Maria E. Seaman *Legislative Service Commission*

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(As Passed by the General Assembly)

Reps. **Willamowski, Terwilleger, Van Vyven, Hartnett, Grendell, Netzley, Clancy, A. Core, Mottley, Hollister, Vesper, Williams, Salerno, Schuck, Bender, Widener, Austria**

Sens. **Blessing, Johnson, Drake, Herington**

Effective date: March 15, 2001; Sections 1 to 8, 11, and 14 effective April 1, 2001; Sections 9 and 10 and certain provisions effective January 1, 2002

ACT SUMMARY

Changes to Ohio's state retirement systems

- Permits a public retirement program, acting pursuant to a court order dividing marital property, to make payments to a member's former spouse for the purpose of dividing a retirement benefit or lump sum payment and defines "public retirement program" as an alternative retirement plan provider or one of Ohio's five state retirement systems: the Public Employees Retirement System (PERS), Ohio Police and Fire Pension Fund (OP&F), School Employees Retirement System (SERS), State Teachers Retirement System (STRS), and State Highway Patrol Retirement System (SHPRS).

- Requires the Ohio Retirement Study Council to have prepared a report examining certain issues concerning benefits provided by a public retirement program.

- Authorizes the transfer of service credit and contributions between the Cincinnati Retirement System and a state retirement system.

- Specifies that a state retirement system's board is not required to hold an election for a position as a member of the board if only one candidate is nominated for the position in accordance with that system's law governing the election of board members.

Changes to PERS, SERS, and STRS

- Provides that an individual eligible for an annuity earned as a reemployed retirant and an annuity from a position that continues after retirement from another position covered by PERS, STRS, or SERS is to receive a single annuity that commences and is paid like a reemployed retirant's annuity.

- Provides that a PERS, SERS, or STRS retirant or an other system retirant who returns to employment earlier than two months after retirement forfeits retirement benefits for any month the retirant is employed prior to the expiration of the two-month period, rather than for the number of days the retirant is employed.

- Prohibits under certain circumstances payment to the beneficiary of a retired PERS, SERS, STRS member, or other individual who may be eligible to receive a benefit from PERS, SERS, or STRS, absent a court order, if the death of the retired member or other individual was caused by the beneficiary.

- Requires PERS to transfer to SERS or STRS, in the case of a coordinated retirement benefit, a portion of any amount paid to PERS by a PERS employer for a period during which the employer failed to deduct contributions.

Changes to PERS and STRS

- Authorizes the PERS and STRS Boards, in the case of a member who is eligible to retire and applies for a refund of member contributions, to waive the requirement of spousal consent to the refund, if the spouse is incapacitated or cannot be located, or for any other reason specified by PERS or STRS Board.

PERS changes

- Authorizes a PERS officer to certify the system's records in the same manner as the executive director.

- Provides that the reduction in final average salary used to calculate benefits paid to qualified survivors of a deceased disability benefit recipient is also used to calculate the benefit paid to a surviving spouse or

other sole dependent beneficiary of a member who was eligible to retire at the time of death.

- Authorizes the surviving spouse or dependents of a deceased disability benefit recipient to purchase service credit under the same terms and conditions that the deceased member could have purchased the credit.

- Establishes the employee contribution rate for PERS members contributing toward a benefit based on law enforcement service as a sheriff, deputy sheriff, township constable or police officer as the sum of 1.1% of the member's earnable salary and the employee contribution rate calculated for other members contributing toward a benefit based on law enforcement service.

- Requires that a reelected official who is receiving a penalized retirement allowance and is eligible to elect to have the penalty cease make the election not later than 90 days after the act's effective date.

- Permits an elective official who, prior to September 14, 2000, retired under SERS or STRS and, on that date, was contributing to PERS, to combine the official's PERS service with the SERS or STRS service and have the official's retirement allowance recalculated under the law providing for coordination of retirement benefits under PERS, SERS, and STRS.

- Eliminates a provision that prohibited cost-of-living increases to certain PERS members who retire from public office and are reelected or reappointed to the same office for the term immediately following the term during which the member retired.

STRS changes

- Requires the STRS Board to adopt rules establishing penalties to be paid by employers who fail to transmit to STRS the required employee and employer contributions.

- Eliminates a provision that prohibited an STRS retirant from receiving the portion of an allowance or benefit that is attributable to employer contributions for any period the retirant is compensated under a private contract for performing services for the employer that employed the retirant at the time of retirement.

- In the case of a refund of contributions of a member with five or more years of service credit, provides that in determining the additional amount paid from the Employers Accumulation Fund amounts paid to restore service credit and to purchase credit for leaves of absence are not to be considered.

- Excludes from the compensation used in determining final average salary any amounts resulting from a percentage increase paid to a member during the member's two highest years of compensation that results from employment by a different employer or promotion to a position held by another employee within the 12-month period preceding the promotion.

- Modifies the exception of types of service credit that qualify for a percentage of final average salary in excess of 2.2%.

- Provides for a recalculation of certain coordinated benefits so as to include certain types of military service credit.

- Makes changes to the defined contribution plan established by STRS.

Changes to the existing alternative retirement program for academic and administrative employees of public institutions of higher education

- Specifies that the alternative retirement program is established for the purpose of providing to academic or administrative employees of public institutions of higher education the opportunity of participating in an alternative retirement plan (ARP) as an alternative to participating in PERS, SERS, or STRS.

- Provides that the board of trustees of a public institution of higher education is the sponsor of each ARP offered under the program.

- Specifies that the board of trustees of each public institution is required to adopt an ARP and that the public institution is required to enter into contracts with each designated entity that is willing to provide the investment options under the public institution's ARP.

- Requires that each ARP offered under the program be a defined contribution plan that is a qualified retirement plan under the Internal Revenue Code.

- Provides that, in the case of a public institution of higher education to which the law governing classification of state employees does not apply, an employee on the institution's administrative staff serving in a position comparable to a position in the unclassified civil service is an academic or administrative employee for purposes of determining eligibility to participate in an ARP.

- Increases to 120 days (from 90) the length of time each eligible employee has to elect to participate in an ARP.

- Specifies that an election to participate in an ARP applies to the participant's employment in all positions at a public institution, unless the participant terminates employment at the public institution and does not return to employment in any position at that institution prior to one year after the termination.

- Requires each public institution to allow an electing employee to contract with only one designated entity in any plan year, except during the first payroll period in any plan year and any time the entity selected by the employee ceases to be designated.

- Requires PERS, SERS, or STRS to transfer certain contributions made by or on behalf of an employee who elects to participate not later than 30 days after receiving an election form.

- Eliminates a provision allowing employees participating in an ARP to make voluntary deposits to the employee's ARP.

- Subjects any payment to be made to an employee participating in an ARP to withholding for restitution if the employee is convicted of or pleads guilty or no contest to certain felony sex offenses.

- Permits employees participating in an ARP to participate in the Ohio Public Employees Deferred Compensation program.

- Makes other changes to the law governing the alternative retirement program.

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CONTENT AND OPERATION

CHANGES TO OHIO'S STATE RETIREMENT SYSTEMS

Payments to a former spouse pursuant to a court order

(secs. 145.56, 742.47, 3305.08, 3307.41, 3309.66, and 5505.22)

Ohio law provides for division of marital property on termination of a marriage. Marital property includes retirement benefits or an interest in retirement benefits acquired by either or both of the spouses during the marriage. However, prior to the act, state law governing the state retirement systems and the alternative retirement program did not authorize withholding from a benefit except pursuant to a support order or to enforce restitution for certain crimes.[1]

Effective January 1, 2002, the act permits a public retirement program, which it defines as a state retirement system or the provider of an alternative retirement plan, to make payments to a member's former spouse pursuant to a court order for the purpose of dividing a retirement benefit or lump sum payment.[2]

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[1] *The state retirement systems are the Public Employees Retirement System (PERS), Ohio Police and Fire Pension Fund (OP&F), State Teachers Retirement System (STRS), School Employees Retirement System (SERS), and State Highway Patrol Retirement System (SHPRS). The alternative retirement program is established under current law for academic and administrative employees of public institutions of higher education and consists of retirement plans established by individual institutions.*

[2] *A lump sum payment is a payment, such as a return of contributions, made in lieu of paying a retirement benefit (Revised Code section 3105.80).*

Court order for the division of marital property

(secs. 145.27(D)(5), 742.41(E)(5), 3105.81, 3105.82, 3105.821, 3105.90, 3305.20, 3307.21(E)(5), 3309.22(E)(5), and 5505.04(E)(5))

Under the act, a court order requiring a public retirement program to make payments for the purpose of dividing a retirement benefit or lump sum payment must meet all of the following requirements:

(1) Be on a form jointly created by the state retirement systems, the Ohio State Bar Association, and the Ohio Domestic Relations Judges Association;

(2) Set forth the name and address of the public retirement program subject to the order or, if the court determines that the retirement program participant has contributions on deposit with more than one public retirement program, the name and address of each public retirement program that is potentially subject to the order;[3]

(3) Set forth the names, Social Security numbers, and current addresses of the participant and the alternate payee;[4]

(4) Specify the amount to be paid the alternate payee as one of the following:

(a) As both a monthly dollar amount should the participant elect a benefit and as a one-time payment should the participant elect a lump sum payment;

(b) As a percentage of a fraction determined as follows of a monthly benefit or lump sum payment:

(i) The numerator of the fraction is the number of years during which the participant was both a member of a public retirement program and married to the alternate payee;

(ii) The denominator, determined by the public retirement program at the time the participant elects to take the benefit or payment, is the participant's total

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[3] *The act defines a "participant" as a member, contributor, retirant, or disability benefit recipient who is or will be entitled to a benefit or lump sum payment under a state retirement system or an academic or administrative employee who elects to participate in an alternative retirement plan. (R.C. 3105.80.)*

[4] *The "alternate payee" is defined by the act as the person who is to receive one or more payments from a public retirement program benefit or lump sum payment under a court order to divide marital property. (R.C. 3105.80.)*

years of service or, in the case of a participant in an alternative retirement plan, years of participation in the plan.

(5) If the participant is eligible for more than one benefit or lump sum payment, specify the amount, if any, to be paid to the alternate payee from each benefit or lump sum payment.

(6) Require an individual who is a participant or alternate payee to notify the public retirement program in writing of a change in the individual's mailing address;

(7) Notify the alternate payee of the conditional nature of the right to a benefit or payment and the possible reduction or termination of the amount paid to the alternate payee by the public retirement program (see "***Reduction or termination of an alternate payee's payment***" below);

(8) Apply to payments made by the public retirement program after retention of an order (see "***Retention of an order***" below).

The monthly benefit used under (4)(b) above to determine the amount to be paid an alternate payee is to be whichever of the following applies:

(1) If the participant is receiving a monthly benefit, the monthly benefit is to be the benefit the participant is receiving at the time the decree of divorce or dissolution becomes final;

(2) If the participant has applied for but is not yet receiving a monthly benefit, the monthly benefit is to be the benefit for which the participant is eligible;

(3) If the participant has not applied for a benefit, the monthly benefit is to be the benefit calculated at the time the participant elects to take it.

The act provides that on the written request of an alternate payee a retirement program must furnish information on the amount and status of any amounts payable to the alternate payee.

Division of a retirement benefit or payment

(secs. 3105.85 and 3105.87)

The act specifies that the total amount to be paid to the alternate payee must not exceed 50% of a benefit or lump sum payment or if the withholding is to be from more than one benefit or lump sum payment, 50% of the total of the benefits or lump sum payments.

Under the act, if a participant's benefit or lump sum payment is or will be subject to more than one order that divides it as part of a division of martial property, the public retirement program is not to withhold an aggregate amount for all the orders that exceeds 50% of the benefit or payment. If the benefit or lump sum payment is or will be subject to a division of marital property order that includes the benefit or lump sum payment and to one or more withholding orders that provide for child support payments, the public retirement program is prohibited from withholding an aggregate amount for all such division of marital property orders that exceeds the difference between 50% of the benefit or payment and the percentage of the benefit or payment that is or will be paid under the child support orders that provides for child support payments.

The act permits the court to order a public retirement program to provide information from a participant's personal history record necessary to determine the monthly payments or lump sum payment to be paid the alternate payee.[5]

Transmission of an order

(sec. 3105.88)

The act requires the clerk of courts to transmit a certified copy of an order to each public retirement program named in the order. If the clerk fails to transmit an order, the public retirement program named in the order is not required to administer it.

Retention of an order

(secs. 145.571(B), 742.462(B), 3105.88, 3305.21(B), 3307.371(B), 3309.671(B), and 5505.261(B))

On receipt of an order for the division of a retirement benefit or payment due to termination of a marriage, the public retirement program must determine whether the order meets the requirements set forth in the act. The retirement program must retain in the participant's record an order the retirement program determines meets the requirements. The retirement program is not to retain an order unless it is filed in a court with jurisdiction in this state.

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[5] *"Personal history record" means information maintained by the public retirement program on an individual who is a member, former member, contributor, former contributor, retirant, or beneficiary that includes the address, telephone number, Social Security number, record of contributions, correspondence with the system, or other information determined by a retirement board to be confidential. (R.C. 145.27, 742.41, 3305.20, 3307.21, 3309.22, and 5505.04.)*

The act requires the retirement program to return to the court that issued the order, not later than 60 days after receipt, any order the system determines does not meet the statutory requirements. If the retirement program returns an order, the clerk of courts must notify the counsel of record that the order was not retained by the retirement program.

Reduction or termination of an alternate payee's payment

(secs. 145.571(F), 742.462(F), 3105.86, 3305.21(F), 3307.371(F), 3309.671(F), and 5505.261(F))

Under the act, if a participant's benefit or lump sum payment is or will be subject to more than one order dividing it or such an order and a child support withholding order, the retirement program must, after determining that the amounts that are or will be withheld will cause the benefit to fall below the statutory limits, do all of the following:

(1) Establish, the priority in which the orders are or will be paid by the retirement program (see "***Prioritizing orders***" below);

(2) Reduce the amount paid to the alternate payee based on the established priority;

(3) Notify, by regular mail, a participant and alternate payee of any reduction in the payee's benefit or payment.

Under the act, the alternate payee's rights under an order dividing a retirement benefit or lump sum payment is terminated on the earlier of the following:

(1) The death of the participant;

(2) The death of the alternate payee;

(3) The termination of a benefit paid to a participant under the laws governing the public retirement programs.

Prioritizing orders

(secs. 145.571(G), 742.462(G), 3305.21(G), 3307.721(G), 3309.671(G), and 5505.261(G))

The act specifies that a withholding or deduction notice for child support has priority over all other orders and is to be complied with in accordance with

child support enforcement laws. All other orders are entitled to priority in order of earliest retention by the retirement program.[6]

Payment under an order

(secs. 145.571, 742.462, 3105.83, 3105.84, 3305.21, 3307.371, 3309.671, and 5505.261)

Under the act, a public retirement program must comply with a retained order at the following times, as appropriate:

(1) If the participant has applied for or is receiving a benefit or has applied for but not yet received a lump sum payment, as soon as practicable;

(2) If the participant has not applied for a benefit or lump sum payment, on application for a benefit or lump sum payment.

The act specifies that an alternative payee has no right or privilege under the provisions of the Revised Code governing public retirement programs that is not provided in those provisions. It also provides that a court order providing for division of a retirement benefit may not require a public retirement program to take any action or provide any benefit, allowance, or payment not authorized under the law governing the program.

If a public retirement program transfers a participant's service credit or contributions made by or on behalf of a participant, or in the case of an alternative retirement program the account balance of a participant, to another retirement program not named in the order, the retirement program must (1) notify the court that issued the order by sending the court a copy of the order and the name and address of the retirement program to which the transfer was made, and (2) send a copy of the order to the retirement program to which the transfer was made.

Under the act, if a retirement program receives a participant's service credit or contributions, or in the case of an alternative retirement plan, a participant's account balance, and a copy of an order for the division of a retirement benefit, the retirement program must administer the order as if it were the retirement program named in the order.

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[6] *The law, prior to the act, did not specify that a pension or benefit may be assignable or not exempt from garnishment to pay on a child support order received from another state. The act specifically permits assignment and garnishment for child support orders of another state.*

The act authorizes the board of the retirement program that is or will be paying the benefit or lump sum payment to withhold from any benefit or payment that is subject to an order an amount determined by the retirement program to be necessary to defray the cost of administering the order. This amount is to be divided equally between the participant and the alternate payee.

Retirement programs exempt from liability

(secs. 145.571(H), 742.462(H), 3305.21(H), 3307.371(H), 3309.671(H), and 5505.261(H))

The act specifies that the public retirement programs are not liable in civil damages for loss resulting from any action or failure to act in regard to retaining and complying with an order to divide a retirement benefit.

Court jurisdiction

(sec. 3105.89)

The act specifies that the court is to retain jurisdiction to modify or supervise the implementation of an order that divides a retirement benefit.

Under the act, the court may modify an order that provides for division of marital property on termination of a marriage and was effective prior to January 1, 2002, for the purpose of enforcing the order or carrying out the manifest intentions of the parties. A modified order must meet the act's requirements.

Recovery of payments

(secs. 145.563, 742.64, 3305.22, 3307.47, 3309.70, and 5505.34)

Continuing law requires an individual who is a member, former member, contributor, former contributor, retirant, or beneficiary of PERS, STRS, or SERS to repay to the retirement system any benefit received to which the individual is not entitled. If the individual fails to make the repayment, the retirement system is authorized to withhold the amount due from any future benefit.[7]

The act requires an individual who is an alternate payee to repay any payment to which the individual is not entitled and requires the retirement system or entity providing an alternative retirement plan to withhold the amount due from

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[7] *Prior to the act, the law governing OP&F, SHPRS, and the alternative retirement program for academic and administrative employees of public institutions of higher education did not specifically provide for the recovery of erroneous benefits.*

future payments if the individual fails to make the repayment or collect the amount in any other manner provided by law.[8]

Ohio Retirement Study Council to report on benefit issues

(Section 11)

Under the act, the Ohio Retirement Study Council is required to have prepared a report that examines the following issues with regard to Ohio's state retirement systems and any entity providing an alternative retirement plan:

(1) Provision of benefits to a former spouse of a retirement system member or retirant;

(2) Cost and feasibility of offering an optional retirement plan of payment that provides for continuing benefits after the death of a retirant to more than one beneficiary;

(3) Cost and feasibility of providing cost-of-living or other post-retirement benefit adjustment to a person who is to receive one or more payments from a state retirement system or ARP under a court order to divide marital property;

(4) Any other issue related to the division of a retirement benefit on termination of marriage.

In preparing the report, the staff of the Council is required to consult with the state retirement systems and the Ohio State Bar Association, Ohio Judicial Conference, Ohio Domestic Relations Judges Association, Ohio Association of Court Magistrates, Ohio Academy of Trial Lawyers, and other organizations that express an interest in issues related to the division of marital property. On completion of the report, but not later than December 31, 2001, the Council must submit the report to the chairs of the standing committees of the House of Representatives and Senate with primary responsibility for retirement legislation. The Ohio State Bar Association, Ohio Judicial Conference, Ohio Domestic Relations Judges Association, and Ohio Academy of Trial Lawyers are to receive a copy of the report.

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[8] *This provision applies to all five state retirement systems.*

Transfer of service credit and contributions between state retirement systems and the Cincinnati Retirement System

Background

A member of one of the state retirement systems may receive credit for prior service covered by the Cincinnati Retirement System (CRS). A PERS, STRS, or SERS member may purchase the credit by paying to the appropriate retirement system, an amount equal to the member's retirement contribution for full-time employment for the first year of service under PERS, STRS, or SERS following termination of service in the CRS, plus interest at a rate determined by the appropriate retirement board.[9]

A member of OP&F or SHPRS who has credit for prior full-time service covered by CRS will receive OP&F or SHPRS credit if, for each year of service credit, the retirement system receives an amount, which must be paid by the member, equal to the amount withdrawn from CRS for that year of service, with interest from the date of withdrawal to the date of payment and additional amounts of interest and employer contributions paid by either the member or CRS.[10] However, the law prior to the act did not provide specific provisions for an intersystem transfer and does not require CRS to pay those amounts.[11]

Agreement to transfer service credit and contributions

(secs. 145.293, 145.2910, 742.21, 742.211, 3307.74, 3307.762, 3309.31, 3309.74, 5505.40, and 5505.401)

The act permits transfers of credit and contributions between CRS and the state retirement systems if both of the following conditions are met:[12]

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[9] *A state retirement system member must withdraw the member's contributions from CRS to use those contributions to purchase credit under the member's current system.*

[10] *An OP&F member who became a member on or after September 16, 1998, must also pay an additional amount that accounts for the difference in employee and employer contribution rates that would have been contributed or paid had the member been employed by the member's current employer as a member of a police or fire department.*

[11] *Since the law prior to the act did not authorize the state retirement systems to transfer credit and contributions to CRS, a former member of a state retirement system who wished to purchase credit in CRS had to withdraw the member's contributions from the state retirement system and purchase credit in accordance with CRS' requirements.*

[12] *Service credit may only be purchased from OP&F or SHPRS if the prior service was full time.*

(1) The Cincinnati City Council and the CRS Board of Trustees take all actions, including the adoption of any ordinance or resolution, necessary to authorize the transfers.

(2) Each state retirement system and CRS, through their boards of trustees, enter into an agreement governing the transfers that is consistent with statutory requirements. The agreement must include a provision under which the retirement systems agree to transfer amounts specified in statute and specify an amount of credit the system to which the transfer is made will grant for a specific period of service earned under the transferring system.[13]

The act specifies that if either of the above conditions is not met, credit may be purchased or granted as permitted under existing law (see "***Background***" above). If the conditions are met, service credit and contributions may be transferred between the state retirement systems and CRS in accordance with the agreements.

Under the act, the state retirement systems and CRS may modify the agreement by mutual consent. CRS or any of the state retirement systems may, without mutual consent, rescind an agreement, but must promptly notify the other system.

State retirement system members with contributions on deposit with CRS

(secs. 145.2911, 742.212, 3307.763, 3309.75, and 5505.402)

A member of a state retirement system who has contributions on deposit with, but is no longer contributing to CRS, is to be given credit for service credit earned under CRS or purchased or obtained as military service credit if, for each year of service, CRS transfers to the appropriate state retirement system the sum of the following:[14]

(1) The amount contributed by the member, or in the case of military service credit, paid by the member;

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[13] *Under the act, the amount of credit awarded may be less than the person earned for a specific period of service under the system transferring the credit and contributions.*

[14] *An OPFPF member who became a member of OPFPF on or after September 16, 1998, is required to also pay an additional amount that accounts for the difference in employee and employer contribution rates that would have been contributed or paid had the member been employed by the member's current employer as a member of a police or fire department.*

(2) An amount equal to the lesser of the amount contributed by the employer to CRS or the amount that would have been contributed by the employer had the member been employed by the member's current employer as a member of PERS or OP&F or been a member of STRS, SERS, or SHPRS at the time the credit was earned.

(3) Interest on the amount specified in (1) and (2) above from the last day of the year for which the service credit was earned or in which payment was made for military service credit to the date the transfer is made.

State retirement system members who received a refund of contributions from CRS

(secs. 145.2911, 742.212, 3307.763, 3309.75, and 5505.402)

A member of a state retirement system who has received a refund of the member's contributions to CRS is to be given credit for service covered by CRS or purchased or obtained as military service credit if, for each year of service, the state retirement system receives the sum of the following:[15]

(1) An amount, paid by the member, equal to the amount refunded by CRS to the member for contributions and payment for military service, with interest at a rate established by the respective retirement board, on that amount from the date of refund to the date of payment, plus any interest the member received when CRS made the refund;

(2) An amount transferred by CRS to the appropriate system equal to the sum of the following:[16]

(a) Interest on the amount refunded to the member attributable to the year of service from the last day of the year for which the service credit was earned or in which payment was made for military service credit to the date the refund was made;

(b) An amount equal to the lesser of the employer's contributions to CRS or the amount that would have been contributed by the employer had the member been employed by the member's current employer as a member of PERS or OP&F

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[15] *A PERS, STRS, or SERS member who received a refund of contributions to CRS must have at least 18 months of contributing service in PERS, STRS, or SERS to be eligible to receive credit for service covered by CRS.*

[16] *The amount CRS is to transfer is not to include any interest CRS paid to the member when it refunded the member's contributions.*

or been a member of STRS, SERS, or SHPRS at the time the credit was earned, with interest on that amount from the last day of the year for which the service credit was earned to the date of the transfer.

Interest is to be calculated separately for each year of service credit. The interest to be paid by CRS is calculated at the lesser of the actuarial assumption rate for that year of the state retirement system making the transfer or CRS and compounded annually.

CRS members with contributions on deposit with a state retirement system

(secs. 145.2912, 742.213, 3307.764, 3309.76, and 5505.403)

Under the act, if an individual who is a member or former member of, but not currently contributing to, a state retirement system and is not receiving a pension or benefit from the system elects to receive credit under CRS for service for which the individual contributed to a state retirement system, that system is to transfer certain amounts to CRS.

If the individual has contributions on deposit with a state retirement system, the retirement system is to transfer to CRS, for each year of service credit, the sum of the following:

(1) An amount equal to the individual's contributions to the state retirement system and payments made by the member for military service credit;

(2) An amount equal to the lesser of the amount contributed by the employer to the state retirement system that would have been contributed by the employer for the service had the individual been a member of CRS at the time the credit was earned;

(3) Interest on the amounts specified in (1) and (2) above for the period from the last day of the year for which the service credit was earned or in which payment was made for military service credit to the date the transfer was made.

CRS members who received a refund of contributions from a state retirement system

(secs. 145.2912, 742.213, 3307.764, 3309.76, and 5505.403)

If the individual seeking CRS credit received a refund of accumulated contributions to a state retirement system, the system is to transfer to CRS, for each year of service credit, the sum of the following:

(1) Interest on the amount refunded to the individual from the last day of the year for which the service credit was earned or in which payment was made for military service credit to the date the refund was made;

(2) An amount equal to the lesser of the amount contributed by the employer to the state retirement system or the amount that would have been contributed by the employer had the individual been employed as a CRS member at the time the credit was earned, with interest on that amount from the last day of the year in which the service credit was earned to the date of the transfer.[17]

Interest is to be calculated separately for each year of service credit. The interest to be paid to CRS is calculated at the lesser of the actuarial assumption rate for that year of the state retirement system making the transfer or CRS and compounded annually.

Copy of record of service and contributions

(secs. 145.295(I), 145.2911(G), 145.2912(F), 742.212(G), 742.213(G), 3307.761(H), 3307.763(G), 3307.764(F), 3309.73(G), 3309.75(G), 3309.76(G), 5505.402(G), and 5505.403(H))

PERS, SERS, STRS, and CRS are required, at the request of OP&F or SHPRS, to certify to OP&F or SHPRS, a copy of the records of service and contributions of a member or former member of PERS, SERS, STRS, or CRS who seeks to purchase credit for time in that system from OP&F or SHPRS.

The act requires all the retirement systems, including CRS, at the request of another retirement system, to certify to the requesting system a copy of the records of service and contributions of a member or former member of that system who seeks to purchase credit for time in the other.

Notice of payment

(secs. 145.2911, 145.2912, 742.212, 742.213, 3307.763, 3307.764, 3309.75, 3309.76, 5505.402, and 5505.403)

Under the act, when a state retirement system receives payment from the member of the amount to be paid by the member, the system is to notify CRS. On receipt of the notice, CRS is to transfer to the state retirement system the amount

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[17] *Of the amounts to be transferred by PERS, that amount is not to include any amount of employer contributions or interest on employee contributions the individual received from PERS when the individual received a refund of contributions. The act also extends this provision to transfers of contributions by PERS to OP&F and SHPRS.*

to be paid by CRS. The transfer cancels an equivalent amount of service credit. Similarly, on receipt of notice from CRS, that the system has received payment from an individual seeking to receive credit from CRS for service in a state retirement system, the state retirement system is to transfer the appropriate amount.

Restoration of service credit by a former member

(secs. 145.31, 3307.71, and 3309.26)

A member or former member of PERS, STRS, or SERS who has withdrawn the member's contributions and has at least 18 months of contribution service in any of the state retirement systems may have the PERS, STRS, or SERS service credit restored by paying to the system the amount withdrawn and compound interest from the date of withdrawal to the date of payment. However, a former PERS, STRS, or SERS member is ineligible to have service credit restored if the former member is eligible to buy the service credit as a member of OP&F or SHPRS. The act specifies that the former member is also ineligible to have the service credit restored if the former member is eligible to buy it as a member of CRS.

Additional provisions

(secs. 145.2911, 742.212, 3307.763, 3309.75, and 5505.402)

Continuing law specifies both of the following with regard to the granting of service credit under one state retirement system for credit earned under another state retirement system or CRS:

(1) A state retirement system member, subject to the rules of the appropriate Board, may choose to purchase in any one payment only part of the credit the member is eligible to purchase.

(2) A retirement system member is ineligible to receive credit for service in another state retirement system if that service is used in the calculation of any retirement benefit currently paid or payable in the future to the member, or service rendered concurrently with any other period for which service has already been granted.

In addition, continuing law also specifies both of the following with regard to the granting of service credit under OP&F for credit earned under PERS, STRS, SERS, or CRS:

(1) If an OP&F member purchased credit for service in PERS, STRS, SERS, or CRS and that purchased credit does not increase a pension or benefit that

the member is eligible for, the member or the member's estate is entitled to a refund of the amount or portion of the amount paid to purchase the credit.

(2) The OP&F Board of Trustees must adopt rules establishing a payroll deduction plan for purchase of credit for service in PERS, SERS, STRS, and CRS.

The act specifies that the above provisions, as they continue to apply in the law governing transfers of credit between the systems, also apply to purchases of credit for service in CRS as provided in the act.

Election not required if only one candidate

(secs. 145.051, 742.041, 3307.071, 3309.061, and 5505.04)

Under continuing law, the administration and management of each state retirement system is performed by a board, consisting of elected and non-elected members. The elected members generally represent members, retired members, and employers participating in the system.

The act provides that, notwithstanding the requirement that board members be elected by ballot, a system's board is not required to hold an election for a position on the board if only one candidate has been nominated for the position by petition in accordance with a system's law governing the election of board members. The candidate takes office as if elected.[18] The term of office is four years beginning on the date set forth in each system's law governing the election of board members.[19]

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[18] *For PERS, this provision also applies to special elections. For SHPRS, this provision applies to an election to fill a vacancy on the SHPRS Board.*

[19] *For PERS, the term of office begins on the January 1 following the date the candidate was nominated. For OP&F, the term of office begins on the first Monday in June following the date the candidate was nominated. For STRS, the term of office begins on the September 1 following the date the candidate was nominated. For SERS, the term of office begins on the July 1 following the date the candidate was nominated. For SHPRS, the term begins in August of the year the candidate was nominated and, in the case of vacancy, the candidate fills the unexpired term.*

CHANGES TO PERS, SERS, AND STRS

Annuities for contributions based on reemployment and continuing employment

(secs. 145.38, 145.383, 145.384, 3307.35, 3307.351, 3307.352, 3309.341, 3309.343, and 3309.344)

Background

Continuing law permits an individual to be a reemployed retirant. A reemployed retirant is an individual who, after retiring under a state retirement system, is employed in a position covered by the same or one of the other systems, other than SHPRS. Employee and employer contributions are made toward a separate annuity paid after reemployment terminates.

Continuing law also permits a PERS, STRS, or SERS member who holds more than one position covered by one or more of those retirement systems to retire from the position that, at the time of retirement, has the highest annual earnable salary or compensation. The member is not required to retire from the other position or positions at the same time. While the member continues employment in the other position or positions, employee and employer contributions are made toward a benefit consisting of a single life annuity.

The act

If an individual is eligible for both an annuity earned as a reemployed retirant and an annuity earned from continued employment in one or more positions held at the time the individual retires from another position, the individual is eligible for two separate annuities. In this instance, the act provides for the payment of one single life annuity for the reemployment and continued employment. The annuity is to commence and be paid in the manner specified in continuing law for a reemployed retirant's annuity to commence and be paid.

Reemployed retirants forfeiture of benefits

(secs. 145.38, 3307.35, and 3309.341)

As described above, a member of a state retirement system may retire and subsequently be reemployed in a position covered by the same or one of the other systems, other than SHPRS (see "***Annuities for contributions based on reemployment and continuing employment***" above). If the reemployment begins before a certain time after the member retires, the retired member is subject to a reemployment penalty consisting of forfeiture of retirement benefits for up to two months.

Under prior PERS, SERS, and STRS law, the retirement benefit was forfeited for the period that began on the date employment commenced and ended on the date that was two months after the date on which retirement commenced. Under the act, the retirement benefit is forfeited for any month the retirant was employed prior to the expiration of the two-month period.

Death of member caused by beneficiary

(secs. 145.43, 3307.562, and 3309.44)

A payment to a beneficiary of a PERS, SERS, or STRS member is prohibited, absent a court order to the contrary, if the member's death is caused by the beneficiary under one of the following circumstances: (1) the beneficiary is convicted of, pleads guilty to, or is found not guilty by reason of insanity for committing, or complicity in, aggravated murder, murder, or voluntary manslaughter, (2) the beneficiary is indicted for committing, or complicity in, one of the above offenses and is adjudicated incompetent to stand trial, or (3) the beneficiary is found to be a delinquent child by reason of committing an act that, if committed by an adult, would be, or be complicity in, one of the above offenses.

The act continues this provision and applies it to the beneficiary of an individual who is receiving or may be eligible to receive from PERS, SERS, or STRS an allowance or benefit based on service to a public employer (referred to as a "recipient") and an individual who would be eligible to receive an allowance or benefit by virtue of the death of a PERS, SERS, or STRS member or recipient.

Transfer of delinquent contributions when benefits are coordinated

(secs. 145.37, 3307.57, 3307.58, and 3309.35; 145.483, not in the act)

Under continuing law, on a finding that an employer failed to deduct PERS contributions, a statement of delinquent contributions is prepared by PERS showing the amount the contributor and employer would have contributed had regular payroll deductions been taken, plus interest at a rate set by the PERS Board, from the end of each calendar year (referred to as "delinquent contributions"). The amount paid by the employer is deposited in the Employers Accumulation Fund. No part of the payment is credited to the member or treated as the member's contributions. Continuing law also authorizes a PERS, SERS, or STRS member who has service and contributions in more than one of those retirement systems to elect to have total contributions and service credit in all systems combined to determine eligibility for a benefit. The retirement system determining and paying the benefit receives from the other system or systems the member's accumulated contributions.

The act specifies that, if applicable, the retirement system determining and paying the benefit is to receive from PERS a portion of the delinquent contributions paid on behalf of a PERS member by a PERS employer. The portion is paid from the Employers Accumulation Fund and equals the product obtained by multiplying by two the amount the PERS member would have contributed during the period the employer failed to deduct contributions.

If STRS is the retirement system determining and paying the benefit, the act requires STRS to use the service credit attributable to the delinquent contributions in determining whether the member is eligible for a retirement benefit based on percentages of final average salary (FAS) in excess of 2.2% (see "***Calculation of benefits for individuals with military service credit***" below).[20]

CHANGES TO PERS AND STRS

Waiver of spousal consent

(secs. 145.40 and 3307.56)

Under continuing law, a married PERS or STRS member who applies for a refund of the member's contributions and, at the time of application, is eligible to retire must submit with the application a written statement by the member's spouse attesting that the spouse consents to the refund. Consent is valid only if it is signed and witnessed by a notary public.

The act authorizes the PERS or STRS Board to waive the consent requirement if the spouse is incapacitated or cannot be located, or for any other reason specified by the Board. Consent or waiver is effective only with regard to the spouse who is the subject of the consent or waiver.

PERS CHANGES

Certification of records

(sec. 145.27)

PERS' executive director has the authority to certify the system's records. Any records certified by the executive director are to be received as true copies of the system's records in any court or before any state officer. The act permits an

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[20] *With some exceptions, "final average salary" is determined by dividing by three the sum of the member's annual compensation for the three highest years of compensation for which the member made contributions (R.C. 3307.501).*

officer of PERS to certify the system's records (in addition to the executive director).

Final average salary reduction for survivors of disability benefit recipients

(sec. 145.45)

In calculating certain benefits paid to survivors of deceased PERS members, continuing law provides that, for the qualified survivor of a disability benefit recipient, the final average salary (FAS) used in calculating a benefit must be adjusted, for each year between the effective date of the disability benefit and the recipient's date of death, by the lesser of (1) three per cent or (2) the actual average percentage change in the Consumer Price Index (CPI), as prepared by the United States Bureau of Labor Statistics (U.S. City Average for Urban Wage Earners and Clerical Workers: "All Items 1982-84=100").[21]

The act continues this provision and applies it to another type of survivor benefit, the benefit paid to a surviving spouse or other sole dependent beneficiary of a member who was eligible to retire at the time of death. The benefit is computed as a joint-survivor benefit consisting of the actuarial equivalent of the allowance the member would have received, had the member retired, paid in a lesser amount for the member's life and continuing after the member's death to a surviving beneficiary designated at the time of the member's retirement.

Purchase of service credit by survivors of disability benefit recipients

(sec. 145.452)

The surviving spouse or dependents of a member who dies prior to receipt of a disability benefit or retirement allowance may purchase any service credit the member, had the member not died, would have been eligible to purchase on the same terms and conditions that the deceased member could have purchased the credit. The act modifies this provision to allow the surviving spouse or dependents of a deceased disability benefit recipient to purchase service credit under the same circumstances.

Provisions applicable to certain law enforcement officers

The law governing PERS includes special provisions for members who are law enforcement officers. These provisions apply to such law enforcement

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[21] *With some exceptions, "final average salary" is determined by dividing by three the sum of the member's annual compensation for the three highest years of compensation for which the member made contributions (R.C. 145.01).*

officers as sheriffs, township police officers, park district police officers, and others who have completed police officer training. PERS provisions for law enforcement officers differ from those for other PERS members with regard to contribution rates, retirement eligibility, and the formulas used to compute retirement benefits.

Calculation of benefits for certain law enforcement officers

(sec. 145.33)

A PERS member with 25 years of service as a law enforcement officer, including credit for military service, is eligible to retire with full benefits at age 52. The benefit consists of a benefit equal to the sum of 2.5% of the member's FAS for each of the first 25 years of service credit and 2.1% for each year in excess of 25. A member who attains age 48 or older with 25 years of law enforcement service may retire prior to age 52, but the retirement benefit is reduced for every year under age 52.[22] A PERS member who retires as a law enforcement officer may elect to have service credit as a law enforcement officer used in calculating the formula benefit described above and all other service used in calculating a benefit consisting of a single life annuity having a reserve equal to the member's accumulated contributions and an equal amount of employer contributions.

Sub. House Bill 416 of the 123rd General Assembly, effective January 1, 2001, permits a PERS member with at least 25 years of service as a law enforcement officer while serving as a sheriff, deputy sheriff, or township constable or police officer in a township police department or district to retire with full benefits at age 48. This act permits a member who qualifies for full benefits at age 48 to elect to have service credit as a sheriff, deputy sheriff, or township constable or police officer in a township police department or district used in calculating the formula benefit described above and all other service used in calculating a benefit consisting of a single life annuity as described above.

Employee contributions by sheriffs, deputy sheriffs, and township constables and police officers

(sec. 145.49)

The PERS Board is authorized to calculate separately from contribution rates for other PERS members the employee and employer contribution rates for members contributing toward a retirement benefit based on law enforcement service. Under the act, the contribution rate for those PERS members eligible to

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[22] *The reduction ranges from 7% at age 51 to 25% at age 48.*

retire at age 48 with full benefits is the sum of 1.1% of the member's earnable salary and the employee contribution rate calculated for other members contributing to a benefit based on law enforcement service.[23]

Interest paid on annuities for continuing employment

(sec. 145.473)

Continuing law permits a PERS, STRS, or SERS member who holds more than one position covered by one or more of those retirement systems to retire from the position that, at the time of retirement, has the highest annual earnable salary or compensation and continue to be employed in one or more other positions. The member and employer continue to contribute to the retirement system covering the continuing position. On termination of the continuing position, the member is eligible for a single life annuity having a reserve equal to the sum of the amount of the member's contributions and an equal amount of the employer's contributions.

The act specifies that the interest rate used for the purpose of determining the reserve value of the member's annuity is the current actuarial assumption rate of interest, as determined by the PERS Board's actuary.

Reemployed PERS retirants subject to forfeiture

(Sections 4 and 5)

Background

Prior to the enactment of Am. Sub. S.B. 144 of the 123rd General Assembly, effective December 13, 2000, a PERS retirant reemployed in a position covered by PERS was required to elect to receive either (1) both compensation for the reemployment and his or her retirement allowance or (2) compensation for the reemployment and have the retirement allowance penalized.[24] The penalty was forfeiture of the pension portion of the retirement allowance and suspension of the

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[23] *The employee contribution rate for members contributing toward a retirement benefit based on law enforcement service, other than service as a sheriff, deputy sheriff, or township constable or police officer, is currently set by the Board at 9.0%.*

[24] *The benefit of electing the option under which the retirement allowance was penalized was that the retirant became a new PERS member with all the rights, privileges, and obligations of membership, excluding survivor benefits. A retirant who elected the other option did not become a new PERS member or have the rights, privileges, or obligations of membership.*

annuity portion until the reemployment terminated. The annuity portion accumulated to the retirant's credit and was paid in a single payment after the reemployment terminated. A PERS retirant was required to elect option (2) above (penalized retirement allowance) if the retirant's PERS-covered position was an elective office and reemployment was reelection or appointment to that elective office for the remainder of the term, or the term immediately following the term, during which the retirant retired.

S.B. 144 amended this provision so that a reemployed PERS retirant is no longer permitted or required to make the election resulting in a penalized retirement allowance. An elective official who was subject to such an election has the choice to either remain subject to the election or cease to be subject to the election. If the elective official elects to cease to be subject to the election, all of the following apply:

(1) Any forfeiture or suspension required by the election that exceeds the two-month reemployment penalty ceases on the earlier of the date the employment that caused the forfeiture and suspension terminates or the date that is two months after the date on which the retirement began, but no earlier than September 14, 2000.

(2) The annuity portion of the retirement allowance, which accumulated to the official's credit, is to be paid to the official in a single payment as soon as possible after the official ceases to be subject to the election.

(3) The official is eligible for the benefit that reemployed retirants receive when their reemployment terminates.[25]

The act

Under the act, a reelected official must make the election to cease to be subject to the penalty not later than 90 days after the act's effective date. A reelected official who fails to make an election continues to be subject to the penalty. The act specifies that any contributions made during the period of forfeiture by an official who makes the election must be left on deposit with the system and used in the calculation of a benefit. An official may choose to have those contributions used in the calculation of a supplemental retirement allowance or a benefit consisting of a single life annuity having a reserve equal to the

[25] *The benefit consists of a single life annuity having a reserve equal to the amount of the retirant's accumulated contributions for the period of reemployment, other than contributions excluded due to the reemployment penalty, and an equal amount of employer contributions.*

official's contributions for the period of reemployment and an equal amount of employer contributions.

Recalculation of benefits for elective officials

(Section 7)

The act permits an elective official of the state or a political subdivision who, prior to September 14, 2000, retired independently under SERS or STRS and, on that date, was contributing to PERS, on termination of service as an elective official, to combine the official's PERS service with the SERS or STRS service and have the official's allowance and benefits recalculated under law providing for coordination of retirement benefits under PERS, STRS, and SERS. The official was eligible for an adjusted retirement allowance based on total contributions and service credit accrued during all service under PERS and STRS or SERS, or all three systems.

Denial of cost-of-living increases to certain elective officials

(Section 3)

The act eliminates a provision that denies cost-of-living increases to any individual who at the time of retirement under PERS held a public office and was reelected or appointed to the same office for the term immediately following. The increase was denied during the period beginning on the later of March 7, 1997, or the effective date of retirement and ending on the last day for which compensation was paid for the new term of office or a subsequent term in the same office. The denial applied to individuals who retired prior to March 7, 1997, but did not affect any increases received prior to that date.

STRS CHANGES

Individual accounts for STRS contributors

(sec. 3307.19)

The STRS Board is required to provide for the maintenance of an individual account for each member showing the amount of the member's contributions and any accumulations on those contributions. The act requires the Board to maintain an individual account for each contributor, which includes members, former members, and individuals who retire from one of Ohio's state retirement systems and return to STRS-covered employment.

Penalties for failure to transmit employee and employer contributions

(sec. 3307.292)

The act requires the STRS Board to adopt rules establishing penalties to be paid by employers who fail to transmit to STRS required employee and employer contributions. The rules may provide for interest, at a rate determined by the STRS Board, in addition to the penalties.

Teachers reemployed as independent contractors

(sec. 3307.35(J))

The act eliminates a provision that denies an STRS retirant the portion of an allowance or benefit that is attributable to employer contributions for any period the retirant is compensated under a private contract, or through an independent contractor, whereby the retirant is to perform personal or professional services for the employer that employed the retirant at the time of retirement.

Limitation on compensation

(sec. 3307.501)

"Compensation," as defined in the law governing STRS, is used to determine a member's final average salary, which in turn is used to determine retirement and disability benefits. "Compensation" does not include any amount resulting from a percentage increase paid to a member during the member's two highest years of compensation. Under an exception in prior law "compensation" included increases resulting from employment by a different employer or from promotion to a position held by another employee within the 12-month period preceding the promotion. The act eliminates the exception.

Refund of amounts from Employers Accumulation Fund

(sec. 3307.563)

An STRS member who dies before age and service retirement or ceases service for any reason other than death, retirement, receipt of disability benefit, or election of an alternative retirement plan is entitled to a refund of the member's accumulated contributions to STRS. In addition to the member's contributions, the refund includes interest and, if the member has more that five years of service credit at the time of refund, an amount payable from the Employers Accumulation Fund. This amount is equal to 50% of the sum of the member's contributions, and under prior law, repayments of previously canceled service credit and purchases of

service credit for leaves of absence. The amount also included interest on the total amount at a rate established by the STRS Board, but not greater than 6%.

Under the act, amounts paid by the member for previously canceled service credit and purchases of service credit for leaves of absence are not included in determining the amount the member receives from the Employers Accumulation Fund.

Calculation of benefits for individuals with military service credit

(sec. 3307.58)

Under current law, an STRS member's annual retirement benefit is generally calculated by multiplying the member's Ohio service credit by 2.2% of the member's final average salary (FAS), except that if a member has 35 or more years of credit as a teacher, including credit purchased for leaves of absence and certain other types of credit, the percentage is 2.5% (with one exception described below) for each of the first 30 years.[26] For each year or fraction of a year in excess of 30 years, the percentage of FAS is 2.2%, except that if the member has more than 30 years of credit for service as a teacher, including credit purchased for leaves of absence and certain other types of credit, the percentage of FAS for each year ranges from 2.5% to 3.3% depending on the total years of service.

The exception is that a percentage of FAS in excess of 2.2% may be applied to credit used in calculating a benefit coordinated with PERS or SERS or credit for service as a police officer, firefighter, or State Highway Patrol trooper only if the credit was established by contributions made or restored by the member. The act modifies the exception to specify that a percentage of FAS in excess of 2.2% is applied to service credit used in calculating a coordinated benefit only if the service credit was established by contributions made or restored by the member and payments made to purchase or obtain military service credit. Under the act, service credit for service as a police officer, firefighter, or State Highway Patrol trooper is not to be used to qualify for a percentage in excess of 2.2%.

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[26] *"Ohio service credit" means all contributing service as an STRS member, plus other types of credit, such as military service credit, credit purchased for service as a school board member, and credit purchased for other teaching service, but not including credit purchased for service in private schools (R.C. 3307.50).*

Recalculation of benefits and one time payment for individuals with military service credit

(Section 12)

Substitute Senate Bill 190 of the 123rd General Assembly provided a benefit increase for STRS members by changing the formula used to calculate benefits. In the case of a member with more than 30 years of service credit, a higher percentage is used in the calculation. In calculating a coordinated benefit, military service credit purchased or obtained under PERS or SERS was excluded from the types of service credit that qualified for the increased percentage. (See "***Calculation of benefits for individuals with military service credit***," above.) The act requires STRS to recalculate the benefit of certain recipients who are receiving a coordinated benefit that includes types of military service credit purchased or obtained under PERS or SERS. If the recalculated benefit is greater than the recipient's benefit prior to the recalculation, STRS must begin paying the greater benefit and make a one time payment to the recipient equal to the difference between the benefits paid to the recipient between July 1, 1999, and the date of payment and the benefit under the recalculation.

Changes to the defined contribution plan

Sub. Senate Bill 190, effective July 13, 2000, authorizes STRS to establish a defined contribution plan and specifies which STRS members will be permitted to elect to participate.[27]

Elections to participate in a defined contribution plan

(secs. 3307.25 and 3307.251)

--Eligibility to make election. The act provides that a retired member of another state retirement system who is employed in a position covered by STRS is not eligible to elect a defined contribution plan.

--Filing of election. An individual who becomes an STRS member after STRS has established a defined contribution plan may elect to join the plan by filing an election form provided by STRS with the employer's personnel officer. Under the act, the election form must be filed with STRS.

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[27] *In a defined contribution plan, a member and employer contribute to the plan a specified percentage of the member's compensation. These contributions are held in an account and invested, usually at the direction of the member. At retirement or on withdrawal of contributions, the benefit payable to the member is determined by the amount, including investment earnings, in the member's account.*

--Election irrevocability. Under prior law, an election to participate in a defined contribution plan was irrevocable on receipt by the employer or, in the case of a current STRS member who makes the election, on receipt by STRS. Under the act, an election becomes irrevocable at the end of the 180-day election period. This enables an STRS member who has elected to participate in the defined contribution plan to revoke the election prior to the end of the 180-day election period.

--Amounts transferred to Defined Contribution Fund. In the case of an existing STRS member who elects to participate in a defined contribution plan, STRS is required to credit to the account of the member in the Defined Contribution Fund the accumulated contributions standing to the member's credit in the Teachers' Savings Fund, plus interest and, if the member has more than five years of service credit at the time of the election, a portion of the employer contribution. Under the act, no part of the employer's contribution will be credited to the member's account in the Defined Contribution Fund.

Amounts transferred to Employers Accumulation Fund

(sec. 3307.84)

For each member participating in a defined contribution plan, STRS is required to transfer to the Employers' Trust Fund a portion of the employer contribution that is equal to the percentage of members' compensation determined by the STRS Board's actuary to be necessary to mitigate any negative financial impact on the system resulting from the participation of members in a defined contribution plan. The Board is required to have prepared annually an actuarial study to determine whether the percentage transferred should be changed to reflect a change in the level of the negative financial impact resulting from members participating in a defined contribution plan. The percentage transferred is to be increased or decreased to reflect the amount needed to mitigate the negative financial impact, if any, on the system, as determined by the actuarial study. The act provides that the increase or decrease in the percentage is to be based on the actuarial study rather than determined by it.

CHANGES TO THE EXISTING ALTERNATIVE RETIREMENT PROGRAM FOR ACADEMIC AND ADMINISTRATIVE EMPLOYEES OF PUBLIC INSTITUTIONS OF HIGHER EDUCATION

Continuing law provides for an alternative retirement program for certain academic and administrative employees of public institutions of higher education. The act makes a number of changes to the program, including changes with respect to the administration of the program, the alternative retirement plans

(ARPs) to be offered under the program, eligibility to participate in an ARP (an "ARP participant"), and other changes.

Alternative retirement program; purpose; alternative retirement plans

(secs. 3305.02 and 3305.03)

Continuing law provides for an alternative retirement program for the purpose of providing to academic and administrative employees three or more retirement plans as alternatives to participating in a state retirement system.[28] Each alternative retirement plan (ARP) offered under the program must be a defined contribution plan that provides retirement and death benefits through the purchase of annuity contracts or certificates, fixed or variable in nature, or a combination thereof.

The act modifies this provision to specify that the alternative retirement program is established for the purpose of providing to academic and administrative employees the opportunity of participating in an ARP as an alternative to participating in PERS, SERS, or STRS and that a public institution of higher education is the sponsor of each ARP offered under the program. The act also specifies that the defined contribution plan must be a qualified retirement plan under section 401(a) of the Internal Revenue Code.[29]

The act expands the types of investment options that may be offered under an ARP to include, in addition to annuity contracts, retirement and death benefits through investment options. The options must be offered to employees pursuant to group or individual contracts, and certificates issued under group contracts, and may include life insurance, annuities, variable annuities, regulated investment trusts, pooled investment funds, or other forms of investment, at the option of each electing employee.

Designation of entities to provide investment options; review

(sec. 3305.03)

Under prior law, the Department of Insurance was required to designate three or more ARPs provided by at least three different entities, to be offered to

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[28] *For this purpose, the state retirement systems are PERS, SERS, and STRS.*

[29] *A qualified retirement plan is a retirement plan that meets certain requirements specified in federal law. If the requirements are met, contributions to and amounts earned under the plan are not subject to federal and state income tax until distribution (100 Stat. 2085, 26 U.S.C.A. 401(a), as amended).*

electing employees. The act modifies this provision to specify that the Department must designate three or more entities as "providers" and an entity must be designated a provider if the entity meets certain requirements.

Under prior law, an ARP could not be designated unless the entity providing the ARP met certain requirements, one of which was that the entity provides the ARP in at least ten other states. The act modifies this provision to require that the entity provide, in at least ten other states, the same or similar investment options to be offered under the ARPs, as group or individual contracts, or a combination thereof. In addition, the act requires the Department to periodically review each designated provider and the investment options offered by the provider (rather than each ARP and the entity offering the ARP) to ensure that the requirements and purposes of the alternative retirement program are being met.

Duties of public institutions of higher education; contracts with providers

(sec. 3304.04)

Prior law required the board of trustees of each public institution of higher education to enter into a contract with each provider offering an ARP designated by the Department of Insurance for the purpose of establishing an alternative retirement program at the institution. Each contract had to provide for termination if the ARP ceases to be designated.

Under the act, the board of trustees is required to adopt an ARP and each public institution is to enter into a contract with each designated provider that is willing to provide investment options under the ARP at that institution. Each contract must provide for termination if the provider ceases to be a designated provider.

Academic and administrative employees eligible to participate in an ARP

(sec. 3305.01)

Academic and administrative employees of public institutions of higher education are eligible to participate in an ARP. "Academic and administrative employees" are members of the faculty or administrative staff of a public institution of higher education serving in a position in the state's unclassified civil service.

The act continues this provision and specifies that, if the state's system of classifying employees does not apply, the individual is a member of the administrative staff of a public institution serving in a position comparable to a position in the unclassified civil service.

Election to participate in an ARP

Election period

(sec. 3305.05(A))

A person whose employment as an academic or administrative employee of a public institution of higher education commences after the initial date on which the board of trustees of the institution establishes an ARP may elect to participate in an ARP. Prior law provided that the person had 90 days after the starting date of employment to make an election. The act increases the election period to 120 days after the starting date of employment.

Opportunity to make another election

(sec. 3305.05(A))

Under prior law, an election to participate in an ARP was irrevocable while the ARP participant remained continuously employed.[30] If an ARP participant ceased to be continuously employed and was subsequently employed by a public institution in a position for which an ARP is available, the participant could make another election.

The act removes all references to "continuously employed" and specifies that (1) an election to participate in an ARP is irrevocable while the ARP participant remains employed by the public institution and (2) if an ARP participant terminates employment at one public institution and is subsequently employed by another public institution in a position for which an ARP is available, the participant may make another election.

Notice of election

(sec. 3305.05(C))

Under continuing law, the designated officer of an ARP participant's employing public institution must file, within ten days, a certified copy of the election with the state retirement system that covers the participant's employment. The act specifies that the certified copy must be filed not later than ten days after it is made (or the date on which the election becomes irrevocable).

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[30] *An ARP participant is "continuously employed" if no more than one year intervenes between each period of employment by a public institution in a position for which three or more ARPs are available (R.C. 3305.01(E), repealed by the act).*

Participation in ARP

(secs. 3305.01 and 3305.05(E))

Under prior law, an election to participate in an ARP applied only to the participant's employment in positions for which an ARP is available. Employment in any other position was subject to the applicable state retirement system.

Under the act, an election to participate in an ARP applies to the participant's employment in all positions at a public institution, unless the participant terminates employment at the public institution and does not return to employment in any position at that institution prior to one year after the termination. The act specifies that an individual who is eligible to make an election to participate in an ARP and does not make the election may not elect to participate in an ARP for employment in any other position at the public institution while employed at that institution, unless the individual terminates employment and does not return to employment in any position at that public institution prior to one year after the termination.

Selection of providers

(sec. 3305.05(F) and (G))

The board of trustees of a public institution is required to permit an ARP participant to change the participant's ARP if the ARP ceases to be a designated plan. Under the act, the board of trustees must also permit an ARP participant to do all of the following:

(1) Select, from among the providers that have entered into a contract with the public institution, the provider of an investment option for the participant;

(2) Except under the circumstances described in (3), contract with only one provider in any plan year;

(3) Change the provider selected by the ARP participant once during the first payroll period in any plan year or any time the provider selected by the participant ceases to be a designated provider.

The act specifies that if an ARP participant changes providers, the provider of the participant's current investment option must transfer the participant's balance to the new provider.

Transfer of amounts on deposit with state retirement systems

(secs. 145.40, 3305.051, 3307.56, and 3309.42)

A state retirement system member who ceases to be a member for any reason other than death, retirement, receipt of a disability benefit, or election of an ARP may be paid the accumulated contributions standing to the member's credit with the system. Special provisions apply to a member who ceases membership by electing to join an ARP.[31]

Amounts required to be transferred

The state retirement system that covers an ARP participant's employment is required to return to the public institution of higher education any employee and employer contributions made to the system for the period during which the ARP participant is eligible to elect to participate in the alternative retirement program. The act requires the system to pay to the provider of the investment option selected by the ARP participant, not later than 30 days after the date on which a certified copy of the participant's election is filed with the system, the contributions made to the retirement system by or on behalf of the participant for the period beginning on the date on which the participant became eligible to elect to participate and ending on the day before the day on which contributions commence under an ARP.

Amounts that may be transferred

If the member has contributions standing to the member's credit with the state retirement system, in addition to the contributions that are required to be transferred, and is not otherwise employed in a position in which the member continues to be a member for the purposes of that position, the state retirement system is required to pay the contributions to the appropriate provider on application by the member.

In addition, the act specifies that a member whose accumulated contributions are paid to a provider is forever barred from claiming or purchasing service credit in a state retirement system for the period of employment attributable to those contributions.

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[31] *The act specifies that "current employment in a position for which the member elected an ARP" (rather than "election of an ARP") entitles the member to a payment of the member's contributions.*

Contributions to an ARP

(sec. 3305.06)

Prior law required each ARP participant and the participant's employer to contribute a percentage of the participant's compensation to the ARP in which the participant is participating. Under the act, the participant and the participant's employer contribute a percentage of the participant's compensation to the provider of the investment option the employee has selected. The full amount of the contributions made by and on behalf of the participant were paid to the entity providing the participant's ARP for application to that ARP in accordance with any contract the participant entered into for purposes of the ARP.

The act requires the full amount of the contributions be paid to the appropriate provider for application to the electing employee's investment option.

Voluntary deposits to an ARP

(sec. 3305.06(D))

Under prior law, an ARP participant could make deposits to the participant's ARP in addition to the contributions that were required to be made by the participant. The act eliminates this provision.

Contributions to the state retirement systems

(secs. 171.07 and 3305.06(D); Section 6)

Continuing law requires each public institution of higher education to contribute to the state retirement system that covers an ARP participant's employment a percentage of the participant's compensation to mitigate any negative financial impact of the alternative retirement program on the state retirement system. The percentage is 6%, but may be increased or deceased to reflect the amount needed to mitigate the negative financial impact, if any, as determined by an independent actuarial study completed by the Ohio Retirement Study Council (ORSC). The actuarial study must determine any necessary adjustments in contributions to the state retirement systems to reflect any changes in the level of negative financial impact on the systems resulting from the establishment of the alternative retirement program. Under prior law, the study was to be completed and submitted to the Ohio Board of Regents by the July 1 following the first year the Department of Insurance made its initial designation of entities and every third year thereafter. An increase or decrease in the percentage was to take effect on the July 1st in the year in which the study was completed.

The act requires that ORSC have the actuarial study completed and submitted by July 1, 2002, and every third year thereafter.[32] Any adjustment in the percentage takes effect on the first day of the second month following submission of the actuarial study to the Board of Regents. As was required prior to the act, the percentage is to be paid until the unfunded actuarial accrued liability for all benefits, except health care benefits and benefit increases paid by the state retirement systems after March 31, 1997, is fully amortized as determined by each system's annual actuarial valuation.[33]

Payment of benefits under an ARP

(sec. 3305.07)

Under prior law, benefits had to be paid to an ARP participant or the participant's beneficiaries in accordance with any contract entered into for purposes of the participant's ARP, with limited exceptions (see "***Taxes, garnishment, and assignment***" below). However, the payment of any benefits under an ARP prior to the time an ARP participant ceases to be continuously employed was prohibited.

Under the act, benefits must be paid to an ARP participant or the participant's beneficiaries in accordance with the ARP adopted by the public institution of higher education at which the participant is employed, with the same exceptions. The act specifies that a benefit or payment must not be paid under an investment option prior to the time an ARP participant dies, terminates employment with the public institution, or, if provided under the ARP or investment option, becomes disabled. However, if an ARP participant selects a new provider, the provider of the participant's current investment option is required to transfer the participant's account balance to the other provider.

Spousal consent

(sec. 3305.10)

If an ARP participant is married at the time one or more payments are to commence under an ARP, the provider that will make the payment is required to obtain, prior to making any payment, the consent of the participant's spouse to the form of payment selected by the participant. If an ARP participant is married at

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[32] *The act specifies that the actuarial study completed in 1999 is to be used to determine any necessary adjustments in contributions until the next study is completed.*

[33] *Am. Sub. House Bill 586, the act that established the alternative retirement program, took effect on March 31, 1997.*

the time the participant dies, the provider that will make a payment of any amounts that are payable to the participant is required to obtain the consent of the participant's spouse to the payment of the amounts before making the payment.

The act requires each provider to establish requirements for consent that are the same as the requirements specified for spousal consent under the Internal Revenue Code for private pension plans.[34] Consent may be waived if the spouse cannot be located or for any other reason specified in the regulations adopted under the federal law. Consent or waiver is effective only with regard to the spouse who is the subject of the consent or waiver.

Taxes, garnishment, and assignment

(secs. 2907.15, 3111.20, 3113.21, 3305.08, and 3305.09)

Any payment, benefit, or other right accruing to an ARP participant under a contract entered into for purposes of the ARP selected by the participant, any contributions to a provider for purposes of funding the participant's ARP, and all moneys, investments, and income of those contracts are:

(1) Exempt from all Ohio taxes, except the income tax;

(2) Not subject to execution, garnishment, attachment, the operation of bankruptcy or the insolvency law, or other process of law, with limited exceptions;

(3) Unassignable except as provided in the contract the participant has entered into for purposes of the ARP, with limited exceptions.

The act adds an exemption from all county, municipal, or other local taxes, except school district income taxes.

Exceptions

Under continuing law, the money payable from a state retirement system or deferred compensation program is subject to withholding orders to satisfy child support obligations and to pay restitution for theft in office and for certain sex offenses. The money payable from an ARP is subject to withholding orders to satisfy child support obligations and to pay restitution for theft in office. The act amends the law governing child support orders to specify that providers under the ARP are "payors" for purposes of that law and, in addition, subjects any payment under a contract entered into for purposes of funding an ARP participant's retirement plan benefit to withholding for restitution for certain sex offenses.

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[34] *(100 Stat. 2085, 26 U.S.C.A. 417(a)(2), as amended).*

--Restitution order for certain sex offenses. The act requires a prosecutor, in a case in which the court orders restitution to the victim of rape, sexual battery, corruption of a minor, or gross sexual imposition, to file a motion requesting an order for withholding of specified amounts from money payable to the offender from the provider of an electing employee's investment option under the ARP. Restitution to the victim of the sex offense may be ordered if the victim (1) is a child, student, patient, or other person with whom the offender had contact in the course of the offender's public employment and (2) requests the prosecutor to seek the order.

The money subject to withholding by a restitution order will be from one or more of the following:

(1) Any payment or benefit payable under an ARP, other than a survivorship benefit, that has been or is in the future granted to the offender; and

(2) Any payment of accumulated employee contributions standing to the offender's credit with the retirement plan.

The order cannot apply to any payments made under an ARP to a person other than the offender pursuant to a previously issued domestic court order.

The order must require the provider to continue the withholding, in accordance with the order, out of each payment due the offender, and immediately forward the amount withheld to the clerk of the court for payment to the victim.

A motion requesting withholding for restitution may be filed at *any time after* conviction of the offender or entry of a guilty plea. On the filing of the motion, the clerk of the court must notify the offender and the ARP in writing of a number of things, including that the motion was filed and that the offender has a right to a hearing on the question of whether there is good cause for the order not to be issued. Notice must be provided in the manner provided in the Ohio Rules of Civil Procedure for service of process.

--Hearing. An offender may request a hearing on a motion for a withholding order by delivering a written request to the court not later than 30 days after receiving notice that the motion was filed. If the offender makes a timely request, the court must schedule a hearing as soon as possible after the request is made and notify the offender and the ARP of the date, time, and place of the hearing.

The hearing must be limited to considering whether, based on evidence presented by the offender, there is good cause for the order not to be issued. If it determines that there is good cause not to issue the order, the court must deny the

motion. If the offender does not make a timely request for a hearing, or a hearing is held but the court does not find good cause to deny the order, the court must order the withholdings. In the case of a hearing regarding a withholding for restitution to a sex offense victim, good cause for denying an order includes a determination by the court that the order would severely impact the offender's ability to support dependents.

--Notice of charges. The prosecutor must send written notice to the appropriate ARP when charges are filed for theft in office or one of the specified sex offenses against a person who may be subject to a withholding order under the act upon conviction or pleading guilty. The notice must specifically identify the person charged.

--Plan's compliance. The provider of the contract entered into for purposes of funding an electing employee's ARP benefit must comply with a withholding order. Upon receiving a notice that the electing employee is charged with theft in office or one of the specified sex offenses, the entity cannot make payment prior to whichever of the following circumstances applies:

(1) If the electing employee is convicted of or pleads guilty to the charge and no motion for a withholding order for restitution is filed, 30 days after final disposition of the charge;

(2) If the electing employee is convicted of or pleads guilty to the charge and a motion for a withholding order for restitution is filed, the date on which the court decides the motion;

(3) If the charge is dismissed or the electing employee is found not guilty or not guilty by reason of insanity, the date on which final disposition of the charge is made.

Participation by ARP participants in Ohio's deferred compensation program

(sec. 148.01)

Continuing law allows public employees who are covered by Ohio's state retirement systems to participate in a deferred compensation program established by the Ohio Public Employees Deferred Compensation Board. A "deferred compensation program" is an employee benefit program under which an employee's compensation is deferred and paid at a later date, usually at retirement. The employee pays federal and state income tax on the deferred compensation when the compensation is received rather than when it is earned.

The act permits individuals participating in the alternative retirement program to elect to participate in the deferred compensation program established by the Board.

Technical changes

(secs. 145.23, 145.33, 145.383, 145.40, 145.473, 145.58, 3307.26, 3307.351, 3307.50, 3307.54, 3307.62, 3307.71, 3307.79, 3309.343, 3309.46, 5505.01, and 5505.29)

The act makes a number of technical and cross-reference changes to Revised Code sections.

COMMENT

Former law provided that a PERS member who ceased to be a public employee could be paid, under certain conditions, the member's accumulated contributions, plus principal payment and interest the member paid to purchase additional service credit (R.C. 145.40). The act removes the provision specifying that a refund includes amounts paid to purchase additional service credit. However, according to representatives of PERS, "accumulated contributions" includes those amounts.[35]

HISTORY

ACTION	DATE	JOURNAL ENTRY	
Introduced	01-11-00	p.	1493
Reported, H. Health, Retirement & Aging	04-12-00	p.	1822
Passed House (97-0)	05-17-00	pp.	1984-1985
Reported, S. Ways & Means	11-15-00	pp.	2223-2224
Passed Senate (32-0)	11-15-00	p.	2236
House concurred in Senate amendments	11-16-00	pp.	2372-2373

00-hb535.123

[35] *PERS law defines "accumulated contributions" as the sum of all amounts credited to the individual account of a member or contributor in the Employees' Savings Fund (R.C. 145.01).*