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BILL ANALYSIS

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Senate Bill 175 (as enacted)

PUBLIC ACT 99 of 2013

Sponsor: Senator John Pappageorge

Senate Committee: Veterans, Military Affairs and Homeland Security

House Committee: Military and Veterans Affairs

Date Completed: 10-21-13

CONTENT

The bill amended the Michigan Military Act to do the following:

- **Revise the criteria for service as Adjutant General, by requiring a minimum rank and allowing service until designated for retirement for an active Army or Air Force officer of like grade (rather than until age 64).**
- **Provide for the Adjutant General and Assistant Adjutants General to receive retirement pay equal to what an officer of like grade and total years of service would receive (rather than receiving retirement benefits as a qualified participant under the State Employees Retirement Act).**
- **Provide for retirement benefits for officers, other than the Adjutant General and Assistant Adjutants General, who were appointed to State special duty before July 1 2013, in the same manner as for the Adjutant General and Assistant Adjutants General.**
- **Delete a provision that provided for retirement benefits for officers and enlisted persons equal to that authorized to personnel of like grade, rank, and longevity who were retired from the active Federal armed forces.**
- **Limit eligibility for survivor retirement benefits to the eligible surviving spouse of an Adjutant General or Assistant Adjutant General, rather than the surviving spouse of any officer or enlisted person.**
- **Include oversight of veterans' or related State facilities in the Adjutant General's responsibility to oversee armories and other military facilities.**
- **Grant the Adjutant General, rather than the State Military Board, authority regarding armories, other facilities, training areas, and other real property.**
- **Expand the Governor's authority to order members of the organized militia into active State service and to order members of the unorganized militia into the defense force.**
- **Expand the Governor's authority to enter into agreements with the governors of other states to authorize the use of the military forces of this State.**
- **Transfer from the Governor to the Adjutant General the authority to organize and arrange units of the military establishment.**
- **Include "special duty" in various provisions authorizing the services of the organized militia.**

The bill also repealed sections of the Act that had created and governed the five-member State Military Board; and repealed a section that had limited the tenure of the senior line officer serving in the grade of major general to four years, except when the National Guard was in the service of the United States.

The bill took effect on July 2, 2013.

Adjutant General

The Office of the Adjutant General, with the rank of major general in the National Guard, is created in the Act. The Adjutant General is the commanding general of the State's military establishment (the organized militia of the State, including the employees and equipment assigned or necessary to carry out the provisions of the Act). Under the direction of the Governor, the Adjutant General is charged with the responsibility for the command, administration, logistics, training, and fiscal direction of the military establishment.

The Governor must appoint the Adjutant General from among qualified federally recognized officers of the National Guard. The Adjutant General must have served as an officer of field or general grade in the State military establishment for at least five years before appointment. The bill also requires the Adjutant General to have Federal recognition in the rank of colonel or higher, and be capable of being federally recognized to the rank of brigadier general, before appointment.

The Adjutant General serves at the pleasure of the Governor. Previously, unless relieved sooner, the Adjutant General could serve until the age of 64. The bill deleted that age restriction. The bill specifies that, unless relieved sooner, the Adjutant General serves until the age designated for retirement for an active Army or Air Force officer of like grade.

Adjutant General & Assistants Retirement

Under the Act, the Adjutant General and the Assistant Adjutants General beginning employment on or after January 1, 2011, when relieved under honorable circumstances must receive retirement benefits as a qualified participant under the State Employees Retirement Act. Retirement benefits begin on the date of retirement or honorable relief from duty. Under the bill, that provision applies, except as described below. (Before January 1, 2011, the Adjutant General and the Assistant Adjutants General were provided retirement pay equal to the retirement pay that an officer of like grade and total longevity would receive as indicated under Federal regulations and upon retirement. Retirement pay did not depend on how long the person served as Adjutant General or Assistant Adjutant General. The State cost for that retirement pay was net of any Federal pension payments.)

Beginning on the bill's effective date, when retired or relieved under honorable circumstances, the Adjutant General and the Assistant Adjutants General must be placed on the retired list of the National Guard. The Adjutant General and the Assistant Adjutants General will receive retirement pay equal to the retirement pay that an officer of like grade and total years of service would receive as indicated in appropriate Federal regulations when they are retired or honorably relieved. Their retirement benefits will start on the date of retirement or honorable relief from duty.

Under the bill, retirement for the Adjutant General and the Assistant Adjutants General requires all of the following:

- At least 20 of years active service with the National Guard or State defense force, or both.
- At least four consecutive years of special duty as an Adjutant General or Assistant Adjutant General.
- The service member is at least 55 years old.

The requirement for four consecutive years of service as an Adjutant General or Assistant Adjutant General for retirement pay will be waived if the service member is relieved because a new Governor assumes office.

The bill specifies that any retirement pay received from the Federal government for military service must be deducted when the amount to be received from the State is computed. The deduction must start on the first day of the month the officer becomes eligible for Federal retirement. Once established, the amount of the deduction may not be changed. The retirement benefit will be paid according to the Federal regulations commensurate with active duty years and traditional National Guard service time. The full-time Adjutant General's and Assistant Adjutant General's service will be credited at the equivalent of full-time active duty service, and part-time traditional services will be credited to the Federal military points system, in a manner determined by the retirement system.

Only one Adjutant General appointed by the Governor in any four-year period is eligible for retirement under the bill's provisions that require placement on the retired list of the National Guard. Only two Assistant Adjutants General are eligible in any four-year period. If the Adjutant General or an Assistant Adjutant General is mobilized pursuant to a Federal mobilization and the Governor appoints a replacement Adjutant General or the Adjutant General appoints a replacement Assistant Adjutant General, the replacement officer is eligible for retirement under the bill's provisions. If, due to any change or error in the records, any member, retirant, or beneficiary receives from the retirement system more or less than he or she would have been entitled to receive if the records had been correct, the retirement system must correct the error and, as far as practicable, adjust the payment in such a manner that the actuarial equivalent of the benefit to which that member, retirant, or beneficiary was correctly entitled will be paid.

Retirement Benefits for Other Personnel

Under the bill, officers, other than the Adjutant General and Assistant Adjutants General, who were appointed to State special duty before July 1, 2013, because they reached the maximum age or because of Federal law or regulation, and retire, must receive retirement pay as described above for the Adjutant General and Assistant Adjutants General. Retirement for those other officers requires at least 20 years' active service with the National Guard and/or State defense force. Any retirement pay received from the Federal government for military service must be deducted when the amount received from the State is computed. The deduction must start on the first day of the month the person becomes eligible for Federal retirement. Once established, the amount of the deduction may not be changed.

Previously, under the Act, an officer or enlisted person retired from special duty with the military establishment because he or she reached maximum age or because of Federal law or regulation, had to receive retirement pay equal to that authorized to personnel of like grade, rank, and longevity who were retired from the active Federal armed forces by appropriate Federal regulation. Retirement under this provision required at least 20 years' active service with the National Guard and/or State defense force. Any retirement pay received from the Federal government for military service had to be deducted when the amount received from the State was computed. The deduction had to start on the first day of the month the person became eligible for Federal retirement. Once established, the amount of the deduction could not be changed, but it could not deprive the retired person from receiving a total of State and Federal pay equal to that authorized to personnel of like grade, rank, and total longevity who were retired from the active Federal armed forces. These retirement benefits from the State were effective on the date of retirement. The bill deleted those provisions.

Survivor Benefits

Under the bill, if an Adjutant General or Assistant Adjutant General who continues on special duty on or after the date he or she acquires 15 years of active service dies before retirement and leaves an eligible surviving spouse, the eligible surviving spouse must be

paid a survivor's benefit equal to 67% of the retirement pay to which the officer would have been authorized had he or she retired the day preceding death. If an Adjutant General or Assistant Adjutant General who retires is receiving retirement pay and dies, leaving an eligible surviving spouse, the spouse must begin receiving 50% of the officer's retirement pay. Previously, these provisions applied to the surviving spouse of any officer or enlisted person.

Adjutant General Responsibilities

The Act requires the Adjutant General to plan, negotiate, and contract with the Federal government for the maintenance, remodeling, additions to, and construction of armories and other military facilities within Michigan. The bill includes other veterans' or related State facilities in that provision.

The Adjutant General must request civilian positions and personnel of the military establishment, as he or she considers necessary, to be included in the classified State civil service or, under the bill, in "state senior service".

The bill authorizes the Adjutant General to designate an armory manager for each armory to carry out the duty of operating and maintaining the armory. Previously, the Act provided for the creation of an armory board of control for each armory of the State military establishment, with the duty of operating and maintaining the armory.

The State Military Board was authorized to receive funds and gifts of property from various sources to aid in providing, erecting, or improving armories or other facilities, or training areas and other surrounding land for the use of the State military establishment. The bill instead authorizes the Adjutant General to receive funds and gifts for those purposes. The bill gives the Adjutant General various responsibilities that the Act previously gave to the State Military Board regarding real property. These responsibilities include condemning property; disposing of facilities; giving the State Treasurer direction in spending money in the Michigan National Guard Construction Fund for the purpose of acquiring facilities and training land and building new facilities; and holding title to the Camp Grayling Military Reservation.

Gubernatorial Authority

The Governor is the commander-in-chief of the organized militia and may order to active State service any members of the organized militia in case of riot, tumult, breach of the peace, or resistance of process, or for service in aid of civil authority, whether State or Federal, or in time of public danger, disaster, crisis, catastrophe, or other public emergency within Michigan. The bill refers to "actual or imminent" public danger, disaster, crisis, catastrophe, or other public emergency. It also authorizes the Governor to order any members of the organized militia into active State service to respond to acts or threats of terrorism or to safeguard military or other vital resources of the State or the United States.

The Governor also may order into the defense force any members of the unorganized militia in case of riot, tumult, breach of the peace, or resistance of process, or for service in aid of civil authority, or in time of public danger, disaster, crisis, catastrophe, or other public emergency within Michigan. The bill refers to "actual or imminent" public danger, disaster, etc.

(Under the Act, the "organized militia" of the State constitutes the Armed Forces of the State and consists of the Army National Guard, the Air National Guard, and the defense force when actually in existence as provided under the Act. The unorganized militia consists of all other able-bodied citizens of the State and all other able-bodied citizens who are residents of the State who have declared their intention to become citizens of the United

States, who are 17 or older and not more than 60, and are subject to State military duty as provided in the Act.

As used in the Act, a reference to the Michigan defense force means the Michigan volunteer defense force. The Governor may activate within the military establishment a number of units to be known as the Michigan volunteer defense force, as the Governor considers necessary for adequate emergency assistance to the State. When activated, the defense force must perform missions determined by the Department of Military and Veterans Affairs in cooperation with the State Police and the State emergency preparedness plan.)

The Governor may enter into an agreement with the governors of one or more other states authorizing the military forces of this State, in time of invasion, rebellion, public disaster, or catastrophe, or to assist a state or local law enforcement agency, at its request, in enforcing a law prohibiting the importation, sale, delivery, possession, or use of a controlled substance. The bill also authorizes such an agreement as necessary to comply with reciprocal agreements for emergency assistance to other states under the Interstate Emergency Management Assistance Compact.

The bill authorizes the Governor to direct the Adjutant General to organize, disband, arrange, transfer, convert, alter, consolidate, or attach units of the military establishment. Previously, the Act authorized the Governor to take those actions, and the transfer of personnel to and within units had to be carried out by order of the Governor. Under the bill, those actions must be done by order of the Adjutant General.

The bill includes "special duty" in various provisions governing the services of the organized militia. The Act defines "special duty" as military service in support of the full-time operation of the State military establishment for a period of not less than one day if ordered by competent authority.

MCL 32.505 et al.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill reversed the retirement changes made under Public Act 255 of 2010, which eliminated defined benefit retirement provisions for the Adjutant General and Assistant Adjutants General hired after January 1, 2011, and placed those appointees into the State's 401k defined contribution plan. At the time, the fiscal statement for Public Act 255 (House Bill 6270) identified savings from closing the defined benefit system of at least \$1.5 million per year, once the system is entirely closed and no previously eligible retirees are drawing benefits, 30 to 40 years in the future. To prefund the pension benefits of a new Adjutant General and two Assistants as provided in this legislation will cost an estimated \$200,000 per individual per year, on top of the existing \$1.5 million per year from the pay-as-you-go retirement costs for the previous Adjutant and Assistant Adjutants General eligible for pension benefits.

Fiscal Analyst: Kathryn Summers

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.