Fiscal Note & Local Impact Statement

124 th General Assembly of Ohio

Ohio Legislative Service Commission
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BILL: **Sub. H.B. 244** DATE: **October 10, 2001**

STATUS: **As Enacted – Effective February 19, 2002** SPONSOR: **Rep. Niehaus**

LOCAL IMPACT STATEMENT REQUIRED: **Yes**

CONTENTS: **Modifies penalties against employers who fail to submit reports, payments and information to the Ohio Police and Fire Pension Fund**

State Fiscal Highlights

STATE FUND	FY 2002	FY 2003	FUTURE YEARS
Ohio Police and Fire Pension Fund			
Revenues	Potential increase or decrease	Potential increase or decrease	Potential increase or decrease
Expenditures	- 0 -	- 0 -	- 0 -

Note: The state fiscal year is July 1 through June 30. For example, FY 2002 is July 1, 2001 – June 30, 2002.

- The bill modifies penalties against employers who fail to submit required reports, payments and information to the Ohio Police and Fire Pension Fund. Dependent upon the number of days the required information is late and the payroll of the employer, the penalties under the bill could be more or less than the fines under current law.

- The bill requires the Fund to reduce penalties or refund penalties that could total up to $3,879,000.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 2002	FY 2003	FUTURE YEARS
Political Subdivisions			
Revenues	- 0 -	- 0 -	- 0 -
Expenditures	Potential increase or decrease	Potential increase or decrease	Potential increase or decrease

Note: For most local governments, the fiscal year is the calendar year. The school district fiscal year is July 1 through June 30.

- The bill modifies penalties against employers who fail to submit required reports, payments and information to the Ohio Police and Fire Pension Fund. Dependent upon the number of days the required information is late and the payroll of the employer, the penalties under the bill could be more or less than the fines under current law. Employers with smaller payrolls may be assessed penalties at higher percentages than employers with larger payrolls.

- The bill requires the Fund to reduce penalties or refund penalties owed by local governments that could total up to $3,879,000.

Detailed Fiscal Analysis

The bill modifies various penalties assessed against employers that fail to meet deadlines for submitting certain contributions and reports to the Ohio Police and Fire Pension Fund (Fund) and creates a new penalty for failure to meet a reporting deadline for service credit contributions. The bill also allows the Fund to reduce existing penalties against employers if the employer submits the reports as specified by the bill and pays the reduced penalties by June 1, 2002. The bill also provides for refunds of penalties that have been paid, under the same conditions for the reduction.

Changes in Penalties

The first two charts below show the two penalty schemes for late reporting as envisioned by the bill. The third chart shows the penalties assessed under current law and the penalty for the same violation under the bill.

Penalty Under ORC 742.352 (As in the Bill)

Days Late	Penalty
1-10	$100
11-30	Greater of $1000 or 1% of payment
31-180	Greater of $3000 or 2% of payment
181-210	Greater of $7500 or 5% of payment
211 days or more	Greater of $7500 or 5% of payment plus $50 per day

Penalty Under ORC 742.353 (As in the Bill)

Days Late	Penalty
1-10	$100
11-30	$1000
31-180	$3000
181-210	$7500
211 days	$7500 plus $3.75 per day

Comparison of Penalties Under Current Law and Under the Bill

Reporting Requirement	Penalty Under Current Law	Penalty Under Bill
Employee Contributions*	5% of total due	Penalty under ORC 742.352
Employer Contributions	5% of total due	Penalty under ORC 742.352
Form for Retiring Officer	$100 per day	Penalty under ORC 742.353
Physical Examination**	$100 per day	Penalty under ORC 742.353
Purchase of Service Credit	$0	Penalty under ORC 742.352

*Current law allows the Fund to charge interest on the amount of the penalty if the penalty has not been paid within three months of being added to the regular employer billing. The bill allows the Fund to charge interest if the penalty has not been paid within sixty days of being added to the regular employer billing on the amount of the penalty *and* the total amount due.

**Current law requires the physical examination report to be sent to the Fund within thirty days after the employee becomes a member of the fund. The bill extends this deadline to sixty days.

Examples of Penalties

The following examples illustrate possible differences between the fines assessed under current law and the fines envisioned by this bill. (The penalties in the bill can be superseded if rules are adopted by the Fund establishing penalties not exceeding these penalties.) It would be impossible to give an exact dollar amount for the total amount of penalties that will be collected under the bill. The bill increases penalties dependent on the number of days the required information or contributions are late. This should serve as an incentive for employers to submit the required information in a timely matter. However, the actual future behavior of employers cannot be predicted.

Employer Contribution Example: An employer with a four-month payroll of $600,000 fails to submit the required quarterly employer contributions of $117,000 to the Fund. The employer contribution is 85 days past due. Under current law, the penalty is 5% of the total due. That totals $5,850. Under the bill, the payment is considered 25 days late (both the bill and current law give employers a 60-day grace period before penalties are assessed). The bill requires a penalty of $1000 or 1% of total payment due, whichever is greater. The 1% penalty would total $1,170 and it would be assessed. However, if in this example the required contributions were only nine days late, the penalty would be $100 instead of the current $5,850. In most instances, the penalty under the bill would be less than the penalty in current law, however, the highest penalty under the bill as amended would equal the 5% penalty that is assessed currently, with an additional $50 per day for each day over 210 days past due.

Employee Contribution Example: A smaller employer with a one-month payroll of $75,000 fails to submit the required employee contribution of $7,500 to the Fund. Under current law the employer is given a 30-day grace period. (The bill changes this to the last day of the month after the last day of the reporting period.) The current penalty would be 5% of the total amount due, which is $375. Under the bill, the penalty for a payment one to ten days late would be $100. If the payment were 11

to 30 days late, the penalty would be the greater of $1000 or 1% of the total due. In this case the fine would be $1000, 13.3% of the amount due. The penalty would increase subsequently, up to a possible $7,500 plus $50 per day, if the contribution is over 210 days past due.

Form for Retiring Member Example: Under current law, an employer who fails to return a form sent by the board for a retiring member will be fined $100 per day, thirty days after receiving notice. Under the bill, the fine would be $100 if one to ten days late; $1000, if 11 to 30 days late; up to a fine of $7500 plus $3.75 per day if over 211 days late. To illustrate, current law would require a fine of $3000 for a form thirty days late. Under the bill, the fine would be $1000. Under both current law and the bill, the Fund is required to make payment to the retired member equal to the amount of the penalty if the member's pension doesn't commence by the ninety-first day after the Fund has sent a request for information to the employer.

Physical Examination Report Example: Under current law, a fine of $100 per day is assessed for each day the physical examination report is late. (The report is considered late if it is not sent to the Fund within thirty days after the employee becomes a member of the Fund or 28 days after receiving a request for such a report from the board for a member who has applied for a disability benefit. The bill extends this deadline to sixty days). The bill applies the same penalties for this violation as for the form for a retiring member, which is illustrated above.

Purchase of Service Credit Report: Current law does not assess a penalty for an employer's late submission of the contributions and/or report for the purchase of service credit. The bill assesses the same penalties as are assessed for late submission of employer and employee contributions, as illustrated in the first chart.

Reduction and Refund of Penalties

The bill also includes a reduction and refund of penalties. An employer that has incurred a fine for failing to submit the physician's report shall have its fine reduced by ninety percent if the employer submits the report in the form required by the Ohio Police and Fire Pension Fund Board before the effective date of this bill. If the employer has paid the full amount of the fine before the effective date of this bill, the employer shall receive a ninety percent refund. According to the Fund, there are approximately $4 million in fines that will be subject to this reduction and refund. If all employers were to submit the required physician's reports before the effective date of this bill, the total amount reduced and refunded would be approximately $3.6 million.

An employer that has incurred a penalty between January 1, 2000 and the effective date of this bill for late submission of employer contributions or employee contributions and/or the corresponding reports shall have its penalty reduced by fifty percent under the bill if the report is submitted within six months after the report was due. According to the Fund, there are $558,003 in penalties that will be subject to this reduction. If all employers were to submit the reports within six months after the report was due, the total amount reduced and refunded would be $279,000.

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