Legislative Analysis

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PREVIOUSLY EARNED RETIREMENT BENEFITS FOR CERTAIN PART-TIME STUDENT EMPLOYEES

House Bill 6378 proposed committee substitute (H-3)
Sponsor: Rep. Scott VanSingel
Committee: Financial Liability Reform
Complete to 11-7-18

BRIEF SUMMARY:

House Bill 6378 would amend the Public School Employees Retirement Act (the Act) to create a process in which eligible part-time student employees of community colleges could apply for and be credited with service for retirement benefits they earned previously, but for which their employers did not report or contribute to the Michigan Public School Employees' Retirement System (MPSERS). It would also authorize the Office of Retirement Services (ORS) to determine and assess related community colleges' contributions. Finally, the bill would revise two recently amended provisions related to MPSERS payroll calculations and assumptions.

BACKGROUND:

House Bill 6378 builds upon Public Act 328 of 2018,[1] legislation passed to address an Auditor General finding[2] that at least one community college had not been reporting, nor making contributions for, retirement benefits earned by certain part-time student employees. Subsequent information suggested that less than half of community colleges had been complying with the law regarding this subset of student employees. PA 328 required that colleges submit to ORS a report with detailed information regarding the number of applicable student employees, along with the contributions the college made and/or failed to make associated with them, for fiscal years FY 2013-14 through FY 2016-17. Under the act, ORS had to provide a summary report to the Legislature by September 30, 2018.[3]

Part-time student employees hired on or after July 2, 2018, are no longer eligible for retirement benefits under PA 328.

DETAILED SUMMARY:

Community College Part-Time Student Employees

House Bill 6378 would require that a part-time student employee of a community college, who was employed prior to July 1, 2014, under Section 5(p) of the Act and who did not

[1] See House Fiscal Agency Summary of PA 328 of 2018: http://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-0888-FB930B6F.pdf
[2] Auditor General Audit: https://audgen.michigan.gov/wp-content/uploads/2018/02/r917DTMB01.pdf
[3] https://www.michigan.gov/documents/dtmb/PA_328_Final_Report_Transmittal_634555_7.pdf

previously have that service reported by his or her employer, may claim and be credited with that service if all of the following apply:

- The individual files a written application with the retirement board between January 1, 2019, and January 31, 2020, in a method determined by ORS. The application would be irrevocable.
- The individual fulfills the terms of a billing statement issued by ORS that corresponds to the amount he or she would have had to contribute for that service, plus regular interest before he or she retires.

An individual who was eligible to apply and does not satisfy the conditions above would forfeit any claim to receive service credit unless good cause is shown to the satisfaction of the retirement board.

Individuals employed on or after July 1, 2014, but before July 2, 2018, are members.

Supplemental Employer Contributions

The bill would require that ORS determine and assess a supplemental employer contribution for each community college based on that college's report required under PA 328 and its payroll data reported to ORS. The supplemental contribution must take into account the extent to which the college remitted employer contributions and related retirement information for applicable part-time student employees for each of the 4 school fiscal years covered in the PA 328 report.

The bill also would require ORS to determine and assess a supplemental employer contribution for each college based on the service credit claimed by part-time student employees hired prior to July 1, 2014. The contribution must take into account the amount and duration of service claimed and the retirement plan election made by the eligible student employee.

Under the bill, the supplemental contributions must include interest and late fees as provided under section 42 (see below).

Late Fees

Currently, section 42 provides that if an employer fails to submit a report or contributions, the unit shall pay a late fee, established by the retirement board but not less than $25, as well as interest charges equal to not less than 6% per year. According to ORS, currently the late fee is equal to 2% of a delinquent contribution, and the interest rate is equal to the actuarial rate of return minus 2%, but never less than 6%, which as of the PA 328 report equaled 8.48%. Late fees and interest are compounded each pay period and are intended to make the retirement system whole for lost investment gained had the contributions been made on time.

Section 42 also provides that if an employer fails to correct payroll reporting errors before they are discovered by the retirement system or if the errors are intentional, then the employer must pay a late fee and interest charges <u>for each day</u> that the report is in error unless reasonable cause is shown to the satisfaction of the retirement system. <u>The bill</u>

would clarify to align with current practice that limits daily late fees to those cases in which the errors are intentional. The bill also would provide that a violation may be investigated by a county prosecutor, the Auditor General, or the Attorney General. The bill would define an "intentional error" as any of the following:

- A knowing and willful representation that service was performed when it was not.
- A knowing and willful submission of a report containing material misrepresentations or falsifications, or knowing and willful failure to submit a report.
- Any other knowing and willful act or omission of a false, fraudulent, or misleading nature undertaken to comply or appear to comply with the Act.

Finally, the bill would appropriate $650,000 for FY 2018-19 to the Department of Technology, Management, and Budget (DTMB) for ORS to administer the bill's proposed application and remediation process. It would make the appropriation a work project, thus allowing unspent funds at the end of the fiscal year to be carried forward into subsequent fiscal years.

MPSERS Employer Adjusted Payrolls

The bill also would strike a provision added in PA 92 of 2017, and amended subsequently in PA 181 of 2018,[4] that adjusts MPSERS employer payrolls for the purpose of determining each employer's share of unfunded accrued actuarial liability (UAAL) costs beginning in FY 2019-20. The provision adjusts an employer's payroll base by the annual growth in its "payroll plus purchased services"—its payroll and contracted services—in order to capture contract compensation to prevent the phenomenon of employers offloading their share of retirement costs by privatizing services. By striking the provision, the bill would return to applying contribution rates to an employer's actual annual payroll.

MPSERS Payroll Growth Assumption

House Bill 6378 also would amend a provision added in PA 181, which requires the MPSERS payroll growth assumption to be decreased over time until it is zero, to clarify that after the required reduction begins in FY 2021-22, ORS and the MPSERS board may agree to reduce the payroll growth assumption rate by any number of additional basis points over and above the either 25 or 50 basis points as otherwise required in that year.

MCLs 38.1341 et al. and proposed MCLs 38.1343h et al.

FISCAL IMPACT:

Generally, House Bill 6378 would increase costs to the state and applicable community colleges, and would have an indeterminate impact on MPSERS employers related to revisions regarding payroll calculations and assumptions.

[4] See HFA summary of PA 181 of 2018: http://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-5355-4ED7E075.pdf

Community College Part-Time Student Employees
Information collected from the PA 328 report suggests that the scope of the cost to colleges for the 4 fiscal years covered by the report is approximately $7.5 million, including about $1.5 million in applicable late fees and interest (assuming no additional daily late fees or interest are levied for errors found to be intentional). The report details the estimated cost by college, but as official payroll is revised and reported, the amounts could vary. The colleges could assess the employee contribution share included in that figure to the employees being credited with service during that 4-year period.

Additionally, the bill's cost to colleges would increase to the extent that applicable student employees first hired prior to July 1, 2014, apply for and are willing to make the required contributions toward their retirement benefit.

Assuming that ORS can accurately determine and collect the required member and employer contributions, the additional benefits provided to the applicable students should be adequately paid for, and the net cost to the MPSERS system would be zero.

Finally, the bill would appropriate $650,000 general fund/general purpose revenues to DTMB with which to carry out the bill's application and remediation process.

Revised Payroll Calculations and Assumptions
The bill's provisions related to payroll would have an indeterminate fiscal impact.

Deleting the provision that adjusts an employer's payroll beginning in FY 2019-20 would have an indeterminate impact because the data regarding the future adjustments does not yet exist, but it is likely to reduce the anticipated future growth in the base on which retirement contributions are collected, thus limiting the growth in the share paid by MPSERS employers and increasing the share paid by the state. This is because contributions are assessed on employers as a percent of payroll, which is capped, and any amount necessary above the cap is paid by the School Aid Fund through an appropriation in the School Aid budget.

By allowing the actuarially assumed rate of payroll growth to be reduced more quickly than the required phase-out, which begins in FY 2021-22 under PA 181, the bill could increase up-front costs but reduce long-term costs over the life of the unfunded liability amortization period, but the actual impact would depend on the difference in the assumption compared to actual payroll growth. For a more detailed discussion of the potential impact of reducing the payroll growth assumption see the HFA analysis for PA 181.[5]

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

[5] See HFA summary of PA 181 of 2018: http://www.legislature.mi.gov/documents/2017-2018/billanalysis/House/pdf/2017-HLA-5355-4ED7E075.pdf