Legislative Analysis

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POLICE AND FIRE RETIREMENT SYSTEM TRUSTEES

House Bill 4135
Sponsor: Rep. Fred Durhal
Committee: Oversight, Reform, and Ethics

Complete to 1-31-11

A SUMMARY OF HOUSE BILL 4135 AS INTRODUCED 1-25-11

Under the bill, if the local charter of a municipality having 500,000 or more people specifies that a retiree member should be selected to serve on a municipality's fire and police retirement board, then the method of selection of that retiree member would be a "prohibited subject of [collective] bargaining." This would apply only to the City of Detroit.

Specifically, House Bill 4135 would amend the Public Employment Relations Act (Public Act 336 of 1947), which concerns the collective bargaining rights of public employees. The bill deals with the board of trustees of the police or firefighters pension or retirement system in a municipality (city, village, or township) with a population of 500,000 or more; that is, the City of Detroit.

Under the bill, if the charter of the eligible municipality "specifies the selection of a retirant member" of the municipality's fire department, police department, or fire and police department pension or retirement board, then the method of selection of that member would be a prohibited subject of bargaining.

[Note: A prohibited subject of bargaining is one that the parties are not explicitly forbidden from discussing during the bargaining process, but any contract provision containing a prohibited subject is unenforceable. Moreover, employers are not required to bargain to the point of agreement or impasse on "prohibited subjects" before taking unilateral action.]

The bill is similar to House Bill 4917 of the 2009-2010 Legislative Session. That bill passed both the House and the Senate but was vetoed by Governor Granholm. For an extended discussion of that bill, see the analysis dated 9-1-10 at:

http://www.legislature.mi.gov/(S(w5vseauj35czwoil5m3gxk45))/mileg.aspx?page=getObject&objectName=2009-HB-4917

MCL 423.215

FISCAL IMPACT:

The bill would have no fiscal impact on the state and would appear to have no material fiscal impact on the City of Detroit. (Other local units of government would not be affected.)

The issue of the composition of the Detroit police and fire retirement system has a lengthy legal history, with state courts invalidating attempts to alter the composition of the Detroit Police and Fire Retirement System (DPFRS) board through city ordinance or city charter. Given past court rulings preventing a retiree member from being added, it's unclear what impact the bill would have. These court decisions have made the composition of the board a matter of collective bargaining, not charter provision. The bill addresses the issue of *the method of selecting* the retiree member on the DPFRS board; that is, whether the retiree member would be elected by only the retiree members of the system, or only the active members of the system, or both sets of members – by providing that the "method of selection of that [retiree] member" would be a prohibited subject of bargaining. However, the bill does not appear to address the larger question of whether the inclusion [selection] of a retiree member on the DPFRS board would itself now be a prohibited or permissive subject of bargaining, and thus, whether a retiree member (regardless of how that member is to be selected) is to now be a member of the DPFRS board. [The current method of selection is determined under the collective bargaining process.]

If the DPFRS board would, under the bill, include a retiree member, the retirement system would bear the cost of selecting that member. That cost, essentially printing and postage for the ballots, would depend on the method of selection, but would not likely be a material amount. According to the FY 2010 audit of the DPFRS, the retirement system's defined benefit plan included 8,560 retired members, 4,045 active members, and 83 terminated members, as of June 30, 2010.

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