

**Municipal Police Employees' Retirement System
Minutes of the Legislative Committee Meeting
April 25, 2024**

The Legislative Committee of the Municipal Police Employees' Retirement System held a meeting on Wednesday, April 25, 2024, at the system's office at 7722 Office Park Boulevard in Baton Rouge, Louisiana.

A. Call to Order

The meeting was called to order by Asst. Chief Jason DiMarco at 8:36 a.m.

B. Roll Call

Members Present

Major (Retired) Kelly Gibson (virtual)
Lt. (Retired) Chad King (virtual)
Mayor Greg Cromer (virtual)

Members Absent

Major Raymond Burkart, Jr, Chairman

Others Present

Mr. Benjamin Huxen II, MPERS Executive Director and General Counsel
Ms. Emily Thurston, Accountant
Ms. Melissa Frazier, MPERS, Benefits Administrator
Mr. Greg Curran - Curran Actuarial Consulting, Actuary
Ms. Sheri Morris - Daigle, Fisse, & Kessenich
Ms. Taylor Camp, MPERS, Chief Financial Officer
Mr. Robert Gauss, Ice Miller, Outside Fiduciary and Tax Counsel (Virtual)
Chief Edwin Bergeron, Jr., MPERS Trustee (Virtual)
Mr. Craig Cassagne, Commission of Administration Designee (Virtual)
Mr. Julius Roberson, State Treasurer Designee (Virtual)
Chief Christopher Wilrye, MPERS Trustee (Virtual)
Mr. Joey David, House Retirement Committee, Legislative Analyst (Virtual)
Mr. Rick Allen, Mayor of Leesville (Virtual)
Ms. Laura Gail Sullivan, Outside counsel (Virtual)
Ms. Christie Ziadeh, (virtual)

C. Public Comment

There were no public comments.

D. Approval of the April 3, 2024 Committee Meeting Minutes

Mr. Huxen informed the committee that the minutes were not yet available given the timing of the special legislative committee meeting.

E. New Business

1. Discussion and Action Regarding Legislation for the 2024 Regular Session

Mr. Huxen stated that most of the report was an update not requiring action. Just wanting to keep the committee updated on the fast-paced session.

a. House Bill No. 15 by Rep. Fontenot

Mr. Huxen stated that HB15 was originally to do just with return-to-work issues. There were a couple of items that Rep. Bacala had placed in the bill from HB 36 along with some language that the City of Baton Rouge had requested. Mr. Huxen stated that he didn't see any issues. There may be amendments that the Governor's office wanted to address issues with New Orleans. Also, Mr. Huxen stated that Mr. Curran had suggested adding a sunset date so that the system could assess the cost impact of the reemployed retiree provisions. Mr. Curran stated that all these bills that provide greater flexibility for retirees to return to work are expected to have a cost. He stated that it was difficult to determine the cost of reemployed retiree bills, but that after a few years he could review the number of reemployed retirees to estimate the impact. He stated that the Sheriffs had included a sunset in a few years on their bill. He stated that if the change was needed by cities in the short-term due to difficulty attracting talent, a sunset date would give them time. He stated that in the long run the system is better off with young new hires because their contributions are supportive of avoiding cost increases. Mr. Huxen mentioned 2027 as a possible date. Mr. Curran stated that a few years would provide sufficient data for the actuary to study the issue. Ms. Laura Gail Sullivan stated that from the legislative standpoint, the system might want to have it end where future legislation would be considered in an even-numbered year. The committee discussed a possible sunset date of June 30, 2028.

Motion by Lt. (Retired) Chad King, seconded by Major (Retired) Kelly Gibson, to request that the author add a sunset date of June 30, 2028 to the reemployed retiree provision of House Bill 15. After a roll call vote and without objection, the motion carried.

b. House Bill No. 36 by Rep. Bacala

Mr. Huxen stated that House Bill 36 was pretty much dead and parts of it were placed in House Bill 15.

c. House Bill No. 38 by Rep. Freeman

House Bill 38 was a partial dissolution bill for New Orleans. The bill was never moved forward.

d. House Bill No. 42 by Reps. Firment and Butler, et al.

Asst. Chief Jason DiMarco described a meeting the prior Thursday at the Capitol held with Senator Price. He stated that he and Mr. Huxen joined Mayor Rick Allen, Mr. Patrick Cronin (General Manager of RMI), Richard Williams (Interim Director of LMA), and Suchitra Satpathi (lobbyist). At the meeting the group came to an agreement on most everything. Asst. Chief Jason DiMarco stated that the only thing left out of the meeting was the inclusion of the Louisiana Governmental Claims Act. He stated that the only reason it was not brought up at the meeting was that through several other conversations, he was under the impression that it was going to be removed from the bill. The only sticking point for MPERS at this point is the Governmental Claims Act which could cost the system a lot of money moving forward.

System counsel, Sheri Morris, stated that the concern for MPERS is that the Louisiana Governmental Claims Act will tie the system's hands of being able to collect money from municipalities that fail to enroll timely or fail to enroll them at all. The litigation currently pending has been challenged along lots of procedural grounds which have caused the process to take longer. MPERS used a summary proceeding called a mandamus, which is generally the least expensive type of proceeding to get a court order to compel a public officer to do what the law says. A mandamus can be heard within 2 to 10 days. The ones that have been pending involve MPERS' attempt to work out terms with some municipalities and because of the many writs that have been filed taking matters to higher courts. This is an attempt to make the process a long-drawn-out process and will be more expensive for both parties. In the world of collections, data shows that an unpaid debt is best collected close in time to the debt. As time goes on, the amount grows due to interest and every time a payroll check is issued. The ability of a person to pay a debt decreases over time. The point of this project was to obtain compliance and to lower or keep the employer rate as low as possible. This is a huge setback for the employers who are participating.

Mr. Huxen asked Ms. Morris about the likelihood of collecting funds with a judgement under the Louisiana Governmental Claims Act. He stated that his understanding was that payment was optional where MPERS would be treated like a tort debtor, and it would require a city council to agree to pay when they previously did not want to pay. Ms. Morris stated that the law was not that clear so the only thing that has been litigated to this point has been procedural issues and this raises additional procedural issues. Of the suits that have been filed,

a number involve municipalities that now have enrolled their officers, and the only issue is with delinquent contributions. In some cases, officers have not been enrolled and some of those officers have the option to opt out of membership and in some cases they do not. The suit that MPERS filed was to obtain a court order to require the enrollment of officers. Not being able to obtain that order and move forward to resolve the back debt will increase costs.

Mayor Cromer asked Ms. Morris what kind of individual personal liability removing the Louisiana Governmental Claims Act would open mayors and council members to. He stated that right now it would be treated as a tort and the body would have to approve the claim.

Ms. Morris stated that MPERS did not sue any individuals. The suits were initially against the towns, but because of some of the exceptions filed we had to add parties to keep the suit. For a mandamus someone must act for the city. The initial suits were against the municipality and the mayor in their official capacity. Because of some of the arguments, MPERS added some of the city councils to the suits in their official capacity. The only personal liability comes from a failure to comply with the public records law and that's outside of this proposed law. MPERS had sent public records requests initially. There never has been a tort claim filed. MPERS did allege in the petition that the failure to pay these contributions timely damages the other members who are participating by increasing the employer contributions, but MPERS did not have any claim requesting or computing any damages. MPERS sought an order to compel the municipalities to provide records if they hadn't, to enroll eligible officers, and to compel them to pay the amounts due. There was no individual claim against any individual except for a judgment under the public records law, but that is being resolved and MPERS has not taken any action to collect that.

Mayor Cromer asked Ms. Morris to clarify that there has been no individual claim filed against an elected official at this point. Ms. Morris answered that no official had been sued in their individual capacity. Mayor Cromer asked if they could be sued individually. Ms. Morris stated that only under the public records law could they have individual liability. Mayor Cromer stated that that was the sticking point for some elected officials. Mr. Huxen stated that there was legislation related to that, but Ms. Morris stated that they weren't sure of the status.

Mr. Huxen stated that the other concern with making MPERS subject to the Louisiana Governmental Claims Act violates the constitution, Article VI, Section 14(A)(2)(e). Mr. Huxen brought up the *Lowther* case related to police and fire wages and benefits, it's mandatory that the mayor and council take action to pay it because it's not discretionary.

Chief Bergeron asked if there were any other government funded retirement system that would be subject to the Louisiana Governmental Claims Act. Mr. Huxen stated that there were not. Chief Bergeron stated that if the concern was the personal liability of a mayor or council member, could it be removed if that

issue was resolved. Mayor Cromer stated that if that was resolved it might be possible. He deferred to Mayor Rick Allen who had been involved in the negotiations. Mayor Allen stated that it gave them a starting point but added that he did not have the authority to make that decision without talking with the LMA Board. He added that his concern was that this should have been worked out on Thursday. He stated that he could not keep going back to his people.

Asst. Chief DiMarco stated that they did negotiate last Thursday, but this issue was not included because they were assured on two prior occasions that this had been resolved. That is why he and Mr. Huxen did not bring it up. He also stated that MPERS would not be sending any more emails without Board review.

Ms. Morris stated that she was not in the meeting because MPERS was limited in the number of participants. She stated that if the personal liability issue is the concern, the Louisiana Governmental Claims Act is much broader than that and it would be better to deal with specific issues because these are not tort suits, they are collection suits. Mayor Allen stated that he understands but going into it he felt they had negotiated on enough other provisions like the \$2,500 and under requires a judgment, \$2,500 and over requires a 2/3 vote of the Board, and that we had removed enough cover off the municipalities where if they did not comply, they could collect that money. He added that they needed MPERS to be strong and stated that his police officers were in MPERS, and he needed the system to be strong for them. Mayor Allen stated that he felt that they had put enough provisions in the amendment to assist MPERS in collecting the money to include LMA telling its members to comply, or they would not be provided legal counsel by RMI and LMA will not support cities that do not comply with the law and MPERS. He added that they had agreed that MPERS would notify the LMA of any municipalities not in compliance and LMA would tell them to comply with law or LMA would not support them.

Mayor Cromer stated that the last thing he wanted was cities not paying their fair share because he and Mayor Allen both pay their share. He added that the only power that LMA has relates to the RMI coverage. LMA cannot require them to make the right decision.

Asst. Chief DiMarco stated that he understood but was concerned that the amendment removed MPERS' power to collect this money. He stated that he knows that the mayors have good intentions, but if people do not all do what they are supposed to do these restrictions may inhibit MPERS from doing what they need to do. Mayor Allen stated that he understands and that at the end of the day they had an education job to do with mayors and police chiefs. He stated that LMA would assist with education and that he agreed to be on the MPERS board to help make sure that the system is successful. He stated his willingness to help educate and noted that the problem was that they were trying to solve ten years' worth of problems in 30 days. He added that there may be things to be addressed next year. He stated that we need to be a team and need a plan for education.

Chief Bergeron stated that he and Mayor Allen had a great conversation the previous night and he does agree that they need education. He added that it wasn't fair to say that it was MPERS' fault for not training since mayors who are elected need to take a certain amount of personal responsibility to learn the responsibilities of the job. He stated that they needed to get back to the Louisiana Governmental Claims Act. If the sticking point is personal liability and that can be resolved, why continue to sink the deals and negotiations that we had. He stated that he understood that some of the emails made people angry and agreed to support avoiding additional emails if the two entities could agree on removing the Governmental Claims Act from the bill. He stated that neither MPERS nor LMA brought it up at the meeting, but if the main issue can be handled in the bill, he supported removing it from the bill. Chief Bergeron stated that to leave the whole provision in the bill would lead to additional litigation on the constitutionality issue which would cost the retirement system even more money. He added that he supported MPERS avoiding future emails about the legislation.

Mayor Allen stated that he understood and that he was willing to go back and have a conversation with LMA to make sure that he understands what all of the LMA's issues are. Mr. Robert Gauss stated that this was the first time he had seen in a set of amendments that employee contributions had been included such that if an employer incorrectly computed the employee contributions for a member MPERS would only be allowed to go back three years. This could lead to MPERS paying benefits to members for periods when they did not receive all contributions due. The second point is that while there are systems across the country that have statute of limitations language, it is generally to limit the board's ability to collect overpayment of benefits. He stated that he had never seen a statute of limitations in a governmental plan across the country that limited the ability to go back and receive employer contributions due under the plan document. Mr. Curran commented that at the end of the day the risk isn't to the plan, it is to the employers that contribute to the plan. Mr. Curran stated that the employers have expressed concerns over the cost of MPERS during his tenure as actuary, and legislation over the past few years has been to limit cost increases. He stated that this session has several bills that could increase costs and warned that added legal costs required because of legislation or limitations on the board's ability to seek payment from cities that have not paid will just increase employer costs. He added that most LMA member employers will see increased costs due to some of these provisions and stated that he hoped LMA was aware of that. Mr. Curran stated that the only thing that could impair members from receiving the benefits that they are due would be employers having an inability to pay required contributions. Anything done that could lead more employers to be unable to pay their costs is concerning. Mr. Curran added that MPERS does not have a single dollar in the trust fund that isn't needed to pay benefits already promised to members. There is no extra money in the trust to make these small employers whole. Every extra dollar is needed because they cannot pay must be paid by other employers.

Laura Gail stated that in the bill there is the ability to purchase service credit that goes back more than the 3-year prescription period. The prescription period means that the system cannot go back and get contributions for more than three years. For cases where employees have time exceeding 3 years there are two possibilities. If MPERS were to grant the credit without payment, the benefits on the additional service would cause employers have to pay the additional cost. The more likely scenario would be that employees do not receive service credit for time where contributions are not made. In that case, the employee loses the chance to get a benefit for that time. This could also affect disability or survivor benefits owed. The bill says the employer or the employee may purchase the credit, but does not require the employer to pay. For an employee that would lose credit, there may be employees suing their employer or MPERS.

Ms. Morris stated that this was a good point. The suits that have not been settled often involve employees with back credit issues. The legislation could impact their ability to receive that credit. Mayor Allen stated that he had personally spoken with an officer who opted out when he was employed and now wants to be in the system. He stated that he told that officer that he could not require the employer to pay for that. Mayor Allen also discussed the negotiations and stated that there were a lot of scenarios, and no solution could deal with all of them. He stated that he believed this was a base to start with.

Mr. Huxen and Ms. Morris stated that one of the items that was originally put into the bill was that for a city to receive the fifteen-year payout period they had to enroll their officers first. That compliance provision was taken out of the bill. This was one of MPERS' tools to get municipalities to get compliant. Ms. Morris stated that to Ms. Sullivan's point, officers will lose service credit, and many don't have the means to file suit or pay for the service.

Mayor Allen asked for clarification that if he and Mayor Cromer spoke with LMA Board and can provide them with the statute that says that a Mayor or elected official in those municipalities cannot be sued and removed the Louisiana Government Claims Act. Is that going to allow us to have an agreement?

Ms. Morris stated that she was unaware of a statute that imposes an individual liability on an elected official, but they could certainly draft something to make that extra clear. She stated that there is personal liability under some federal laws, but this is just collecting a debt. MPERS has suits that have been going on for over a year and those municipalities have not enrolled their eligible officers. Taking away MPERS' ability to get a court order to collect funds will lead to higher costs and litigation that will take years.

Mayor Allen stated that he would follow up and make sure there are no other issues and that he would follow up. Asst. Chief DiMarco stated that they went into the negotiations with a bill that included Back-DROP and the five year DROP, but the current bill only has a 3 year DROP. He stated that he thought it was an accident, but asked if it could be put back in the bill. The mayor stated

that he had not seen that and he would have to look to see why that happened. Mayor Cromer stated that he believed the change to 5-year DROP was a part of the negotiations and that it was likely an accident. Mr. Huxen stated that he would also email a few technical things that were not moved from House Bill 36 that should not concern LMA, but that MPERS needed to see if the mayors could request it be included.

Mr. Curran stated that he wanted to give credit to Mr. Kenny Herbold, Director of Actuarial Services for the LLA, regarding something that he discussed with Mr. Curran regarding the Back-DROP provision. He stated that something that had not previously occurred to him related to the Back-DROP provision that is set to go into effect when the oldest UAL base is paid off. The idea of the provision was to have it go into effect when employers experience savings from no longer being required to pay on the oldest amortization base. Unfortunately, if the Back-DROP becomes law, even if it would not go into effect for 10 years, it would be required under actuarial standards that the actuary account for it in his projections for current active members who could use Back-DROP in the future. Therefore, the employer rate would increase to account for Back-DROP slowly over the next 10 years until the full impact was recognized.

Asst. Chief DiMarco asked if they should put off the Back-DROP. Mr. Curran stated that if cost was a concern, putting the law in when the oldest base is paid off would avoid cost before employers receive the savings. Asst. Chief DiMarco then asked about the change from a 3 year to 5-year DROP. Mr. Curran stated that they have done analysis on similar changes in the past and that some people would cost the system more money. He stated that you truly cannot know the ultimate cost because you cannot truly know what officers will choose to do. Today, we have officers that go into DROP and remain employed years after completing DROP. That is saving the system money. Giving them a 5-year DROP in that case has a little cost because they may not stay employed as long after DROP. But some officers do make decisions that can lead to cost savings for the system and that will be true with a 5-year DROP. He stated that in doing scenario analysis on similar bills, they found that some situations increase costs and some decrease costs. Unless officers improve their ability to make optimal decisions about their retirement, there will likely be some that save MPERS money. In the scenario analyses, if the identified scenarios were equally likely to happen there was not a large cost or savings to the 5-year DROP.

Major (Retired) Kelly Gibson asked Mr. Curran to clarify why Back-DROP costs money. Mr. Curran stated that when Back-DROP is compared with traditional DROP, the cost arises from the fact that members often make imperfect decisions under DROP, but Back-DROP allows members to see all of their choices on the date of their retirement. With all that information, it is presumed that members will make the decision that is in their own best interest. Major Gibson stated that he was not in favor of the attitude that DROP is cheaper because of uninformed decisions by members. Mr. Curran stated that if you consider a plan without DROP and add a Back-DROP, the change still has a

cost. The cost is derived from the fact that Back-DROP allows members to exceed the 100% of average final compensation cap on benefits with a payment of up to 100% and a lump sum payment. He added that DROP also allows members to extend benefits beyond the 100% cap with a lump sum payment. Mr. Curran added that no matter how you look at it, Back-DROP has a higher cost, but is better for officers. Mr. Curran stated that the Back-DROP provision would require the bill to achieve a 2/3 vote for passage. He added that he also expected the extension to a 5-year DROP to cause the LLA to check the box requiring a 2/3 vote for passage.

Asst. Chief DiMarco asked if they should take the Back-DROP out of the bill. Mr. Curran stated that it was policy decision between the mayors and chiefs and police officers. He stated that the original discussion centered around the added cost being offset by savings when the oldest UAL base is paid off in ten years. Prior to the savings from the UAL payoff, if the Back-DROP is passed now the cost will slowly unfold over the ten-year period.

After the committee discussed the issue of whether to continue with the 5-year DROP and Back-DROP in the bill, there were no motions to reconsider.

e. House Bill No. 43 by Rep. Bacala

Mr. Huxen reviewed House Bill 43 by Representative Bacala. At the request of LMA, Representative Bacala removed all the penalty provisions.

Mayor Cromer asked about where the committee stood on House Bill 42. Asst. Chief DiMarco stated that they understood that the mayors would speak with the LMA Board about adding language clarifying that elected officials would not face personal liability and the Louisiana Governmental Claims Act would be removed from the bill. Mayor Cromer stated that he just wanted to be sure of what they needed to do. He stated that he understood that they needed to add back the 5 year DROP provision and leave the Back-DROP. Mayor Allen agreed.

Mr. Huxen stated that without the penalties originally proposed in House Bill 43 there were still deadlines but no real enforcement mechanism. Regarding the monthly reporting requirements, LMA wanted to report once a year. Mr. Huxen stated that the once-a-year reporting would not work with employers that have covered police officers because once a year reporting would mean officers would only be able to retire once a year. He stated that he felt that they could work out a solution where employers without any covered police officers could report once each year, but those with officers in MPERS would need to report monthly. The reason for the annual reporting for employers with no officers enrolled would be to avoid MPERS having to do public records requests or to aggravate the towns. For those that report no officers, MPERS can simply check their audits to be sure their answer is reasonable. Mr. Huxen stated that the system would also be providing education.

f. House Bill No. 52 by Rep. Firment

Mr. Huxen stated that House Bill 52 has been deferred a few times.

g. House Bill No. 902 by Rep. Melerine

House Bill 902 by Representative Melerine had not yet been advanced. Ms. Sullivan stated that given the passion she saw in the original testimony and the fact the chairman stated that the bill was not dead, she expected the author to work with the systems. She stated that she did not know whether it would get through in the time left. Mr. Huxen stated that the bill was related to proxy voting.

h. House Bill No. 963 by Rep. DeWitt

Mr. Huxen stated that House Bill 963 by Representative DeWitt is the substitute bill for House Bill 41. Representative DeWitt made the changes requested by MPERS.

i. Senate Bill No. 1 by Sen. Price

Senate Bill 1 by Senator Price related to transfers is moving along well.

j. Senate Bill No. 5 by Sen. Miguez

Senate Bill 5 by Senator Miguez did not pass out of committee because it received an even vote. Mr. Huxen stated that some amendments to the bill made it workable for MPERS.

k. Senate Bill No. 329 by Sen. Seabaugh

Senate Bill 329 by Senator Seabaugh which was a venue bill has not been moved.

l. Other Legislation

There was no other legislation.

F. Other Business

Lt. (Retired) Chad King asked if Ms. Morris was going to draft language for Mayor Allen to bring to LMA. Mayor Allen stated that he and Mayor Cromer would speak with LMA to get their approval before having MPERS waste any time writing up the changes.


G. Adjourn

Motion by Major (Retired) Kelly Gibson, seconded by Lt. (Retired) Chad King, to adjourn the meeting at 9:49 am. Without objection, the motion passed.

The next meeting date is May 15, 2024.

To the best of my knowledge, the foregoing minutes accurately represent the actions taken at the meeting held April 25, 2024.


Asst. Chief Jason DiMarco
Legislative Committee Acting Chairman


Ben Huxen,
Executive Director and General Counsel