



**House
Legislative
Analysis
Section**

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PUBLIC PENSION PROTECTION ACT

**House Bill 5108 as introduced
Sponsor: Rep. Jerry Vander Roest**

**House Bill 5109 as introduced
Sponsor: Rep. Joanne Voorhees**

**House Bill 5110 as introduced
Sponsor: Rep. Sandra Caul**

**House Bill 5111 as introduced
Sponsor: Rep. Jim Howell**

**House Bill 5112 as introduced
Sponsor: Rep. Alexander C. Lipsey**

**House Bill 5113 as introduced
Sponsor: Rep. Cameron Brown**

**House Bill 5114 as introduced
Sponsor: Rep. Samuel Buzz Thomas**

**First Analysis (2-6-02)
Committee: Appropriations**

House Bills 5108-5114 (2-6-02)

THE APPARENT PROBLEM:

Generally, under an anti-alienation clause of a pension plan, benefits cannot be assigned or “alienated” (transferred), and they are not subject to attachment, garnishment, levy, execution, or other legal process. The federal Internal Revenue Code addresses this issue by providing that benefits under a “qualified” pension plan are, generally speaking, not subject to assignment or transfer. In addition, the federal Employee Retirement Income Security Act (ERISA) contains an anti-alienation provision, and the U.S. Supreme Court has ruled (*Patterson v. Shumate*, 1992) that an interest in an ERISA-qualified pension plan is not includable in a person’s bankruptcy estate. However, according to public pension specialists, these protections do not apply to governmental pension plans. Many, or most, public pension plans contain their own anti-alienation clauses designed to protect pension assets of governmental employees, assuring that these benefits will be there upon retirement. However, apparently not all public plans contain such a clause, and the effectiveness of those existing in local ordinances has been called into question in certain bankruptcy

proceedings. (In a Chapter 7 bankruptcy proceeding, the most common form of bankruptcy, the debtor’s non-exempt assets are liquidated, or sold, and the proceeds distributed to creditors according to priorities established in the federal Bankruptcy Code. Pension benefits may be protected from creditors if they are “excluded” from the debtor’s bankruptcy estate, or, if included in the estate, by being “exempted” from liquidation. At issue is whether pension benefits are “excluded” from a person’s bankruptcy estate by virtue of an effective anti-alienation clause in the pension plan.)

The statutes governing Michigan’s state-administered public pension systems each contain an anti-alienation clause, and also make exceptions for the division of marital assets, payment of child support obligations, and forfeiture of assets due to certain criminal convictions. The Municipal Employee Retirement System Act, under which some municipalities and courts offer retirement plans for their employees, has an anti-alienation clause in its plan document, though the statutory language was

repealed when the MERS system was made into an independent public corporation governed by a board of directors. Public Act 156 of 1851, which allows county boards of commissioners to establish retirement systems for county employees, *does not* contain anti-alienation clause language. In addition, local governments have broad powers to establish retirement systems for their employees under their general statutory and charter operating authority. These independent retirement plans *may or may not* contain anti-alienation clauses. It has been suggested that a uniform state statute applying to all state and local pension systems is needed to provide adequate protection of public employee pension benefits in the event of bankruptcy proceedings.

In a related matter, the State Correctional Facility Reimbursement Act states that a prisoner's pension benefits may be subject to his or her statutory obligation to reimburse the state for the costs of incarceration; however, the pension acts do not specifically mention this obligation. The state supreme court has held, in *State Treasurer v. Schuster*, 1998, that the State Correctional Facility Reimbursement Act has priority over the anti-alienation clause of the Public School Employees' Retirement Act, and therefore that pension benefits payable under that act are subject to the reimbursement act. It has been suggested that the pension statutes should specifically address this obligation.

THE CONTENT OF THE BILLS:

House Bill 5108 would create a new Public Pension Protection Act to put in statute an anti-alienation clause that would apply to all public pension systems administered by the state and by local governments in Michigan. House Bills 5109-5114 would amend the statutes governing pension systems for state employees, public school employees, firefighters and police officers, judges, state police, and legislators to eliminate the so-called "anti-alienation" clause in each act, and instead make these retirement systems subject to the provisions of the new act.

House Bill 5108 would create the new act. It would specify that the right of a member (including a current or vested former member, deferred member, designated beneficiary, or refund beneficiary) or retiree to a retirement benefit *could not* be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law, and could not be assigned. A "retirement benefit" would include an annuity, a retirement allowance, an optional benefit, a postretirement

benefit, a benefit received from a defined contribution plan, defined benefit plan, deferred compensation plan, disability plan, life insurance plan, all money, investments and income of the various funds created under a public employee retirement system, and any other right accruing to a member under a retirement system. A "retirement system" would include a public employee retirement system established by the state or a political subdivision of the state.

However, as under current law, the right of a member or retiree to a benefit *would be*:

- subject to forfeiture under the Public Employee Retirement Benefits Forfeiture Act; and

- subject to an award by a court during divorce proceedings, under an eligible domestic relations order, or under any other domestic relations order of a court pertaining to alimony or child support. As under current law, if an award or court order required a retirement system to withhold payment of a retirement benefit or requires the system to make a payment of a retirement benefit for the purpose of meeting the member's or retiree's obligations to a spouse, former spouse, or child, the withholding or payment provisions of the order would be effective only against amounts that become payable to the member or retiree, unless otherwise provided by an eligible domestic relations order. However, this limitation would not apply to the accumulated contributions of a person who terminates employment before becoming vested in a retirement system.

In addition, the bill would specifically provide that rights to benefits *would be* subject to claims made under the State Correctional Facility Reimbursement Act.

Further, the bill states that it is not intended to prohibit a member or retiree from receiving a loan from a retirement system if the system concluded that the person was otherwise eligible for a loan.

Finally, nothing in the bill would prevent a retirement system administrator from correcting records and seeking to recover overpayments made to a retiree or member.

House Bills 5109-5114 would amend the acts governing the various retirement systems. It would delete language that specifies that retirement benefits from defined benefit programs and distributions from defined contribution programs are not subject to

execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law, and are unassignable except as otherwise provided by law. Instead, the each bill would specify that these benefits and distributions would be subject to the Public Employee Retirement Benefit Protection Act (as proposed in House Bill 5108). The bills would also delete from the respective acts language that specifies that benefits and distributions are subject to court orders in divorce proceedings and eligible domestic relations orders (as that language would be re-enacted in the new act).

House Bill 5109 would amend the State Employees' Retirement Act (MCL 38.31 et al.). House Bill 5110 would amend the Public School Employees Retirement Act (MCL 38.1346 and 38.1385). House Bill 5111 would amend the Fire Fighters and Police Officers Retirement Act (MCL 38.556 and 38.559). House Bill 5112 would amend the Judges Retirement Act (MCL 38.2308 et al.). House Bill 5113 would amend the State Police Retirement Act (MCL 38.1643). House Bill 5114 would amend the Michigan Legislative Retirement System Act (MCL 38.1057 and 38.1080).

Tie-bars. House Bill 5108 is tie-barred to each of the other bills in the package, and House Bills 5109-5114 are each tie-barred to House Bill 5108.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bills have no fiscal implications for the state or for local governments. (2-1-02)

ARGUMENTS:

For:

Bankruptcy law allows a debtor who is unable to pay his or her creditors to resolve debts through the division of his or her assets under court supervision. Bankruptcy allows a debtor to be discharged of his or her debts, even if they are not paid in full, after the assets have been distributed in the manner provided by federal law. In a bankruptcy proceeding, a bankruptcy trustee supervises the liquidation and distribution of a person's non-exempt assets, so that creditors receive at least some part of what is owed. Generally, pension benefits are excluded from the assets that are distributed under a bankruptcy proceeding; this protection is assured to private sector employees who are participants in ERISA-qualified pension plans by federal statute and case law. However, these protections do not apply to public pension plans. Though the state-administered

retirement systems have anti-alienation language, so local systems lack this protection. Pension specialists testified that some public employees in Michigan have had their pension benefits used to satisfy creditors in bankruptcy proceedings, despite attempts by local governments to protect their employees through including anti-alienation clauses in pension ordinances. It is believed that a uniform state law would strengthen the authority and protections of anti-alienation provisions, so that public employees would have the same protection as those in the private sector.

POSITIONS:

The Michigan Association of Public Employee Retirement Systems supports the bills. (2-5-02)

The Retirement Coordinating Council supports the bills. (2-5-02)

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.