

To: Michaele Totino, Executive Director
State Government Committee
Pennsylvania House of Representatives

From: Timothy Reece, Executive Director
Pennsylvania Municipal Retirement System (PMRS)

Date: January 18, 2022

Re: H.B. 1442, P.N. 1556 – Written Testimony from PMRS

Thank you for the opportunity to provide analysis on the HB 1442 which would limit public employees (state, teachers and municipal) to one public pension benefit (regardless if they work for multiple employers who all offer retirement benefits). While the Pennsylvania Municipal Pension System (PMRS), does not see a financial impact of the proposed legislation as currently conceived, we have identified several legal and practical issues. They are outlined below.

Legal issues:

1. Pennsylvania Municipal Retirement Law (PMRL) requires that all full-time employees of a municipality participate in the municipality's pension plan. *See* 53 P.S. § 881.402. Under this statute, if they participate as required (i.e., make required contributions into a plan) and are prohibited from receiving any retirement benefit from that plan, it could be considered an illegal taking.
2. All Pennsylvania Municipal Retirement System plans are considered qualified plans under Section 401(a) of the Internal Revenue Code which allows employees to defer taxes on their pension benefits until they are received at retirement. To be qualified, a plan must have a tax-qualified plan document (approved by the IRS) and it must operate in accordance with that document.

As indicated above, under the PMRL, all full-time municipal employees must participate in, and be eligible to receive pension benefits from, their pension plan and this is included in each tax-qualified plan documents. This legislation would violate the plan documents and would thus jeopardize the tax qualification of all PMRS plans.

3. The legislation does not appear to raise a contract impairment constitutional issue because it seems to apply only to employees who are not eligible for more than one benefit until after the legislation takes effect. Under the Pennsylvania Constitution, a person's right to their pension is fixed upon their date of hire. Because this legislation is prospective only, it would not violate the constitution under the doctrine of contract impairment because the person's right to participate in multiple plans would be extinguished before they are hired by the second employer.

4. A plan member's benefit cannot be valued—and, therefore, compared to another benefit to determine the most valuable—until the end of a member's career. Years of service and any early retirement factor are critical elements in determining the value of a member's benefit. Consequently, any individual affected by the bill must contribute to both retirement plans. Under Pennsylvania law, a retirement benefit funded, in part, by the member, is part of their employment contract and they are entitled to that benefit. Any retroactive change to that contract is an unconstitutional impairment of contract. Moreover, because the member must contribute to both retirement systems but may only receive one, the bill acts as a forfeiture provision to the extent the member is not entitled to certain benefits under one of the retirement plans. This forfeiture implicates constitutional takings, due process, and unjust enrichment issues.

Practical Issues:

1. The PMRL allows portability meaning an employee at a municipality served by PMRS who subsequently becomes employed at another municipality served by PMRS, has the right to transfer their pension from the old plan to the new plan. Because this is an option, there is no need to "elect" which pension to receive because they would receive only one. This may reduce the intended impact of this legislation¹.

It is worth noting that this portability provision only applies to transfers from one PMRS plan to another PMRS plan. A person joining a PMRS plan from a SERS or PSERS plan does not enjoy the portability option.

2. Under the legislation if the employee fails to elect a pension plan, the employee shall receive benefits through the pension system providing the highest benefit amount. However, this would be impossible to calculate until the person leaves all public employment.

For example, if an employee retires, begins collecting benefits from a police plan then returns to work for another employer with a pension plan that eventually offers higher benefit levels, the employee seemingly would be prohibited from receiving the second pension. This would be inconsistent with the language that the employee would receive the higher pension benefit absent an election. It is also unclear whether an employee choosing to accept the second pension after receiving benefits from the first, would be required to repay the benefits they previously received.

¹ While PMRS will defer to SERS and PSERS, PMRS believes that SERS and PSERS have a similar portability concept where service can be combined into one pension. This would lessen the intended effect of this legislation.

3. The legislation would place burdensome administrative requirements on PMRS. PMRS would need to monitor all required contributions and refund them if held by the municipality in error. While PMRS does this, this legislation would likely increase the amount of contributions incorrectly withheld and remitted. Additionally, if the contributions are withheld on a pre-tax basis and are returned this could result in potential tax liability to employees and require the employer to issue amended annual tax documents.

Again, we appreciate the opportunity to share PMRS concerns with the legislation. If we can provide any additional insight, please let us know.