



**House
Legislative
Analysis
Section**

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**MAKE MERS A PUBLIC
CORPORATION**

AS ENROLLED

**House Bills 5523 and 5524 as introduced
House Bill 5525 with committee amendment
First Analysis (3-6-96)**

**Sponsor: Rep. Kim Rhead
Committee: Appropriations**

THE APPARENT PROBLEM:

The Municipal Employees Retirement Act was created in 1945 to give interested municipalities and courts the opportunity to establish retirement programs for their employees, and provides guidelines for membership in the system, the types of pension programs that may be offered, minimum requirements that retirees must meet, and various other provisions. The act establishes the Municipal Employees Retirement System (MERS) within the Department of Management and Budget and confers sole fiduciary authority over the system on a seven-member retirement board composed of officer and non-officer members of MERS; the state treasurer also serves on the board and has custodial charge over MERS assets. At present, MERS has 487 participating municipalities and courts, covering over 37,000 active members and about 13,000 retired members.

In recent years, the state's role in administering MERS has become an issue of concern as member municipalities and courts have considered various changes to the types of retirement programs they would like to offer their employees. For instance, the act currently requires the provision of "defined benefits" to MERS members, which essentially guarantees members they will receive a minimum monthly pension based on the number of years of service and their final average compensation. Some participating municipalities and courts, believing the requirement to offer future members a guarantee of a minimum pension may pose a financial risk in future years, would like to offer their members additional types of retirement programs and benefits--for instance, a "defined contribution" program. In a defined contribution program, an employer contributes some specific amount to employees, who then are responsible to invest these contributions in some kind of retirement vehicle themselves, such as a 401(k) plan or an individual retirement account. Moreover, MERS currently pays the state for certain services it provides related to investment of MERS assets, accounting oversight, and legal counsel which it believes could be performed by others for less. In effect, the act gives the state final say over decisions that could dramatically affect the viability of MERS and

prevents MERS from utilizing cost-saving measures, even though the state--according to an attorney general's opinion issued in 1976--is not ultimately liable to fund a local government's retirement program if for some reason a local government becomes unable to pay for it. Some people believe this problem could be resolved by establishing MERS as a public corporation, independent of state influence over investment and other decisions, where a nine-member retirement board (minus the state treasurer) would have authority to determine all matters pertaining to MERS.

THE CONTENT OF THE BILLS:

House Bill 5525 would amend the Municipal Employees Retirement Act (MCL 38.1502a et al.) to establish MERS as a public corporation, no longer operated within the Department of Management and Budget but managed by a nine-member independent retirement board, if the bill were ratified by at least two-thirds of MERS delegates in a vote on the question. In administering MERS, however, the new board would have to establish provisions affecting benefit levels and programs that "shall not differ materially from the defined benefit provisions in effect" just prior to the bill's enactment. The bill would delete several defined terms in the act and would repeal most sections of the act, including provisions dealing with specific benefit programs, membership, minimum retirement requirements, and other related issues, but would retain and expand language detailing the board's powers and authorities to administer MERS as an autonomous body. The bill is tie-barred to House Bills 5523 and 5524, which would amend the Administrative Procedures Act and the county board of commissioners act, respectively, to reflect the proposed changes to MERS.

Board powers, duties. House Bill 5525 specifies that on and after the certification date established in the vote by MERS delegates on whether to adopt the bill, the MERS Retirement Board would have responsibility to do all of the following:

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* Determine all the provisions of MERS affecting benefit eligibility, benefit programs, contribution amounts, and the decision of municipalities, circuit courts, district courts, and probate courts to participate in the system. The board would establish all MERS provisions, and they could not differ materially from the defined benefit provisions that were in effect just prior to the certification date. However, this would not limit the board's authority after the certification date to establish additional programs, including but not limited to defined benefit and defined contribution programs, and it could adopt provisions of the Reciprocal Retirement Act on behalf of employees of the board as specified in Public Act 88 of 1961.

* Employ and pay for all professional services, including but not limited to actuarial, investment, legal, accounting, and any other services the board considered necessary to properly operate MERS. It also would have complete control of the procurement process.

* Appoint an executive director and any other employees for which it established positions, and the compensation each would receive. Before the certification date, the board would have to offer all current MERS employees a position with the public corporation for a guaranteed period of at least one year. Employees who accepted positions with the new MERS would become employees of it on the certification date, and from then on would no longer be state employees for any purpose.

* Arrange for an annual actuarial valuation and report of the actuarial soundness of each participating municipality, prepared by an independent actuary and based on data compiled and supplied by employees of MERS. The board would have to adopt actuarial tables, assumptions, and formulas after consulting with the actuary.

* Arrange for annual audits of records and accounts of MERS by one or more certified public accountants pursuant to generally accepted auditing standards and the Uniform Budgeting and Accounting Act.

* Prepare an annual report for each fiscal year in compliance with generally accepted accounting principles, which would have to contain information regarding the financial, actuarial, and other activities of MERS during the fiscal year, including a review of the actuarial valuation performed by the independent actuary. The board would have to furnish a copy of the annual report to the governor, each member of the legislature, each participating municipality, and each participating court. (The bill also would delete provisions requiring MERS to prepare an annual report

for each fiscal year showing various financial and actuarial data of the system and to furnish this report to participating municipalities and courts and to anyone else who requests a copy; and requiring the auditor general or a CPA appointed by him or her to conduct at least biennially financial and compliance audits of MERS books and records and to submit copies of these audits to various government officials no later than the February 28 following the fiscal year end of the period audited.)

* Appoint an attorney to be its legal advisor who would represent it in all proceedings.

* Appoint or employ custodians of MERS's assets, who would perform all duties necessary and incidental to the custodial responsibility and make disbursements of authorized MERS payments from its funds.

* Establish the time and location of board meetings and of the annual MERS meeting, consistent with provisions of the Open Meetings Act. Notice of the annual meeting would have to be sent to each retiree at least 30 days prior to its date.

* Perform other functions necessary to execute the bill's provisions.

Makeup of the board. The MERS Retirement Board currently has seven members: three members of MERS who are officers of participating municipalities or courts, three employee members of MERS who are not officers, and the state treasurer or his or her designee. The state treasurer is the treasurer of MERS and has custodial responsibility over its assets and over disbursement of payments from the system. Also, the director of the Bureau of Retirement Systems (within DMB) is MERS's executive secretary, and the attorney general is legal advisor to the board. The bill would delete all language giving state officials authority and responsibility over the affairs of MERS, and providing for the state treasurer to be a member of the board, and would increase the size of the board to nine members.

On the certification date, the board would include three new members, two appointed by the board and having knowledge or experience in retirement systems, administration of retirement systems, or investment management or advisory services, and one who was a MERS retiree who would be nominated by the board and elected by delegates at an annual MERS meeting. Also, all officer and employee board members on the certification date would continue as board members until their terms expired, and initial terms of new members would be set by the board to coincide with the terms of existing elected board members. Upon expiration of

existing board members' terms of office, current provisions of the act would govern their replacement, except that a vacancy occurring at least 120 days before a member's term expired would be filled by the board rather than by gubernatorial appointment. Someone elected to the board would become a member on the January 1 immediately following the referendum.

In addition, the board would employ an executive director of MERS who would be responsible for all of the following:

- * Managing and administering the system under board supervision and direction;
- * Investing MERS assets as directed by the board, consistent with Public Act 314 of 1965 which governs the investment of assets of public employee retirement systems;
- * Annually preparing and submitting to the board for review, amendment, and adoption an itemized budget showing the amount required to pay MERS's expenses for the following fiscal year; and
- * Performing other duties as the board, in its discretion, would delegate to the executive director.

Repealers, deletions. The bill would delete numerous definitions contained in the act, including "beneficiary," "compensation," "final average compensation," "judicial employee," "municipal employee," and various other terms. In addition, the bill would repeal several sections of the act which govern, among other things, membership in MERS, service credit, reciprocity with other retirement systems, retirement requirements, specific benefit programs, forms of payment, and numerous other provisions.

Referendum on bill. House Bill 5525 specifies that it could not take effect unless it was submitted to a vote of certified delegates of MERS and ratified by at least two-thirds of those who actually voted on the question. The question would be submitted by certified mail to those delegates of MERS certified at the most recently held annual meeting or, if no such delegates were certified or if previously certified delegates were no longer employed, then those delegates as certified by a participating municipality or court within 60 days after the bill was enacted. To be valid, each delegate's vote would have to be received at the place designated by the retirement system no later than 75 days from the bill's date of enactment. The bill specifies the form in which the question would have to be presented to delegates.

The MERS Retirement Board would have to certify in writing the results of the referendum and file the certification with the secretary of state no later than the fifth business day following the tally of the votes. If two-thirds of the delegates who voted on the question approved adopting the bill, its provisions would take effect on the date that was 10 calendar days after the filing of certification with the secretary of state, which would have to be set forth in the filing and would be considered the certification date.

House Bill 5523 would amend the Administrative Procedures Act (MCL 24.315) to specify that provisions in the act governing guidelines, the rules promulgation process, and the authority to issue licenses which apply to state agencies no longer would apply either to MERS or the retirement board after the certification date. House Bill 5524 would amend Public Act 156 of 1851 (MCL 46.12a), which governs county boards of commissioners, to delete obsolete language that allows an optional form of retirement allowance to be paid to a member of a county retirement system, and would make technical changes to the act reflecting the changes to the Municipal Employees Retirement Act proposed by House Bill 5525. Neither of the bills could take effect unless House Bill 5525 were enacted.

FISCAL IMPLICATIONS:

The House Fiscal Agency says the bills would not affect state budget expenditures, but could have fiscal implications for local governments participating in MERS. The fiscal impact to local governments could not be determined, however, as it is not known whether costs of administering MERS would increase or decrease as a result of the bills. (2-29-96)

ARGUMENTS:

For:

The bill proposes to make the Municipal Employees Retirement System a public corporation, and would give the MERS Retirement Board--absent the state treasurer, but with three new members--complete authority over administration of the system. Several good reasons exist to implement this change, including the fact that MERS and its member municipalities and courts ultimately are liable to pay the costs of mandated retirement benefits. The attorney general issued an opinion in 1976 clearly stating that the state is not liable to fund retirement programs of local governments in the event a local government cannot meet its financial obligations. This puts MERS and its members in the uncomfortable

position of being the final guarantor on future retirement benefits while having little control over such things as how assets are invested, what types of pension plans are offered, or how much is paid for services instrumental to the smooth operation of MERS. Under the bill, the new MERS Retirement Board not only would have authority to make such decisions, it would have the flexibility it needs to effectively and efficiently manage all aspects of MERS. For instance, the board could decide to adopt a defined benefit program applicable to employees hired after some future date and, thus, would be better able to prevent future unfunded liabilities to the system. However, though such programs could be adopted to apply to future employees, members of the system as of the certification date could not have their benefits reduced in any way. Moreover, to be fully implemented the bill would have to be ratified by at least two-thirds of MERS delegates--essentially, by the very people who make up the system. Thus, those who would be most affected by the bills would have the final say in deciding whether to make MERS a public corporation that would be managed by an autonomous board.

Response:

House Bill 5522, which would amend the State Employees Retirement Act, was originally part of this package of bills and needs to be acted on, too, in order to ensure that all the changes proposed by House Bill 5525 relative to MERS would be reflected in SERA.

Against:

House Bill 5525 contains amendatory language in Sections 37 and 45a of the act; it would also repeal those sections.

Response:

According to the Legislative Service Bureau, this is not a mistake. Rather, by retaining certain language in the act while also repealing the sections in which it is found, the bill--assuming it were enacted--would provide the new retirement board a statement of legislative intent regarding the importance of adopting these provisions as an autonomous body. It is anticipated that, upon the bill's effective date but before delegates actually voted to ratify the bill, the board would begin adopting some provisions that would apply to MERS.

POSITIONS:

The Department of Management and Budget and the Office of Retirement Systems both support the bills. (3-5-96)

The MERS Retirement Board supports the bills. (3-5-96)

The Police Officers Association of Michigan supports the bills. (3-5-96)

The Michigan Municipal League supports the bills. (3-5-96)

The Michigan Association of Counties supports the bills. (3-5-96)

The American Federation of State, County, and Municipal Employees has not yet taken a position on the bills. (3-5-96)

The City of Westland supports the bills. (2-6-96)

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.