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SFA BILL ANALYSIS

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House Bill 5731 (Substitute H-2 as reported without amendment)
Sponsor: Representative Mark Jansen
House Committee: Senior Health, Security and Retirement
Senate Committee: Appropriations

CONTENT

The bill would amend the Local Government Fiscal Responsibility Act to extend the Act to local public pension systems experiencing financial distress. Currently, the 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 add new provisions that would apply to local public pension systems experiencing severe financial distress.

The new provisions detail the preliminary review, the review team membership, the determination of a financial emergency, the financial management of the emergency, the development of a written financial plan, State immunity, the requirement of local cooperation, and the revocation of the financial emergency, all related to a public pension plan in financial distress. Following is a summary of the bill.

Preliminary Review. The State Treasurer would be required to conduct a preliminary review to determine if a financial problem existed if one or more of the following occurred:

-- The board of trustees of the retirement system requested a review.
-- The State Treasurer determined 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.
-- The State Treasurer received a resolution from either the Senate or the House of Representatives requesting a review.
-- The public pension system's sponsor (i.e., a local unit of government) failed to file the required annual financial report.

Within 30 days of the preliminary review, the State Treasurer would have to notify the Governor of whether a serious financial problem existed.

Review Team. Upon notification by the State Treasurer of the existence of a serious financial condition or at the request of the board of trustees of the pension system for assistance, the Governor would appoint a review team consisting of the State Treasurer, the Auditor General, nominees of the Speaker of the House and the Senate Majority Leader, and other State officials or other persons with relevant professional experience.

The review team would undertake a review of the financial condition of the pension system and report its findings to the Governor within 60 days, or sooner upon the Governor's request. Upon request, the Governor could grant one 30-day extension. A copy of the review team's report also would have to be sent to the pension system's board of trustees, the Speaker of the

House, and the Senate Majority Leader. The report would have to specify one of the following:

-- The pension system did not have a serious financial problem.
-- The system did have a serious financial problem but a consent agreement has been adopted to resolve the problem.
-- 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 determine 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, as well as inform the board that it had 10 days to request a hearing. Following the hearing (or after the 10 days expired without a request for a hearing), the Governor would either confirm or revoke the determination of financial emergency. 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 existed 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 was 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 would appoint an emergency financial manager, who could not have been an official of the affected retirement system for the five years immediately preceding his or her appointment.

The emergency financial manger 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 would be binding on the officials and employees to whom they were 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 paying in full of the scheduled debt service requirements of all bonds and notes of the retirement system, and all other uncontested legal obligations. The plan would be in a form and contain information as specified by the manger. The manager would have to make the plan public and it 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 pension plan's 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 spent during the financial emergency.
-- 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 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.
-- 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.
-- Apply for a loan from the State on behalf of the system, in an amount sufficient to pay the expenses of the manager and for other lawful purposes.
-- Change actuarial assumptions and funding requirements.
-- Bring action against a local unit of government for failure to make timely contributions to the retirement system.

<u>State Immunity</u>. 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.

<u>Local Cooperation Required</u>. 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 bill's requirements 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 and the resulting vacancy be re-filled.

<u>Revocation of Financial Emergency</u>. 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 & 141.1251 et al.

FISCAL IMPACT

The bill could have an indeterminate fiscal impact on State and local government. It is unknown how many, if any, public pension systems could require review team action. In such cases, there could be additional costs to the State associated with assessing whether a financial problem existed as well as a cost to the local public pension plan system to take corrective measures to alleviate the severe financial distress.

Date Completed: 11-14-02 Fiscal Analyst: Joe Carrasco, Jr.