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Bill Analysis

Legislative Service Commission

H.B. 270

127th General Assembly
(As Introduced)

**Reps. Schneider, Adams, Latta, Fessler, J. McGregor, Setzer, Webster,
Collier**

BILL SUMMARY

- Establishes a new benefit penalty for persons retired from a state retirement systems who, less than 180 days after retirement benefits commence, return to employment in the same or substantially equivalent positions.
- Sets the penalty for such re-employment as forfeiture of the pension portion of the retirement benefit and suspension of the annuity portion and applies the penalty to persons retired from the Public Employees Retirement System, Ohio Police & Fire Pension Fund, State Teachers Retirement System, or School Employees Retirement System.
- Provides for the suspended annuity portion of a retirement benefit to be paid in a single payment following termination of post-retirement employment.
- Provides for a refund of the retirant's contributions to the retirement system during the period of post-retirement employment.
- Eliminates PERS provisions governing employment of a PERS retirant who is elected or appointed to the public office held at retirement.

CONTENT AND OPERATION

Background

(R.C. 145.38, 742.26, 3307.35, and 3309.341; 145.381, 3307.353, and 3309.345 (not in the bill))

Two month forfeiture

Current law provides that a person who retires under the Public Employees Retirement System (PERS), Ohio Police & Fire Pension Fund (OP&F), State Teachers Retirement System (STRS), School Employees Retirement System (SERS), State Highway Patrol Retirement System (SHPRS), or Cincinnati Retirement System may be employed in a position covered by PERS, OP&F, STRS, or SERS. However, a retirant who has received a retirement allowance for less than two months when re-employment begins forfeits the entire retirement allowance for any month in which the retirant is employed before the expiration of the two-month period.¹ Contributions made by the retirant during re-employment are to be refunded on the retirant's death or termination of employment. The bill does not affect the two-month forfeiture.

Public officials

Unless certain conditions are met, a PERS member who retires while holding a state or local elective office² and then is elected or appointed to the same office for the remainder of the term or the subsequent term is subject to a penalty. The penalty is forfeiture of the pension portion of the retirement allowance and suspension of the annuity portion. The suspended annuity accumulates to the member's credit to be paid in a single payment after the re-employment terminates. The full retirement allowance resumes on the first day of the first month after re-employment terminates.

The penalty does not apply in any of the following circumstances:

(1) The official files with the county board of elections, not less than 90 days before the primary election or, if no primary is scheduled, 90 days before the

¹ A retirement allowance consists of a pension and an annuity. The annuity is based on the member's contributions during employment. The pension is funded by the employer's contributions made on behalf of the member.

² Elective officials, other than school board members, are permitted, but not required, to join PERS. School board members may join SERS.

date on which a primary would have been held, a written declaration of intent to retire before the end of the term.

(2) The retirant retires at least 90 days before the election.

(3) In the case of a person appointed to an elective office, the person notifies the appointing authority that the person is already retired or intends to retire before the end of the term for which the appointment is made.

The bill establishes a new benefit forfeiture and suspension that applies to all re-employed retirants in PERS, OP&F, SERS, and STRS. It eliminates the penalty and forfeiture provision of current law that applies to an elected or appointed official in PERS.

Forfeiture and suspension of pension during re-employment

(R.C. 145.38, 742.26, 3307.35, and 3309.341)

The bill causes retirants³ of PERS, OP&F, STRS, or SERS who are re-employed in essentially the same position held at retirement to forfeit the pension portion (the amount based on employer contributions) of the retirant's pension and have the annuity portion suspended.

Specifically, the bill provides that a PERS, OP&F, or SERS retirant or STRS superannuate⁴ who, less than 180 days after commencing a retirement benefit, returns to employment in the same position or a position in which the

³ PERS and STRS have defined benefit plans, defined contribution plans and combined plans. SERS has a defined benefit plan and authority to create one or more defined contribution plans. "Retirant" is defined, generally, to include a person receiving a retirement allowance from a defined benefit plan or, under PERS, a defined contribution or combined plan. The bill specifically adds as a retirant an individual receiving a benefit from an SERS or STRS defined contribution or combined plan.

⁴ "Superannuate" is defined under current law (R.C. 3307.01, not in the bill) as either of the following:

(1) A former teacher receiving an STRS a defined benefit retirement allowance or disability benefit;

(2) A former teacher receiving a benefit, other than a disability benefit, from STRS under a defined contribution plan.

"Superannuate" may also mean a former teacher receiving from STRS a combined service retirement benefit based in part on service covered by PERS or SERS.

duties are the same or substantially equivalent with the public employer that was the employer at the time of retirement, forfeits the pension portion of the retirement benefit and has the annuity portion suspended.⁵ The bill provides that in all cases of doubt, the retirement board to which the retirant's employment is subject is to determine whether the duties of the position are the same or substantially equivalent. The board's decision is final.

The forfeiture of the pension portion of the retirement benefit begins on the day employment commences and ends on the first day of the month following the month in which the employment ends. The annuity portion of the retirement benefit is suspended on the day the employment begins and accumulates to the credit of the retirant. The accumulated annuity is to be paid in a single payment following termination of the re-employment (see **COMMENT**) along with a refund of the retirant's contributions to the retirement system made during the period of re-employment.

The full retirement benefit is to resume on the first day of the month following termination of the re-employment.

Disability defined benefit plan participation

(R.C. 145.38)

Current law provides that if a disability benefit provided to an OP&F, STRS, SERS, State Highway Patrol System (SHPRS), or Cincinnati Retirement System member who is employed as a re-employed retirant in PERS is terminated, the retirant becomes a member of PERS. The membership is effective on the first day of the month after the termination of the disability benefit. Current law does not specify which retirement plan the member is to participate in.⁶ The bill provides that the retirant is to participate in the PERS defined benefit plan.

⁵ For purposes of the bill:

(1) "Pension portion of a retirement benefit" means the portion of a retirement allowance that is derived from contributions made by the employer and is paid in monthly or less frequent installments;

(2) "Annuity portion of a retirement benefit" means the portion of a retirement allowance that is derived from contributions made by the retirant and is paid in monthly or less frequent installments.

⁶ The PERS and STRS defined benefit plans provide a retirement benefit based on a formula that considers years of service, salary, and sometimes age. The plans also provide disability benefits and access to health care coverage. The defined contribution

Technical changes

(R.C. 145.38, 145.384, 145.473, and 145.58)

Under current law governing PERS a "retirement allowance" is the total of the pension and annuity distributed to a retirant under a defined benefit plan. The bill uses the term "retirement benefit" to include either a retirement allowance or distributions made under a defined contribution or combined plan as a consequence of retirement. Technical changes are made to make the proper references to "allowance" and "benefit" throughout the bill.

COMMENT

Two-month and 180-day period

As discussed above, the bill does not change current law regarding the forfeiture of a retirement benefit if a retirant returns to employment in PERS, OP&F, STRS, or SERS less than two months after a retirement benefit begins. The bill's new forfeiture and suspension for PERS, OP&F, STRS, or SERS retirants re-employed in the same or substantially similar position less than 180 days after commencement of a retirement benefit will overlap with the two-month provision. The bill does not specify whether the two-month forfeiture of the annuity portion of a retirement allowance will apply to a retirant subject to the 180-day provision. Under the 180-day provision, the annuity is suspended and paid in a lump sum on termination of the re-employment.

HISTORY

ACTION	DATE
Introduced	06-19-07

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plans provide a retirement benefit based solely on contributions and investment earnings on those contributions and do not provide disability or health care coverage. A combined plan has features of a defined benefit and a defined contribution plan.

