Ohio Legislative Service Commission

Bill Analysis

Amy J. Rinehart

H.B. 202
129th General Assembly
(As Introduced)

Rep. Hollington

BILL SUMMARY

Re-employment penalty

- Establishes a new re-employment penalty for a public retirement system member who retires and becomes re-employed in a position covered by the Public Employees Retirement System, Ohio Police and Fire Pension Fund, State Teachers Retirement System, or School Employees Retirement System.
- Under the new penalty, causes a re-employed retirant to forfeit one dollar of the retirant's retirement benefit for every two dollars of compensation over $14,160.
- Replaces current law's re-employment penalty for elective officials with both the existing two-month benefit forfeiture penalty and the new penalty.

Deferred Retirement Option Plans (DROPs)

- Eliminates the option of electing to participate in a DROP for members of the Ohio Police and Fire Pension Fund and State Highway Patrol Retirement System who do not make the election prior to the bill's effective date. Eliminates an OP&F or SHPRS member's option to elect to participate in a DROP.

CONTENT AND OPERATION

Re-employment penalty

The bill creates a new re-employment penalty for public retirement system retirants who are re-employed by the same or another state or local government employer. It replaces current law's re-employment penalty for elective officials with both the existing two-month benefit forfeiture penalty and the new penalty. The new penalty causes a re-employed retirant to forfeit one dollar of the retirant's retirement benefit for every two dollars of compensation over $14,160. A retirant is a person who is receiving a retirement allowance from one of the state's public retirement systems. The retirement allowance is the amount the retirant receives. In most cases it consists of an annuity funded by employee contributions and a pension funded by employer contributions and earnings from the retirement system's investment of employee and employer contributions.

Current law permits a member of a public retirement system to retire and be re-employed in a position covered by one of four of the state's public retirement systems: the Public Employees Retirement System (PERS), Ohio Police and Fire Pension Fund (OP&F), State Teachers Retirement System (STRS), or School Employees Retirement System (SERS). (The fifth system, the State Highway Patrol Retirement System (SHPRS), does not allow employment of retired public employees in positions subject to that system.) Re-employment penalties apply when one of the following occurs: (1) a retirant has received a retirement allowance for less than two months when re-employment commences, (2) unless certain conditions are met, a PERS member retires from elective office and is elected or appointed to the same office for the remainder of the existing term of office or the next term, or (3) a PERS retirant is re-employed as an independent contractor (see "**Re-employment penalties – current law**," below).[1]

Under the new re-employment penalty created by the bill, a re-employed retirant forfeits one dollar of the retirant's retirement benefit for every two dollars of compensation over $14,160 earned after the two-month period. The excess earnings base of $14,160 is to be annually adjusted by the actual average increase, if any, in the Consumer Price Index.[2]

The bill retains the existing two-month benefit forfeiture penalty. It eliminates the re-employment penalty for PERS retirants who hold elective office.[3] The result is that both the existing two-month forfeiture penalty and the bill's new penalty apply to elective officials.

The bill does not specify whether it applies to persons who have already retired. However, because under the Revised Code retirement benefits vest at the time they are granted[4] and the Ohio Constitution prohibits legislation that retroactively impairs

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[1] R.C. 145.38(B) and (C), 742.26(D), 3307.35(F), and 3309.341(C).

[2] R.C. 145.38(B)(6), 742.26(F), 3307.35(H), and 3309.341(E).

[3] R.C. 145.38(C).

[4] R.C. 145.561, 742.46, 3307.42, and 3309.661.

vested rights,[5] the bill applies only to retirement system members who retire after the bill's effective date. The vesting provisions as they apply to re-employed retirants were upheld by the Ohio Supreme Court in *McBeam v. Retirement Board*[6] and the *Sixth Circuit U.S. Court of Appeals in Mascio v. Public Employees Retirement System*.[7]

Re-employment penalties – current law

The re-employment penalties that apply under current law concern retirants who are re-employed less than two months after retiring or act as independent contractors and elective officials who are re-elected or appointed to the office from which they retired.

Two-month forfeiture

A retirant subject to one of the state's public retirement systems who has received a retirement allowance for less than two months when re-employment begins forfeits the retirement allowance for any month of re-employment during the two-month period. On termination of the employment or on the retirant's death, the contributions made during that period are refunded. The retirant's service and contributions made during the two-month period cannot be used in calculating a benefit for the retirant's employment with that employer.[8]

Penalty for PERS retirants who hold elective office

Unless certain conditions are met, a PERS member who retires while holding a state or local elective office 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: 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 following termination of the re-employment.[9]

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

(1) The official retires at least 90 days before the election;

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[5] Article II, section 28.

[6] 161 Ohio St. 327 (1954).

[7] 160 F.3d 310 (1998).

[8] R.C. 145.38(B)(4), 742.26(D), 3307.35(F), and 3309.341(C).

[9] R.C. 145.38(C)(1) and (2).

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

(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.

Penalty for PERS retirants employed as independent contractors

A PERS retirant who enters into a contract as an independent contractor with a public employer covered by PERS is subject to a penalty if one of the following applies:

(1) At the time of retirement, the retirant was employed by the contracting public employer;

(2) Less than two months after retirement, the retirant enters into a contract with a public employer other than the retirant's employer at the time of retirement.

If either of the above applies, the retirant is subject to a penalty during the entire period of service under the contract. For the period beginning on the first day of the month following the month in which services under the contract begin until the first day of the month following the month in which the services end, the retirant forfeits the pension portion of the retirement allowance, while payment of the annuity portion of the allowance is suspended. The suspended annuity payments accumulate to the retirant's credit and are paid in a single payment after service under the contract terminates.[10]

A retirant subject to this penalty is ineligible to contribute to PERS and is therefore ineligible to receive a benefit for the period of employment under the contract.

Deferred Retirement Option Plan (DROP)

The bill eliminates the option of an OP&F or SHPRS member to make an election to participate in a deferred retirement option plan (DROP). A member who makes the election before the bill's effective date may continue participating in DROP after the bill takes effect.[11]

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[10] R.C. 145.38(B)(6).

[11] R.C. 742.44 and 5505.51.

Generally speaking, a DROP is an arrangement under which an OP&F or SHPRS member who is eligible to retire and receive a pension continues to work. Instead of having continued compensation and additional years of service taken into account for purposes of the plan's benefit formula, the member has a pension, member contributions, and interest accrue to a separate account during each year of the continued employment. On termination of employment, the member receives a lump sum distribution of the amounts accrued in the account, in addition to whatever pension the member is eligible to receive at the time DROP participation begins.

HISTORY

ACTION	DATE
Introduced	04-12-11

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