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Bill Analysis
Legislative Service Commission

Sub. S.B. 267
127th General Assembly
(As Passed by the Senate)

Sens. Faber, Seitz, Cates, Coughlin, Fedor, Harris, Kearney, D. Miller, Niehaus, Wilson, Spada, R. Miller, Wagoner, Stivers, Schuler, Mumper, Mason, Smith, Amstutz, Padgett

BILL SUMMARY

- Distinguishes the two existing sub-groups in the Public Employees Retirement System (PERS) law enforcement division by creating a public safety officer division.
- Includes in the PERS public safety officer division officers whose primary duties are other than to preserve the peace, protect life and property, and enforce Ohio laws and all Hamilton County Municipal Court bailiffs.
- Permits the PERS Board to establish a program under which a PERS member may convert up to five years of credit for non-law enforcement service to credit for service as a law enforcement or public safety officer by paying not less than 100% of the additional liability resulting from the conversion.
- Provides that the member contribution rate for PERS law enforcement officers is the rate established for PERS public safety officers plus an additional percentage, which is initially 1% of members' earnable salaries but may be increased by the Board to not more than 2%.
- Revises the penalties assessed against employers who fail to timely transmit to PERS employee retirement contributions or required reports of those contributions.

CONTENT AND OPERATION

Background

The Public Employees Retirement System (PERS) has special retirement and benefit provisions for members who are law enforcement officers (see **COMMENT**). Current law distinguishes two groups within the law enforcement division. The groups are composed of the same state, county, and township officers,¹ but are divided by the primary duties of the officer. Officers whose primary duties are the preservation of the peace, protection of life and property, and enforcement of Ohio laws qualify for a normal retirement benefit starting at age 48 with 25 years of service. Those officers whose primary duties are *other* than to preserve the peace, protect life and property, and enforce the laws of Ohio are eligible for a normal retirement benefit starting at age 52 with 25 years of service.² Under current law, a law enforcement officer's group, and, therefore, retirement eligibility, is determined at retirement, rather than during actual service.

The bill

Public safety officer division

(R.C. 145.01(Y) and 145.33(B))

The bill creates the PERS public safety officer division to distinguish between the two law enforcement officer groups. Under the bill, officers will be determined to be in the law enforcement or public safety officer division at the time of service rather than at retirement. Those who will be eligible to retire at

¹ Both groups include the following officers: a deputy sheriff, township constable or police officer in a township police department or district, drug agent, municipal public safety director, department of public safety enforcement agent, natural resources law enforcement staff officer, park officer, forest officer, preserve officer, wildlife officer, state watercraft officer, park district police officer, conservancy district officer, veterans' home police officer, special police officer for a mental health institution, special police officer for an institution for the mentally retarded and developmentally disabled, state university law enforcement officer, municipal police officer, house sergeant at arms, assistant house sergeant at arms, regional transit authority police officer, or state highway patrol police officer.

² Hamilton County Municipal Court bailiffs are included in this group.

age 48 will continue to be in the law enforcement division. Those who will not be eligible until age 52 will be in the new public safety officer division.³

Combining credit or receiving a separate annuity

Under current law, no specific statutory provisions exist to determine retirement eligibility at age 52 for a member who has service both as an officer whose primary duties were to preserve the peace, protect life and property, and enforce the laws of Ohio (law enforcement officer) and service as an officer whose primary duty was *other* than to preserve the peace, protect life and property, and enforce the laws of Ohio (public safety officer). The bill specifically permits a member to combine service as a public safety officer and service as a law enforcement officer to meet the 25 years of service requirement necessary to retire at age 52.⁴

The bill makes a technical change to continue current law's requirement that, to retire at age 48, the member must have 25 years as a law enforcement officer whose primary duties were to preserve the peace, protect life and property, and enforce the laws of Ohio. It makes clear that a member may not combine public safety officer service with law enforcement service to meet the requirements necessary to retire at age 48. An additional technical clarification is included to continue current law that allows a member to receive an annuity for non-law service that is in addition to the 25 years of service necessary to retire at age 48 under the law enforcement division or age 52 in the public safety officer division.⁵

³ Neither existing law nor the bill specifies how this distinction is made. It appears, however, that the employer determines which officers have as their primary duties preserving the peace, protecting life and property, and enforcing Ohio laws.

⁴ According to Deborah McCarthy, PERS Assistant Government Relations Officer, allowing a public safety officer to retire at age 52 by combining public safety officer service and law enforcement service is current PERS practice (telephone conversation with Deborah McCarthy, January 7, 2008).

⁵ For instance, if a member has 25 years of law enforcement service and 5 years of non-law enforcement service, the member may retire and receive a law enforcement benefit based on 25 years of law enforcement service and an additional annuity based on the 5 years of non-law enforcement service.

Conversion of non-law enforcement service

(R.C. 145.2914)

The bill permits the PERS Board to establish a program under which non-law enforcement service is treated as law enforcement or public safety officer service for purposes of determining retirement benefits and eligibility. For each year of service credit converted, the member is to pay an amount determined by the PERS Board that is not less than 100% of the additional liability resulting from the purchase of that credit. The member must agree to retire within 90 days of the conversion.⁶ The number of years a member may purchase under this program is limited to five.⁷

Contribution rates

(R.C. 145.49)

Current law provides that law enforcement members contribute 10.1% of their salaries to PERS (see **COMMENT**, below). The Board is authorized to calculate employee contribution rates separately for officers whose primary duties are other than to preserve the peace, protect life and property, and enforce Ohio laws. The current rate established by the Board for all law enforcement officers is 10.1%.⁸

The bill provides that the PERS Board may calculate contribution rates for PERS public safety officers. Under the bill, the contribution rate of PERS law enforcement officers is to be the rate established by the Board for public safety officers plus an additional percentage that is to be initially 1% and may be increased to no more than 2% of the officers' salaries.⁹

⁶ If the member fails to retire, PERS is to cancel the conversion and refund the payment to the member.

⁷ A member may purchase only part of the service, but may not exceed the limits imposed under 26 United States Code 415(n). The Internal Revenue Service places limits on the type and amount of service credit purchases that may be made under a qualified government plan such as PERS.

⁸ PERS, "OPERS Employer Notice," June 19, 2007 (available online at: <https://www.opers.org/pubs-archive/employers/notices/2007/EN-Certification-Local-Rates-2008.pdf>).

⁹ Current law unchanged by the bill provides that the Board may establish employer contribution rates on behalf of all officers in an amount that cannot exceed 18.1% of the officers' salaries.

Fines for failure to transmit timely contributions

(R.C. 145.47)

Each public employee is required to contribute a percentage of the employee's salary to PERS. Each employer of a covered employee is required to deduct that contribution from the employee's salary and transmit a warrant or check for the total amount to PERS. The employer is also required to submit a report of the contributions to PERS. The bill revises the penalties PERS is required to impose on an employer who fails to timely transmit a report or employee contributions.

Under current law, PERS is required to impose a penalty of 5% of the total amount due in a reporting period if the report or employee contributions are received later than 30 days after the end of the reporting period. Interest is to be charged on the penalty if it is not paid within three months.

Under the bill, unless the PERS Board adopts a rule establishing a different penalty, penalties for failing to transmit a report or contributions when due are as follows:

- (1) At least one but not more than ten days past due, an amount equal to 1% of the total amount due during the payment period;
- (2) At least 11 but not more than 30 days past due, an amount equal to 2.5% of the total amount due;
- (3) 31 or more days past due, an amount equal to 5% of the total amount.

The bill authorizes the Board to adopt rules to establish penalties in amounts that do not exceed the statutory limits. The bill continues current law that permits PERS to set the interest rate on penalties that are not timely paid, but requires that the interest on the penalty be charged if the penalty is not paid within 30 days (rather than three months under current law). The bill also permits an employer to make an electronic payment rather than a warrant or check.

COMMENT

The following chart shows the differences in contribution rates, retirement eligibility, and benefit calculations between regular PERS members and members in PERS law enforcement. Under the bill, the provisions for PERS law enforcement officers whose duties are other than to preserve the peace, protect life and property, and enforce the laws of Ohio largely apply to public safety officers.

Current Law				The Bill
PERS Feature	Regular PERS Members	PERS Law Enforcement Officers whose duties are to preserve the peace, protect life and property, and enforce the laws	PERS Law Enforcement Officers whose primary duties are other than to preserve the peace, protect life and property, and enforce the laws	PERS Public Safety Officers division under the bill
Employee Contribution Rate	10% of earnable salary	10.1% of earnable salary ¹⁰	10.1% of earnable salary	Determined by the PERS board
Employer Contribution Rate	State--14% of earnable salary Local--14% of earnable salary	17.40% of earnable salary ¹¹	17.40% of earnable salary	Determined by board but not to exceed 18.1%
Regular Retirement Eligibility	At any age with 30 or more years of service Age 65 with 5 years of service	Age 48 with 25 years of service Age 62 with 15 years of service	Age 52 with 25 years of service Age 62 with 15 years of service	Same as previous column
Early Retirement Eligibility	Age 60 with 5 or more years of service Age 55 with 25 or more years of service	Any age with 15 or more years of service, but payment of benefits is deferred until age 52	Any age with 15 or more years of service, but payment of benefits is deferred until age 52 Age 48 with 25 or more years of service	Same as previous column

¹⁰ Under the bill, the employee contribution is to be initially one per cent higher than that paid by PERS public safety officers, but not to exceed two per cent higher than that paid by public safety officers.

¹¹ As under current law, the contribution is not to exceed 18.1% of employees' earnable salaries.

Current Law				The Bill
PERS Feature	Regular PERS Members	PERS Law Enforcement Officers whose duties are to preserve the peace, protect life and property, and enforce the laws	PERS Law Enforcement Officers whose primary duties are other than to preserve the peace, protect life and property, and enforce the laws	PERS Public Safety Officers division under the bill
Disability Benefit Eligibility	<p>If membership commenced prior to 7/29/92, younger than age 60 with at least 5 years of service</p> <p>If membership commenced on or after 7/29/92, at any age with at least 5 years of service</p>	<p>For on-duty illness or injury, at any age, regardless of length of service</p> <p>For all other illness or injury same as regular PERS</p>	<p>For on-duty illness or injury, at any age, regardless of length of service</p> <p>For all other illness or injury same as regular PERS</p>	Same as previous column
Regular Retirement Benefit Formulas	<p>The greater of:</p> <p>(a) \$86 x years of service;</p> <p>(b) 2.2% final average salary (FAS) x years of service through 30 years, plus 2.5% FAS x years over 30, not to exceed 100% of FAS¹²</p>	<p>2.5% FAS x years of service through 25 years of service, plus 2.1% FAS x years over 25, not to exceed 90% of FAS</p>	<p>2.5% FAS x years of service through 25 years of service, plus 2.1% FAS x years over 25, not to exceed 90% of FAS</p>	Same as previous column

¹² With some exceptions, final average salary is the average of the three years of contributing service in which the member's earnable salary was highest (R.C. 145.01).

Current Law				The Bill
PERS Feature	Regular PERS Members	PERS Law Enforcement Officers whose duties are to preserve the peace, protect life and property, and enforce the laws	PERS Law Enforcement Officers whose primary duties are other than to preserve the peace, protect life and property, and enforce the laws	PERS Public Safety Officers division under the bill
Early Retirement Benefit Formulas	Less than 30 years of service, or under age 65, benefit is reduced 3 to 25%, depending on age and years of service	Under age 62 with at least 15 but less than 25 years of service, 1.5% FAS x years of service	Under age 62 with at least 15 but less than 25 years of service, 1.5% FAS x years of service At least age 48 but less than age 52 with 25 years of service, benefit is reduced 7 to 25%, depending on age	Same as previous column
Disability Benefit Formulas	<p>If a member prior to 7/29/92, the greater of:</p> <p>(a) \$86 x (years of service + projected years of service to age 60);</p> <p>(b) 2.2% x FAS x (years of service + projected years of service to age 60)</p> <p>If a member after 7/29/92, the greater of:</p> <p>(a) 4.5% x FAS;</p> <p>(b) 2.2% x FAS x years of service, up to 60% of FAS</p>	Same as Regular PERS	Same as Regular PERS	Same as previous column

HISTORY

ACTION	DATE
Introduced	12-18-07
Reported, S. Health, Human Services & Aging	04-03-08
Passed Senate (32-0)	04-08-08

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