Legislative Analysis

FORFEIT EMPLOYER CONTRIBUTIONS TO DEFINED CONTRIBUTION PLANS FOR CERTAIN FELONIES

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House Bill 4131 as introduced
Sponsor: Rep. Jim Runestad
Committee: Judiciary
Complete to 3-7-17

SUMMARY:

Currently, under Section 3 of the Public Employee Retirement Benefits Forfeiture Act, a member or retirant who is convicted of or enters a nolo contendere plea accepted by the court for a felony arising out of service as a public employee is considered to have breached the public trust and may have his or her rights to an otherwise vested retirement benefit and all accumulated contributions forfeited. House Bill 4131 would amend the act to include "a benefit from employer contributions to a defined contribution plan" in the definition of "retirement benefit." This means, the bill would allow for the forfeiture of employer contributions to a defined contribution system (such as a 401K), including earnings on those contributions.

(However, this applies only to the retirement system of which the individual was a member or retirant of at the time the felony was committed, and only to the retirement system established by the entity affected by the felony.)

Currently, under Section 4 of the act, if a member or retirant is convicted of or enters a nolo contendere plea accepted by the court for a felony arising out of service as a public employee, the court may order forfeiture of specified retirement benefits. The bill would instead specify that the court shall order forfeiture.

The section would also be amended so that forfeiture would apply to the employer contributions to a member's or retirant's individual account under a defined contribution plan established by the retirement system, including earnings on those contributions, on or after the date the first act that resulted in the felony was committed.

Additionally, the bill replaces "person" with "individual" throughout the Act.

MCL 38.2702 et seq.

FISCAL IMPACT:

The bill would have an indeterminate fiscal impact, but could create savings for local and state public pension plans. There are no data available with which to estimate the number of potential forfeitures to which the new defined contribution provision might apply, and any savings would depend on the amount of employer contributions plus investment returns that had accumulated in any individual defined contribution (DC) plan. Currently in a forfeiture situation, the state deposits forfeited DC funds into a forfeiture account, which is the same account used to collect funds from employee DC accounts for employees who leave prior to vesting in their employer-paid benefits. These funds are then used to offset mandatory employer contributions, and thus create a savings to the state. Savings to local governments would depend on how the local pension plan treats forfeiture funds. The bill's provision that a judge "shall" rather than "may" order a forfeiture would presumably increase the funds retained by the system and would typically accumulate to the benefit of the whole pension plan.

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