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Final Analysis
Legislative Service Commission

Sub. H.B. 98

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(As Passed by the General Assembly)

Reps. Willamowski, Hughes, Gibbs, Allen, Otterman, J. Stewart, Schneider, Schmidt, Reidelbach, Buehrer, Cates, Clancy, Core, Distel, Domenick, Fessler, Flowers, Hagan, Harwood, Hollister, Key, Latta, McGregor, Niehaus, Price, Seitz

Sens. Wachtmann, Blessing, Spada

Effective date: *

ACT SUMMARY

Payment to a former spouse of a portion of a public retirement benefit

- Revises a factor in the formula for determining the amount of a state retirement system member's retirement benefit a former spouse is to receive under an order dividing marital property to (1) clarify that the years of service used in the formula are years of contributing service, and (2) ensure that the factor also applies to defined contribution plans under the Public Employees Retirement System (PERS), School Employees Retirement System (SERS), and State Teachers Retirement System (STRS).

Cost of living allowance

- Requires that a portion of a cost-of-living allowance be paid to a former spouse receiving a portion of a retirement benefit under a division of property order.
- Requires that the portion of a cost-of-living allowance paid to beneficiaries under the act's multiple beneficiary payment plan option be

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

divided among the beneficiaries in accordance with the portion of the retirement allowance each beneficiary has been allocated.

Defined benefit plans

Court ordered survivor benefit

- Creates an additional exception to the default plan of payment of a married PERS, SERS, STRS, or OP&F (Ohio Police and Fire Pension Fund) member: the default plan is not required if a court ordered plan of payment issued prior to the member's retirement requires payment in a specified amount continuing after the member's death to a former spouse.
- For all retirement systems, if the member is subject to an order of the type described immediately above and the retirement board has received a copy of the order, requires the retirement board to accept the member's election of a payment plan only if the member: (1) elects a plan that is in accordance with the order, and (2) if (for PERS, OP&F, STRS, and SERS retirants) the member is married, elects the new multiple beneficiary plan, and designates the member's current spouse as a beneficiary under the plan, unless the current spouse consents in writing to not being designated a beneficiary under the payment plan or the retirement board waives the spousal consent.

New multiple beneficiary payment plan option

- Permits an option governing the manner in which a retirement allowance is paid to provide for payments to two, three, or four surviving beneficiaries named at the time of the member's retirement.
- Requires that, under the multiple beneficiary plan, the portions of the member's lesser retirement benefit amount be allocated among the beneficiaries at the time of the member's retirement.
- Prohibits a portion allocated under the multiple beneficiary payment plan to be less than 10% of the member's lesser retirement benefit amount unless compliance with a division of marital property order requires the allocation of a portion less than 10%.
- Prohibits the total of the portions allocated under the multiple beneficiary plan to exceed 100% of the member's lesser retirement benefit amount.

Death, divorce, or marriage and the payment plan

- Clarifies that the death of a retirant's spouse or designated beneficiary cancels only the portion of the plan of payment regarding survivorship benefits, so that the retirant receives the actuarial equivalent of the retirant's single lifetime allowance, based on the number of remaining beneficiaries, with no change in amount payable to any remaining beneficiary.
- Clarifies that a retirant's divorce, annulment, or dissolution of marriage authorizes the retirant to elect to cancel the portion of the plan providing survivorship benefits to the former spouse, so that the retirant receives the actuarial equivalent of the retirant's single lifetime allowance, based on the number of remaining beneficiaries, with no change in amount payable to any remaining beneficiary.
- Authorizes a retirant who is receiving a benefit under a plan that provides for payment to a former spouse pursuant to a court order dividing marital property and who remarries to elect a new plan under the multiple beneficiary option created by the act, if the new plan elected does not reduce the payment to the former spouse.

Defined contribution plans--PERS, SERS, and STRS

- Creates an additional exception to the default plan of payment for married PERS, SERS, and STRS members: if a court has ordered a plan of payment providing for payment in a specified amount continuing after the member's death to a former spouse and that order is issued prior to the effective date of the member's retirement the act requires:

(1) If the member is married, the payment plan must also provide payment to the member's current spouse, unless the current spouse consents in writing to not being designated a beneficiary under the plan or the current spouse's consent is waived by reason other than the court order.

(2) If the member is a PERS or SERS member, the member must to annuitize the member's accumulated amounts in accordance with the order.

CONTENT AND OPERATION

Background--existing law

Marital property

Existing law unaffected by the act provides for the 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 marriage. Current law governing the state retirement systems deals with payment of a portion of a retirement benefit to a former spouse pursuant to a division of property order issued by a court.¹ A division of property order (or a comparable order dividing marital property under the laws of another state) may require a retirement system to make direct payments to a former spouse of a member, deducted from either a monthly benefit or lump sum payment being paid to the member.² Under continuing law, a monthly payment to a former spouse does not reflect any change in the retiree's benefit due to a cost-of-living increase.

A division of property order concerning a retirement benefit remains in effect, and payments under it continue, until the retirement system member dies, the former spouse dies, or the member's benefits are terminated. Thus, the division of property does not include survivor benefits for a former spouse. A retirement system is authorized to honor a division of property order for only one former spouse.

Retirement plans

All five retirement systems have traditionally received contributions and paid benefits under what is referred to as a "defined benefit plan": a plan under which contributions are invested at the discretion of the system and benefits are paid pursuant to a formula specified in the Revised Code. The Public Employees Retirement System (PERS), School Employees Retirement System (SERS), and State Teachers Retirement System (STRS) have been authorized to also establish one or more "defined contribution plans." These are plans under which the

¹ *The state retirement systems are the Public Employees Retirement System, State Teachers Retirement System, School Employees Retirement System, Ohio Police and Fire Pension Fund, and State Highway Patrol Retirement System.*

² *A spouse who is a party to an action for divorce, legal separation, annulment, or dissolution of marriage and is to receive one or more payments from a retirement benefit or lump sum payment under a division of property order is referred to in current law and the act as an "alternate payee."*

member directs the investment of contributions and receives benefits based on contributions and investment earnings.

Participants in defined benefit plans earn service credit for years of service. Participants in defined contribution plans do not.

Calculation of payment to former spouse

(R.C. 3105.82)

Continuing law substantively unchanged by the act includes a formula for determining the amount of a retirement benefit a former spouse is to receive under an order dividing marital property. Under this formula, the court must specify the amount to be paid to the former spouse as either: (1) a monthly dollar amount, should the participant elect a benefit, and as a one-time payment, should the participant elect a lump sum payment, or (2) a percentage of a fraction of a monthly benefit or lump sum payment.

If the courts opts to specify the amount as a percentage of a fraction, the fraction is determined as follows:

(1) The numerator is the number of years during which the participant was both a member of a public retirement program and married to the former spouse.

(2) The denominator is the participant's total years of service credit or, in the case of a participant in an institution of higher education alternative retirement plan, years of participation in the plan.

The act clarifies that the number of years of service described in the fraction's numerator refers to the number of years of contributing service. In the fraction's denominator, for a participant in a PERS, SERS, or STRS defined contribution plan, the act changes "years of service credit" to "years of participation in the plan."

Cost-of-living allowance

(R.C. 145.323, 742.3711(G), 742.3716, 742.3717, 3307.67, 3309.374, and 5505.174)

Under continuing law, each of the state retirement systems provides an annual cost-of-living allowance (COLA) to eligible recipients of an allowance or benefit.

The act grants a portion of the COLA to a former spouse who is receiving a portion of a benefit under a division of property order concerning a benefit from a



state retirement system. A COLA granted while the order is in effect must be apportioned between the former spouse and the benefit recipient in the same proportion that the amount being paid the former spouse bears to the amount paid the benefit recipient.³

If payment of a portion of a benefit is made to one or more beneficiaries under the multiple beneficiary payment plan option created by the act (see "**Defined benefit plans**," below), each COLA granted while the plan is in effect must be divided among the designated beneficiaries in accordance with the portion each beneficiary has been allocated.

Defined benefit plans

(R.C. 145.46, 742.3711, 3105.80, 3307.60, 3309.46, and 5505.162)

Court ordered survivor benefit

Continuing law unaltered by the act governing the defined benefit plans provides that a retirement allowance may be paid either as a single lifetime benefit or in a lesser amount payable for life and continuing after death to a surviving spouse or other beneficiary under one of several options.⁴ For PERS, STRS, SERS, and Police and Fire Pension Fund (OP&F) retirants, with two exceptions, an application for retirement by a married person is considered an election of an option that pays an actuarially reduced amount to the retiree for life with one-half of that amount continuing to the surviving spouse for life as sole beneficiary.⁵

The act creates a third exception. Under this exception, the member may receive a retirement allowance under a plan other than the default joint and

³ *The PERS and STRS provisions of the act use the term "benefit recipient." The SERS provisions use "retirant or disability benefit recipient." The terms have the same meaning.*

⁴ *The single life annuity is the amount paid a retiree under an option that does not include survivor benefits. An option that includes survivor benefits has lesser payments during the retiree's life but continues the same or lower payments to a surviving spouse or beneficiary. Payments are calculated so that an option that includes survivor benefits (a joint and survivor benefit) is the actuarial equivalent of the single life annuity.*

⁵ *A married person's application for retirement is not considered an election of a joint and survivor benefit if (1) the member's spouse consents in writing to a different manner of payment or (2) the board waives the requirement that the spouse consent to a different manner of payment. A retirement board can waive the requirement of consent if the spouse is incapacitated or cannot be located or for any other reason specified by the board.*

survivor plan for a married member if a court order issued prior to the effective date of the member's retirement requires payment of a specified amount to a former spouse to continue after the member's death. The member may elect a plan of payment that complies with such a court order.⁶

Also, under the act, if the member is subject to an order of this type and the retirement board has received a copy of the order, the retirement board is required to accept the member's election of a payment plan only if the member: (1) elects a plan that is in accordance with the order, and (2) if the member is married, elects the new multiple beneficiary plan and designates the member's current spouse as a beneficiary under the plan unless the current spouse consents in writing to not being designated a beneficiary under any payment plan or the retirement board waives the spousal consent.⁷

New multiple beneficiary payment plan option

The act creates an additional payment plan option under which a portion of the retiree's lesser allowance is paid to the member for life and, after the member's death, some portion of the lesser allowance continues to be paid to two, three, or four surviving beneficiaries named at the time of the member's retirement. The portion of the lesser allowance that continues after the member's death must be allocated among the beneficiaries at the time of the member's retirement.

Generally, no portion allocated to a beneficiary under this payment plan may be less than 10% of the member's lesser allowance. However, if the member elects this plan as required by a division of marital property order and compliance with the order requires the allocation of a portion less than 10% to the member's former spouse, the member must allocate a portion less than 10% to the member's former spouse in accordance with that order. The total of the portions allocated must not exceed 100% of the member's lesser allowance.

Death, divorce, or marriage and the payment plan

Death of beneficiary. Under continuing law, the death of a retirant's spouse or any other designated beneficiary cancels any plan of payment to provide continuing lifetime benefits to the spouse or designated beneficiary. The retirant then receives the retirant's single lifetime retirement allowance equivalent as determined by the retirement board.

⁶ Continuing law, unaffected by the act, requires the system to comply with an order of this nature (R.C. 145.571, 3307.371, and 3309.671).

⁷ The second provision applies to PERS, OP&F, STRS, and SERS, but not the State Highway Patrol Retirement System (SHPRS).

The act clarifies that such a death cancels the *portion* of the plan of payment regarding the survivorship benefits, and the retirant receives the *actuarial equivalent* of the retirant's single lifetime allowance as determined by the retirement board, based on the number of remaining beneficiaries, with no change in amount payable to any remaining beneficiary.

Divorce of retirant. Similarly, under continuing law, on divorce, annulment, or marriage dissolution, a retirant receiving a retirement allowance under a plan of payment that provides for continuation of all or part of the allowance after death for the lifetime of the retirant's surviving spouse may elect to cancel the plan. The retirant then receives the member's single lifetime retirement allowance equivalent as determined by the retirement board.

The act clarifies this provision, stating that the retirant may elect to cancel the *portion* of the plan providing the survivorship benefits to the ex-spouse and receive the *actuarial equivalent* of the retirant's single lifetime retirement allowance as determined by the retirement board, based on the number of remaining beneficiaries, with no change in amount payable to any remaining beneficiary.

Marriage of retirant. Finally, following a marriage or remarriage, continuing law permits a retirant who is receiving the retirant's retirement allowance as a single lifetime benefit to elect a new payment plan that provides joint and survivor benefits based on the actuarial equivalent of the retirant's single lifetime benefit as determined by the retirement board.

Under the act, a retirant who is receiving a benefit pursuant to a plan providing for payment to a former spouse pursuant to a court order dividing marital property may elect a new plan under the multiple beneficiary option created by the act, based on the actuarial equivalent of the retirant's single lifetime retirement allowance as determined by the board, if the new plan elected does not reduce the payment to the former spouse.

Defined contribution plans

(R.C. 145.92, 3307.87, and 3309.92)

Continuing law governing PERS, SERS, and STRS defined contribution plans generally does not specify how retirement benefits are to be paid. The exception is that if a member is married at the time benefits under a defined contribution plan are to commence, unless the spouse consents to another manner of payment or the spouse's consent is waived, the member's retirement allowance

is to be paid in a lesser amount payable for life and one-half of the allowance continuing after death to the surviving spouse for the life of the spouse.⁸

The act requires the retirement system to waive the requirement of consent if a court order dividing marital property is issued prior to the effective date of retirement and provides for payment in a specified portion continuing after the member's death to a former spouse. If a court order requires this payment plan, the member must be required to annuitize the member's accumulated amounts in accordance with the order.⁹ If the member is married, the payment plan selected by the member also must provide payment to the member's current spouse, unless the current spouse consents in writing to not being designated a beneficiary under the plan or the current spouse's consent is waived by reason other than the court order.

Delayed effective date

(Section 3)

The act provides that its operative provisions take effect 18 months after the act's effective date.

HISTORY

| ACTION | DATE | JOURNAL ENTRY |
|---|----------|---------------|
| Introduced | 03-04-03 | p. 204 |
| Reported, H. Banking, Pensions, & Securities | 06-03-03 | p. 533 |
| Passed House (98-0) | 06-25-03 | pp. 965-966 |
| Reported, S. Health, Human Services & Aging | 12-08-04 | pp. 2434-2435 |
| Passed Senate (32-0) | 12-08-04 | pp. 2454-2455 |
| House concurred in Senate amendments (86-2) | 12-17-04 | pp. 2759-2760 |

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⁸ *A defined contribution plan can waive spousal consent if the spouse is incapacitated, cannot be located, or for any other reason specified in regulations that govern these plans.*

⁹ *The annuitization requirement was not included in the STRS law because, according to STRS, the member already would be required to annuitize the accumulated amounts.*

