance with the orders of the emergency financial manager, by court action if necessary.

- Sell or otherwise use the assets of the retirement system to meet past or current obligations.

- Apply for a loan from the state on behalf of the system, in a sufficient amount to pay the expenses of the manager and for other lawful purposes.

- Alter the composition of the investment portfolio of the retirement system.

- Change actuarial assumptions and funding requirements.

- Bring action against a local unit of government for failure to make timely contributions to the retirement system.

State immunity. The bill specifies that the state, the Local Emergency Financial Assistance Loan Board, and the emergency financial manager would not be liable for any obligation of or claim against a public pension system resulting from actions taken under the bill.

Local cooperation required. The board of trustees of a retirement system and local government elected officials would be required to provide assistance and information requested by a review team, the Local Emergency Financial Assistance Loan Board, or the emergency financial manager in the effectuation of their duties and powers under the bill. Failure of an elected official or a board of trustees to abide by the requirements of the bill would be considered gross neglect of duty, which the emergency financial manager would have to report to the Local Emergency Financial Assistance Loan Board. Following review and a hearing the board could recommend to the governor that the local official or board of trustees be removed from office.

Revocation of financial emergency. The governor could determine, upon recommendation from the Local Emergency Financial Assistance Board, that the conditions for revoking the financial emergency had been met.

MCL 141.1202 and 141.1251 et al.

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