



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

House Bill 4131 (Substitute H-1 as passed by the House)
Sponsor: Representative Jim Runestad
House Committee: Judiciary
Senate Committee: Judiciary

Date Completed: 4-24-17

CONTENT

The bill would amend the Public Employee Retirement Benefits Forfeiture Act to do the following:

- **Require, rather than allow, the forfeiture of an individual's rights to a vested retirement benefit and accumulated employer contributions, for a conviction or no contest plea for a felony arising out of the individual's service as a public employee.**
- **Require, rather than allow, a court to order forfeiture of an individual's retirement benefit if the individual were convicted of or entered a no contest plea for a felony arising out of his or her service as a public employee.**
- **Require a court to order a retirement system to pay an equivalent monthly retirement allowance to an individual who otherwise would be a beneficiary of someone whose benefits were forfeited (as currently provided), except for a benefit from employee contributions to a defined contribution plan.**
- **Allow a retirement benefit to be frozen, subject to a showing of probable cause that the benefit was subject to forfeiture.**
- **Allow a court to issue a freezing order on an ex parte application by a prosecuting agency under certain conditions.**
- **Require a retirement system to comply with a freezing order, and prohibit payment of retirement benefits to a member or retiree whose benefits were frozen.**

The bill would take effect 90 days after its enactment.

Mandatory Forfeiture of Retirement Benefits

The Act applies to a member of a public employee retirement system established by the State or a political subdivision of the State, and to a retiree with benefits payable from such a system.

Under the Act, a member or retiree who is convicted of or who enters a nolo contendere (no contest) plea for a felony arising out of his or her service as a public employee may have his or her rights to an otherwise vested retirement benefit and all accumulated contributions to his or her credit in the retirement system forfeited. The bill would require the individual's rights to an otherwise vested retirement benefit and all accumulated employer contributions, including earnings on the employer contributions, to be forfeited.

Currently, "retirement benefit" means an annuity, a retirement allowance, a pension, an optional benefit, a postretirement benefit, and any other right accrued or accruing to a member under a retirement system. Under the bill, "retirement benefit" also would include a benefit from employer contributions to a defined contribution plan (e.g., a 401k plan).

("Felony arising out of his or her service as a public employee" means a felony resulting from one or more of the following: a) misuse of public funds, or b) receipt of a bribe or other financial benefit in that individual's capacity as a public employee.)

Currently, if a member or retiree is convicted of or enters a no contest plea for a felony arising out of his or her service as a public employee, the court may order forfeiture. The bill would require the court to order forfeiture.

If forfeiture is ordered, the clerk of the court must deliver the order to the retirement system. The order must specify, among other things, that the retirement system must pay to an individual who otherwise would be a beneficiary of the member or retirant whose retirement benefit is being forfeited an actuarially equivalent monthly retirement allowance at the age that member or retirant would have become eligible for unreduced retirement benefits under that retirement system. Under the bill, this would apply to a retirement benefit except a forfeited benefit from employee contributions to a defined contribution plan.

Freezing Order

The bill would allow a retirement benefit subject to forfeiture under the Act to be frozen under a freezing order issued by a court on a showing of probable cause that the retirement benefit was subject to forfeiture. On an ex parte application by the prosecuting agency (i.e. without notice to the member or retiree), the court could determine ex parte whether there was probable cause to believe that a member's or retiree's benefit was subject to forfeiture and that notice to the individual before a retirement benefit was frozen would cause the loss of that benefit.

If the court found that there was probable cause to believe that the above conditions existed, it would have to issue an order freezing the retirement benefit. The clerk of the court would have to deliver the order to the retirement system. ("Prosecuting agency" would mean the Attorney General or the prosecuting attorney of a county, or his or her designee.)

The Act requires the retirement system to comply with an order of the court requiring forfeiture of a member's or retiree's retirement benefit, and requires the system not to pay any benefits to an individual whose benefit is forfeited on or after the governing body receives the forfeiture order. Under the bill, these requirements also would apply to a freezing order.

MCL 38.2702 et al.

Legislative Analyst: Jeff Mann

FISCAL IMPACT

The bill would have an indeterminate, but positive, impact on State and local pension plans (and, by extension, on the State and local governments) to the extent that retirement benefits were forfeited under the Act, and to the extent that benefits were frozen during an investigation, as allowed under the bill. Specifically, since the bill would require, instead of allow, a court to order forfeiture when a member or retirant was convicted of a felony arising out of public service, this would increase dollars available in the applicable pension system in an amount equal to any forfeited funds (which could then be used to fund other costs in the system).

Also, any funds frozen during an investigation would increase the fund balance of the applicable pension system during the period of time the benefits were frozen, and would permanently increase the fund balance if the retirement benefits were forfeited upon conclusion of the investigation. The bill also clarifies that amounts contributed by an employer in a defined contribution plan would be part of the retirement benefits subject to freezing and forfeiture; however, since this is already how the State's Office of Retirement Services has interpreted this Act, it is likely that this language change would have little to no fiscal impact on the pension plans.

Fiscal Analyst: Kathryn Summers

SAS\S1718\s4131sa

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.