Legislative Analysis

ALLOW CERTAIN RETIRED STATE EMPLOYEES TO WORK FOR STATE WITHOUT LOSING BENEFITS

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Senate Bill 911 (S-1) as passed by the Senate
Sponsor: Sen. Ken Horn
House Committee: [Pending]
Senate Committee: Economic and Small Business Development [Discharged]
Revised 10-13-20

SUMMARY:

Senate Bill 911 would amend the State Employees' Retirement Act to allow certain retired state employees to work for the state under certain circumstances without forfeiting their retirement benefits.

Section 68c of the act currently requires the forfeiture of retirement benefits during any period in which a retired state employee returns to state work, whether employed directly by the state or indirectly through a third-party contract or as an independent contractor.

Under the bill, until December 31, 2020, the above provisions would not apply to a retiree who was hired after March 15, 2020, by either the Unemployment Insurance Agency or the Michigan Occupational Safety and Health Administration.

The bill would put into law provisions of Executive Order 2020-76 that were also in a predecessor order, EO 2020-57, which EO 2020-76 rescinded and replaced.[1] On October 2, 2020, the Michigan Supreme Court found the 1945 act under which the governor had declared a state of emergency and a state of disaster to be an unconstitutional delegation of legislative power. EO 2020-76 was issued under authority of that emergency declaration.

The bill could not take effect unless Senate Bill 886 and House Bills 6030, 6031, 6032, and 6101 were also enacted into law.

MCL 38.68c

BACKGROUND:

Section 68c of the State Employees' Retirement Act was added by 2007 PA 95 to eliminate the practice, often referred to as "double-dipping," in which a state employee retires and returns to work for the state, drawing both retirement benefits and a salary. It initially required the forfeiture of retirement benefits during any period in which a retiree returned to state work if he or she were either directly employed or indirectly hired through a third-party contract. 2010 PA 185 expanded the benefit forfeiture to include employment with the state indirectly as an independent contractor.

[1] Executive Order 2020-76, issued May 6, 2020 (http://www.legislature.mi.gov/documents/2019-2020/executiveorder/pdf/2020-EO-76.pdf).

Section 68c has been subsequently amended several times to create specific exceptions to this rule, typically for hard-to-fill positions or professions. Currently, it includes the following exceptions, each of which has specifically applicable provisions:

- An individual hired by DOC to provide health care services.
- An individual appointed by the Attorney General as a special assistant attorney general who was an assistant attorney general and has specialized expertise and experience.
- An individual with whom the Attorney General contracts as a witness, expert, or consultant because he or she has specialized expertise and experience.
- An individual hired by the Department of Natural Resources for active wildland fire suppression.
- An individual hired by the Department of Health and Human Services as a psychiatrist to provide mental health services in state operated psychiatric hospitals.
- An individual hired by the Department of Health and Human Services as a mental health professional other than a psychiatrist to provide mental health services in state operated psychiatric hospitals.
- An individual employed by the Legislative Service Bureau as legal counsel through a contractual arrangement.

FISCAL IMPACT:

The bill could increase costs to the state by an indeterminate, but likely limited, amount. By allowing employees of the Unemployment Insurance Agency and Michigan Occupational Safety and Health Administration to return to work without forfeiting retirement benefits, the bill could create an incentive for employees to retire earlier than they might have otherwise, knowing they can earn both current compensation as well as a pension and retiree health benefits. That said, because the term by which the employee could retire and return to work without foregoing retirement benefits ends on December 31, 2020, the incentive to retire would be diminished.

When retirees retire earlier than anticipated under the retirement system's actuarial assumptions, it increases the unfunded liabilities in a pension system. Increased unfunded liabilities would be borne by the state through increased departmental costs for the State Employees' Retirement System (SERS), which are assessed across all state departments as an equal percent of payroll. However, the candidate pool is likely to be small, and costs increase only if the bill changes the behavior of currently active employees.

Legislative Analyst: Rick Yuille
Fiscal Analyst: Ben Gielczyk