



December 17, 2024

Via Electronic Mail

Leonard Gilroy
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Reason Foundation
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Re: House Bill 6060 Analysis

Dear Mr. Gilroy:

Reason Foundation has asked us for an analysis and opinion regarding House Bill 6060 and whether it potentially violates MCL 38.1140h(5) if enacted in its current form. Please allow this letter to serve as our opinion. We are providing this analysis and opinion as a matter of statutory construction and interpretation and not as an opinion regarding any retirement system or benefits. We disclaim any expertise in ERISA requirements and do not provide this opinion in that context.

House Bill 6060 is a bill to amend the Public School Employees Retirement Act of 1979. The bill would amend portions of MCL 38.1341b, 38.1381c, 38.1381d, and 38.1384 of the Public School Employees Retirement Act of 1979.

The substantive revisions to MCL 38.1341b would eliminate the current requirement that employees and the employer each contribute 50% of the cost of any unfunded actuarial accrued liability. The revisions eliminate any employee contribution and shift 100% of the contribution requirement to the employer.

House Bill 6060 also creates a new Section 69h, which would become MCL 38.1369h. That new section would allow an employee who has completed 10 years of service to purchase not more than five years of service credit on request and payment to the retirement system of the full actuarial cost. Service credit purchased cannot be used to satisfy the service credit requirement for a retirement allowance paid before age 56. This new section would also allow individuals to remain Tier 2 participants (Defined Contribution Plan) while also allowing them to purchase up to five years of service in a Tier 1 (Defined Benefit) Plan.

The revisions to MCL 38.1381c appear to be technical amendments related to early retirement eligibility.

The revisions to MCL 38.1381d add a section (Paragraph 8) addressing service credit for new hires who elect Tier 1 participation status and reinforces Section 69h allowing employees to elect to move from a DC Plan to a DB Plan.

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MCL 38.1384 is found in Article 5 of the Public School Employees Retirement Act which is titled "Retirement Allowances." MCL 31.1384 is titled "Computation of Retirement Allowance." The revisions to MCL 38.1384 are all stylistic rather than substantive. Most of the revisions consist of replacing the word "shall" with the word "must" or "does."

The question on which we have been requested to opine is whether the combined revisions to the Public School Employees Retirement Act in HB 6060 violate MCL 38.1140h(5). The answer to this question is not entirely clear, as both MCL 38.1140h and the proposed revisions in HB 6060 are not well-drafted and are ambiguous. With that caveat, however, our opinion is that HB 6060 appears to violate MCL 38.1140h(5) for the reasons that follow.

MCL 38.1140h(5) states:

A system shall provide a supplemental actuarial analysis before adoption of pension benefit changes. System assets must not be used for any actuarial expenses related to the supplemental actuarial analysis under this subsection. The supplemental actuarial analysis must be provided by the system's actuary and must include an analysis of the long-term costs associated with any proposed pension benefit change. The supplemental actuarial analysis must be provided to the board of the particular system and to the decision-making body that will approve the proposed pension benefit change at least 7 days before the proposed pension benefit change is adopted. For purposes of this subsection, 'proposed pension benefit change' means a proposal to increase the amount of pension benefits received by persons entitled to pension benefits under the system. Proposed pension benefit change does not include a proposed change to a health care plan or health benefits.

MCL 38.1132e(5) defines "system" as "a public employee retirement system created and established by this state or any political subdivision of this state."

The term "supplemental actuarial analysis" must be understood in conjunction with MCL 38.1140h(4), which states:

Except as otherwise provided in this subsection, a system shall have an annual actuarial valuation with assets valued on a market-related basis. The actuarial present value of total projected benefits must include all pension benefits to be provided by the system to members or beneficiaries under the terms of the system and any additional statutory or contractual agreements to provide pension benefits through the system that are in force at the actuarial valuation date, including, but not limited to, service credits purchased by members, deferred retirement option plans, early retirement programs, and postretirement adjustment programs. A system that has assets of less than \$20,000,000.00 is only required to have an actuarial valuation as required under this subsection done every other year.

Thus, the “supplemental actuarial analysis” referred to in section 5 is an updated analysis of the annual actuarial valuation referred to in Section 4 and would include the actuarial present value of total projected benefits based on the “proposed pension benefit change.”

Section 5 requires any supplemental actuarial analysis to be provided to the board of the particular system and to the decision-making body that will approve the proposed pension benefit change at least 7 days before the proposed pension benefit change is adopted. Section 5 defines “proposed pension benefit change” as “a proposal to increase the amount of pension benefits received by persons entitled to pension benefits under the system.” The initial question to answer, therefore, is whether HB 6060 proposes to increase the amount of pension benefits received by persons entitled to pension benefits under the Public School Employees Retirement Act. It is our opinion that HB 6060 does propose to increase pension benefits by allowing employees to transition from Tier 2 Defined Contribution Plans to Tier 1 Defined Benefit Plans as well as purchase up to five years of service. Both of these aspects of HB 6060 will increase pension benefits to employees. Moreover, the newly proposed Section 69h allows Defined Contribution members with at least ten years of service to purchase up to five additional years of service in the Defined Benefit Plan.

MCL 38.1140h(5) applies to a retirement system which is defined as “a public employee retirement system created and established by this state or any political subdivision of this state.” The seven-day notice requirement would clearly apply to retirement systems where the employer has discretion to make changes to pension benefits. For example, municipal corporations, including cities and counties, are empowered to increase the amount of pension benefits received by an employee through union contract negotiations. *Detroit Police Officers Association v City of Detroit*, 391 Mich 44, 214 NW2d 803 (1974). When those changes are proposed, MCL 38.1140h(5) applies and requires the supplemental actuarial analysis to be provided to the retirement board of the particular system and to the decision-making body that will approve the proposed pension benefit change at least 7 days before the proposed pension benefit change is adopted. In the case of a county, it would require the retirement committee and the county board of commissioners to be provided with the analysis at least seven days before the change is adopted.

However, in the case of the Public School Employees Retirement Act, local school districts are not allowed to provide greater pension benefits than those provided in the Act. Michigan Attorney General Opinion No. 5314, June 15, 1978. Therefore, the Legislature is “the decision-making body that will approve the proposed pension benefit change,” and a supplemental actuarial analysis would have to be provided to the Legislature before the Legislature votes to increase pension benefits under MCL 38.1140h(5), along with the seven day notice requirement. The question then becomes whether the proposed revisions to the Act in HB 6060 constitute an increase in pension benefits.

It is our opinion that the combined proposed amendments to the Act have the effect of providing greater pension benefits to participants. First, transitioning from Tier 2 (DC Plan) to Tier 1 (DB Plan) is an obvious increase in benefits. The reason that most employers

- including public employers - transitioned away from DB Plans is they were too expensive to fund. A DB Plan guarantees a retired employee a specified benefit. A DC Plan, on the other hand, does not guarantee a particular end benefit. A DC Plan is entirely dependent on the level of funding and the performance of Plan investments. A DB Plan guarantees the benefit and if contributions are lacking or the fund underperforms, the employer remains financially responsible for funding the full amount of the defined benefit. Thus, by transitioning from DC Plans to DB Plans, HB 6060 has effectively and significantly increased the amount of employees' pension benefits.

Second, allowing employees to purchase up to five years of additional service will result in greater pension benefits to the employee. Even if the employee is responsible for the "up front" payment, from an actuarial standpoint the defined benefit is not dependent on the up-front payment. In fact, the employee is purchasing the additional years of service at a substantial discount which will result in a greater defined benefit upon retirement. Thus, purchasing additional years of service should have the effect of triggering MCL 38.1140h(5).

Additionally, the Tier 1 Plans are funded at a specific discount rate (6%). If the Plan returns fall below the assumed discount rate the employer is required to assume the unfunded actuarially accrued liability. This too constitutes an increase in pension benefits when compared to a Tier 2 Plan.

In summary, it is our opinion that the amendments in HB 6060 to the Public School Employees Retirement Act will result in increases to employees' pension benefits. That increase triggers the requirements of MCL 38.1140h(5) which include seven days notice and a supplemental actuarial analysis of the impact of the proposed changes on the pension funds.

Should you have any questions or wish to discuss, please contact us.

Respectfully,

PLUNKETT COONEY



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