

# Legislative Analysis



## MUNICIPAL EMPLOYEES RETIREMENT SYSTEM GRIEVANCE HEARINGS

Phone: (517) 373-8080  
<http://www.house.mi.gov/hfa>

**Senate Bill 1041 as reported from House committee**  
**Senate Bill 1042 (S-1) as reported from House committee**  
**Sponsor: Sen. Douglas C. Wozniak**  
**House Committee: Judiciary**  
**Senate Committee: Judiciary and Public Safety**  
**Complete to 9-28-22**

Analysis available at  
<http://www.legislature.mi.gov>

### SUMMARY:

Taken together, the bills would require a hearing, as a contested case, to be provided to a person aggrieved by a decision of the Municipal Employees Retirement System (MERS) under certain provisions of the Administrative Procedures Act (APA) and also allow for a court review of the final decision or order in the case.

**Senate Bill 1042** would add a new section to the Municipal Employees Retirement Act to require MERS's retirement board to provide a hearing if requested in writing by a person, participating court, or participating municipality that is aggrieved by a decision of the retirement system. The hearing would have to be conducted as a contested case under Chapter 4 of the APA and policies or procedures adopted by the retirement board. A final order of a hearing under the bill would be subject to Chapter 6 of the APA. (Chapter 6 provides a mechanism for judicial review when a person is aggrieved by a final decision or order in a contested case, as well as when a person has exhausted all administrative remedies available within an agency.)

Proposed MCL 38.1545b

**Senate Bill 1041** would amend the APA to include MERS and its retirement board in the definition of *agency*, except as otherwise provided under section 115(5) of the APA. (Section 115(5) specifies that provisions in the APA governing guidelines [Chapter 2], the rules promulgation process [Chapter 3], and the authority to issue licenses [Chapter 5] which apply to state agencies no longer apply to MERS or the retirement board once MERS is established as a public corporation. Public Act 220 of 1996, which amended the Municipal Employees Retirement Act to establish MERS as a public corporation managed by an independent retirement board, took effect August 15, 1996, which became the official certification date establishing MERS as a public corporation.)

MCL 24.203

#### Tie-bar and retroactive date

Senate Bill 1042 is tie-barred to SB 1041, which means that it cannot take effect unless SB 1041 is also enacted into law. Further, each bill states that it is intended to be retroactive and applies retroactively effective on and after August 15, 1996.

## **BRIEF DISCUSSION:**

A recent unpublished Court of Appeals decision pertaining to a dispute over retirement benefits highlighted a need to clarify portions of law within the Administrative Procedures Act and the Municipal Employees Retirement System.<sup>1</sup> At one time, MERS was a state agency within the Department of Management and Budget. On August 15, 1996, MERS was certified as a public corporation and therefore no longer operated within the executive branch of Michigan. The case in question revolved around whether the appeals process provided under the APA, including the contested case process, still applied to members of MERS aggrieved by a decision of its retirement board. Currently, one section of the APA states that certain chapters of the act do not apply to MERS, implying that the rest of the chapters do apply. However, the term “agency” as defined in the APA, and referenced in provisions throughout the act, does not specifically include MERS or the retirement board as an agency to which provisions of the APA would apply.

Senate Bills 1041 and 1042 would address the issue by amending the MERS act to clarify that the contested case process under the APA, and the ability to seek judicial review of a decision by the retirement board, would apply to members of MERS. In addition, the bills would also clarify that MERS and the retirement board would be considered an “agency”, and therefore provisions of the APA would apply to MERS and the board, except for Chapters 2, 3, and 5.

## **FISCAL IMPACT:**

The bills would have no fiscal impact on state or local government.

## **POSITIONS:**

Representatives of the Michigan Municipal Employees Retirement System testified in support of the bills. (9-20-22)

Representatives of the following entities indicated support for the bills (9-20-22):

- Michigan Townships Association
- Michigan Municipal League

Legislative Analyst: Susan Stutzky  
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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations and does not constitute an official statement of legislative intent.

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<sup>1</sup> *Davis v Montcalm Center for Behavioral Health, Montcalm County Community Mental Health Authority, doing business as Montcalm Care Network, and Municipal Employees Retirement System*. Docket No. 354049 (Unpublished August 26, 2021).