House
Legislative
Analysis
Section

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POLICE & FIREFIGHTER RETIREMENT: REMARRIAGE RESTRICTION

House Bill 4827 (Substitute H-1)
First Analysis (1-30-02)

Sponsor: Rep. Scott Shackleton
Committee: Senior Health, Security and Retirement

THE APPARENT PROBLEM:

Traditionally, many defined benefit retirement systems have provided for surviving spouses to receive benefits upon the death of the retiree-spouse, and it was not uncommon for these systems to contain restrictions on the remarriage of the surviving spouse (so that upon remarriage, the retirement benefit was lost). During the 1970s and 1980s, the state-administered retirement systems and many local government retirement systems eliminated these remarriage restrictions. A package of legislation enacted in 1985 removed most of the remaining remarriage restrictions then existing in state law; however, amendments added to bills amending the Municipal Employees Retirement Act and the Fire Fighters and Police Officers Retirement Act gave local governmental units the authority to, in effect, veto this provision, leaving the remarriage restriction in effect in their jurisdictions. (The Municipal Employees Retirement Act has since been made into an independent public corporation administered by a board consisting of local governmental officials, with authority to adopt and implement benefit programs as it sees fit.)

As a result, in some municipalities, the surviving spouses of deceased fire fighters and police officers face the awful choice of forgoing remarriage, or losing their pension benefits. In the case of fire fighters and police officers killed in the line of duty, the surviving spouse is often left with dependent children and a long life yet to live. Many believe that state law should not promote a policy that creates a powerful disincentive to marry.

THE CONTENT OF THE BILL:

The bill would amend the Fire Fighters and Police Officers Retirement Act to specify that, beginning on the effective date of the bill, a surviving spouse who is eligible to receive a duty death pension and who remarries after the effective date of the bill could not be denied pension benefits by a municipality because of the remarriage.

In the case of a non-duty death, the local government would retain the option of whether to approve, by resolution, lifting the remarriage restriction for surviving spouses.

In addition, the bill would delete language added in 1982 to address one particular situation in the city of Centerline.

MCL 38.556 et al.

BACKGROUND INFORMATION:

Firefighters and Police Officers Retirement Act. The Fire Fighters and Police Officers Retirement Act is a statutory framework used by local governments to administer pension programs for full-time police and fire fighters. Setting up a retirement system under the act is optional for local governments. However, once a local government opts to establish a retirement system under the act, it must provide benefits as specified in the act.

Age and service requirements for retirement. Under the act, a member may retire at age 55 with 25 years of service, or at age 50 with 25 or more years of service, or at age 60 with no service requirement. The act provides for compulsory retirement at age 65.

Vesting, deferred pension rights. A member who has 10 or more years of service becomes "vested" and is eligible for benefits upon reaching the age and service requirements listed above, even if he or she has left the employment of the local unit of government.

Pension benefits. Retirees receive a benefit of 2 percent of average final compensation, multiplied by

the first 25 years of service, plus 1 percent of average final compensation multiplied by years of service in excess of 25. A participating municipality may increase the multiplier to 2.5 percent.

Surviving spouse benefits (non-duty death). Similar to many public pension plans, retirees have the option to select from (reduced) payment options that protect their spouses upon the death of the retiree. The act provides that if no such option has been selected and a retiree dies while receiving a regular (unreduced) retirement benefit, the surviving spouse continues to receive a benefit of 60 percent of the regular retirement benefit. If a member who has 20 years of service dies before retiring, the surviving spouse receives a reduced benefit. Benefits continue for the life of the surviving spouse, or until his or her remarriage (as noted, the municipality may opt to continue benefits despite the remarriage).

Duty death benefits. A surviving spouse receives benefits equal to that which he or she was eligible to receive under the Worker's Disability Compensation Act. The benefit continues for the life of the surviving spouse, or until his or her remarriage (as noted, the municipality may opt to continue benefits despite the remarriage). Benefits are also payable to dependent children and to other dependents in the same amounts as had been paid under the worker's compensation act.

Duty disability pensions. Members who sustain duty-related disabilities receive benefits upon medical certification of "total and permanent" disability. A member under age 55 receives 50 percent of average final compensation; upon attaining age 55, the pension is converted to a formula comparable to the formula for non-duty disability pensions.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bill would have no fiscal impact on the state. It would result in an indeterminate actuarial loss for some local units. An actuarial evaluation would be required, but in most systems, barring a catastrophe, the loss is likely to be negligible. (1-29-02)

ARGUMENTS:

For:

The bill would bring simple fairness to a situation that is profoundly unfair. According to testimony presented before the House Committee on Senior Health, Security and Retirement, many widows and widowers of police officers and fire fighters are faced with the dilemma of deciding between remarriage, and what that represents in terms of building a new life, and preserving what may be a key factor in their family's financial security. Survivors of fallen police officers noted that they are encouraged to "get on with life" after losing their loved one, yet there exists a powerful financial disincentive to do so. Some feel they must make the morally distasteful decision to cohabit rather than marry, in order to preserve their pension benefits. This dilemma seems unfair and unnecessary, and downright antiquated, given that all other state employee pension systems have long ago eliminated the remarriage restriction. To many, it seems wrong to impose this penalty on the families of those who have given their lives in the service of their communities. While it is acknowledged that this bill would eliminate one element of local control, many believe that in balancing the needs of families against the principle of local control, families should prevail.

Response:

The bill doesn't go far enough. It would leave in place the local option to end surviving spouse benefits in cases that do not involve duty-related deaths. This still places older widows and widowers of former police officers and fire fighters in the position of having to choose between remarriage and continuation of pension benefits. Such restrictions for survivors of state employees, public school employees, legislators, state police troopers, and judges were removed years ago. What is more, there is precedent in statute for allowing those whose benefits have been terminated due to remarriage to apply to have benefits reinstated.

Against:

Representatives of local governments note that, although the committee substitute has addressed many of their concerns about the original bill, the proposal would still eliminate a local option and would in some cases impose costs on local units of government. Remarriage restrictions typically have been included in pension programs in recognition that when remarriage occurs, the need for pension benefits may lessen. Some would prefer to limit the bill to situations in which there are dependent children.

Response:

Since the survivor benefits continue to be payable for the life of the survivor if remarriage does *not* occur, it could be argued that the bill would create no new costs, but rather would simply require local units to continue to be responsible for an obligation already incurred. It has been suggested that local units should

address cost concerns at the time that they decide to hire police officers and fire fighters, including the costs of meeting obligations to surviving spouses should those officers be killed in the line of duty.

Against:

The Michigan Commission on Public Pension and Retiree Health Benefits, established by Governor Engler to examine issues related to public pension systems, said in its February, 2001 report: "Often there seems to be little thought given to how the government will generate the funds to pay for new or expanded benefits in the years after they were granted. Officials who find it easy to vote for increased benefits should also be aware of the need for higher tax revenues to cover those improved benefits." Accordingly, the commission recommended that "Before any pension benefit is increased, new benefit granted, or change made that may result in a cost increase to the plan, a supplemental actuarial evaluation must be completed and given to the appropriate elected and appointed governmental officials before such change becomes effective." There appears to be little data available to estimate the actual fiscal impact of the bill on the local retirement systems that would be affected

It should also be noted that if the legislature creates a requirement for additional benefits to be paid under the Fire Fighters and Police Officers Retirement Act, that action may have "Headlee" amendment implications (i.e., the bill appears to impose mandated costs on local governments without a corresponding appropriation).

Response:

According to the House Fiscal Agency, it is likely that many or most local government pension plans could fund the costs of this bill out of their surpluses. The state constitution requires public pension plans to be funded on an actuarially sound basis. For most large systems, the added costs due to this bill would be negligible.

POSITIONS:

The Michigan Concerns of Police Survivors organization supports the bill. (1-29-02)

The Michigan Association of Police Organizations supports the bill. (1-29-02)

The Police Officers Association of Michigan supports the bill. (1-29-02)

The Michigan Professional Fire Fighters Union supports the bill. (1-29-02)

The Michigan Association of Public Employee Retirement Systems supports the bill. (1-29-02)

The Michigan Family Forum supports the bill. (1-29-02)

The Michigan Association of Counties opposes the bill. (1-29-02)

Analyst: D. Martens

■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.