



Sub. H.B. 98

125th General Assembly
(As Passed by the House)

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

BILL SUMMARY

- Makes the following changes concerning payment by the Public Employees Retirement System (PERS), School Employees Retirement System (SERS), or State Teachers Retirement System (STRS) of a portion of a retirement benefit to a former spouse:
 - (1) Requires that a portion of a cost-of-living allowance be paid to a former spouse receiving a portion of the benefit under a division of property order.
 - (2) Creates an additional exception to the default plan of payment of a married retirement system member: the default plan is not required 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.
 - (3) Permits an option governing the manner in which a retirement allowance is paid to provide for payments to more than one surviving beneficiary.
- Clarifies that the death of an SERS retiree's spouse or designated beneficiary cancels only the portion of the plan of payment regarding survivorship benefits, permitting recalculation of the retirement allowance based on the actuarial equivalent of the retiree's single lifetime allowance.

- Clarifies that an SERS retirant's divorce, annulment, or dissolution of marriage authorizes the retirant to elect to cancel the portion of the plan providing survivorship benefits, permitting recalculation of the retirement allowance based on the actuarial equivalent of the retirant's single lifetime allowance.

CONTENT AND OPERATION

Background

Marital property

Ohio law 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 from either a monthly benefit or lump sum payment being paid to the member.² Under current 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.

¹ *The state retirement systems are the Public Employees Retirement System (PERS), State Teachers Retirement System (STRS), School Employees Retirement System (SERS), Ohio Police and Fire Pension Fund, and State Highway Patrol Retirement System. The bill deals only with PERS, SERS, and STRS.*

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 bill as an "alternate payee."*

Retirement plans

The Public Employees Retirement System (PERS), School Employees Retirement System (SERS), and State Teachers Retirement System (STRS) 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. Each of the systems has been authorized to also establish one or more "defined contribution plans." These are plans under which the 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)

Current law includes a formula for determining the amount of a retirement benefit a former spouse is to receive under an order dividing marital property. One factor is the retirement system member's years of service credit. In the case of a participant in a PERS, SERS, or STRS defined contribution plan, the bill changes this factor from years of service credit to years of participation in the plan.

Cost-of-living allowance

(R.C. 145.323, 3307.67, and 3309.374)

Under current law, PERS, SERS, and STRS provide an annual cost-of-living allowance (COLA) to eligible persons who are receiving an allowance, pension, or benefit under a defined benefit plan. Eligibility for a COLA and the method by which it is calculated differs for each state retirement system, but the percentage used in calculation of the COLA is 3%.

The bill 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 PERS, SERS, or STRS. 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 For example, under the bill, a former spouse receiving 40% of a retirement allowance will receive 40% of the COLA.

Retirement benefit options

Defined benefit plans

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

Court ordered survivor benefit. Current law governing the defined benefit plans provides that a PERS, SERS, or STRS 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 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 bill creates a third exception. Under this exception, the member may receive a retirement allowance under a plan other than the default plan for a married member if a plan of payment providing for payment in a specified amount continuing after the member's death to a former spouse is required by a court order issued prior to the effective date of the member's retirement.⁶ (See **COMMENT.**)

New payment plan option. The bill creates an additional payment plan option under which a portion of the retiree's lesser allowance is paid to the member for life and continuing after death to each of two or more surviving

³ *The PERS and STRS provisions of the bill 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 *The exceptions are (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.*

⁶ *Existing law requires the system to comply with an order of this nature (R.C. 145.571, 3307.371, and 3309.671).*

beneficiaries named at the member's retirement, in such portion as specified at retirement. To choose this option, a married person would have to have the consent of the spouse or a waiver of the consent requirement or be subject to a court order of the type described in the preceding paragraph.

The bill also provides, for SERS only, that a member receiving a benefit pursuant to an option providing for payment under a court order dividing marital property may elect to receive payment under the new option created by the bill if the new option does not reduce the payment to the former spouse.

SERS law--divorce or death of spouse and the payment plan. Under existing SERS law, the death of a retiree's spouse or any other designated beneficiary cancels any plan of payment to provide continuing lifetime benefits to the spouse or designated beneficiary. The retiree then receives the retiree's single lifetime retirement allowance equivalent as determined by the SERS Board. The bill clarifies that such a death cancels the *portion* of the plan of payment regarding the survivorship benefits, and the retiree receives the *actuarial equivalent* of the retiree's single lifetime allowance.

Similarly, under existing SERS law, on divorce, annulment, or marriage dissolution, a retiree 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 member's surviving spouse may elect to cancel the plan. The retiree then receives the member's single lifetime retirement allowance equivalent as determined by the SERS Board. The bill clarifies this provision that the retiree may elect to cancel the *portion* of the plan providing the survivorship benefits to the ex-spouse and receive the *actuarial equivalent* of the retiree's single lifetime retirement allowance.

Defined contribution plans

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

The 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.⁷ The bill requires the

⁷ A defined contribution plan can waive spousal consent if the spouse cannot be located or for any other reason specified in regulations that govern these plans.

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 amount continuing after the member's death to a former spouse. (See **COMMENT**.)

Delayed effective date

(Section 3)

The bill provides that its provisions take effect July 1, 2004.⁸

COMMENT

This provision eliminates the protection otherwise provided a current spouse through the requirement that the spouse consent to any plan of payment other than a joint and survivor benefit. The bill does not require that the default plan (joint and survivor benefit) be used for the portion of the retirement allowance not subject to the court order. For defined benefit plans, the member may, but is not required to, use the new payment plan option under which survivor benefits are paid to more than one beneficiary.

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

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⁸ As July 1, 2004, has passed, the effective date of the bill needs to be clarified.