



Sub. H.B. 272*

126th General Assembly

(As Reported by H. Financial Institutions, Real Estate, and Securities)

Reps. Schneider, D. Evans, Reidelbach

BILL SUMMARY

Changes to all retirement systems

Voluntary health care savings account program

- Authorizes each state retirement system to establish a voluntary health care savings account program under which members, employers, and, in some cases, retirants may make deposits that are in addition to regular contributions that may be used for medical expenses.

Filling a vacancy on a state retirement system board

- Provides that a state retirement system need not hold an election to fill a vacated employee member or retirant member position if less than 90 days remain in the vacated term.
- Provides that, if a vacancy occurs during the term of an elected member of the OP&F Board, STRS Board, or SERS Board and the remaining board members must elect a successor member, the successor member holds office until the first day of the new term that occurs not less than 90 days after the successor member's election, or until the end of the term for which the successor member was elected, whichever occurs first.

* *This analysis was prepared before the report of the House Financial Institutions, Real Estate, and Securities Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

Board member removal proceedings

- Requires board member removal proceedings to be conducted by the court of common pleas of the county in which the board member resides (rather than the district court of appeals).
- Provides that the board member has the right to appeal to the court of appeals (rather than the Ohio Supreme Court).

Annual disability benefit reports

- Requires each state retirement system to annually prepare, by not later than March 1, a report on disability benefits provided by the system during the preceding fiscal year. (Current law requires that the reports be prepared from 2000-2005 only.)

Changes to PERS

Purchase of an additional annuity

- Revises current law with regard to the purchase of an additional annuity to (1) permit deposits to be made through payroll deduction, (2) specify the date on which deposits begin, and (3) require that additional annuity deposits be refunded on withdrawal of accumulated contributions or death prior to retirement or, under certain circumstances, on application.
- Specifies the payment plans an additional annuity contributor may choose from, requires spousal consent for the selection of certain payment plans, and provides for changes in the payment plan due to specified changes in circumstances.
- Provides for distribution of the additional deposits a member has made if the member dies before benefits begin.
- Requires a PERS additional annuity contributor who is subject to a division of marital property order that requires payments to a former spouse to select a plan of payment that provides for such payments.
- Provides that if a PERS retiree marries or remarries, election of a joint and survivor annuity plan under the additional annuity program must be made no later than one year after the marriage or remarriage.

Employer contributions

- Eliminates the option permitting an employer to pay the employer's obligation in installments less frequent than monthly, but permits the PERS Board to lengthen the period of time for employers to comply with the employer obligation provisions.
- Revises the methods by which penalties and interest for late payment of the employer's obligation are calculated, authorizes the PERS Board to establish lesser penalties and rates, and permits the Board to enter into repayment agreements with employers.
- Enacts transitional provisions regarding the employer obligation provisions for the months of October, November, and December of 2007 under which the employer may spread the transitional liability over three years.

Delinquent employer contributions--penalties

- Shortens the period before which an employer that receives a delinquent contribution statement becomes subject to penalties and interest from 90 days after the end of the quarterly period in which the payments become the employer's obligation to 30 days after the end of the month in which the payments become an obligation.

Elected officials--refund for service credit purchases

- Provides for a PERS member who purchased additional service credit for service as an elected official (or the member's estate) to receive a refund for all or a portion of the amount the member paid to purchase the credit if using the purchased credit to calculate the member's retirement benefit results in a benefit that is greater than the maximum benefit allowed (100% of the member's final average salary).

PERS law enforcement officers--benefit for surviving spouse

- Waives certain minimum service credit requirements so that the surviving spouse of a PERS law enforcement officer may receive a monthly survivor benefit regardless of the member's length of service.

Beneficiary designations

- Requires a member who designates two or more beneficiaries to receive a lump sum payment of the member's accumulated contributions to specify the percentage of the lump sum payment each beneficiary is to receive.
- Provides that if a member does not specify the percentages each beneficiary is to receive, the lump sum will be divided equally among all the beneficiaries.

Defined contribution plan participants--change of annuity plan

- Requires the spousal consent document for a change to a defined contribution plan annuity plan to be signed by the member's spouse, rather than the member. (Existing law requires a PERS defined contribution plan participant to get spousal approval of a change in an annuity plan, but requires the document evidencing the spouse's consent be signed only by the member, not by the spouse.)

Changes to OP&F

OP&F Board of Trustees--police officer retirant member

- Provides that the police officer retirant member of the OP&F Board of Trustees whose term of office commenced on June 2, 2003, has a term of five, rather than four years.

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CONTENT AND OPERATION

Changes to all retirement systems

Voluntary health care savings account program

(R.C. 145.294, 145.583, 742.451, 742.56, 3307.393, 3307.70, 3309.27, 3309.692, 5505.203, and 5505.281)

The bill permits each of the five retirement systems to establish a program under which a member, the member's employer, or a retired member ("retirant") may make deposits for the purpose of providing funds to the member or retirant for the payment of health, medical, hospital, surgical, dental, vision care, or drug expenses, including insurance premiums, deductible amounts, or copayments. Deposits made to the program are in addition to regular employee and employer contributions.¹

To implement the program, the bill authorizes the board of each retirement system to enter into agreements with insurance companies or other entities authorized to do business in Ohio. If a retirement system includes a health savings account program, the system must adopt rules to establish and administer the program.

Filling a vacancy on a state retirement system board

(R.C. 145.06, 742.05, 3307.06, 3309.06, and 5505.043)

Under current law, if a vacancy occurs during the term of office of an active or retired employee member of a state retirement board, the remaining members of the board must elect a successor member. The bill provides that a successor member need not be elected if, on the day the vacancy occurs, less than 90 days remain in the vacated term. The bill also clarifies that a successor member holds office either (1) until the first day of the new term that follows the next board election that occurs 90 days after the successor member's election, or (2) until the end of the term for which the successor member was elected--whichever is sooner.

¹ *The program may be a voluntary employees' beneficiary association, as described in Internal Revenue Code section 501(c)(9), an account described in Internal Revenue Code section 401(h), a medical savings account, or a similar type of program under which an individual may accumulate funds for the purpose of paying such expenses.*

Board member removal proceedings

(R.C. 145.057, 742.046, 3307.061, 3309.061, and 5505.048)

Existing law, unchanged by the bill, provides that an employee member or retirant member of a retirement system board is guilty of misconduct in office for any of the following: willfully and flagrantly exercising authority or power not authorized by law; refusing or willfully neglecting to enforce the law or to perform any official duty imposed by law; or being guilty of gross neglect of duty, gross immorality, drunkenness, misfeasance, malfeasance, or nonfeasance. Currently, removal proceedings are commenced by filing a complaint with the court of appeals of the district in which the board member resides. The court must hold a hearing. Once the court of appeals has issued its finding, the board member has the right of review or appeal to the Ohio Supreme Court.

The bill revises the removal proceedings so that (1) proceedings are in the court of common pleas of the county in which the member resides (rather than the district court of appeals) and (2) the member has the right to appeal to the court of appeals (rather than the Ohio Supreme Court).

Annual disability benefit reports

(R.C. 145.351, 742.381, 3307.513, 3309.391, and 5505.181)

Substitute House Bill 648 of the 122nd General Assembly required, from 2000 through 2005, each of the state retirement systems to make and submit a report for the preceding fiscal year of the disability experience of each employer subject to the system. Each report was to specify the total number of disability applications submitted, the status of each application as of the last day of the fiscal year, total applications granted or denied, and the percentage of disability benefit recipients to the total number of the employer's employees who are members of the system. The reports were submitted to the Governor, the Ohio Retirement Study Council, and the chairpersons of the standing committees and subcommittees of the Ohio Senate and House of Representatives with primary responsibility for retirement legislation.

The bill requires the retirement systems to resume annually making and submitting these reports, beginning on the first day of March following the bill's effective date.

Changes to PERS

Current law--purchase of an additional annuity

(R.C. 145.23(C))

Current law permits any member participating in the PERS defined benefit plan² to voluntarily deposit in the PERS Employees' Savings Fund amounts in addition to required employee contributions. At the time of retirement, the member receives in return for those additional amounts either an annuity having a reserve equal to the amount deposited or a cash refund with such interest as the PERS Board allows. The additional deposits and interest must be refunded in the event of death prior to retirement, withdrawal of accumulated contributions, or on application of the contributor prior to retirement. Current law specifies how interest is earned and requires the PERS Board to credit interest at the end of the calendar year in which it is earned. Any additional deposits made by a member participating in a PERS defined contribution plan must be credited to that defined contribution plan.

The bill--making additional payments

(R.C. 145.23(C), 145.294(A), 145.62, 145.63, and 145.64 and conforming changes in R.C. 145.471(A), and 145.472(A))

The bill relocates and revises the additional annuity provisions of current law. Under the bill, subject to rules adopted by PERS, a contributor participating in the PERS defined benefit plan or contributing as a result of being a re-employed retirant may deposit additional amounts in the Employees' Savings Fund. The additional deposits may be made either directly to PERS or by payroll deduction. In return, the contributor is to receive either an annuity having a reserve equal to the amount deposited or a refund of the amount deposited, together with earnings on those deposits as the PERS Board determines appropriate.

Refunds. If the annuity under the plan of payment selected by the contributor would be less than \$25 per month, the contributor must be paid the refund.

Deposits, together with earnings, must be refunded under any of the following circumstances:

² *The defined benefit plan is the traditional PERS retirement plan under which members receive retirement benefits under a formula that uses compensation, years of service, and sometimes age.*

(1) Withdrawal of accumulated contributions following termination of employment covered by PERS;

(2) Death prior to retirement;

(3) In the case of a contributor participating in the PERS defined benefit plan, on application prior to attaining retirement eligibility;

(4) In the case of a contributor who is a re-employed retirant, on application prior to attaining eligibility for a benefit;

(5) In the case of an unmarried contributor who has attained eligibility for an age and service retirement benefit or a benefit payable to a re-employed retirant, on application;

(6) In the case of a married contributor who has attained eligibility for an age and service retirement benefit or a benefit payable to a re-employed retirant, on application if the application is accompanied by a statement of the spouse's consent to the refund or the Board waives the requirement that the spouse consent.³

Annuities. A contributor who has not received a refund of amounts deposited may file an application with PERS for an annuity under a plan of payment similar to those offered for age and service retirement benefits.

A contributor who is married at the time of application for a benefit will receive a monthly annuity under "Plan A,"⁴ unless the application is accompanied by a statement of the spouse's consent to another plan or the PERS Board waives the requirement that the spouse consent.⁵

³ *The consent of a spouse to a refund is valid only if it is in writing, signed, and witnessed by a notary public. The Board may waive a requirement of consent if the spouse is incapacitated or cannot be located or for any other reason the Board specifies. Consent or waiver is effective only with regard to the spouse who is the subject of the consent or waiver.*

⁴ *"Plan A" is a monthly amount payable for life to the contributor with an amount equal to one half that amount continuing after the contributor's death to the surviving spouse for the spouse's life. The monthly amount paid the contributor is less than it would be if the annuity were paid only for the contributor's life.*

⁵ *As with refund applications, the spouse's consent must be in writing, signed, and witnessed by a notary public. The Board may waive the consent requirement if the spouse is incapacitated or cannot be located, or for any other reason the Board specifies. Consent or waiver is effective only for the spouse who is the subject of the consent or waiver.*

The contributor must designate a beneficiary under a plan of payment in writing at the time the plan is selected.

A plan of payment other than "Plan B"⁶ is effective only if it is certified by an actuary engaged by the Board to be the actuarial equivalent of the contributor's "Plan B" annuity and is approved by the Board. A contributor who is eligible to select the form of benefit, but fails to do so, receives a monthly annuity under the plan of payment specified in rules adopted by the Board.

An annuity is paid monthly and consists of an amount determined by PERS or the actuarial equivalent of that amount paid under another permissible plan of payment. Payments begin on whichever of the following applies: (1) the effective date of the contributor's age and service retirement allowance, (2) the effective date of a benefit paid to a re-employed retirant, or (3) the date on which a member receiving disability retirement would have been eligible for an age and service retirement allowance.

The death of a spouse or designated beneficiary under a plan of payment cancels the plan of payment. Effective the month following receipt by the Board of notice of the death, the contributor is to receive payments under "Plan B."

On divorce, annulment, or marriage dissolution, a contributor may, with written consent of the spouse or pursuant to an order of the court with jurisdiction over the termination of the marriage, elect to cancel a plan and instead receive payments under "Plan B." The election must be made on a form provided by the system and is effective the month following its receipt by the system. Following marriage or remarriage, a contributor receiving payments under "Plan B" may select a new plan of payment based on the actuarial equivalent of the contributor's Plan B, as determined by the PERS Board. The plan becomes effective the first day of the month following receipt by the system of an application on a form provided by the system.

If at the time of death a contributor receiving a monthly annuity under "Plan B" has received less than the contributor's deposits plus earnings on those deposits, the difference between the amount received and the amount of the contributor's deposits plus earnings must be paid to the contributor's beneficiary. If a beneficiary receiving a monthly annuity dies and at the time of the beneficiary's death the amounts paid to the contributor and the beneficiary are less than the amount of the contributor's deposits plus earnings on those deposits, the difference between the amount received by the contributor and the beneficiary and

⁶ "Plan B" is a single life annuity under which the contributor receives a specified amount monthly for life.

the amount of the contributor's deposits plus earnings must be paid to the beneficiary's estate.

Receipt of the first month's annuity payment constitutes final acceptance of the plan of payment and may be changed only as provided above.

Annuities and division of property orders. Continuing law unaffected by the bill 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. 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.⁷

The bill requires that, if a contributor who is subject to division of property order that was issued prior to the effective date of the contributor's benefit application and the PERS Board has received a copy of the order, the contributor must elect to receive a monthly annuity under "Plan F" and designate the contributor's current spouse as a beneficiary under that plan, unless the spouse consents in writing to not being designated, or the PERS Board waives the requirement that the current spouse consent.⁸ "Plan F" permits more than one beneficiary to be designated.

The bill--death of contributor before commencement of annuity

(R.C. 145.65)

Should a contributor die before commencement of an annuity or other benefit from the additional deposits,⁹ the additional deposits plus earnings must be

⁷ *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 as an "alternate payee."*

⁸ *"Plan F" is a monthly annuity under which a lesser portion of the amount is paid to the contributor for life and, after the contributor's death, some portion of the lesser amount continues to be paid to two, three, or four surviving beneficiaries named at the time of the contributor's application.*

⁹ *Payments begin on the effective date of the contributor's age and service retirement or disability benefit or the effective date of a lump sum benefit paid to a contributor who is a re-employed retiree (R.C. 145.62).*

paid to the person or persons the contributor has designated.¹⁰ If the deposits of a deceased contributor are not claimed by a beneficiary or by the estate of the deceased contributor within five years after the death, the deposits must remain in the Employees' Savings Fund or may be transferred to the Income Fund and thereafter must be paid to the beneficiary or to the contributor's estate on application to PERS. The bill requires the PERS Board to adopt the necessary rules governing all designations of beneficiaries.

If the deceased contributor is not survived by a designated beneficiary, the following qualify with all attendant rights and privileges, in the following order of precedence, the contributor's: (1) surviving spouse, (2) children, share and share alike, (3) parents, share and share alike, and (4) estate. If a beneficiary under this provision is deceased or is not located within 90 days, the beneficiary ceases to qualify for any benefit and the beneficiary next in order of precedence qualifies as a beneficiary. Any payment made to a beneficiary as determined by the PERS Board constitutes a full discharge and release to the Board from any future claims.

If the validity of a marriage cannot be established to the satisfaction of the Board for the purpose of disbursing any amount due in regard to the additional deposits, the Board may accept a decision rendered by a court having jurisdiction in the state in which the contributor was domiciled at the time of death that the relationship constituted a valid marriage at the time of death, or the "spouse" would have the same status as a widow or widower for purposes of sharing the distribution of the contributor's intestate personal property.¹¹

If the death of a contributor or of any individual who by virtue of the death of a contributor would be eligible to receive a refund or an annuity payment from additional deposits is caused by a beneficiary, no amount due to that beneficiary may be paid to that beneficiary in the absence of a court order to the contrary filed with the Board.

¹⁰ *The designation must be in writing, duly executed on a form provided by PERS, signed by the contributor, and filed with PERS prior to the contributor's death. A contributor may designate two or more persons as beneficiaries to be paid jointly. The last designation of any beneficiary revokes all previous designations. The contributor's marriage, divorce, marriage dissolution, legal separation, or refund, or the birth of the contributor's child, or adoption of a child, constitutes an automatic revocation of the contributor's previous designation.*

¹¹ *Intestate personal property is personal property that is not disposed of by a will.*

Employer contributions--existing law

(R.C. 145.51)

Under existing law, employers must pay employer contributions to PERS in such monthly *or less frequent* installments as the PERS Board requires. Ninety days after the end of a quarterly period, any amounts that remain unpaid are subject to a 5% penalty for late payment. In addition, interest on past due amounts and penalties may be charged at a rate set by the PERS Board.

The bill

General provisions (R.C. 145.51). The bill changes the period within which the payments must be made and the penalties for failing to make timely payments. While the bill eliminates the option of making the payments in installments that are less frequent than monthly, it permits the Board to adopt rules permitting the Board to lengthen the periods of time for employers to comply with the employer obligation provisions.

Generally, the bill requires that all employer obligations be received by PERS not later than the 30th day after the last day of the calendar month for which related member contributions are withheld. Unless the Board adopts a rule establishing a different interest rate or penalty, interest and penalties for failing to pay this obligation when due are as follows:

(1) Interest, compounded annually and charged monthly, for each day after the due date that the employer obligation remains unpaid in an amount equal to 6% per annum of the past due amount of the obligation and any penalties imposed;

(2) The penalty for failing to pay the employer obligation when due is as follows: (a) at least 11 but not more than 30 days past due, an amount equal to 1% of the past due obligation, (b) at least 31 but not more than 60 days past due, an additional amount equal to 1.5% of the past due obligation (or a total penalty of 2.5%), and (c) 61 or more days past due, an additional amount equal to 2.5% of the past due obligation (or a total penalty of 5%).

The bill authorizes the PERS Board to adopt rules to establish interest at a rate that does not exceed the statutory annual rate and establish penalties in amounts that do not exceed the statutory amounts. The bill also permits the Board to enter into repayment agreements for employers to comply with the employer obligation provisions.

Transitional provisions (R.C. 145.52 and 145.53 and a conforming change in R.C. 145.82). The bill enacts special provisions regarding the employer obligation due under the revised employer obligation provisions for the months of October, November, and December 2007. This "transitional liability" is payable

in three installments on or before December 31, 2008 (for the October, 2007, transitional liability), December 31, 2009 (for the November, 2007, transitional liability), and December 31, 2010 (for the December, 2007, transitional liability). Interest and penalties for failing to pay amounts when due under these transitional provisions is to be calculated in accordance with the bill's revised interest and penalty provisions.

From the employer obligation relating to defined contribution plans for the month of February, 2008, an amount equal to the portion of the employer obligation for the months of October, November, and December of 2007, must be credited to the PERS defined contribution plan to satisfy the portion of the transitional liability attributable to defined contribution plan employer contribution provisions. When this amount is credited to the PERS defined contribution plan, an equal amount must be added to the transitional liability to satisfy a portion of the February, 2008 employer obligation that is attributable to the PERS defined benefit plan. This amount must be paid as described in the preceding paragraph and must be prorated to correspond with the portion of the transitional liability due.

Delinquent employer contributions--penalties

The bill shortens the period before which an employer becomes subject to penalties and interest. Under existing law, if delinquent contribution statements are not paid not later than 90 days after the end of the quarterly period in which they become an obligation of the employer, any balance remaining must be collected with penalties and interest. The bill shortens this period such that penalties and interest are triggered if the delinquent contribution statements are paid later than 30 days after the end of the month in which they become an obligation.

Elected officials--refund for service credit purchases

(R.C. 145.201)

Current law permits a PERS member who is an elected official or is appointed by the Governor with the advice and consent of the Senate to serve full-time as a member of a public body to purchase additional service credit. The amount purchased may not exceed the lesser of 35% of the member's service credit as an elected or appointed official or the amount permitted by federal law. The member may purchase the service credit at any time prior to retirement. The bill permits a member who purchased service credit for service as an elected or appointed official (or the member's estate) to receive a refund for all or a portion of the amount the member paid to purchase the credit if using the credit to calculate the member's retirement benefit results in a benefit that is greater than the maximum benefit allowed (100% of the member's final average salary).



PERS law enforcement officers--benefit for surviving spouse

(R.C. 145.45)

Under current law, if a PERS member with at least one and a half years of PERS service credit dies prior to retirement, a surviving spouse who meets certain requirements is eligible to receive survivor benefits. The spouse must be either (1) age 62 or (2) any age, if the deceased member had ten or more years of service credit or the spouse is caring for a minor or dependent child or the spouse is adjudged mentally or physically incompetent.

The bill waives the requirement that the member have had ten years of service credit if the member was a law enforcement officer killed in the line of duty.¹² Therefore the surviving spouse need not be age 62, caring for a child, or adjudged mentally or physically incompetent.

Beneficiary designations

(R.C. 145.43)

Current law provides that, if a member dies prior to receiving a retirement benefit, the member's accumulated contributions to PERS may be paid out as a lump sum payment to one or more beneficiaries, as specified by the member.¹³ To designate a beneficiary, a member must sign and complete a form supplied by PERS. To be valid, the beneficiary form must be filed prior to the member's death. A member may designate one or more people as beneficiaries, but current law states that the accumulated contributions will be paid "jointly" if there are two or more beneficiaries. The bill provides that, subject to rules adopted by the PERS Board, a member who designates two or more beneficiaries must specify the percentage of the lump sum each beneficiary is to be paid. If the member does not specify the percentages, the lump sum will be divided equally among the beneficiaries.

¹² "Killed in the line of duty" means either that death occurred in the line of duty or as a result of injury sustained in the line of duty.

¹³ The lump sum payment is in lieu of survivor benefits.

Defined contribution plan participants--change of annuity plan

(R.C. 145.92)

Current law requires a PERS member who is participating in a PERS defined contribution plan¹⁴ to get spousal approval of a change in an annuity plan. However, the law requires the document evidencing the spouse's consent to the change in plan to be signed only by the member--the spouse's signature is not required. The bill amends this section to require that the form be signed by the member's spouse, rather than the member.

Changes to OP&F

OP&F Board of Trustees--police officer retirant member

(Section 3)

The Board of Trustees of the Ohio Police and Fire Pension Fund is comprised of nine members: the Treasurer of State's investment designee; two investment expert members, one appointed by the Governor and one appointed jointly by the Speaker of the House and President of the Senate; four employee members, two police officers and two firefighters; and two retirant members, one a retired police officer, the other a retired firefighter.

The bill provides that the police officer retirant member whose term of office commenced on June 2, 2003, is to serve a term of five, rather than four years. (The terms of future police officer retirant members are unaffected by the bill: they will have four-year terms, as provided in current law.)

HISTORY

ACTION	DATE
Introduced	05-19-05
Reported, H. Financial Institutions, Real Estate, and Securities	---

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¹⁴ PERS has three plans under which retirement benefits are paid: the traditional (defined benefit) plan, combined plan, and member directed (defined contribution plan). Under a defined contribution plan benefits are based solely on the earnings of investment of contributions.

