



Sub. S.B. 134

124th General Assembly
(As Passed by the Senate)

Sens. **Blessing, Austria, Spada, Fingerhut, Coughlin, Robert Gardner, Herington, Mumper, Ryan**

BILL SUMMARY

- Provides for creation of the Deferred Retirement Option Plan in the Ohio Police and Fire Pension Fund.

CONTENT AND OPERATION

Establishment of the plan

(sec. 742.43)

The bill requires the Board of Trustees of the Ohio Police and Fire Pension Fund (OP&F) to establish the Deferred Retirement Option Plan for members who are eligible to retire with full benefits but have not chosen to retire. However, creation of the plan is contingent on the Board receiving from the U.S. Internal Revenue Service a determination letter indicating that the plan meets the requirements of the Internal Revenue Code applicable to governmental plans.

The Board is given authority by the bill to adopt rules to implement and administer the plan.

Operation of the plan

Eligibility for participation

(sec. 742.44)

Any time prior to filing an application for retirement, an eligible member of the Fund may elect to participate in the plan. Eligible members are those who have completed 25 years of active service as contributors to the Fund and have attained age 48.

Notice of participation in plan

(secs. 742.351 and 742.44)

Under current law, a member electing to retire sends written notice to the Fund that is verified by the member's employer. The employer is subject to a fine for failure to properly provide the member's termination date and other information requested by the Fund. A member electing to participate in the plan must notify the Fund of the election on a form prescribed by the Fund. The employer is similarly subject to a fine for failing to provide timely information to the Fund regarding a member's election to participate in the plan.

The member's election to participate in the plan becomes effective on the first day of the first payroll period immediately following the Board's receipt of the notice of election.

At the time of election, the member is not required to specify the number of years the member will participate in the plan. However, the member must agree to terminate active service not later than eight years after the effective date of the member's election.

Accrual of benefits during participation

(secs. 742.44, 742.441, 742.442, and 742.443)

A member who elects to participate in the plan continues in the active service of a police or fire department, receives active service salary and benefits, and continues contributing a portion of the member's salary to the Fund. The member does not accrue retirement service credit for active service during participation in the plan. The bill does not specify, but it appears that the employer of a member participating in the plan is required to make the same contributions to the Fund as the employer makes for other active members.

Using the member's total service credit and average annual salary as of the election's effective date, the Fund determines the monthly pension benefit that the member would receive had the member chosen to retire.¹ A member electing the

¹ *A member who had 15 or more years of active service in the Fund on January 1, 1989, may choose at the time of retirement to have a retirement pension calculated based on a "recalculated average annual salary," which includes in average annual salary amounts paid on termination of employment for such things as unused leave and unpaid overtime. A member electing to participate in the plan does not have the option of having the monthly pension calculated based on the member's recalculated average annual salary. (R.C. 742.3716.)*

plan may choose to have the member's monthly pension benefit calculated as a retirement allowance payable throughout the member's life (single life annuity) or as an allowance that is reduced but continues to a surviving beneficiary (joint and survivor annuity). Unless the Board adopts rules establishing a period when this choice may be rescinded, it is irrevocable until the member ceases participating in the plan. If the member does not choose a method of calculating the monthly pension amount, it is to be based on a single life annuity and the member will again have the option of selecting a method of receiving pension benefits when the member ceases participation in the plan.

The Fund credits the monthly pension benefit to the member's accrual under the plan each month that the member remains in active service during participation in the plan. The member is also credited with any cost-of-living increases the member would have received had the member elected to retire at the time of electing to participate in the plan.

In addition to the deferred pension amounts, the member's employee contributions during participation in the plan accrue to the member's benefit as shown in the following table.

Accrual of Member Contributions	
Duration of participation	Percentage accrued
Beginning date to the earlier of 2 years or end of participation	50%
2 + years	75%
3 + years or longer	100%

Any amount of the member's contribution not accruing to the member's benefit is credited to the Police Officers' or Firefighters' Contribution Fund, as appropriate.

The amounts accrued to a member's benefit during participation in the plan earn compound interest at a rate determined by the Board.

Cessation of participation in the plan

(secs. 742.444 to 742.447)

A member can cease participating in the plan in any of four ways: termination of active service; continuing in active service beyond the eight-year maximum for participation; acceptance of a disability benefit; or death. A

member notifies the Board of termination of active service on a form that is verified by the employer. An employer is required to verify the member's termination date and any other information required by the Board. Failure to comply with this requirement will subject the employer to a fine.

Termination of active service. A member who terminates active service before the eight-year maximum period ends must notify the Fund of termination on a form prescribed by the Fund. A member who ceases active service with less than three full years of participation in the plan forfeits all interest credited to the amounts the member contributed under the plan. The amounts accrued to the member's benefit under the plan may not be distributed until three full years after the date of the member's election to participate.

Failure to terminate active service. If the member has not terminated active service by the end of the eighth year after electing to participate in the plan, participation ceases and the Fund will no longer credit amounts to the member's accrual. The member forfeits the accrual and is treated as if the member had never participated in the plan but continued in active service. The member is granted service credit for the time spent in active service and at retirement the monthly pension is calculated as if the member had never elected the plan.

Disability. All amounts accrued under the plan for a member who ceases participation due to acceptance of a disability benefit awarded by the Fund are forfeited. The member is granted service credit for active service while participating in the plan and that service credit is included in determining the member's disability benefit.

Death. The amounts accrued to a member's benefit are to be paid to the member's surviving spouse or designated beneficiary if the member dies while participating in the plan. The surviving spouse will receive the greater of a 50% joint and survivor annuity or payments under the plan of payment selected by the member at the time of electing to participate in the plan. (See **COMMENT 2.**)

Distribution of plan accrual

(sec. 742.444)

At the time of ceasing participation due to termination of active service, a member must select a method of distribution of the member's accrued amounts in the plan. The member may select to have the accrual paid in a single payment or periodic payments as determined by the Board. A member who chooses periodic payments must be offered the opportunity at least once each year to switch to a single payment.

At this time, the member must also select a plan of payment for the monthly pension the member will receive that is unrelated to the accruals under the plan, unless the member chose a plan of payment at the time of electing to participate in the plan. The member has the same choices as other members retiring from active service: a single life annuity or joint and survivor annuity.

Vesting

(secs. 742.447 and 742.46)

Under current law, a member becomes vested in the right to receive a pension when the pension is granted. The bill specifies that a plan participant vests in the right to receive the amounts accrued under the plan when participation ceases. Therefore, on termination of active service, the member is entitled to receive the amounts accrued to the member's benefit during participation in the plan and the monthly pension benefit calculated at the time the member elected to participate in the plan. As previously noted, a portion of the member's contributions or the interest on the accrual may be forfeited if the member participates in the plan for less than three full years.

Actuarial investigation, Board option to terminate plan

(sec. 742.14)

In addition to the actuarial investigations already required to be performed by OP&F's actuary, the bill requires the Board to have prepared an actuarial investigation of the plan. The actuary is to determine whether the plan has a negative financial impact on the Fund. If the actuary determines that the plan has a negative financial impact, the Board may modify the plan or cease to offer members who have not already elected to do so the option of participating in the plan. Members who have already chosen to participate in the plan are not to be affected by the Board's decision not to accept new participants. The report of the actuarial investigation must be submitted to the Ohio Retirement Study Council and to the standing House and Senate committees with primary responsibility for retirement legislation.

The bill specifies that the firefighter and police officers employers' contributions are not to be increased to offset any negative financial impact of the plan.²

² *The employer contribution rates are established in statute. (Secs. 742.33 and 742.34.) The OP&F Board does not have authority to increase them.*

Plan participants are not "retirants"

(sec. 742.03)

Members participating in the plan are not considered firefighter or police retirants for purposes of election and membership on the OP&F Board of Trustees.

Technical changes

(secs. 742.101, 742.113, 742.14, 742.37, 742.442, 742.446, and 742.63)

These sections are amended for the technical consistency of existing statutes with those governing the plan.

COMMENT

1. **Average annual salary limitation.** Under current law, a member of OP&F can receive a maximum annual pension equal to not more than 72% of the member's average annual salary, which occurs with 33 years of service credit.³ "Average annual salary" is the average of a member's three highest years of salary as a contributor to the Fund. A member who began contributing to the Fund at age 21 could reach the final average salary limitation at age 54. Because contributions made by a member after reaching the average annual salary limit will not affect the member's pension on retirement, the Deferred Retirement Option Plan may be attractive to members who have reached that limit.

2. **Plan of pension payment.** At the time of electing to participate in the plan established under the bill, a member may elect the plan of payment that will be used when the member's regular age and service retirement pension is ultimately paid. If the member chooses a joint and survivor annuity, the amount that will accrue to the member's benefit in the plan will be reduced. This is because that annuity provides for a reduced benefit for the member's life to fund the survivor's benefit. Under the bill, should the member die before terminating active service, the surviving spouse will receive the greater of (1) an annuity with payments equal to 50% of the payments the member would have received under a joint and survivor annuity or (2) payments under the plan of payment selected by the member at the time of electing to participate in the plan.

³ *The Public Employees Retirement System, School Employees Retirement System, and State Teachers Retirement System all have final average salary limitations of 100%. The State Highway Patrol Retirement System has a final average salary limitation of 79.25%.*

If, at the time of electing to participate in the plan, the member does not choose a plan of payment for the member's pension, the amount accruing to the member's benefit under the plan will be calculated as a single life annuity. When the member terminates employment, the member will have the option of having the member's pension paid either as a single life annuity or as a joint and survivor annuity.

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	06-14-01	p. 667
Reported, S. Ways & Means	11-14-01	p. 1112
Passed Senate (30-0)	11-14-01	p. 1124

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