



# Ohio Legislative Service Commission

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## Bill Analysis

Amy J. Rinehart

### **H.B. 246**

128th General Assembly  
(As Introduced)

**Reps.** Yuko and Stewart, Garland, Mallory, Pillich, Hagan, Murray, Foley, Patten, Luckie, Lundy, Winburn, Boyd, Chandler, Slesnick, Letson, Snitchler, Oelslager

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## **BILL SUMMARY**

- Provides that a member of the Ohio Police and Fire Pension Fund (OP&F) who is disabled as a result of specified diseases is presumed for purposes of determining disability benefits to have incurred the disease while performing official duties if the disease or evidence of it was not revealed by the physical examination passed on the member's entry into a police or fire department.
  - Provides that a firefighter, police officer, or public emergency medical services worker who is disabled as a result of specified diseases is presumed for purposes of Ohio's Workers' Compensation Law to have incurred the disease while performing official duties.
  - Specifies that for the purposes of the law governing OP&F, the presumption created by the bill may be refuted by competent evidence and that, for the purposes of the law governing workers' compensation, the presumption created by the bill may be refuted by affirmative evidence.
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## **CONTENT AND OPERATION**

### **Background**

#### **OP&F disability benefits**

The Ohio Police and Fire Pension Fund (OP&F) is generally comprised of full-time municipal police officers and full-time firefighters employed by a fire department of the state, an instrumentality of the state, or a municipal corporation, township, joint fire district, or other political subdivision of the state.

OP&F provides disability benefits to eligible members. OP&F has two on-duty disability benefit categories: partial disability and total and permanent disability. OP&F also provides coverage for off-duty disability. To be eligible for an off-duty disability benefit, a member must have five years of active service in OP&F and have a disability that prevents the member from performing the member's duties and impairs the member's earning capacity. The disability must not have been caused by the member's negligence.<sup>1</sup> The annual benefit for on-duty, total and permanent disability is 72% of the member's average annual salary<sup>2</sup> and for on-duty partial disability an amount based on years of service but not exceeding 60% of the member's average annual salary. The annual benefit for off-duty disability is an amount fixed by the OP&F Board not exceeding 60% of the member's average annual salary.

To be eligible for partial disability benefits, a member must have a disability that prevents the member from performing the member's duties and impairs the member's earning capacity.<sup>3</sup> To be eligible for total and permanent disability benefits, a member must be unable to perform the duties of any gainful occupation for which the member is reasonably fitted by training, experience, and accomplishments and have no present indication of recovery.<sup>4</sup> In the case both of partial and of total and permanent disability, the disability must have occurred as a result of the performance of the member's official duties.<sup>5</sup> The Board of Trustees of the Police and Fire Pension Fund must determine whether a member is disabled by using objective criteria in rules adopted by the Board.

### **Workers' compensation benefits**

Under the law governing workers' compensation, an employee who is injured or contracts an occupational disease<sup>6</sup> and the dependents of an employee who is killed or dies as the result of an occupational disease is entitled to receive all of the following: (1)

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<sup>1</sup> R.C. 742.38(D)(4).

<sup>2</sup> "Average annual salary" means the highest average annual salary of an OP&F member during any three years of contributions determined by dividing the member's total salary as an employee during the years by three.

<sup>3</sup> R.C. 742.38(D)(2).

<sup>4</sup> R.C. 742.38(D)(1).

<sup>5</sup> R.C. 742.38(D)(1) and (2).

<sup>6</sup> "Occupational disease" means a disease contracted in the course of employment, which by its causes and the characteristics of its manifestation or the condition of the employment results in a hazard which distinguishes the employment in character from employment generally, and the employment creates a risk of contracting the disease in greater degree and in a different manner from the public in general (R.C. 4123.01(F)).

compensation for the loss sustained because of the injury, occupational disease, or death, (2) medical, nurse, and hospital services and medicine necessary for the treatment of the injury or occupational disease, and (3) the amount of funeral expenses in case of death.<sup>7</sup> Current law contains a schedule of occupational diseases for which an employee or dependents may receive workers' compensation benefits.

## **The bill**

### **Diseases contracted while performing official duties**

(R.C. 742.38(D)(3)(b) and 4123.68(X))

#### **OP&F**

Current law provides that, unless the contrary is shown by competent evidence, an OP&F member who is disabled as a result of heart disease or chronic cardiovascular or respiratory disease is presumed to have incurred the disease while performing official duties if the disease was not revealed by a physical examination on entry into a police or fire department.<sup>8</sup> This makes the member eligible for on-duty disability benefits.

The bill adds additional diseases to those a member is presumed to have incurred while performing official duties. The bill provides that an OP&F member who is a police officer or is a firefighter who has been assigned to at least three years of hazard duty as a member of a fire department and is disabled as a result of any of the following types of cancer or other disease, is presumed to have incurred the disease while performing the member's official duties:

- (1) Cancer of the lung, brain, kidney, bladder, rectum, stomach, skin, or prostate;
- (2) Non-Hodgkins lymphoma;
- (3) Leukemia;
- (4) Multiple myeloma;
- (5) Testicular or colorectal cancer;

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<sup>7</sup> R.C. Chapters 4121., 4123., 4127., and 4131.

<sup>8</sup> R.C. 742.38(D)(3)(a).

(6) A contagious or infectious disease specified in rules adopted by the Public Health Council concerning emergency medical services workers and funeral services workers.<sup>9</sup>

The presumption does not apply if competent evidence to the contrary of the presumption is shown or if the disease that resulted in a member's disability, or any evidence of it, was revealed by the physical examination passed by the member on entry into the department.

### **Workers' compensation**

In the schedule of diseases specified in the law governing workers' compensation, the bill provides that the following types of cancer or other disease contracted by a police officer or by a firefighter or public emergency medical services worker who has been assigned at least three years of hazard duty constitutes a presumption, which may be refuted by affirmative evidence, that the cancer or disease was contracted in the course of and arising out of employment:

- (1) Cancer of the lung, brain, kidney, bladder, rectum, stomach, skin, or prostate;
- (2) Non-Hodgkins lymphoma;
- (3) Leukemia;
- (4) Multiple myeloma;
- (5) Testicular or colorectal cancer;

(6) A contagious or infectious disease specified in rules adopted by the Public Health Council.

The bill defines "public emergency medical services worker," as a person who holds a current valid certificate to practice as a first responder, emergency medical technician-basic, emergency medical technician-intermediate, or emergency medical technician-paramedic and is a member of a public retirement system.<sup>10</sup>

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<sup>9</sup> R.C. 3701.248(F). The Public Health Council has adopted a rule specifying the diseases that are reasonably likely to be transmitted by air or blood during the normal course of duties performed by an emergency medical services worker or funeral services worker. Twenty-two diseases are specified, including diphtheria, hepatitis B and C, tuberculosis, and rabies.

<sup>10</sup> This will primarily affect members of OP&F but might also affect certain members of the Public Employees Retirement System.

## Effective date

(Sections 3 and 4)

The bill's provisions governing OP&F apply only to OP&F disability benefit applications filed on or after its effective date, and the provisions governing workers' compensation apply only to claims arising on or after that date.

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## HISTORY

ACTION	DATE
Introduced	06-30-09

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