

POLICE AND FIRE RETIREMENT SYSTEM TRUSTEES

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House Bill 4135 as enacted

Public Act 25 of 2011

Sponsor: Rep. Fred Durhal

House Committee: Oversight, Reform, and Ethics

Senate Committee: Appropriations

Second Analysis (8-3-11)

BRIEF SUMMARY: The bill specifies that if the city charter requires that a retiree member be selected to serve on the Detroit Police and Firefighters Retirement Board, then the method of selecting the retiree member would be a "prohibited subject of [collective] bargaining."

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.) For further detail, see *Fiscal Information* below.

THE APPARENT PROBLEM:

In 1996, voters in the City of Detroit adopted a new City Charter under the Home Rule Cities Act that added a 12th member to the Detroit Police and Firefighters Retirement System Board of Trustees. The new member was to be "[a] retirant, receiving benefits under the retirement system who shall be a resident of the city and elected by retired firefighters and police officers under procedures as established by ordinance."

Despite the 'will of the people' expressed during the election, the retired member has not been added to the board. Instead, the current 11-member board of trustees that governs the Detroit Police and Firefighters Pension System (composed of active police and firefighters, and also representatives from the City of Detroit) have argued that the charter requirement is superseded by the collective bargaining process, as that process is set forth in the Public Employment Relations Act, customarily called PERA.

In response to a lawsuit brought by the Retired Detroit Police and Fire Fighters Association (RDPFFA), the Michigan Court of Appeals, in a per curiam unpublished opinion, ruled in February 2007 that "[c]harter provisions enacted pursuant to the Home Rule Cities Act cannot contravene the obligations imposed by PERA" (the Public Employment Relations Act), which in this case applies to inclusion of the composition of the retirement system boards as a mandatory subject of collective bargaining.

During the 2009-2010 legislative session, legislation was introduced to specify that the method of selecting a retiree member of a city police and fire pension board is a prohibited subject of collective bargaining when the local charter in a city having 500,000 or more people requires the selection of a retirant member of the fire or police department pension or retirement board. That bill—House Bill 4917 of 2009—was vetoed by

Governor Granholm on December 21, 2010. In her veto, the governor cited adherence to the principle of local control, noting that the resolution of issues relating to local retirement board membership are best resolved locally at the bargaining table. See ***Background Information*** below to read the veto message in its entirety.

Identical legislation—House Bill 4135—has been re-introduced early in the 2011-2012 legislative session.

THE CONTENT OF THE BILL:

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. Only the City of Detroit meets the definition.

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.]

MCL 423.215

BACKGROUND INFORMATION:

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://legislature.mi.gov/doc.aspx?2009-HB-4917>

The following veto message from the Governor was received and read to the members of the Legislature on December 21, 2010:

Ladies and Gentlemen:

Enrolled House Bill 4917 represents an effort to provide greater transparency and accountability in the management of police and fire pensions systems. I fully support that

intent; indeed, Michigan needs an aggressive, comprehensive effort to reform the oversight of local pension boards and investments.

The actual content of House 4917, however, would dictate from the State Capitol the resolution of issues relating to local retirement board membership that are best resolved locally at the bargaining table. Furthermore, signing this bill could deter the more comprehensive reform efforts that are necessary.

Accordingly, I have vetoed and return the bill without signature, as provided under Section 33 of Article IV of the Michigan Constitution of 1963. I strongly encourage the next legislature to consider other methods to provide greater accountability and transparency in local retirement system management, including for participating retirees.

Respectfully,

Jennifer M. Granholm

Governor

FISCAL INFORMATION:

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.

ARGUMENTS:

For:

Proponents of this legislation say this bill ensures basic fairness. They argue it should become law to ensure a voice to the retirees of the Detroit police and fire departments—a silenced group of retirees who now outnumber active-duty police and firefighter by a ratio of more than two-to-one. The members of the Retired Detroit Police and Fire

Fighters Association argue that this bill does not interfere with the collective bargaining rights of active union members," because the bill "does not address a mandatory subject of bargaining under the Public Employment Relations Act, MCL 423.201 et seq."

Indeed, proponents of the bill note that it is customary for pension system boards to include a seat for retiree members. For example, Detroit's general pension board for other city workers allows retirees to hold one of its 10 trustee seats. Nonetheless, the 11-member board of trustees for the Detroit police and fire retirement system continues to deny a voice to the city's 8,560 retired police and fire workers who are part of the defined contribution plan.

Proponents of the bill argue that retired participants of the pension system have as much interest and right to participate in the retirement board's administration of the system as do the 4,045 active duty members of the police and fire departments. They say that any effort to prevent them from active participation is unconstitutional since it fails to comply with the due process clause of the U.S. Constitution.

For:

Proponents of the bill note that during the last legislative session, an identical bill—House Bill 4917—was reported by the House Labor Committee, and thereafter passed both the House and Senate with overwhelming bi-partisan support. The vote in the House (on November 10, 2010) was 63 yeas and 38 nays. The vote in the Senate (on December 2, 2010) was 34 yeas and 0 nays. Based on the strong support demonstrated by both the citizens of Detroit as they voted to amend their city charter, and the duly elected representatives of Michigan's citizens statewide, this bill should once again be passed by the legislature, ordered enrolled for presentation to the governor, and then signed into law.

Against:

Opponents of the bill argue that it would restrict the rights of firefighters and police officers to negotiate local pension issues, and also impede ongoing arbitration. The legislative director of the Michigan State AFL-CIO notes that "this is a local issue that is properly resolved by local government," and he notes further that "the retiree board member issue is currently a part of a larger arbitration case that is expected to come to resolution as the [arbitration] process concludes." [According to committee testimony, the arbitration process is expected to conclude in four or five months.]

During the last legislative session when an identical bill—House Bill 4917 of 2009—was debated in the legislature, the spokesman for the Michigan Professional Firefighters Union noted that the union's opposition to the bill was based on reasons that are historical, legal, and philosophical. First, he argued that "pension systems for municipal unions are locally based and are an important part of every labor agreement." He noted that this kind of legislation represents "a first step in taking away the right to negotiate for pensions and the operating structure that determines the benefits that are earned and eventually paid out to current and future members of the system."

Second, he noted that "bargaining over pension benefits and pension systems are longstanding, legal rights of public employee bargaining units." Further, the spokesperson noted that "PERA (the Public Employment Relations Act) continues to

provide a clear structure for negotiating wages, hours, and other conditions of employment." Consequently, the spokesman continued, "it is absolutely essential that the collective bargaining rights over local pension system remain with the authorized representative of the active employees and the employer."

And finally, the union spokesperson noted that since the system is funded locally, it should be dealt with at the local level of government, thereby enabling officials at the local level to exercise local control free from state intervention.

Against:

During the last legislative session, the governor vetoed a bill identical to this legislation—House Bill 4917. In the rationale for her veto message, she said: "The actual content of House 4917...would dictate from the State Capitol the resolution of issues relating to local retirement board membership that are best resolved locally at the bargaining table. Furthermore, signing this bill could deter the more comprehensive [pension transparency and accountability] reform efforts that are necessary." Opponents of House Bill 4135—which is identical to the bill vetoed in the last legislative session—advance the same argument today.

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■ 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.