



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 12 (as enacted)
Sponsor: Senator Rick Jones
Senate Committee: Judiciary
House Committee: Judiciary

PUBLIC ACT 20 of 2015

Date Completed: 6-22-15

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 it was suggested that another exception be added to allow the Attorney General to contract with retired employees who possess specialized expertise or knowledge, so they may serve as expert witnesses or case consultants in matters related to litigation involving the State.

CONTENT

The bill amended 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 do not apply to a retirant if all of the following conditions are met:

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

The contract must provide that the retirant's service as a witness, expert, or consultant ends at the conclusion of the litigation.

(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.)

The bill took effect on May 5, 2015.

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 can 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 had found itself at a disadvantage because it could not contract with a retiree who is receiving a pension unless that person was 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 was unable to benefit from the expertise of its own retirees. Allowing State retirees to work under contract for the Attorney General, without having to give up their retirement allowance, might 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 may allow the State to avoid some large judgments against it.

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

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

For the State, if a contracted retirant otherwise were willing to forfeit his or her pension to return to State employment, then this bill will have a negative fiscal impact in that it allows for the payment of pensions that would not previously have been paid. However, to the extent that retirants with specialized expertise are willing to return only if they may collect a pension and contract pay, then the fiscal impact must 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.