Bill Analysis

Jeffery A. Bernard *Legislative Service Commission*

Am. Sub. H.B. 272

126th General Assembly
(As Passed by the House)

Reps. **Schneider, D. Evans, Reidelbach, Aslanides, Barrett, Blessing, Bubp, Calvert, Chandler, Coley, Collier, Combs, Daniels, DeBose, Domenick, C. Evans, Flowers, Hartnett, Key, Martin, Otterman, T. Patton, Raussen, Seitz, Setzer, G. Smith, S. Smith, Williams, Yuko**

BILL SUMMARY

Changes to all state retirement systems

Voluntary health care savings account program

- Authorizes each state retirement system[1] to establish a voluntary health care savings account program under which members, employers, and, in some cases, retirants may make deposits that are in addition to regular contributions and may be used for medical expenses.

Retirement board vacancies

- Provides that a state retirement system need not hold an election to fill a vacated employee member or retirant member position if less than 90 days remain in the vacated term.

- Provides that, if a vacancy occurs during the term of an elected member of the Board of OP&F, STRS, or SERS, and the remaining board members must elect a successor member, the successor member holds office until the first day of the new term that occurs not less than 90 days after the successor member's election, or until the end of the term for which the successor member was elected, whichever occurs first.

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[1] *There are five state retirement systems: the Public Employees Retirement System (PERS), State Teachers Retirement System (STRS), Ohio Police and Fire Pension Fund (OP&F), School Employees Retirement System (SERS), and State Highway Patrol Retirement System (SHPRS).*

Board member removal proceedings

- Requires board member removal proceedings to be conducted by the court of common pleas of the county in which the board member resides (rather than the district court of appeals).

- Provides that the board member has the right to appeal to the court of appeals (rather than the Ohio Supreme Court).

Annual disability benefit reports

- Requires each state retirement system to annually prepare, by not later than March 1, a report on disability benefits provided by the system during the preceding fiscal year. (Current law requires that the reports be prepared only from 2000-2005.)

Changes to PERS

Additional deposits

- Permits additional deposits to be made by contributors to PERS through payroll deduction.

- Specifies the circumstances under which a PERS contributor who has made additional deposits may choose a plan of payment for an additional annuity, requires spousal consent for the selection of certain payment plans, and provides for changes in the payment plan due to specified changes in circumstances.

- Provides for distribution of the additional deposits a contributor has made if the contributor dies before benefits begin.

- Requires a contributor who is subject to a division of marital property order that requires payments to a former spouse to select an annuity that provides for such payments.

- Provides that if a contributor marries or remarries, election of a joint and survivor annuity plan under the additional annuity program must be made no later than one year after the marriage or remarriage.

Employer contributions

- Eliminates the option permitting an employer to pay the employer's obligation for its employees who are PERS members in installments less frequent than monthly, but permits the PERS Board to lengthen the period of time for employers to comply with the employer obligation provisions.

- Revises the methods by which penalties and interest for late payment of the employer's obligation are calculated, authorizes the PERS Board to establish lesser penalties and rates, and permits the Board to enter into repayment agreements with employers.

- Enacts transitional provisions regarding the employer obligation provisions for the months of October, November, and December of 2007 under which the employer may spread the transitional liability over three years.

Delinquent employer contributions--penalties

- Shortens the period before which an employer that receives a delinquent contribution statement becomes subject to penalties and interest from 90 days after the end of the quarterly period in which the payments become the employer's obligation to 30 days after the end of the month in which the payments become an obligation.

Elected officials--refund for service credit purchases

- Provides for a PERS member who purchased additional service credit for service as an elected official (or the member's estate) to receive a refund for all or a portion of the amount the member paid to purchase the credit if using the purchased credit to calculate the member's retirement benefit results in a benefit that is greater than the maximum benefit allowed (100% of the member's final average salary).

PERS law enforcement officers--benefit for surviving spouse

- Waives a minimum service credit requirement so that the surviving spouse of a PERS law enforcement officer may receive a monthly survivor benefit regardless of the member's length of service.

Beneficiary designations

- Requires a member who designates two or more beneficiaries to receive a lump sum payment of the member's accumulated contributions to specify the percentage of the lump sum payment each beneficiary is to receive.

- Provides that if a member does not specify the percentages each beneficiary is to receive, the lump sum will be divided equally among all the beneficiaries.

Defined contribution plan participants--change of annuity plan

- Requires the spousal consent document for a change to a defined contribution plan annuity plan to be signed by the member's spouse, rather than the member. (Existing law requires a PERS defined contribution plan participant to get spousal approval of a change in an annuity plan, but requires the document evidencing the spouse's consent be signed only by the member.)

Changes to OP&F

OP&F Board of Trustees--police officer retirant member

- Provides that the police officer retirant member of the OP&F Board of Trustees whose term of office commenced on June 2, 2003, has a term of five, rather than four, years.

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Voluntary health care savings account programs

(R.C. 145.294, 145.583, 742.451, 742.56, 3307.393, 3307.70, 3309.27, 3309.692, 5505.203, and 5505.281)

The bill permits each of the state retirement systems to establish a program under which a member, the member's employer, or, in the case of PERS, a retired member ("retirant") may make deposits for the purpose of providing funds for the payment of health, medical, hospital, surgical, dental, vision care, or drug expenses, including insurance premiums, deductible amounts, or copayments. Deposits made to the program are in addition to regular employee and employer contributions to a retirement system.[2]

To implement the program, the bill authorizes the board of each retirement system to enter into agreements with insurance companies or other entities authorized to do business in Ohio. If a retirement system establishes a health savings account program, the system's board must adopt rules to administer the program.

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[2] *The program may be a voluntary employees' beneficiary association, as described in Internal Revenue Code section 501(c)(9), an account described in Internal Revenue Code section 401(h), a medical savings account, or a similar type of program under which an individual may accumulate funds for the purpose of paying health care expenses.*

Retirement board vacancies

(R.C. 145.06, 742.05, 3307.06, 3309.06, and 5505.043)

Under current law, if a vacancy occurs during the term of office of an employee or retirant member of a state retirement board, the remaining board members must elect a successor member. The bill provides that a successor member need not be elected if, on the day the vacancy occurs, less than 90 days remain in the vacated term. In the case of OP&F, STRS, and SERS, the bill specifies that a successor member holds office either (1) until the first day of the new term that follows the next board election that occurs 90 days after the successor member's election, or (2) until the end of the term for which the successor member was elected--whichever is sooner.

Board member removal proceedings

(R.C. 145.057, 742.046, 3307.061, 3309.061, and 5505.048)

Existing law, unchanged by the bill, provides that an employee member or retirant member of a retirement system board may be removed from the board for certain actions. Removal proceedings are commenced by filing a written complaint with the court of appeals of the district in which the board member resides. The complaint must state the charge against the board member and be signed either by the Governor or by a portion of the retirement systems members or retirants (whichever type of board member is the subject of the complaint) who voted in the most recent board election. The court must hold a hearing. Once the court of appeals has issued its finding, the board member has the right of review or appeal to the Ohio Supreme Court.

The bill revises the removal proceedings so that (1) proceedings are in the court of common pleas of the county in which the member resides and (2) the member has the right to appeal to the court of appeals.

Annual disability benefit reports

(R.C. 145.351, 742.381, 3307.513, 3309.391, and 5505.181)

Substitute House Bill 648 of the 122nd General Assembly required, from 2000 through 2005, each of the state retirement systems to make and submit a report for the preceding fiscal year of the disability experience of each employer subject to the system. Each report was to specify the total number of disability applications submitted, the status of each application as of the last day of the fiscal year, total applications granted or denied, and the percentage of disability benefit recipients to the total number of the employer's employees who are members of the system. The reports were to be submitted to the Governor, the Ohio

Retirement Study Council, and the chairpersons of the standing committees and subcommittees of the Ohio Senate and House of Representatives with primary responsibility for retirement legislation.

The bill requires the retirement systems to annually make and submit these reports, beginning on the first day of March following the bill's effective date.

CHANGES TO PERS

Additional deposits

(R.C. 145.23(C))

Current law permits members participating in the PERS defined benefit plan[3] to make voluntary deposits into the PERS Employees' Saving Fund in addition to the required employee contributions. The law specifies how interest is earned and requires the PERS Board to credit interest at the end of the calendar year in which it is earned. On retirement a contributor may receive either an annuity having a reserve equal to the amount deposited or a cash refund with such interest as the PERS Board allows.[4] A contributor may withdraw additional deposits prior to retirement and must do so if all PERS contributions are withdrawn.

Additional deposits under the bill

(R.C. 145.23(C), 145.294(A), 145.62, 145.63, and 145.64 and conforming changes in R.C. 145.471(A) and 145.472(A)).

The bill relocates and revises the additional deposit provisions of current law. It allows deposits to be made either directly to PERS or by payroll deduction, and permits re-employed retirants to make additional deposits. The contributor is to receive either an additional annuity (see "***Annuities***" below) having a reserve

[3] *For the most part, Ohio retirement systems operate defined benefit plans. However, PERS and STRS permit certain members to participate in a defined contribution plan. A defined benefit plan provides a retirement benefit that is determined by a formula composed of compensation, years of service, and sometimes age. A defined contribution plan provides a retirement benefit determined solely on the contributions by the member and employer and investment earnings on those investments. A fuller explanation of the differences between a defined benefit and defined contribution plan is provided in the* **COMMENT** *section below.*

[4] *For members who changed participation from a defined benefit to defined contribution plan, current law requires any additional deposits made prior to changing participation to be credited to the member's defined contribution plan.*

equal to the amount deposited or a refund of the amount deposited, together with earnings on those deposits as the PERS Board determines appropriate.

Annuities

On retirement, a contributor who has not received a refund of additional deposits may file an application with PERS for an annuity.[5] The annuity is to be paid under a plan that is the same as one of three of the plans under which retirement benefits are paid: Plan A, B, or F.[6]

As under current law applying to retirement benefit payment plans, the bill provides that Plan A is the default annuity payment plan for the additional deposits. This plan applies if the contributor is married at the time of application for a benefit, unless the application is accompanied by a signed statement of the spouse's consent to another payment plan or the PERS Board waives the requirement that the spouse consent. Plan A provides reduced annuity payments for the contributor for life and one-half of that annuity payment continuing after the contributor's death to the surviving spouse.

A contributor may also select Plan F, which provides a reduced payment and a lesser amount continuing after death to two, three, or four surviving beneficiaries. Plan F may be required due to a court order regarding the division of marital property.[7]

A contributor not required to receive a payment plan under Plan A or F, is to receive the annuity under Plan B. Under Plan B, annuity payments are made to the contributor but not to any surviving beneficiaries.

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[5] *An annuity is paid monthly and consists of an amount determined by PERS or the actuarial equivalent of the reserve amount. Payments for all annuities under PERS begin on (1) the effective date of the contributor's age and service retirement allowance, (2) the effective date of a benefit paid to a re-employed retirant, or (3) the date on which a member receiving disability retirement would have been eligible for an age and service retirement allowance.*

[6] *PERS offers a number of annuity plans defined as Plan A, B, C, D, E, and F. The annuity payment under the plans is determined by the number of beneficiaries and whether the annuity will continue on the death of the PERS member. Because only Plans A, B, and F affect the additional deposits, only these plans are described.*

[7] *A court may require a retirement system to make direct payments to a former spouse of a member, deducted from either a monthly benefit or lump sum payment being paid to the member. A member subject to this requirement may be required to select a Plan F payment plan.*

A contributor who is eligible to select a plan of payment, but fails to do so is to receive the annuity under the plan of payment specified in rules adopted by the Board.

If the contributor is receiving a payment under Plan A or F, the death of a spouse or beneficiary cancels the plan of payment or portion of plan of payment providing continuing lifetime payment to the deceased spouse or beneficiary. Effective the month following receipt by the Board of notice of the death, the contributor is to receive payments equivalent to the remaining annuity with no change to the amount payable to any other beneficiaries.

On divorce, annulment, or marriage dissolution, a contributor may, with written consent of the spouse or pursuant to an order of the court with jurisdiction over the termination of the marriage, elect to cancel a plan and instead receive payments under Plan B. The election must be made on a form provided by the system and is effective the month following its receipt by the system.

Following marriage or remarriage, a contributor receiving payments under Plan B may select a new plan of payment based on the actuarial equivalent of the contributor's Plan B, as determined by the PERS Board. A contributor receiving payments under Plan F who remarries may elect a new plan of payment such that it does not reduce payment to a former spouse. The plan becomes effective the first day of the month following receipt by the system of an application on a form provided by the system.

<u>Death of annuity recipient prior to receiving full reserve and earnings</u>

(R.C. 145.64(G))

If a contributor receiving a plan of payment under Plan B dies prior to receiving the sum of the additional amount deposited by the contributor plus earnings on those deposits, the difference between the amount received and the amount deposited and earnings on those deposits is to be paid to the contributor's beneficiary.[8] If a beneficiary receiving these amounts as an annuity dies prior to

[8] *The designation of a beneficiary must be in writing, duly executed on a form provided by PERS, signed by the contributor, and filed with PERS prior to the contributor's death. A contributor may designate two or more persons as beneficiaries, but must specify the percentage of the additional deposits that each beneficiary will receive. If the contributor does not specify a percentage, the deposits are to be divided equally among the beneficiaries. The last designation of any beneficiary revokes all previous designations. The contributor's marriage, divorce, marriage dissolution, legal separation, or refund, or the birth of the contributor's child, or adoption of a child, constitutes an automatic revocation of the contributor's previous designation.*

receiving the balance of the additional deposits, the remaining deposits are to be paid to the beneficiary's estate.

Death of contributor before commencement of annuity

(R.C. 145.65)

Should a contributor die before commencement of an annuity or other benefit from the additional deposits,[9] the additional deposits plus earnings must be paid to the person or persons the contributor has designated as a beneficiary.[10] If the deposits of a deceased contributor are not claimed by a beneficiary or by the estate of the deceased contributor within five years after the death, the deposits must be transferred to the Income Fund and thereafter paid to the beneficiary or to the contributor's estate on application to PERS. The bill requires the PERS Board to adopt the necessary rules governing all designations of beneficiaries.

If the deceased contributor is not survived by a designated beneficiary, the following qualify with all attendant rights and privileges, in the following order of precedence, the contributor's: (1) surviving spouse, (2) children, share and share alike, (3) parents, share and share alike, and (4) estate. If a beneficiary under this provision is deceased or is not located within 90 days, the beneficiary ceases to qualify for any benefit and the beneficiary next in order of precedence qualifies as a beneficiary. Any payment made to a beneficiary as determined by the PERS Board constitutes a full discharge and release to the Board from any future claims.

If the validity of a marriage cannot be established to the satisfaction of the Board for the purpose of disbursing any amount due in regard to the additional deposits, the Board may accept a decision rendered by a court having jurisdiction in the state in which the contributor was domiciled at the time of death that the relationship constituted a valid marriage at the time of death, or the "spouse" would have the same status as a widow or widower for purposes of sharing the distribution of the contributor's intestate personal property.[11]

If the death of a contributor or of any individual who by virtue of the death of a contributor would be eligible to receive a refund or an annuity payment from

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[9] *Payments begin on the effective date of the contributor's age and service retirement or disability benefit or the effective date of a lump sum benefit paid to a contributor who is a re-employed retirant (R.C. 145.62).*

[10] *The designation of a beneficiary is the same as described in "**Beneficiary designations**" below.*

[11] *Intestate personal property is personal property that is not disposed of by a will.*

additional deposits is caused by a beneficiary, no amount due to that beneficiary may be paid to that beneficiary in the absence of a court order to the contrary filed with the Board.

<u>Refunds of additional deposits</u>

If the annuity under the plan of payment selected by the contributor would be less than $25 per month, the contributor must be paid a refund of additional deposits.

A contributor may receive a refund of additional deposits, together with earnings, under any of the following circumstances:

(1) Withdrawal of accumulated contributions following termination of employment covered by PERS;

(2) Death prior to retirement;

(3) In the case of a contributor participating in the PERS defined benefit plan, on application prior to attaining retirement eligibility;

(4) In the case of a contributor who is a re-employed retirant, on application prior to attaining eligibility for a benefit;

(5) In the case of an unmarried contributor who has attained eligibility for an age and service retirement benefit or a benefit payable to a re-employed retirant, on application;

(6) In the case of a married contributor who has attained eligibility for an age and service retirement benefit or a benefit payable to a re-employed retirant, on application if the application is accompanied by a statement of the spouse's consent to the refund or the Board waives the requirement that the spouse consent.[12]

EMPLOYER CONTRIBUTIONS--EXISTING LAW

Under existing law, employers must pay employer contributions to PERS in such monthly *or less frequent* installments as the PERS Board requires. Ninety days after the end of a quarterly period, any amounts that remain unpaid are

[12] *The consent of a spouse to a refund is valid only if it is in writing, signed, and witnessed by a notary public. The Board may waive a requirement of consent if the spouse is incapacitated or cannot be located or for any other reason the Board specifies. Consent or waiver is effective only with regard to the spouse who is the subject of the consent or waiver.*

subject to a 5% penalty for late payment. In addition, interest on past due amounts and penalties may be charged at a rate set by the PERS Board.

The bill

General provisions

(R.C. 145.51)

The bill eliminates the option of making the payments in installments that are less frequent than monthly, but permits the Board to adopt rules permitting the Board to lengthen the periods of time for employers to comply with the employer obligation provisions.

Generally, the bill requires that all employer contributions be received by PERS not later than the 30th day after the last day of the calendar month for which related member contributions are withheld. As a result, the bill shortens from 90 to 30 days the period before which an employer becomes subject to penalties and interest. Unless the Board adopts a rule establishing a different interest rate or penalty, interest and penalties for failing to pay this obligation when due are as follows:

(1) Interest, compounded annually and charged monthly, for each day after the due date that the employer obligation remains unpaid in an amount equal to 6% per annum of the past due amount of the obligation and any penalties imposed;

(2) The penalty for failing to pay the employer obligation when due is as follows: (a) at least 11 but not more than 30 days past due, an amount equal to 1% of the past due obligation, (b) at least 31 but not more than 60 days past due, an additional amount equal to 1.5% of the past due obligation (or a total penalty of 2.5%), and (c) 61 or more days past due, an additional amount equal to 2.5% of the past due obligation (or a total penalty of 5%).

The bill authorizes the PERS Board to adopt rules to establish interest at a rate that does not exceed the statutory annual rate and establish penalties in amounts that do not exceed the statutory amounts. The bill also permits the Board to enter into repayment agreements for employers to comply with the employer obligation provisions.

Transitional provisions

(R.C. 145.52 and 145.53 and a conforming change in R.C. 145.82).

The bill enacts special provisions regarding the employer obligation due under the revised employer obligation provisions for the months of October, November, and December 2007. This "transitional liability" is payable in three installments on or before December 31, 2008 (for the October, 2007, transitional liability), December 31, 2009 (for the November, 2007, transitional liability), and December 31, 2010 (for the December, 2007, transitional liability). Interest and penalties for failing to pay amounts when due under these transitional provisions is to be calculated in accordance with the bill's revised interest and penalty provisions.

From the employer obligation relating to defined contribution plans for the month of February, 2008, an amount equal to the portion of the employer obligation for the months of October, November, and December of 2007, must be credited to the PERS defined contribution plan to satisfy the portion of the transitional liability attributable to defined contribution plan employer contribution provisions. When this amount is credited to the PERS defined contribution plan, an equal amount must be added to the transitional liability to satisfy a portion of the February, 2008 employer obligation that is attributable to the PERS defined benefit plan. This amount must be paid as described in the preceding paragraph and must be prorated to correspond with the portion of the transitional liability due.

Elected officials--refund for service credit purchases

(R.C. 145.201)

Current law permits the purchase of additional service credit by a PERS member who is an elected official or is appointed by the Governor with the advice and consent of the Senate to serve full-time as a member of a public body. The amount purchased may not exceed the lesser of 35% of the member's service credit as an elected or appointed official or the amount permitted by federal law. The member may purchase the service credit at any time prior to retirement. The bill permits a member who purchased service credit for service as an elected or appointed official (or the member's estate) to receive a refund for all or a portion of the amount the member paid to purchase the credit if using the credit to calculate the member's retirement benefit results in a benefit that is greater than the maximum benefit allowed (100% of the member's final average salary).

PERS law enforcement officers--benefit for surviving spouse

(R.C. 145.45)

Under current law, if a PERS member with at least one and a half years of PERS service credit dies prior to retirement, a surviving spouse who meets certain requirements is eligible to receive survivor benefits. The spouse must be either (1) age 62 or (2) any age, if the deceased member had ten or more years of service credit, the spouse is caring for a minor or dependent child or the spouse is adjudged mentally or physically incompetent.

The bill waives the requirement that the member have had ten years of service credit if the member was a law enforcement officer killed in the line of duty.[13] Therefore the surviving spouse need not be age 62, caring for a child, or adjudged mentally or physically incompetent.

Beneficiary designations

(R.C. 145.43)

Current law provides that, if a member dies prior to receiving a retirement benefit, the member's accumulated contributions to PERS may be paid out as a lump sum payment to one or more beneficiaries, as specified by the member.[14] To designate a beneficiary, a member must sign and complete a form supplied by PERS. To be valid, the beneficiary form must be filed prior to the member's death. A member may designate one or more people as beneficiaries, but current law states that the accumulated contributions will be paid "jointly" if there are two or more beneficiaries. The bill provides that, subject to rules adopted by the PERS Board, a member who designates two or more beneficiaries must specify the percentage of the lump sum each beneficiary is to be paid. If the member does not specify the percentages, the lump sum will be divided equally among the beneficiaries.

Defined contribution plan participants--change of annuity plan

(R.C. 145.92)

Current law requires a PERS member who is participating in a PERS defined contribution plan[15] to get spousal approval of a change in an annuity plan. However, the law requires the document evidencing the spouse's consent to the change in plan to be signed only by the member--the spouse's signature is not required. The bill amends this section to require that the form be signed by the member's spouse, rather than the member.

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[13] *"Killed in the line of duty" means either that death occurred in the line of duty or as a result of injury sustained in the line of duty.*

[14] *The lump sum payment is in lieu of survivor benefits.*

[15] *See* **COMMENT**.

CHANGES TO OP&F

<u>OP&F Board of Trustees--police officer retirant member</u>

(Section 3)

The Board of Trustees of the Ohio Police and Fire Pension Fund is comprised of nine members: the Treasurer of State's investment designee; two investment expert members, one appointed by the Governor and one appointed jointly by the Speaker of the House and President of the Senate; four employee members, two police officers and two firefighters; and two retirant members, one a retired police officer, the other a retired firefighter.

The bill provides that the police officer retirant member whose term of office commenced on June 2, 2003, is to serve a term of five, rather than four years. (The terms of future police officer retirant members are unaffected by the bill: they will have four-year terms, as provided in current law.)

COMMENT

PERS and STRS members may participate in one of three retirement plans: defined benefit, defined contribution, or combined. The defined benefit plan entitles an eligible member to a retirement allowance based on the member's final average salary, years of service credit, and sometimes age. A defined contribution plan is a plan consisting of benefit options that provide for an individual account for each participating member and under which benefits are based solely on the amounts that have accumulated in the account. A combined plan combines features of both the defined benefit and defined contribution plan.

HISTORY

ACTION	DATE
Introduced	05-19-05
Reported, H. Financial Institutions, Real Estate, and Securities	12-05-06
Passed House (97-0)	12-06-06

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