

# *Mark A. Porter, & Associates, PLLC*

Attorneys and Counselors at Law  
1457 East 12-Mile Road  
P. O. Box 71527  
Madison Heights, Michigan 48071-0527  
Office: (248) 547 - 1 - 911  
Fax: (248) 547 - 1917  
[www.map-law.com](http://www.map-law.com)

December 01, 2017

## **Summary of Fast-Track Lansing Legislation to Eliminate Pensions and Retiree Health Insurance**

### **To All Retiree Associations and Their Members**

On Thursday, November 30, 2017, the GOP lawmakers in Lansing simultaneously introduced numerous Bills in both the Michigan House and Senate. These Bills are claimed to provide “stability” to public sector employee pensions and retiree health care. In fact they are designed to destroy **your** pension and health care benefits. You should also know that the Governor’s office fully supports these Bills. Here are the web links to the main Bill in both the House and Senate:

<http://legislature.mi.gov/doc.aspx?2017-HB-5298>

<http://legislature.mi.gov/doc.aspx?2017-SB-0686>

This Retiree Legislative Alert will cite the pages in the Senate Bill so that you can track the information summarized below.

### **I. Immediate Retiree Impacts**<sup>1</sup>

1. All **current** and **future** pension and retiree health insurance systems are now declared to be *strictly optional* and *voluntary* on the part of each local government [**Pages 1-2**]. They are **not** required by any other laws – including the Public Employment Relations Act. The legislators have claimed that those sections simply keep the State from paying for local pension systems under “the Headlee” Amendment – and that claim is patently false. The language on those pages means what it says – and says what it means.<sup>2</sup>

**The Effect:** Any future “collective bargaining” on either pensions or retiree health insurance [*including stipends*] will be “permissive,” with the local governments refusing to bargain on those topics.

For retirees, it means that local governments can change, or close any **current** retiree **health insurance program** at any time, and for any reason.

---

<sup>1</sup> Public employees who retire, and who are already retired under local ordinances and charters are automatically and permanently impacted by the Bills.

<sup>2</sup> [1963 Constitution art. 9 §29](#).

2. ***Pre-Funding*** requirements for **both** active employee and retiree health care are now created out of thin air, and imposed ***retroactively*** on every local government and authority. As an **active** employee, the **future** retiree health care insurance must now be **pre-funded** at least **20%** before **July, 2020 [Page-9]**. For **current retiree** health insurance, it must be **pre-funded** at **30% *retroactive*** to July, 2016 [**Page 19**].

The Bills also ***simultaneously*** create **pension** funding levels that require **60%** funding retroactive to **July 2016 [Page-20]**. These simultaneous, sudden demands will immediately place most communities Statewide under the control of the State Treasurer.

3. Once State control comes in through the State Treasurer, your local government will be given **180-days** to come up with a “***corrective action plan***” that cuts costs and benefits.

It is important to note that on **Page-27**, it states that this “Plan” must be “negotiated” with retirees. However, the identification of who, exactly, represents the “retirants” is not defined in the 34-pages of Senate Bill 686. However, newly-created “Local Government Retirement Stability Board” [**LGRSB**] must approve all “agreed-upon” cuts to benefits. And – if your local government cannot reach agreement on a “corrective action plan,” the Stability Board will ***automatically*** throw your Employer into **2012 Public Act 436**, the Emergency Act.

Even if you and your local government agree on a “Plan,” to get out of your “underfunded” status, the Board can reject it once – or as many times as it wants. It can “suggest” that your local government alter retirement system “eligibility, calculation of **benefits, copays**, drug prescription coverage, or **other modification** of provisions of an applicable ***retirement system***.”<sup>3</sup>

4. Once your local community is thrown into PA 436, there is a newly-created “Financial Management Team” [**FTM**], which is a “***Mini-Me***” Emergency Manager. The FTM is “***granted broad powers to rectify***” the State’s declaration of chronic underfunding in your community. It can **take any action** necessary, related to the operation your local government, its employment of personnel, or its expenditure of money. Those powers include changing the local budget, payments, and benefits. All “FTM” orders are binding upon the local government – just as the “real” Emergency Managers.<sup>4</sup>

The FTM also has the authority to throw your local government into all of the other sections of PA 436, for a complete and total takeover of your community – just as happened in Flint.

## II. **Impacts on Current Retirees << AND >> Dependents**

1. The core of the entire act is found on **Pages 8-9** of **SB 686**. In order for **any current** retiree to continue to receive health insurance through a collective bargaining agreement – which was in effect at the time of the retiree’s retirement – the contract language guaranteeing health insurance **must** be:

<sup>3</sup> The Bills define a “***retirement system***,” as a pension plan; a retiree health insurance plan; or **both**, at **Pages 5-6**.

<sup>4</sup> **Senate Bill 687**, at **pages 11** and **13**.

1. Clearly and expressly written out; and,
2. Confer a fixed, unalterable right to a vested benefit; and,
3. Last for an unambiguous duration.

This quoted section automatically eliminates nearly 99% of all current and existing retiree health insurance across the State – some dating back to the 1970s for surviving, elderly dependents. This language truly discloses the actual intent of the legislation – to completely wipe out current retiree health insurance coverage.

2. If any current retiree – or dependent – takes a job where the other employer offers health insurance, the local government must drop the retiree and dependent from the health insurance benefits for as long as the other employment lasts [Page-8].

The insurance at the other employer only has to be “offered” – it does not have to be accepted and signed-on by the retiree from your previous, local government. As long as the “offered” insurance is “comparable” to your current retiree insurance, your previous Employer must eject you from its health insurance coverage.

The decision of whether the other employer’s health insurance is “comparable” is at “the sole discretion” of the retiree’s local government and former employer. *Id.* “Comparable” to most Employers simply means making some payments for “premiums” on the cheapest insurance possible. The much higher co-pays and deductibles are then dropped onto the retirees.

3. Because all health insurance coverage will now be “optional,” the Employer can change any insurance plan at any time. The Employer can also terminate any insurance program at any time, with no “grievance” or other challenge permitted [Page-8]. Stipends are not included anywhere in this Act as being protected. The absence of any specific reference is deemed to be intentional by the Courts.

4. All retirees who are eligible must enter Medicare Plans A & B. Failure to enter those Medicare Plans will result in automatic ejection from your previous Employer’s health insurance. In addition, once Medicare is the primary insurance, the Employer from where you retired can only provide supplemental or “gap” insurance [Page-31].

5. Local waivers requested from the State Treasurer for the various levels and tripwires require the local government to show “the degree to which the local unit of government provides for retirement benefits” – in other words – the fewer benefits, the better the chance for a waiver. Note that the generic term “retirement benefits” includes both pensions and health insurance combined.

The waiver application must also show the current level of general fund expenditures devoted to all retirement benefits, as well as the “trend lines” for retiree health insurance. In other words – ***IF*** any retirees still receive health insurance after these Bills are passed – the trend lines must show the mortality tables for the retirees’ expected demise.

**YOU NEED TO ACT – NOW !!**

The goals of the Bills are to entice – and then to order – all local governments to unilaterally

terminate all retiree pension and health insurance benefits during the next few years. It is **not** the “stability” of retiree benefits, as claimed by both the Legislative and Executive Branches – it is their total elimination. That was always the goal by the Legislators and the Governor’s office.

These Bills will move through the Legislature as quickly as next week, December 5th – 8th. The Democratic members of the House and Senate are united against these Bills. **BUT** – they are in the minority in both the Michigan House and Senate – and they can be easily out-voted.

Please **immediately call your local GOP Legislator**. If your local State Legislator is a Democrat, please contact GOP Legislators in nearby Districts. The Michigan Legislature website at [www.mileg.org](http://www.mileg.org) has a map showing each Legislator.

In addition, your Retiree Associations also maintain contact information for all State Legislators.

Remain respectful, but emphasize how devastating these changes will be to you and your dependents. You have the exact page numbers of Senate Bill 686 to back up your talking points to the State Representatives and State Senators.

***This CANNOT Wait – You must act NOW.***

Respectfully,

/s/ *Mark A. Porter*

Attorney at Law