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UPDATE ON STATE LEGISLATIVE ISSUES
May Conference, 2010
Mt. Pleasant
Ellen Hoekstra and Noah Smith

Progress on PA 314 Revisions

Since the past conference, MAPERS' proposals to update PA 314 of 1965 have moved ahead. Following some pre-committee negotiations, HB 5323 (Rep. Rick Hammel, D-Flushing) was reported out of the House Banking and Finance Committee on February 4. All members present voted "yes" except for one, Rep. Darwin Booher (R-Ewart) who abstained following the lack of adoption of his amendments to exclude the expansion of the limit on "foreign securities". The version of the bill reported out would provide substantially more flexibility in investment options than does current law, although in a somewhat different manner than MAPERS' original legislation. It contained the same level of increase in real estate as we had recommended—10% for all asset classes. Rather than increasing specific categories of alternative investments (high yield, private equity, and derivatives), the legislation doubles our proposed basket clause increases from 5 to 10%. The committee substitute for the bill also provided more flexibility in foreign securities, raising that cap from 20 to 30%, the one element of the bill that became controversial. On the House floor, unfortunately, the sound bite argument of "sending money to foreign countries" prevailed, and the bill passed the House without that component. MAPERS is working to restore that provision in the Senate. The legislation passed the House on February 17 with 103 "yes" and 3 "no" votes, with the three "no" votes being Representatives Amash (R-Kentwood), Lund (R-Shelby Twp.) and Rogers (R-Brighton).

The House-passed version of the bill contains the other changes that MAPERS had initiated, including explicit permission for fiduciaries to use fund income to provide professional training and education and to hire services delineated in the bill. HB 5323 also requires fee disclosures, an aspect of the bill that is popular with legislators. Finally, as MAPERS had suggested, the bill permits multiple forms of establishment of investment companies and joint funds.

HB 5323 is now in the Senate Appropriations Committee, where it will be heard in the Subcommittee on Retirement chaired by Senator Mark Jansen (R-Grand Rapids), with other members being Senators Jud Gilbert (R-Algonac) and Deb Cherry (D- Burton). MAPERS's Vice-president Greg Simmons, legal counsel Michael VanOverbeke, MAPERS lobbyists, and PA 314 Committee Chair Mike Holycross have met with Senator Jansen to provide an overview of the bill and the importance of passing it. We will have an opportunity to testify before the subcommittee, but traditionally the full appropriations committee does not take public testimony—only remarks from fiscal analysts and state departments. The subcommittee hearing has been delayed due to the fact that Senator Jansen has been heavily involved in the negotiations over the school and state employee.

We urge you to send letters from your system to your state senators in support of the bill in its House-passed form. The House-passed version and a model letter are available on the MAPERS website.

Pension Board Take-over Bills

Rumors proved to be true, and Detroit's mayor had requested legislation to be introduced that would permit the Department of Treasury to require Detroit's pension systems to become members of MERS, based on conditions outlined in the legislation. However, the bills as introduced potentially could affect **all** local pension systems in Michigan and are strongly opposed by MAPERS.

Two bills have been introduced in both chambers, one amending the MERS act and one establishing this change. The bills in the Senate are SB 1239 (Sen. Mickey Switalski, D-Roseville) and SB 1240 (Sen. Jelinek, R-Three Oaks); the House bills are HB 5976 (Rep George Cushingberry, D-Detroit) and 5982 (Rep. David Hildenbrand, R- Lowell). All of the bills were referred to the appropriations committees of each body. MAPERS' concerns about the bill, drafted with the assistance of legal counsel Tom Michaud, include the following:

- Legislation could potentially **eliminate ALL local pension plans**.
- Legislation establishes vague and ambiguous standards mandating the transfer of local pension plans to MERS.
- Legislation mandates a transfer of local pension plans to MERS without citizen or employee approval. However, a costly vote of the electorate would be required to terminate MERS participation.
- Legislation assumptions with respect to the economic benefits of MERS participation are unsupported by fact and disregard the benefits and favorable performance of local pension plans.
- Legislation may create additional liability for the State and local communities and would have an adverse economic impact on local pension plans.
- Legislation would create costly legal and administrative challenges regarding constitutional, collective bargaining, and other state and federal rules and regulations.
- Legislation does not recognize the ability and successes of local officials to prudently administer, manage and operate local pension plans.

Members concerned about what this does to their system's autonomy should contact their local legislators and urge them to vote "no" on these bills if they come up. Although Rep. Cushingberry has backed away from pressing forward with the legislation at this time, it is entirely possible that it could return in a slightly different form at a later day.

Emerging Fund Manager Legislation

Legislation introduced by Rep. Shanelle Jackson (D-Detroit) regarding emerging fund managers has had a second hearing before the House Senior Health, Security and Retirement Committee. MAPERS has opposed the legislation, HB 5618 both as introduced and in a revise, H-2 version and has testified before the committee on two occasions regarding concerns. Prior to the conference, MAPERS attorney Michael VanOverbeke and lobbyist Ellen Hoekstra will be meeting with Rep. Jackson for a more in-depth discussion.

The bill requires retirement systems to develop policies regarding their efforts to use fiduciaries that are qualified emerging fund managers and emerging fund broker dealers. Under the bill, these policies shall

be applied to the review and evaluation of every contract proposal they receive. “Emerging funds” are defined as those with assets of two billion or more. The legislation also requires reports to the legislature on the methods and result of these efforts to the legislature. MAPERS has opposed the bill on the basis that its requirements constitute an unfunded mandate on local pension systems. MAPERS is also concerned that the legislation creates limits on local pension boards’ ability to make independent and prudent investment decisions, causing potential financial and legal liabilities for plans.

Campaign Update

On May 10, Rep. Alma Wheeler Smith announced that she plans to withdraw from the Democratic primary for the Governor’s race. That leaves House Speaker Andy Dillon and Lansing Mayor Virg Bernero as the last two Democrats to face-off in the August Primary. The Republican candidates still include U.S. Congressman Pete Hoekstra (R – MI 2), Attorney General Mike Cox, Oakland County Sheriff Mike Bouchard, former Gateway Chief Rick Snyder, and State Senator Tom George.

The mid-April Democratic convention put Genesee County Prosecutor David Leyton, who had strong UAW support, as the Democratic nominee for Attorney, narrowly defeating attorney and disability rights advocate Richard Bernstein. Leyton will face either Appellate Judge Bill Schuette or Senate Majority Leader Mike Bishop (R – Rochester), depending on delegates’ choice at the August Republican convention. Senator Bruce Patterson (R – Canton) previously dropped out of the running.

The Democratic convention also made Jocelyn Benson the nominee for Secretary of State, defeating Detroit Clerk Janice Winfrey by a massive margin. Benson, a professor at Wayne State and a voting and civil rights attorney, will face Calhoun County Clerk Anne Norlander, State Senator Michelle McManus (R – Lake Leelenau) or State Senator Cameron Brown (R – Fawn River Twp), depending on who comes out of the Republican convention in August.

U.S. Congressman Bart Stupak’s (D – MI 1) recent withdrawal from his reelection campaign caused a stir up north. Ultimately, it appears that State Representative Gary McDowell (D – Rudyard) will enter the race, and will most likely face State Senator Jason Allen (R – Traverse City) in November. McDowell’s entry in the race, however, leaves Democrats without their strongest candidate to win the State Senate seat being vacated due to term limits by current Senator Jason Allen.

The fall report will include more details on state house and senate races, which will be particularly numerous this year.

Other legislation:

- **HB 4917** (Rep. Fred Durhal, D-Detroit), the legislation regarding selection of representation on the Detroit Police and Firefighting Board, has had several contentious hearings before the House Labor Committee. A committee vote on this issue may occur prior to the MAPERS conference. MAPERS does not support the legislation because it encompasses an issue that should be resolved at the local level.
- **HB 5181 and 5284** (Rep. Doug Geiss, D-Taylor); **5182** (Rep. Kim Meltzer, R-Clinton Twp.) and **5214** (Rep. Timothy Bledsoe, R-Grosse Pointe) are before the House Intergovernmental and Regional Affairs Committee, which has had hearings. MAPERS has been involved in redrafting and amendments on these bills. We expect new legislation to be drafted coming out of the work done on this issue by Michael VanOverbeke. However, like committee action on HB 5323,

the drafting has been delayed by the legislature's focus on school and state employee pension legislation.

- **HB 5293** (Rep Marty Knollenberg R-Troy) is before the House Intergovernmental and Regional Affairs Committee and requires ethics training for pension fund trustees.
- **HB 5294** (Rep Marty Knollenberg R-Troy) is before the House Intergovernmental and Regional Affairs Committee and establishes oversight for public employee retirement system investments; provides plan participants and beneficiaries a list of investments made on their behalf and information from which a reasonable person could conclude the basis for the investment decision; provides for prudent investment decisions by political subdivisions.
- **HB 5370** (Rep Kathy Angerer D-Dundee) is before the House Intergovernmental and Regional Affairs Committee and clarifies health coverage for surviving spouse and dependents of a public safety officer who dies in the line of duty. The legislation would ensure their coverage if the officer passed away between October 1, 2003 and August 1, 2007.
- **HB 5570** (Rep. Fred Miller D-Mt. Clemens) Currently in front of the House Labor Committee. It prohibits the inclusion of overtime pay in the FAC used to determine pensions for employees in the general law counties, with an exemption made for current collective bargaining agreements.
- **HB 5571** (Rep. Fred Miller D-Mt. Clemens) Currently in front of the House Labor Committee. It caps pensions from being higher than that which could be received by the Governor and, like HB 5570, also prohibits the inclusion of overtime in FAC's for employees under the charter county law. We do not expect house action on HB 5570 or 5571, nor on HB 5572, which makes similar restrictions regarding FAC's.
- **HB 5619**, Rep. Bert Johnson, D-Highland Park) had one hearing before the House Senior Health, Security and Retirement Committee. The bill amends PA 314 to require investment in minority-owned businesses and does not have support from MAPERS.
- **HB 5345** (Rep. Dillon, D-Redford Township) is the public pension health "pooling" bill. The workgroups, including the one on retiree health care that Tom Michaud attended, have reported back to the full committee dealing with this issue, but there has been no further action on this bill. We have heard rumors of a substitute to the legislation but have yet to see details.
- **HB 5993** (Rep. Tom McMillin R- Rochester Hills) Currently in front of the House Government Operations Committee and requires posting of certain pension board expenditures.
- **HB 6001-6003** (Rep. Fred Miller D-Mt. Clemens) Currently in the House Intergovernmental and Regional Affairs Committee and suspend pensions from counties of 35,000 or more of retirees who return to work for those counties, whether directly or indirectly through a third party contract. We do not expect movement on these bills.
- **SB 642** (Sen. Michael Switalski D-Roseville) is before the Senate Appropriations Committee. It will eliminate State Police deferred retirement option plan.
- **SB 657** (Sen. Jud Gilbert R- Algonac) it is in the Senate Local, Urban and State Affairs Committee. It extends out-of-state travel restrictions to local government and local public pension funds; includes reporting requirements.
- **SB 945** (Sen. Mark Jansen, R-Grand Rapids), the bill enabling bonding authority for prefunded retiree health care is on the Senate floor, having been reported out of the full Senate Appropriations Committee and currently sits on the Senate floor. Similar legislation has already passed the House, **HB 4075** (Rep. Marc Corriveau, D-Northville) and **HB 4077** (Rep. Jim Marleau, R- Lake Orion). Thus, we expect the legislature to pass this legislation ultimately.
- **SJR 16** (Sen. Mark Jansen R-Gaines Twp.) It is currently in the Senate Floor after a second reading and allows the Legislature to regulate health benefits of public employees and officers.
- Bills to implement the Governor's proposed changes to school and state employees' retirement benefits have been introduced and passed both houses in different versions. However, time grows short for the school employees' bill to move ahead.