



Ohio Legislative Service Commission

Bill Analysis

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H.B. 620

130th General Assembly
(As Introduced)

Reps. Huffman, Pelanda

BILL SUMMARY

Survivor benefit modifications

- Increases to five years (from 18 months) the service credit a deceased Public Employees Retirement System (PERS) member has to have had for survivors to be eligible for monthly benefits.
- Provides survivor benefits until age 22 to the qualified child of a PERS or State Teachers Retirement System (STRS) member who dies prior to retirement regardless of whether the child is attending an institution of learning or training.
- Resumes survivor benefits of certain qualified children under age 22 whose benefits were terminated because they were not attending an institution of learning or training.
- Corrects reference to and modifies the plan of payment under which survivor benefits are paid to the surviving spouse or beneficiary of a PERS member who dies after attaining retirement eligibility but without having retired.

Ex-spouse survivor benefit

- Provides for payment of a survivor benefit or a portion of a refund of member contributions to the ex-spouse of a public retirement program member who was subject to a division of marital property order effective on retirement but died prior to retirement.
- Reduces the survivor benefits or refund to the member's surviving spouse or beneficiary when a payment is made to the ex-spouse.

- Applies to orders issued before the bill takes effect, as well as those issued on or after its effective date.

CONTENT AND OPERATION

Survivor benefit modifications

PERS survivor benefit eligibility

The bill increases to five years the service credit a PERS member who dies prior to retirement must have had for qualified survivors to be eligible to receive monthly survivor benefits. Under current law, for qualified survivors to be eligible for benefits, the deceased member must have had 18 months of "contributing service credit." The bill's requirement is five years "total service credit."¹ Total service credit includes credit purchased by the member or granted for certain military service.²

The bill continues the current law requirement that the deceased member have had at least one-quarter year of contributing service credit within the two and one-half years prior to the date of death or have been receiving a disability benefit at the time of death. Also as under current law, these requirements and the requirement that the member have had five years of service credit do not apply if the member was contributing to PERS as a law enforcement officer.³

Election of monthly survivor benefits

In PERS, STRS, and the School Employees Retirement System (SERS) current law permits a beneficiary who was designated by a member who died before retirement to receive a refund of the member's contributions unless there are surviving minor children. If there is no designated beneficiary and no surviving minor children, the contributions may be refunded to the member's surviving spouse, children, parents, or estate, in that order.⁴

Current law permits a qualified PERS, STRS, or SERS survivor who is entitled to receive a refund of a member's contributions to forfeit them and instead have a monthly benefit paid for each of the qualified survivors. Qualified survivors are (1) a surviving spouse who meets certain criteria, (2) children who are under 18, or under 22 if

¹ R.C. 145.45.

² R.C. 145.01.

³ R.C. 145.45.

⁴ R.C. 145.43, 3307.562, and 3309.44.

attending an institution of learning or training, or disabled,⁵ and (3) in some cases, dependent parents. If, at the time of death, the member was eligible to retire, the survivor benefit is based on the amount the surviving spouse or another sole dependent beneficiary would have received had the member died after retirement having chosen a form of payment that included a benefit continuing after the member's death to the surviving spouse or beneficiary. If the member was not eligible to retire, the survivor benefit is based on either the number of qualified survivors or the member's length of service and ranges from 25% to 60% of the member's final average salary.⁶

Laws governing the Ohio Police and Fire Pension Fund (OP&F) and State Highway Patrol Retirement System (SHPRS) provide for refund of a member's contributions in only limited circumstances. In OP&F the contributions of a member who dies before retirement are refunded only if the member dies with no survivors eligible for pensions or if any survivors who receive pensions cease to be eligible before an amount equal to the member's contributions is paid as pensions.⁷ In SHPRS the contributions are refunded only if the member dies with no survivor eligible for a pension.⁸ The surviving spouse and eligible children of a deceased member of OP&F or SHPRS are eligible for pensions in amounts specified in the Revised Code.⁹ Payment of these pensions is not related to a refund of contributions.

PERS and STRS qualified children

The bill makes a surviving child of a member of PERS or STRS who died prior to retirement eligible to continue receiving monthly benefits until age 22. Under current law, a child 18 or older is eligible to receive benefits until 22 only if attending an institution of learning or training in a program designed to complete at least $\frac{2}{3}$ of the full-time curriculum.

For both PERS and STRS, the bill requires benefits to a qualified child who is at least 18 but under 22 that were terminated due to a lack of attendance at an institution of learning or training to resume on the first day of the month immediately following receipt by the appropriate board of an application on a form provided by the board if the application is received not later than one year after the bill's effective date. The bill

⁵ For SERS, for a child who begins receiving a benefit after January 7, 2013, the child must be under 19 or disabled.

⁶ R.C. 145.45, 3307.66, and 3309.45.

⁷ R.C. 742.50.

⁸ R.C. 5505.21.

⁹ R.C. 742.37 and 5505.17, not in the bill.



also specifically authorizes each retirement system to continue to pay survivor benefits to both of the following:

(1) Qualified children who are under 18 and receiving survivor benefits on the bill's effective date until they reach 22;

(2) Qualified children who are between 18 and 22 on the bill's effective date until they reach 22, regardless of whether they are attending or continue to attend an institution of learning or training.¹⁰

Surviving spouse or beneficiary of PERS member eligible to retire

The bill modifies and corrects references to the monthly benefit payable to the surviving spouse or other sole beneficiary of a PERS member who, at the time of death, was eligible to retire. Current law provides that the surviving spouse or beneficiary may elect a monthly benefit computed as the joint-survivor benefit designated as "plan A" in R.C. 145.46. Sub. S.B. 343 of the 129th General Assembly eliminated plan A, but the survivor benefit section (R.C. 145.45) was not corrected. Under former R.C. 145.46, a surviving spouse under plan A received one-half of the actuarial equivalent of the member's retirement allowance. The bill eliminates the reference to plan A and provides for the benefit to be computed as a joint-life plan under which the spouse or beneficiary receives 100% of the actuarial equivalent of the deceased member's lesser retirement allowance.¹¹ The lesser retirement allowance is the reduced allowance a retired PERS member receives under a plan of payment providing for continuing payments to another person after the member's death.¹²

Ex-spouse survivor benefits

The bill makes the ex-spouse of a public retirement program member eligible for survivor benefits or part of the refund of the member's contributions if the member was subject to a division of marital property order effective on retirement but died before retirement. It does this by reducing the survivor benefits or refund payable to the member's surviving spouse or beneficiary.¹³ The bill applies to the state's public retirement systems (PERS, STRS, OP&F, SERS, and SHPRS) and to entities providing alternate retirement plans at state universities and other public institutions of higher education such as technical schools and community colleges. The retirement systems

¹⁰ R.C. 145.45 and 3307.66 and Section 3.

¹¹ R.C. 145.45.

¹² R.C. 145.46.

¹³ R.C. 145.571, 742.462, 3305.21, 3307.371, 3309.671, and 5505.261.

and alternate retirement plans are referred to as "public retirement programs" in the law governing division of property orders.¹⁴

Division of property orders

The right of a public retirement program member to receive a future retirement or disability benefit or a refund of the member's contributions is considered marital property to the extent that the right was acquired during the marriage.¹⁵ Continuing law allows a court, in a divorce or dissolution of marriage, to order a division of a retirement benefit or refund,¹⁶ but no payment is made until the member receives the benefit or refund. The order terminates on the death of the member or ex-spouse or on termination of the benefit.¹⁷ The member is referred to in this law as the "participant" and the ex-spouse as the "alternate payee."¹⁸

A court order requiring a public retirement program to make payments dividing a retirement benefit or refund of contributions must specify the amount to be paid the alternate payee as one of the following:

(1) A monthly dollar amount should the participant elect a benefit and a one-time payment should the participant elect a refund of contributions;

(2) A percentage of a fraction of a monthly benefit or refund determined by dividing (a) the number of years during which the participant was both a member of a public retirement program and married to the alternate payee by (b) the participant's total years of service or, in the case of a participant in an alternative retirement plan, years of participation in the plan. Years of service is determined at the time of application for a refund or benefit.¹⁹

The amount to be paid the alternate payee cannot exceed 50% of the benefit or refund.²⁰

¹⁴ R.C. 3105.80.

¹⁵ R.C. 3105.171, not in the bill.

¹⁶ R.C. 3105.171 and 3105.65, not in the bill.

¹⁷ R.C. 3105.86, not in the bill.

¹⁸ R.C. 3105.80.

¹⁹ R.C. 3105.82.

²⁰ R.C. 3105.85, not in the bill.



An example of the calculation in (2) is a situation in which the participant and alternate payee divorce after ten years of marriage (during which the participant contributed to a public retirement program) and the participant continues to contribute for another ten years (a total of 20 years) before applying for a retirement benefit. The ten years of marriage is divided by the 20 years the participant contributed to the retirement program, so the fraction is one-half. If the court awards the alternate payee 50% of the retirement allowance for the years of the marriage, 50% is divided by one-half. The payment to the alternate payee is 25% of the participant's refund or retirement benefit.

Except for orders issued prior to January 2002, the bill eliminates the specific requirement that a court retain jurisdiction to modify or supervise the implementation of an order that divides a refund or benefit. Additionally, the bill requires the order to notify the parties that the terms of the order cannot be changed by the court or by the parties' agreement.²¹

New benefit

The new benefit created by the bill applies in PERS, SERS, and STRS to the surviving ex-spouse (alternate payee) of a member who was a participant in a division of property order effective on retirement and died before retirement if a refund of the member's contributions or a monthly survivor benefit is paid to a person other than the qualified children of the member.²² The person could be a beneficiary designated by the member, the member's surviving spouse (the person the member was married to at the time of death), or a dependent parent.

The benefit to the alternate payee is a percentage of the amount otherwise payable to the person entitled to a refund or benefit. The calculation of the benefit to the alternate payee depends on whether the division of property order specifies a dollar amount or a percentage of a fraction. If the order specifies a monthly dollar amount or a one-time payment from a refund, the amount payable to the alternate payee is determined by dividing the amount specified in the order by the amount the member would have been eligible to receive. The amount is the resulting fraction of the refund or benefit.

If the order provides for the alternate payee to receive a percentage of a fraction of a refund or monthly benefit, the percentage is the percentage specified in the order and the fraction is calculated by dividing (1) the number of years during which the

²¹ R.C. 3105.82 and 3105.89.

²² R.C. 145.571, 3307.562, and 3309.672.



participant was both a contributing member of the retirement program and married to the alternate payee by (2) the member's total years of service.

The alternative payee will receive from the refund or monthly benefit of the surviving spouse or person other than a qualified child either the dollar amount or the percentage determined under the bill.

For the alternative retirement plans, the bill provides that the alternative payee will receive the percentage or other portion of a payment specified in the order.²³

In OP&F and SHPRS, the bill applies only if all or part of a member's contributions are refunded. The calculation is the same as for PERS, SERS, and STRS.²⁴

In all public retirement programs other than the alternative retirement programs, payments made under the bill to an alternate payee reduce by that amount any refund or monthly payment to a surviving spouse or person, other than a qualified child, who is entitled to the refund or payment.

The bill applies to any division of property order issued on or after the bill takes effect. In all public retirement programs other than the alternative retirement programs, it also applies to an order issued prior to the bill's effective date unless prior to that date the participant received a refund of contributions or died.²⁵

COMMENT

As discussed above, in PERS, SERS, and STRS the survivors of a member who dies prior to retirement may choose to receive monthly survivor benefits instead of a refund of the member's contributions. Since the refund of contributions would be subject to a division of property order had the member lived and the survivor benefits are an alternative to a refund of contributions, the bill applies to monthly survivor benefits in these systems as well as to refunds of contributions.

In OP&F and SHPRS, survivors receive monthly benefits specified in statute that are unrelated to a refund of contributions and are paid regardless of whether the member was retired at the time of death.²⁶ These benefits are not subject to division of property orders under current law, and the bill does not extend the ex-spouse

²³ R.C. 3305.21.

²⁴ R.C. 742.462 and 5505.261.

²⁵ R.C. 145.571, 742.462, 3307.562, 3309.672, and 5505.261.

²⁶ R.C. 742.37(D) and (E) and 5505.17(A).

provisions to them. However, it does apply those provisions to any OP&F or SHPRS member contributions refunded because there are no remaining eligible survivors.

The distinction the bill makes regarding OP&F and SHPRS survivor benefits is based on a decision of the Ohio Supreme Court in which an equal protection issue was raised with regard to benefits for survivors of law enforcement officers killed in the line of duty.

In *Roseman v. Fireman and Policemen's Death Benefit Fund*, the Ohio Supreme Court considered a law under which a death benefit paid to the surviving spouse and children of the law enforcement officer was reduced as each child reached adulthood, but the benefit to a surviving spouse without children was not reduced. The Court found that the state had no rational basis for treating similarly situated surviving spouses differently and invalidated that provision of the law as violating the Equal Protection Clauses of the U.S. and Ohio Constitutions.²⁷

Since the OP&F and SHPRS survivor benefits are statutory benefits like the death benefit considered in *Roseman*, treating a surviving spouse of a member with an ex-spouse differently from the surviving spouse of member who had not previously been married would also seem to be a denial of equal protection. As discussed above, this differs from PERS, SERS, and STRS, in which survivor benefits are an alternative to a refund of contributions and the refund of contributions is subject to a division of property order.

HISTORY

ACTION	DATE
Introduced	09-16-14

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²⁷ *Roseman v. Fireman and Policeman's Death Benefit Fund*, 66 Ohio St.3d 443 (1993).

