Ohio Legislative Service Commission

Bill Analysis

Amy J. Rinehart

H.B. 388

129th General Assembly
(As Introduced)

Reps. Damschroder, Thompson, Pelanda

BILL SUMMARY

- Replaces current law's re-employment penalties with a new 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 the retirement benefit of a re-employed retirant to be suspended and placed in an account maintained by the retirement system from the first month following re-employment through the month following the month re-employment ends.
- Provides for the retirement benefit to resume the month following termination of re-employment and be accompanied by an annuity based on the amount in the retirant's account or, if the annuity would be less than $25 per month, a lump sum payment.

CONTENT AND OPERATION

Re-employment penalty

The bill replaces current law's re-employment penalties with a new penalty under which a retirant's retirement allowance is suspended during re-employment. 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 which is funded by employee contributions, and a pension, which is 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]

Instead of the existing penalties, the bill provides for the retirement allowance of a re-employed retirant to be suspended and placed in an account maintained by the retirement system from the first day of the month following the month employment commences to the first day of the month following the month employment ends. The result is that during the re-employment the retirant receives only the compensation for the position, but later receives an annuity or lump sum payment based on the amounts placed in the account. Payment of the retirement allowance resumes on the first day of the month following termination of the re-employment and is accompanied by the new annuity or lump sum payment.[2] The annuity is to have a reserve equal to the amount placed in the retirant's account, except that if the annuity would be less than $25 per month, the retirant is to receive a lump sum payment.[3] Amounts received under the bill may not be included to determine cost-of-living adjustments (COLAs) or any other post-retirement increases.[4]

The bill does not specify whether it applies to persons who have already retired. However, because under the Revised Code[5] retirement benefits vest at the time they are granted and the Ohio Constitution prohibits legislation that retroactively impairs vested rights,[6] the bill applies only to retirement system members who retire after the bill's

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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)(1), 742.26(C)(1), 3307.35(B), and 3309.341(B)(1).

[3] R.C. 145.386(A), 742.261(A), 3307.354(A), and 3309.346(A).

[4] R.C. 145.386(H), 742.261(E), 3307.354(D), and 3309.346(E).

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

[6] Article II, section 28.

effective date. It applies to elected officials, as well as other retirement system members.

Re-employment annuity

As with a retirement allowance, if a PERS or OP&F retirant is married at the time of application for the annuity, the annuity is to consist of reduced annuity payments to the retirant for life and one-half of the annuity payment continuing after the retirant's death to the retirant's surviving spouse, unless the application is accompanied by a signed statement of the spouse's consent to another payment plan or the retirement board waives the requirement that the spouse consent.[7]

An unmarried PERS or OP&F retirant must select one of the following as the annuity plan of payment: (1) the retirant's single life annuity or (2) reduced annuity payments to the retirant for life with continuing payments in the same amount to a surviving beneficiary. If the retirant fails to select a plan of payment, the annuity is to be paid under the plan of payment specified in rules adopted by the retirement board.[8]

In the case of a PERS retirant, the death of the retirant's spouse or designated beneficiary cancels the plan of payment. The retirant is to receive the equivalent of the retirant's single life annuity, effective the first day of the month following the date of death.[9]

On divorce, annulment, or marriage dissolution, a PERS retirant receiving an annuity under which the beneficiary is the spouse, may, with written consent of the spouse or pursuant to a court order with jurisdiction over termination of the marriage, elect to cancel the plan and instead receive the equivalent of the retirant's single life annuity. The election must be made on a form provided by the PERS Board and is effective the month following its receipt by the Board.[10]

Following marriage or remarriage, a PERS retirant receiving a single life annuity may elect a new plan of payment based on the actuarial equivalent of the retirant's single life annuity, as determined by the PERS Board. The election must be made not later than one year after the date of the marriage or remarriage.[11]

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[7] R.C. 145.386(A)(1) and 742.261(A)(1).

[8] R.C. 145.386(A)(2) and 742.261(A)(2).

[9] R.C. 145.386(B)(1).

[10] R.C. 145.386(B)(2).

[11] R.C. 145.386(C).

If a retirant dies during re-employment, a lump sum payment is to be paid to the retirant's beneficiary, or in the case of an OP&F retirant, the retirant's surviving spouse, or if there is no surviving spouse, the retirant's estate. If at the time of death, a retirant receiving a monthly annuity received less than an amount equal to the annuity reserve, the difference between the amount received and the reserve is to be paid to the retirant's beneficiary, or in the case of an OP&F retirant, the retirant's surviving spouse, or if there is no surviving spouse, the retirant's estate. If a beneficiary receiving an annuity dies prior to receiving the balance of the annuity reserve, the remaining amounts are to be paid to the beneficiary's estate.[12]

Re-employment penalties – current law

The re-employment penalties apply under current law to retirants who return to covered employment less than two months after retirement, retired elected officials, and retirants who act as independent contractors.

Two-month forfeiture

A retirant 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 will be 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.[13]

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.[14]

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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[12] R.C. 145.386(E), 742.261(C), 3307.354(C), and 3309.346(C).

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

[14] 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.[15]

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.

HISTORY

ACTION	DATE
Introduced	12-01-11

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