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Bill Analysis

Legislative Service Commission

H.B. 240

127th General Assembly
(As Introduced)

**Reps. Goodwin, Wachtmann, J. McGregor, Stebelton, Setzer, Webster,
Wagoner, Combs**

BILL SUMMARY

- Limits a public employer's authority to employ a retired member of a state retirement system in the case of certain "administrative employees."
- Requires a public employer that seeks to employ a retired administrative employee in the position held at the time of retirement to have the employment approved by a state retirement system board.
- Limits the annual compensation of a retirant employed under the bill to 60% of the retirant's final average salary.
- Specifies that a retirant employed under the bill may not receive nonmonetary compensation for the employment other than health care coverage, and that only if the employer provides coverage to other employees who perform comparable work.

CONTENT AND OPERATION

Background

Reemployment of state retirement system members

Ohio law requires public employers and their employees to contribute to one of five state retirement systems: 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). Current law permits, with exceptions for certain law enforcement positions, members of PERS, OP&F,

SERS, and STRS to retire and subsequently be reemployed by public employers.¹ A reemployed retirant and the employer must contribute to the appropriate retirement system at the same rates as for active members.² ("Retirant" is the term used in the Revised Code for a retirement system member who has retired.)

Penalty for early reemployment--retirants generally

Generally, a state retirement system member may retire and then be employed by a public employer without incurring any penalty. However, a retirant who commences employment with a public employer less than two months after the effective date of retirement is subject to a penalty: the retirant forfeits the retirement allowance for each month in which there is employment during the two months following retirement. On termination of the employment or on the retirant's death, the contributions made to a retirement system during that period will be refunded. The retirant's service and contributions made during the two-month period cannot be used in calculating a benefit for the retirant's employment with that employer. (On completion of the two-month period, the retirant's service and contributions for the remainder of the employment will be applied towards a benefit payable on termination of the employment.)³

¹ While OP&F law permits reemployment of retirants, it may be unusual for a retirant without prior law enforcement experience to be employed in a law enforcement position: to obtain such employment requires completion of certain training courses, including Ohio Peace Officer training, many of which have age limits for participation. (Revised Code 742.26.)

The law governing SHPRS includes no provision for employing a retirant. (This is likely because State Highway Patrol troopers must undergo training with the State Highway Patrol Academy; to enter Academy training, an individual can be no older than age 35.) (R.C. 5503.05; [www.http://statepatrol.ohio.gov](http://statepatrol.ohio.gov), visited May 4, 2007.)

R.C. 145.38, 742.26, 3307.35, and 3309.341.

² For current contribution rates, see **COMMENT 1**.

³ The law governing PERS also specifies certain circumstances under which a PERS retirant who is reemployed by a public contractor or as an elected official may be subject to a penalty. For an explanation of the circumstances and penalties, see **COMMENT 2**.

The bill

Reemployment of retirant as administrative employee restricted

(R.C. 145.386, 742.261, 3307.354, and 3309.346; technical changes in R.C. 145.38, 742.26, 3307.35, and 3309.341)

The bill preserves public employers' authority to employ retirants, but limits the authority in the case of certain "administrative employees"--a term created by the bill.⁴ The bill specifies that, to employ a retirant as an administrative employee in the position the retirant held at the time of retirement, a public employer must meet certain requirements. (Because the State Highway Patrol does not employ retirants, the bill affects the reemployment of PERS, OP&F, STRS, and SERS retirants only.)

A public employer that seeks to reemploy a retirant in the position the retirant held at the time of retirement must request authorization to do so from the board of the state retirement system from which the retirant receives a retirement benefit. The request must be submitted in writing on a form provided by the board. The board must authorize the employment within 30 days of receiving the employer's request by notifying the employer, in writing, of the amount that equals 60% of the retirant's final average salary.⁵

On receiving notice of the board's authorization, the employer may employ the retirant; however, the bill limits the retirant's compensation to 60% of the retirant's final average salary. In addition, the bill specifies that the retirant's compensation cannot include any form of nonmonetary compensation, except for primary health, medical, hospital, or surgical insurance coverage from the employer and then only if the employer provides coverage to other employees performing comparable work.

Who is an administrative employee?

(R.C. 145.386(A), 742.261(A), 3307.354(A), and 3309.346(A))

Under the bill, an administrative employee generally includes any employee with "managerial responsibilities and duties." These responsibilities and duties include formulating policy on behalf of the employer, directing the

⁴ Who is considered an administrative employee varies slightly for each retirement system, as discussed below in "*Who is considered an administrative employee?*".

⁵ "Final average salary," or, in the case of OP&F retirants, "average annual salary" is generally the average of the retirant's three highest years of compensation.

implementation of policy, assisting the preparation for conduct of collective negotiations, administering collectively negotiated agreements, or having a major role in personnel administration. Who is considered an administrative employee varies among retirement systems. The bill identifies specific employees under each retirement system as administrative employees.

PERS

(R.C. 145.386(A))

For PERS members, employment as an administrative employee includes employment in any of the following positions:

(1) The head of any department appointed by the Governor or by and with the Governor's consent or by the chief appointing authority of any entity of local government;⁶

(2) A deputy or assistant of any state agency or local government agency authorized to act for and on behalf of the agency, or holding a fiduciary or administrative relation to that agency;

(3) A deputy or assistant of any officer or principal executive officer of an entity of state or local government who is authorized to act for and in place of the officer or perform administrative functions or has managerial responsibilities and duties;

(4) Any person employed or appointed by a board or commission of the state or an entity of local government in a position with managerial responsibilities and duties, including an executive director or assistant executive director.

The bill specifies that a person elected or appointed to an elective office in state or local government or in any other political subdivision of the state is not considered an administrative employee.

OP&F

(R.C. 742.261(A))

For OP&F members, employment as an administrative employee includes employment in any of the following positions:

⁶ "Local government" means a township, special district, municipal corporation, county, county board of mental retardation and development, or board of alcohol, drug addiction, and mental health services.

- (1) As a member of a police department employed as a chief of police;
- (2) As a member of a fire department employed as a fire chief;
- (3) As a member of a police department or a fire department employed in a position with managerial responsibilities and duties.

STRS

(R.C. 3307.354(A))

For STRS members, employment as an administrative employee includes employment (1) by a school board as a superintendent, assistant superintendent, principal, or assistant principal, (2) by an institution of higher education as president, business manager, administrative officer, dean, or assistant dean, or (3) by a school board or institution of higher education in any other position with managerial responsibilities and duties.

SERS

(R.C. 3309.346(A))

For SERS members, employment as an administrative employee means employment in any position with managerial responsibilities or duties, but does not include service as a school board member or a member of an educational service center governing board.⁷

COMMENT

1. **Contributions to a state retirement system**

Ohio law generally requires public employees to contribute a percentage of their earnings to one of the five state retirement systems.⁸ Which retirement system an employee contributes to depends on the employer and, in some cases, the nature of the employment. In addition to the employee contribution, the law requires public employers to contribute to a state retirement system an amount

⁷ School board and governing board members are permitted to join SERS but not required to do so (R.C. 3309.012).

⁸ The law permits certain public employees, who would otherwise contribute to PERS, STRS, or SERS, to elect to participate in an alternative retirement plan (ARP). Employees who participate in an ARP and their employers must contribute at the same rate at which they would otherwise contribute to PERS, STRS, or SERS.

equal to a percentage of each employee's earnings. The employee and employer contribution rates for each retirement system are shown in the following table:

Retirement System	Employee Rate	Employer Rate
PERS – State ⁹	9.50%	13.77%
PERS – Local	9.50%	13.85%
PERS-LE, Group A ¹⁰	9.75%	17.17%
PERS-LE, Group B ¹¹	10.10%	17.17%
OP&F – Firefighters	10.00%	24.00%
OP&F – Police officers	10.00%	19.50%
STRS	10.00%	14.00%
SERS	10.00%	14.00%
SHPRS	10.00%	25.50%

The benefits retirement system members receive at retirement or by reason of disability are funded by employee contributions, employer contributions, and investment earnings.

2. "Penalties"

Penalty for PERS retirant employed as independent contractor

(R.C. 145.38(B)(6))

A PERS member who retires and then enters into a contract as an independent contractor with a public employer subject to PERS may be subject to a penalty if one of the following applies:

⁹ PERS employee and employer contributions are scheduled to increase in 2009 to the maximum amounts permitted by statute: employee contributions 10.00%; employer contributions 14.00%.

¹⁰ PERS-LE (law enforcement) Group A consists of Hamilton County Municipal Court bailiffs and law enforcement officers whose primary duties are other than to preserve the peace, protect life and property, and enforce the laws.

¹¹ PERS-LE Group B consists of law enforcement personnel whose primary duties are to preserve the peace, protect life and liberty, and enforce the laws. Municipal police are in OP&F. Most other law enforcement officers, including sheriffs, deputy sheriffs, and township police, are in PERS.

(1) The retirant was employed by the contracting public employer at the time of retirement;

(2) If the contract is with a public employer other than the member's employer at the time of retirement, the retirant enters into a contract with a public employer less than two months after retirement.

If either of the above applies, the retirant is subject to a penalty during the entire period of service under the contract. First, for the period beginning on the first day of the month following the month in which service under the contract begins until the first day of the month following the month in which the services end, the retirant forfeits the pension portion of the retirement allowance, while payment of the annuity portion of the allowance is suspended.¹² The suspended annuity payments accumulate to the retirant's credit and are paid in a single payment after service under the contract terminates.

A retirant subject to this penalty is ineligible to contribute to PERS and is therefore ineligible to receive a benefit for the period of employment under the contract.

PERS retirants who hold elective office

(R.C. 145.38(C))

With certain exceptions (described below), a PERS member who retires while holding a state or local elective office, then is elected or appointed to the same elective office, either for the remainder of the term or for the subsequent term, is subject to a retirement allowance penalty. After retiring, for the duration of the retirant's term, the retirant forfeits the pension portion of the retirement allowance, while payment of the annuity portion of the allowance is suspended. The suspended annuity payments accumulate to the retirant's credit and are paid in a single payment after termination of the term of office. Payment of the entire retirement allowance resumes on the first day of the first month following termination of the term of office.¹³

To avoid the penalty, an office holder planning to seek election to the same office after retirement must take one of the following measures:

¹² A PERS retirement allowance consists of two portions: a pension and an annuity. The annuity portion is based on the member's contributions to PERS during employment. The pension portion is funded by the contributions made to PERS by the employer on the member's behalf and investment earnings.

¹³ R.C. 145.38(C)(1) and (2).

(1) Retire at least 90 days prior to the date of the election for the office;

(2) If the office holder plans to retire less than 90 days prior to the date of the election, file a written statement of intent to retire before the end of the term. The statement must be filed no later than 90 days prior to the primary election for the office (or, if no primary election is to be held, 90 days prior to the date the primary would have been held) with the board of elections of the county in which petitions for nomination or election to the office are filed.

A member who is appointed to fill an elective office is not subject to the penalty if, at the time of appointment, the member notified the person or entity making the appointment that the member was already retired or planned to retire before the end of the term.

HISTORY

ACTION	DATE
Introduced	05-29-07

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