Legislative Analysis

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RE-HIRING OF RETIRED CORRECTIONS CUSTODY STAFF

House Bill 5881 (Substitute H-2)
Sponsor: Rep. Joe Haveman
Committee: Appropriations

Complete to 11-7-12

A SUMMARY OF HOUSE BILL 5881 (H-2)

House Bill 5881 would amend the State Employees' Retirement Act to allow a state retiree receiving a retirement allowance under the act to be re-employed by the Michigan Department of Corrections (MDOC) on a limited-term basis to provide for the custody of prisoners while still maintaining his or her retirement allowance. However, the re-employment of any such retiree would have to meet certain parameters that are outlined below

Background on Current Law
Section 68c of the State Employees' Retirement Act currently requires retirees from state government receiving a retirement allowance under the act to forfeit that retirement allowance during any time period in which they choose to be re-employed by the State. The retirement allowance is to be reinstated without recalculation when the period of state employment ceases. Employment by the State includes direct employment as a state employee, indirect employment through a contractual arrangement with other parties, or engagement of the retiree as an independent contractor. The requirement became effective for all employment with the State beginning after October 1, 2007 and for independent contracts beginning after October 1, 2010.

The section contains two exemptions from this retirement allowance forfeiture requirement for certain retirees. First, current law exempts retirees hired to provide health care services under jurisdiction of the MDOC, provided that the retiree is hired on a limited-term basis, is paid on a per diem basis with no benefits, and that certain noticing and reporting requirements are met by the MDOC. Second, it exempts the appointment of a retiree who was an assistant attorney general as a special assistant attorney general if the Attorney General determines that the retiree possesses specialized expertise and experience necessary for the appointment and that the appointment is the most cost-effective option for the State.

Content of House Bill 5881
House Bill 5881 would add a third exemption to the retirement allowance forfeiture requirement, which would expire 2 years after the bill's effective date. The bill would allow an exemption for a retiree hired to provide for the custody of individuals under the jurisdiction of the Department of Corrections if the retiree is hired in a limited-term position with no benefits paid, is paid on a per diem basis, and works no more than 1,040 hours in a 12-month period of state employment (which equates to roughly a half-year of

full-time employment). The bill also requires that at least 12 months have passed since the retiree's previous state employment and caps the hourly wage paid to the retiree at 80% of the maximum wage granted for FY 2012-13 to classified state civil service employees employed by the MDOC and performing the same duties. Finally, the bill clarifies for both the new and existing exemptions that they apply only to retirees who retired after a "bona fide termination of employment".

FISCAL IMPACT:

The FY 2012-13 Michigan Department of Corrections (MDOC) budget contains assumed savings of $10.0 million GF/GP tied to the use of retired corrections custody staff to fill existing custody staff vacancies. The MDOC indicates that as of August 1, 2012, the Department had 395 corrections officer vacancies across the state. The budgeted savings assume the use of retired officers to fill the equivalent of approximately 250 vacant custody staff positions.

By allowing retired MDOC officers to be rehired without losing their existing retirement benefits, the bill has the potential to reduce state costs related to the corrections system to the extent that retired corrections officers can be re-hired and used to fill current custody staff vacancies that otherwise result in the use of overtime by current custody staff. The House Fiscal Agency estimates that the MDOC would achieve savings of between $10.8 million and $12.5 million if it is able to achieve its goal of filling the full-year equivalent of 250 vacancies with a retired corrections officer.

However, the bill also has potential cost implications on the state retirement system that could offset some of these savings, although provisions added to the (H-2) substitute should make these costs fairly negligible. Details are provided below on both issues.

Direct Impact on Department of Corrections
Unlike most state departments, the MDOC utilizes a significant amount of paid overtime in ensuring it has sufficient staff to maintain security in the state's prisons. When a custody staff position remains vacant or an existing officer takes sick or annual leave, the Department often pays overtime to existing staff to cover the unfilled assignment. Through the first 24 pay periods of FY 2011-12 (extending through August 2012), MDOC custody staff worked 1,137,914 hours of regular, non-holiday overtime. Of these hours, 532,458 (46.8% of total) were worked to cover an existing custody staff vacancy, 191,048 (16.8%) were to cover for a custody officer on annual or sick leave, and 94,687 (8.3%) were to cover for prisoner hospital visits and other transportation for medical reasons according to MDOC overtime reports. These broad categories accounted for almost 72% of the overtime usage.

Custody officers working overtime are generally paid one-and-a-half times their regular wage rate for these duties. As such, the use of overtime can be a significant expense. For FY 2010-11, the Department expended $50.6 million on regular, non-holiday overtime pay to employees, with over 90% of these costs accruing to prison custody staff.

To avoid these overtime costs, the Department could hire additional custody staff to eliminate existing vacancies and help cover for leave usage, prisoner medical visits, and the other factors that contribute to overtime. Typically, hiring additional custody staff means hiring new state corrections officers. Those new officers, however, also bring new costs that offset much (although not all) of the overtime savings. The state must cover the fixed one-time costs of their training as well as the ongoing costs of health insurance and retirement contributions. The new state employees would also begin to accrue their own leave time, which is itself a potential source of future overtime costs.

House Bill 5881 seeks to provide another outlet for the MDOC to add custody staff, but without incurring some of these extra offsetting costs. By allowing currently retired custody officers to be re-hired by the Department on a limited-term basis while retaining their existing retirement allowance and benefits, the bill could provide an incentive for these retirees to return to work for the MDOC to fill existing vacancies. Further, since these retirees would be hired as non-career, limited-term staff, they would not impose new fringe benefit costs on the department.

The table at the end of this analysis illustrates these potential cost savings by comparing the cost of filling a staffing vacancy through overtime with the costs of employing additional regular custody staff and with the costs of hiring a retiree. The first column of the table illustrates the cost of filling a custody staff vacancy through the use of overtime by current staff. The analysis assumes an hourly wage of $24.00, which is roughly the average wage paid to MDOC staff at the "Corrections Officer E9" classification. The Department would pay an overtime wage of $36.00 and would also be responsible for covering the Social Security/Medicare payroll tax as well as added retirement contributions for the employee(s) providing the overtime hours. This assumes a 9% contribution for this purpose; the actual contribution would vary by employee. Adding together these costs, the MDOC would pay out just over $3,359 for a two-week period to cover the overtime.

The Department could save some of those overtime costs by adding regular staff to fill the vacancies. The next two columns illustrate these costs. The first of these columns shows the costs of a new officer just out of training paid at the minimum hourly wage of the "Corrections Officer E9" pay scale of $16.62. Along with the payroll tax and retirement costs, however, the Department would also have to meet the costs of certain state employee benefits such as insurance coverage and annual/sick leave grants. Insurance is assumed to cost $600 per period, which reflects the average for the classification. Actual costs would vary depending on other factors (e.g. coverage selected, family/single). Combining all costs, the new officer would cost an average of around $1,075 less per pay period than related overtime costs. However, state law imposes specific training requirements on new corrections officers. To comply with these requirements, the MDOC normally operates a new officer training school once annually to bring in new corrections officers. Thus, new hires are limited to the number of officers the Department is able to recruit and successfully train in this effort.

In addition, the new hire level of savings would accrue to MDOC only in the short run. Most new officers advance quickly through the step pay levels of the "Corrections Officer E9" classification. Within 5-6 years, their costs would typically be more reflective of officers paid at the classification's average wage. At the average hourly pay level of $24.00, the savings per pay period would be just under $280.

Finally, the last two columns present information on the costs of re-hiring retired officers. Since the re-hired officers would not impose any additional retirement, insurance, or leave time costs, these costs are zeroed out. The main determinant in the amount of state savings would be the wage at which the retiree is hired back. If the MDOC is able to re-hire retired officers at the minimum base wage of $16.62, savings per pay period are estimated at just over $1,928 when compared to using overtime. If the MDOC pays the maximum rate allowed under the bill of 80% of the pay scale maximum (which comes to $19.61/hour), pay period savings would come to around $1,670. Annualizing these savings and assuming that retired officers would fill the equivalent of 250 custody staff vacancies (as assumed under the Department's savings proposal) suggests annual savings in the range of $10.8 million to $12.5 million.

Implications for the State Retirement System

In addition to the MDOC impact discussed above, the bill could create increased costs for the State Employees' Retirement System (SERS), which would be borne by the state. For employees who had already retired, this provision would not create additional costs to SERS. However, the bill could increase SERS costs to the extent that it would encourage current state employees, who otherwise would have continued employment, to retire knowing they could return to employment and receive both current compensation as well as their pension allowances. However, the requirement added to the (H-2) substitute that a retired officer must be separated from state employment for 12 months prior to being re-hired combined with the temporary two-year window during which officers could be re-hired while retaining their retirement allowance would significantly reduce, if not eliminate, these added costs.

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Costs of Filling a Corrections Custody Vacancy for One Pay Period					
	Overtime	Add regular staff (new hire)	Add regular staff (average)	Retiree 1 (minimum of range)	Retiree 2 (80% of maximum)
Hourly Wage Rate	$24.00 x 1.5 = $36.00	$16.62	$24.00	$16.62	$19.61
Marginal Costs to MDOC					
Salary (80 hour pay period)	$2,880.00	$1,329.60	$1,920.00	$1,329.60	$1,568.80
FICA/Medicaid	$220.32	$101.71	$146.88	$101.71	$120.01
Normal cost - retirement (assumes 9% contribution - actual costs vary by employee)	$259.20	$119.66	$172.80	$0	$0
Insurance costs (average - actual costs vary by employee)	No marginal cost	$600.00	$600.00	$0	$0
Leave time accrual (average - actual leave based on longevity)	No marginal cost	8 hrs accrued = $132.96	10 hrs accrued = $240.00	$0	$0
Total Marginal Cost	**$3,359.52**	**$2,283.93**	**$3,079.68**	**$1,431.31**	**$1,688.81**
Savings per pay period compared to OT usage		**$1,075.59**	**$279.84**	**$1,928.21**	**$1,670.71**

<u>Notes to table</u>:

1) Retirement legacy costs: In addition to the costs noted above, the MDOC, like other departments, are charged a percentage of payroll to cover certain pension-related costs (e.g. unfunded actuarially accrued liability, reconciliation of actuarial assumptions, OPEB pre-funding) and the costs of pay-as-you-go retiree health care. Although these costs are not directly related to this issue, the charges to cover these costs make overtime usage appear relatively more expensive than the other options from MDOC's perspective.

2) Add Regular Staff - New Hire: Column reflects the estimated cost of a first-year Corrections Officer E9 paid at the starting wage of the civil service range. Typically, the wage rate for such an officer would increase significantly over the next 5-6 years as the officer advanced through civil service steps.

3) Add Regular Staff - Average: Column reflects the estimated cost of an average Corrections Officer E9. This better reflects the longer-term costs of filling vacancies through added staff, and uses the same $24.00 average wage as is used in the overtime calculations.

4) Retiree costs: The Civil Service pay range for a Corrections Officer E9 begins at $16.62/hour and is capped at $24.51/hour for FY 2012-13. The two retiree columns illustrate the cost of hiring a limited-term retiree at the bottom of this pay scale and at the "80% of maximum" established under the bill.

5) Other Staffing Costs: The analysis does not factor in other irregular costs of Corrections custody staff such as annual longevity pay and other performance bonuses, uniform-related cost allowances, annual leave bonuses, and special leave time grants. These would tend to reduce the cost differential between overtime and added regular staff.