
New Policy Makes it Easier for Michigan Municipalities to Terminate Participation in MERS Defined Benefit Plan.

I. Background

As noted in a previous article, public pension systems across the country are experiencing significant funding shortfalls. Public employers in Michigan are no exception. The Michigan Department of Treasury reported that, as of March 12, 2018, more than 110 out of 490 local units of government had been preliminarily identified as having an underfunded pension plan or retirement health care plan, or both.

With the recent enactment of the Protecting Local Government and Retirement Benefits Act (commonly referred to as "Act 202"), public employers in Michigan are now required to report on their defined benefit plan funding status. A plan that is identified as underfunded must either apply for a waiver or create and comply with a corrective action plan to address its funding status.

In light of these issues, a municipality that participates in the Municipal Employees' Retirement System ("MERS") defined benefit plan (the "MERS Plan") may consider several options if its MERS Plan faces funding issues. For example, such a participating employer may consider freezing or reducing benefit accruals under the MERS Plan. However, doing so may accelerate the employer's amortization period, which could result in an increased annual contribution requirement.

A participating employer that faces funding issues may also consider terminating participation in the MERS Plan, and transferring its plan assets and liabilities to a non-MERS successor plan. MERS recently adopted a Termination Policy and Procedure that changed the requirements that must be met in order for a municipality to terminate participation in the MERS Plan. The Termination Policy became effective on March 15, 2018.

II. New Termination Policy

Prior to the adoption of the new Termination Policy, a participating municipality could not terminate participation in MERS unless (1) the municipality elected to terminate participation in the MERS Plan by an affirmative vote by qualified electors of the municipality; and (2) the participating municipality fully funded its MERS Plan liabilities.

The new Termination Policy allows a participating municipality to terminate participation in the MERS Plan if it obtains a two-thirds vote of the members of the governing body of the municipality, provided that certain additional requirements are met. If the governing body elects to terminate participation in the MERS Plan and the other requirements are met, then MERS will transfer all assets, liabilities, and fiduciary duties to a qualified successor defined benefit plan.

Summarized below are some additional requirements that must be met in order for a participating municipality to properly terminate participation in the MERS Plan.

1. The topic of termination of participation in the MERS Plan must be an express agenda item on

two consecutive regularly scheduled meetings of the governing body. The vote regarding that topic must take place at the second such meeting.
2. The participating municipality must provide written notice to MERS and to Plan participants of its intention to address the topic of termination. The notice must be provided to MERS at least one month before the first meeting. The notice must be provided to Plan participants at least 15 days before the first meeting.
3. MERS must be provided with a reasonable opportunity to provide information to the governing body at the first meeting outside of the regular public comment opportunity.
4. A signed and certified Termination Resolution must be provided to MERS within five days after its adoption by the governing body. The Termination Resolution must be in a specific format that is described in the Termination Policy.
5. Within 10 business days after the termination of participation in MERS, the municipality must provide written notice to all participants with an accrued Plan benefit. The notice must be in a specific format that is described in the Termination Policy.
6. Within 30 days after the termination date, or as soon as is reasonably practical, the MERS actuary will provide to the governing body a termination liability valuation. This valuation will be prepared at the participant municipality's expense. This valuation will confirm the total assets and liabilities that will transfer out of the MERS Plan and into the successor plan. If (1) the participating municipality has had an emergency financial manager appointed; and (2) the municipality's Plan is not funded at least 60%, then the municipality must contribute sufficient funds to the MERS Plan to establish a funding level of greater than 60% prior to leaving the MERS system.

III. Considerations

The new Termination Policy may be an attractive option to a municipality that is looking for the flexibility to select its own investment strategy and actuarial assumptions. A municipality that is considering this option should consult with legal, actuarial, and investment experts to fully understand its options and determine a strategy for moving forward.

by Julie LaVille Hamlet

February 27 2019

Foster Swift Collins & Smith PC