



**House  
Legislative  
Analysis  
Section**

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**PSERS; POST-RETIREMENT  
EARNINGS LIMIT**

**House Bill 4789 as enrolled  
Public Act 30 of 2001  
Second Analysis (7-16-01)**

**Sponsor: Rep. Jason Allen  
House Committee: Senior Health,  
Security and Retirement  
Senate Committee: Appropriations**

***THE APPARENT PROBLEM:***

Under the Public School Employees Retirement Act, certain restrictions are placed on the practice of retirees becoming re-employed by a "reporting unit" (a public school, intermediate school district, charter school, community college, etc.). These include a limit on the amount that can be earned without affecting the retiree's pension. If a retiree becomes employed by a reporting unit, the retiree's pension is reduced if earnings exceed either: a) 1/3 of the retiree's final average compensation (increased 5 percent per year), or b) the maximum earnings permitted under the federal Social Security Act. The pension is reduced by the full amount that earnings exceed the lesser of the two limitations. Retirement systems typically impose post-retirement earnings limitations (as does the IRS) to prevent the abuse of the system by what is sometimes called "double-dipping", i.e., allowing a person to retire, collect a full pension, and immediately return to work for the same employer in some form, such as a contractual employee, and to simultaneously be paid both a salary and a pension.

Public Act 68 of 1999 amended these provisions to create certain exceptions to the earnings limitation for post-retirement employment with "reporting units" in the case of an emergency situation. During the deliberations on that legislation, the salary cap was said to be an obstacle to using retired personnel to fill, even on a limited basis, certain high-demand teaching positions, such as special education positions or substitute teaching positions. Reportedly, school districts across the state were experiencing difficulties filling teaching positions with skilled and qualified teachers, and this was particularly a problem in the Detroit School District. Further, as the Detroit Reform School Board was beginning to work on overhauling the administration of that district, one of its goals was to address the shortage of certified instructors in Detroit

classrooms. At the request of Detroit school officials, the Engler administration recommended a relaxation in the restrictions on earnings that affect public school employee retirees. It was felt that this would allow Detroit and other districts to bring in skilled, experienced teachers to fill critical teaching positions.

The 1999 amendments to the retiree earnings limit are set to expire July 1, 2002. Further, they are limited to retirees who retired before July 1, 1999. School districts across the state continue to experience teacher shortages, particularly in certain subject areas. In at least one very small school district, Mesick, there is a necessity to bring in a retired industrial arts teacher at least for the fall 2001 semester, in order that the district may offer the industrial arts program next school year. However, the particular retiree in question does not meet the requirement of having retired before July 1, 1999.

It is proposed that the emergency exceptions to the earnings limitation be extended and expanded, to continue to meet the needs of school districts experiencing staff shortages.

***THE CONTENT OF THE BILL:***

House Bill 4789 would amend the Public School Employee Retirement Act to extend and expand the exceptions to the earnings limitation for retirees placed in the statute by Public Act 68 of 1999 (see below). It would extend the scheduled expiration date of these provisions, from July 1, 2002, until July 1, 2006, and it would make the exceptions apply to retirees who retired on or before July 1, 2000, rather than on or before July 1, 1999. Further, the bill would expand the first exception (listed below) to make it apply to

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administrators and stationary engineers as well as to teachers and principals.

Under the 1999 amendments, until July 1, 2002, the earnings limit does not apply to post-retirement employment by a reporting unit (e.g., a school district), under certain limited circumstances. There are two specific exceptions that apply in the case of an emergency situation -- not including a labor dispute -- that necessitates the hiring of a retiree in order to prevent depriving students of an education. The emergency employment cannot exceed three years, and the retiree is not eligible to use the service or compensation attributable to the post-retirement employment for a recomputation of her or her retirement allowance. Under current law, the emergency exceptions only apply to retirees who retired before July 1, 1999.

\* The first exception is for a reporting unit that has an approved emergency situation. In such a case, the chief executive officer or superintendent of the reporting unit must notify the state superintendent of public instruction of the existence of such an emergency situation, including documentation showing that, for the 1998-99 school year, more than eight percent of all classes in the district were taught by full-time substitute teachers who were not certified in the subjects or grade levels which they taught. Within 30 days after receiving such notification, the Department of Education is to notify the district of its approval or disapproval of the emergency situation. If approved, the district may employ a retiree as a teacher or principal and such employment does not affect the retiree's pension. (Under the bill, this provision would also allow the employment of a retiree as an administrator or a stationary engineer without affecting the pension of the retiree.)

\* The second exception is for a reporting unit who needs to hire a retiree to teach in a "critical shortage discipline". The state superintendent was required to compile a listing of such disciplines by July 1, 1999, and update the listing annually.

MCL 38.1361

### ***FISCAL IMPLICATIONS:***

According to the House Fiscal Agency, the bill would have negligible fiscal implications. (7-16-01)

### ***ARGUMENTS:***

#### ***For:***

By extending the exceptions made by the 1999 legislation, the bill would continue a policy that has assisted school districts in filling certain positions that have been difficult to fill, such as in special education, math, science, language and technical fields. Further, the policy allows certain districts to hire retirees for other positions, if the district meets a specified threshold for general teaching shortages. Reportedly, many districts had been filling these spots with people who hold a bachelor's degree but not in education, who had been granted emergency credentials to fill jobs. In particular, at the time the 1999 legislation was being discussed, Detroit had at least 750 such positions. The bill would allow a continuation of the practice of allowing retired teachers and school personnel to fill critical positions for a short period of time, without affecting the retirement allowance of those individuals. Arguably, these experienced teachers are much better qualified and would provide a higher quality of education to students in these districts. And in some cases, such as in the Mesick Consolidated School District, such an exception will allow the district to continue to offer a program that otherwise would have to be discontinued for lack of a teacher.

#### ***Response:***

Some people would like to see these exceptions expanded even more. For example, some would advocate expanding the pool of eligible candidates by exempting people who retire by July 1, 2001, rather than July 1, 2000 as the bill would do, from the earnings limitation. Others would like to allow retirees employed by contracting agencies and placed as administrators in school districts to be clearly exempted from the earnings limit (this has been a controversy raised in other legislation in previous legislative sessions).

#### ***Against:***

The bill would extend and expand a set of exceptions to a general principle of retirement law -- namely an earnings cap generally imposed by retirement systems to prevent "double dipping" -- without evaluating the effect of the exceptions and the continued need for them. A number of questions have been raised, but not answered. There seems to be no available data regarding the number of retirees who have returned to work for reporting units under the 1999 provisions. Further, there seems to be little information available about the need to expand the exceptions to include administrative positions such as business managers and

curriculum specialists. Perhaps further legislative scrutiny is warranted.

***Against:***

Predictably, any expansion in retirement benefits (as an exception to the post-retirement earnings limit could be categorized) results in other requests for further expansions and exceptions.

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■ 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.