



Senate Fiscal Agency  
P. O. Box 30036  
Lansing, Michigan 48909-7536



Telephone: (517) 373-5383  
Fax: (517) 373-1986

House Bill 4964 (Substitute H-2 as passed by the House)  
Sponsor: Representative John Walsh  
House Committee: Financial Liability Reform  
Senate Committee: Reforms, Restructuring and Reinventing

Date Completed: 5-5-14

### **CONTENT**

**The bill would add Section 19b to the Public Employee Retirement System Investment Act to do the following:**

- Allow a public employer to deduct from an employee's compensation an amount for contribution to an individual account maintained under the Internal Revenue Code.**
- Allow a public employer to provide for automatic enrollment in such a plan, and require the employer to give an employee notice (including notice of his or her right to cancel the contribution) before the initial deduction was made.**
- Allow a public employer or plan official to provide investment alternatives for participating employees for contributions made to a plan.**
- Specify that the employer or plan official would not be liable for investment decisions if various requirements were met.**

(The Act codifies the investment authority of State and local public employee retirement systems, and defines and limits the amount and type of investments that may be made by those acting as an investment fiduciary (typically, the applicable retirement board) on behalf of a retirement system.)

For purposes of Section 19b, the bill would define "public employer" as the State or an agency of the State, a city, county, village, township, school district, or intermediate school district, or an institution of higher education. "Automatic enrollment" would mean a plan provision under which the employee would have a specified contribution made to a plan listed Section 19b equal to a compensation reduction that would be made for the employee unless he or she affirmatively elected no compensation reduction contributions or a compensation reduction contribution in another account.

The bill would allow a public employer to deduct from an employee's compensation an amount for contribution to an individual account for the employee's benefit in a plan maintained under Section 125, 401(k), 403(b), 408, 408A, or 457 of the Internal Revenue Code (described below). A public employer also could provide for automatic enrollment of an employee in such a plan.

The public employer would have to give a participating employee written notice of any automatic enrollment before the initial deduction was made. The notice would have to include a description of the benefit the contribution would provide and the employee's right to cancel the contribution by instruction to the employer, including the procedure for giving the instruction. These requirements would not apply to a public employer for purposes of a

employee's participation in a plan established under Public Act 306 of 1976 that provided for automatic contributions as provided under the Internal Revenue Code. (That Act allowed the Department of Civil Service, until October 1, 1996, to implement and administer a deferred compensation plan that could include a fixed-income plan and a stock plan option.)

In addition, a public employer or plan official could provide investment alternatives for participating employees, including one or more default investment alternatives, for any contributions made to a plan listed in the bill. A public employer or plan official would not be liable for the actual decisions made by the employee with regard to the investment of any contribution under the plan, or for the decisions made by the employer or official on behalf of a participating employee with regard to the default investment of any contribution made for the employee to the plan, if all of the following requirements were met:

- The plan allowed the employee at least quarterly opportunities to select investments for any contributions made for him or her between investment alternatives available under the plan.
- For any type of default investment of any contributions for an employee, the default investment was comparable to the types of investment alternatives identified by the U.S. Department of Labor as qualified default investment alternatives.
- The employee was given notice of the default investment decisions that would be made in the absence of employee direction.
- The employee was given notice at least annually of the actual default investments made by the public employer on the employee's behalf, and of the right of a participating employee to cancel his or her continued participation in the plan.

The bill specifies the Section 19b would not alter any existing responsibility of a public employer or other plan official for the selection of investment alternatives available for participating employees.

(The sections of the Internal Revenue Code listed in the bill pertain to the following:

- Section 125: cafeteria plans (a type of employee benefits plan).
- Section 401(k): cash or deferred arrangements that allow employees and employers to make contributions.
- Section 403(b): the taxation of beneficiaries under annuities purchased by a Section 501(c)(3) organization (e.g., a nonprofit tax-exempt charitable organization) or public school.
- Section 408: individual retirement accounts.
- Section 408A: Roth individual retirement accounts.
- Section 457: deferred compensation plans of state and local governments and tax-exempt organizations.)

Proposed MCL 38.1139b

Legislative Analyst: Suzanne Lowe

### **FISCAL IMPACT**

To the extent that the bill resulted in additional public employees participating in defined contribution retirement plans, or contributing more under an auto-enrollment plan compared to a voluntary enrollment plan, the bill would increase costs to public employers that match employee contributions to retirement funds. Enactment of automatic enrollment with opt-out provisions has significantly increased employee participation in some other states. In Michigan, automatic enrollment was authorized for the Michigan Public School Employees' Retirement System in 2010 and for defined contribution members of the State Employees' Retirement System (SERS) in 2012. The Office of Retirement Services reports that participation by defined contribution members of SERS increased from 70%

to 82% over a short time period. The State does not currently have the authority to provide for automatic enrollment for defined contribution plan members of the Judges Retirement System. Currently, 382 (87.8%) of the 435 judges who are eligible are receiving the full State match. Statewide data regarding participation rates for all of the retirement systems that would be affected by the bill are not available.

Fiscal Analyst: Kathryn Summers  
Bill Bowerman

S1314\4964sa

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.