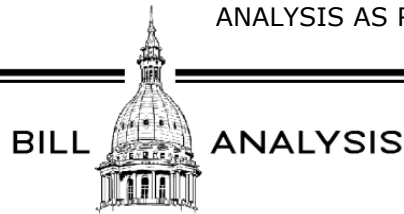




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Senate Bill 907 (Substitute S-2 as reported)  
Sponsor: Senator Bruce Caswell  
Committee: Reforms, Restructuring and Reinventing

Date Completed: 7-9-14

### **RATIONALE**

Many school districts, especially those in rural and inner-city areas, experience a shortage of educational personnel. Retired school employees are often hired to fill the vacant positions because the retirees are qualified, as well as willing to work for a few years until a more permanent employee can be found. In most cases, however, as required by the Public School Employees Retirement Act, a retiree's pension is reduced or forfeited when the person is employed by, or is hired to work at, a "reporting unit" (an entity, such as a school district, that has employees who are members of the Public School Employees' Retirement System) and his or her postretirement pay reaches a certain amount. This can discourage retired school personnel from accepting employment with a school district.

In some cases, the law has made exceptions to the pension reduction or forfeiture requirement in order to help schools fill particular types of positions. Specifically, subject to certain conditions and limitations, school retirees have been allowed to receive their full pension while working in critical shortage disciplines (assignments identified by the Michigan Department of Education), or working as substitute teachers, instructional coaches (who work with classroom teachers to improve their instructional skills), or school improvement facilitators (who perform a variety of functions to help schools meet their improvement goals). These exceptions, however, applied only until July 1, 2014. In order to enable school districts to continue hiring retirees for those positions, it has been suggested that the exceptions be allowed for several more years.

### **CONTENT**

**The bill would amend the Public School Employees Retirement Act to do the following:**

- **Allow, until July 1, 2017, a public school retiree to work in an area identified as a critical shortage discipline, as a substitute teacher, or as an instructional coach or school improvement facilitator, without losing any of his or her pension.**
- **Require a person rehired as a substitute teacher, instructional coach, or school improvement facilitator to have retired between July 1, 2010, and June 1, 2014.**
- **Allow a retiree to be hired in a critical shortage area by an entity other than a reporting unit or as an independent contractor performing core services, without a loss of his or her pension; and require the entity or independent contractor to pay 100% of the contribution rates for unfunded actuarial accrued liability.**

As a rule, if a Michigan Public School Employees' Retirement System (MPSERS) retiree becomes employed by a reporting unit, his or her retirement allowance (pension) must be reduced by one-third of his or her final average compensation or by the amount that the earnings in the calendar year exceed the amount permitted without a reduction of benefits under the Social Security Act, whichever is less. In addition, a public school retiree who retired or retires after July 1, 2010, must forfeit his or her retirement allowance and the MPSERS subsidy for health care benefits if he or she is reemployed by an MPSERS reporting unit, when the retiree's earnings exceed one-third of his or her final average compensation. (Reporting units include K-

12 school districts, intermediate school districts, tax-supported community colleges, some public libraries and museums, and seven public universities.)

Until July 1, 2014, these requirements did not apply to a retiree who was employed by a reporting unit in an area that had been identified by the Superintendent of Public Instruction as a critical shortage discipline. The retiree could not be employed in this position for more than three years, and must have been retired for at least 12 months before becoming reemployed.

Also, until July 1, 2014, the requirements did not apply to a person who retired on or after July 1, 2010, and who became employed as a substitute teacher by a reporting unit, by an entity other than a reporting unit, or as an independent contractor; or who became employed as an instructional coach or a school improvement facilitator by an entity other than the reporting unit or as an independent contractor. The retiree's earnings attributable to employment by or at a reporting unit in a calendar year could not exceed one-third of his or her final average compensation.

The bill would allow a retiree to be employed as described above until July 1, 2017.

In addition, subject to the conditions applicable to a person hired by a reporting unit in a critical shortage discipline, the bill would allow a retiree to be employed by an entity other than the reporting unit or to be an independent contractor performing core services at the reporting unit as determined by MPSERS, without a reduction of his or her retirement allowance or the forfeiture of his or her pension and MPSERS health care subsidy. Also, for a retiree employed by a reporting unit in a critical shortage area, the Act requires the reporting unit to pay to MPSERS 100% of the contribution rates for the unfunded actuarial accrued liability for retiree health care and pension. The bill would extend this requirement to an independent contractor who performed core services at a reporting unit or an entity other than a reporting unit that hired a retiree in a critical shortage area.

MCL 38.1361

## **BACKGROUND**

The Public School Employees Retirement Act requires the Superintendent of Public Instruction annually to update a list of critical shortage disciplines. In July 2013, the Department of Education published the list for the 2013-2014 school year. The list contained 65 different assignments, such as Airframe Technology, Biology, Cosmetology, Diagnostic Services, Early Childhood Special Education Teachers, Guidance & Counseling, Health Informatics, Integrated Science, Mathematics, Natural Resources & Conservation, Orientation & Mobility Specialist, Personal & Culinary Services, Radio & TV Broadcasting Tech, School Nurse, Teachers of Deaf & Hard of Hearing, Visual & Performing Arts, and Welding, Brazing, & Soldering. The list also included instructional coaches and school improvement facilitators.

According to an October 2013 memo from the Superintendent of Public Instruction, in recognition that school districts might have regional shortages outside of those identified in the statewide list, the Department was including specific regional local shortages in the definition of critical shortage disciplines. Interested local education agencies were required to submit a request to the Department for approval of a specific shortage area. If the request was approved, the local district could hire a retiree in that area.

Core services are identified by the Office of Retirement Services (ORS) in the Department of Technology, Management, and Budget. According to the ORS, "The retirement system has determined that 'core services' are those services that are important to the central purpose of a reporting unit", including but not limited to the services provided by specified employee classifications. The classifications include particular types of positions under the categories of Administration (e.g., superintendent); Operation and Service (e.g., aide); Professional - Business (e.g., accountant); Professional - Education (e.g., counselor, speech and language therapist, and teacher); Professional - Other (e.g., psychologist); and Technical (e.g.,

recreational coach). In addition, the retirement system may determine that retirees performing services in classifications not listed are performing core services based on the circumstances of the reporting unit or the nature of the services.

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

By reinstating the exceptions to the requirement for a pension reduction or forfeiture upon reemployment, the bill would enable school districts to continue hiring retired school personnel in situations in which other qualified individuals might not be available. Over the years, this approach worked well to address shortages in particular fields. Beginning in 1999, exceptions applied to retirees hired in an emergency situation or a critical shortage discipline. While the exception for emergency situations expired in 2011, legislation enacted in 2012 extended the exception for critical shortage disciplines and added new exceptions for substitute teachers, instructional coaches, and school improvement facilitators: all subject to the July 1, 2014, expiration date. Without the exceptions, retired teachers and administrators have a disincentive to accept positions with school districts.

In addition to allowing the exceptions for several more years, the bill would expand the situations in which retirees may be hired to work in critical shortage areas without losing part of their pension income or forfeiting their pension and health subsidy. Under the provisions that just expired, a retiree had to be employed by a reporting unit. For this purpose, reporting units do not include public school academies (charter schools) that do not belong to the Public School Employees' Retirement System, which means that most public school academies are not reporting units. Under the bill, however, the exception would apply to retirees hired by an entity other than a reporting unit, which could be a public school academy or a staffing agency, such as Kelly Services. The exception also would apply to independent contractors, who might be retirees who have formed a consulting business. To avoid burdening the retirement system, the bill would require the entity or independent contractor to pay 100% of the contribution rate for the unfunded accrued liability for retiree health care and pension—as required for reporting units that employed retired personnel.

**Response:** Several issues have been raised regarding this proposal. Some people question the extensiveness of the list of critical shortage disciplines published by the Department of Education, and suggest that there may be a need for more local input in the development of the list. The possibility of identifying critical shortage areas in the statute also has been suggested, although that approach could lead to less flexibility.

In addition, the need for another sunset date has been questioned. The exemption for retirees hired in critical shortage areas was extended several times, and now that exemption and the others have expired. Perhaps the bill should reinstate the exemptions without a sunset date.

Legislative Analyst: Suzanne Lowe

## **FISCAL IMPACT**

To the extent the extended critical shortage exemption (allowing MPSERS retirees to collect both a pension and an active wage under certain conditions) led to more retirements, or earlier retirements, than actuarially assumed, there would be additional liabilities in MPSERS related to additional pension and health care benefits paid out to those retirees who retired earlier than anticipated. However, the requirements that would have to be satisfied likely would lead to a fairly narrow use of the provision. Specifically, as previously required, retirees would have to be retired at least one year, the length of reemployment under the exemption could be no more than three years, the retiree would have to be reemployed in a critical shortage area, and reporting units or other entities would have to pay unfunded liability percentages for these rehired retirees. Also, the exemption would be allowed only for a period of three years. Because of these conditions, it is likely that the fiscal impact on MPSERS would be fairly insignificant.

An employer considering using the exemption provision would have to determine whether hiring a retiree under the critical shortage provision would be to the benefit of the employer. The employer would not have to pay active health care benefits, but would have to pay the unfunded accrued liability costs for these rehired retirees.

It is likely that numerous retirees would seek to use the substitute teacher and instructional coach provisions, but with an earnings limitations of one-third of the final average compensation, the extension of the provisions only until July 1, 2017, and the fixed pool of existing retirees eligible to be rehired under these exemptions, there would be no possibility of providing an incentive to retire early. Additionally, reporting units would have to pay 100% of the employer retirement and health accrued liability contribution rates regardless of whether the retired substitute or instructional coach was directly or indirectly hired, and this would assist with the financial health of the retirement system.

An MPSERS reporting unit considering using the substitute teacher provision would have to determine whether hiring a retiree under the exemption would be to the benefit of the reporting unit. The reporting unit would not have to pay active health care benefits, but would have to pay the unfunded accrued liability costs for these rehired retirees, whether directly or indirectly rehired.

Fiscal Analyst: Kathryn Summers

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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.