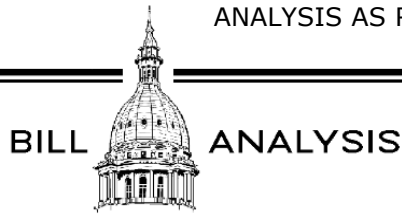




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Senate Bill 12 (Substitute S-1 as reported)
Sponsor: Senator Rick Jones
Committee: Judiciary

(Senate-passed version)

Date Completed: 1-22-15

RATIONALE

The State Employees' Retirement Act prohibits a retirant who is receiving a retirement allowance from continuing to receive that allowance if he or she becomes employed by the State after October 1, 2007. This generally precludes a retired employee from "double dipping" by receiving both a salary and a pension from the State at the same time. The Act contains certain exceptions to this prohibition, however, and some people believe another exception should be added to allow the Attorney General to contract with retired employees who possess specialized expertise or knowledge, so they could serve as expert witnesses or case consultants in matters related to litigation involving the State.

CONTENT

The bill would amend the State Employees' Retirement Act to exempt a person from a prohibition against receiving a retirement allowance while being employed by the State under certain circumstances related to employment for litigation involving the State.

Under the Act, except as otherwise allowed, a retirant who is receiving a retirement allowance and is "employed by this state" beginning after October 1, 2007, agrees to forfeit his or her right to receive the retirement allowance during the period of employment. The retirement system must cease payment of the retirement allowance during that period of State employment and then reinstate payment without recalculation when the period of State employment ends.

Under the bill, those provisions would not apply to a retirant if all of the following conditions were met:

- The Department of Attorney General contracted with the retirant as a witness, expert, or consultant for litigation involving the State.
- The Attorney General determined that, as a result of the retirant's previous employment with the State, the retirant possessed specialized expertise and experience necessary for the litigation and the contract was the State's most cost-effective option.
- The retirant retired after a bona fide termination of employment.

(The Act defines "employed by this state" as employed directly by the State as an employee, indirectly by the State through a contractual arrangement with other parties, or by engagement of the retirant by the State as an independent contractor.)

MCL 38.68c

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

In some of the legal actions in which the Attorney General represents the State, it would be helpful to the State's cause to engage as expert witnesses or case consultants retired employees who developed a degree of expertise or experience in the matters at hand. Due to the State Employees' Retirement Act's prohibition against double dipping, however, the Attorney General's office has found itself at a disadvantage because it cannot contract with a retiree who is receiving a pension unless that person is willing to forfeit his or her retirement allowance while employed by the State. Although opposing parties in these cases may retain retired State employees, the State essentially is unable to benefit from the expertise of its own retirees. Allowing the Attorney General to contract with retirees from State employment, without those people having to give up their retirement allowance, could be critical in a number of cases. An official with the Attorney General's office testified before the Senate Judiciary Committee that the State is facing the possibility of having to pay significant damages in the legal actions in question. Contracting with retirants to assist in those cases could allow the State to avoid some large judgments against it.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have no fiscal impact on local units of government.

For the State, if a contracted retirant otherwise would be willing to forfeit his or her pension to return to State employment, then this bill would have a negative fiscal impact in that it would allow for the payment of pensions that would not be paid under current law. However, to the extent that retirants with specialized expertise would be willing to return only if they could collect a pension and contract pay, then the fiscal impact would have to be determined by the Attorney General to be the most cost-effective option for the State.

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.