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# *Analysis*

## **H.B. 240 – Rep. Goodwin** *(As Introduced)*

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## **ORSC Position**

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H.B. 240 would limit the ability of a public employer covered by the Public Employees Retirement System (PERS), the State Teachers Retirement System (STRS), the School Employees Retirement System (SERS), or the Ohio Police and Fire Pension Fund (OP&F) to rehire a retired administrative employee to the same position held at the time of retirement.<sup>1</sup>

In order to rehire an administrative employee to the same position, the following criteria must be met:

1. The employer must submit, on a form provided by the retirement board, a written request that the retirement board authorize the employment;
2. The retirement board must authorize the employment by notifying the employer of the amount that equals 60% of the retirant's final average salary; and
3. The annual salary of the reemployed retirant cannot exceed 60% of the retirant's final average salary.

The bill provides that the employment cannot exceed one year beginning on the date of reemployment. Additionally, employment would automatically terminate in one year unless the employer renews employment by (1) notifying the retirant of the date employment terminates; (2) conducting a review of the retirant's employment to determine whether to continue employment; and (3) notifying the retirant of the results of the review.

A retirant who is reemployed under the provisions of this bill is also prohibited from receiving nonmonetary compensation for the employment other than health care coverage, if the employer provides coverage to other employees who perform similar work.

A PERS administrative employee is defined as (1) the head of any department appointed by the Governor or by and with the Governor's consent or by the chief appoint authority of any entity of local government; (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 the place of the officer or performs administrative functions or has managerial responsibilities and duties, including an executive director or assistant executive director. It does not include a person elected or appointed to an elective state or local government office.

An OP&F administrative employee is defined as (1) a member of a police department employed as a chief of police or in another position with managerial responsibilities and

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<sup>1</sup> The Highway Patrol Retirement System is not included in the bill because persons age 35 or older are ineligible to become state troopers.

duties and (2) a member of a fire department employed as a fire chief or in another position with managerial responsibilities and duties.

The bill defines an STRS administrative employee as (1) a person employed as superintendent, principal, assistant principal, or any other position with managerial responsibilities and duties and (2) a person employed as a president, business manager, administrative officer, dean, or assistant dean of an institution of higher education or any other position with managerial responsibilities and duties. Whereas an SERS administrative employee means a person employed in a position with managerial responsibilities and duties, but does not include a school board member or a governing board member.

Current law limits reemployment of retirees in several different ways. First, reemployed retirees are required to wait two months before becoming reemployed with a public employer regardless of whether the retiree is reemployed in the same position. If a retiree returns to employment before the expiration of the two-month waiting period, the retirement allowance is forfeited for any month in which the retiree is reemployed prior to the expiration of the two-month period. Reemployed retirees are not considered members of the retirement system and do not earn an additional defined benefit, but they and their employers still must contribute to the retirement system toward a “money purchase benefit.” The calculation of the money purchase benefit is the amount of the retiree's accumulated contributions, excluding contributions made during the two-month waiting period, plus an amount determined by the board (an equal amount in the case of OP&F), plus interest at a rate determined by the board.

Another limitation to reemployment concerns elected officials who retire and are re-elected or appointed to the same office for the remainder of their term or the term immediately following. They are prohibited from receiving their retirement allowance while drawing a salary for that office unless they file notice of an intent to retire at least 90 days prior to the primary election. If notice is filed, the official is treated the same as all other PERS members. A reelected official who does not file notice becomes a new member of PERS and receives a refund of accumulated contributions, plus interest or a supplemental retirement allowance based on the reemployment period.

Finally, if a member of PERS, STRS, or SERS retires from a position that is customarily filled by a vote of members of a board or commission or, for a PERS retiree, by the legislative authority of a county, municipal corporation, or township, the board, commission, or legislative authority must give public notice and hold a meeting on the issue of reemployment before the employment is to begin.

From an actuarial funding perspective, the state retirement systems are designed so that the employee and employer contributions made to the system over the working life of the member, together with investment earnings thereon, are sufficient to fund in full the retirement allowance payable to the member upon retirement. Therefore, the fact that the retired member may be employed subsequent to retirement by a public employer rather

than a private employer has no actuarial cost impact upon the retirement system's funding of the retirement allowance earned by the member.

**Background** – Prior to 1991, reemployed retirees did not contribute to any of the public retirement systems. That changed in response to a federal mandate that would have otherwise required certain reemployed retirees to contribute to the Social Security System on or after July 1, 1991. Because Ohio has consistently opposed mandatory Social Security coverage for public employees, the legislature enacted H.B. 382 (eff. 6/30/91), which required retirees who become reemployed in the public sector to contribute to a public retirement system in lieu of Social Security. Under the federal law, public employees not contributing to a state or local retirement system are generally required to contribute to Social Security.

Accordingly, the prior reemployment restrictions were amended in 1991 to require contributions from all reemployed retirees toward a money purchase benefit equal to the member's accumulated contributions during reemployment, with interest, along with a matching amount from employer contributions. Reemployed retirees continued to receive their original retirement allowance during the period of reemployment, provided they waited at least two months after retirement before returning to employment (18 months after retirement in STRS before returning to full-time teaching). The money purchase benefit was payable as a lump sum payment or monthly annuity upon the later of the first day of the month following termination of employment, attainment of age 65 (age 60 in OP&F) or 12 months after the effective date of their last money purchase benefit.

Unlike any of the other state retirement systems, PERS retirees who were reemployed in a position covered by PERS were given the option to forego their original retirement allowance during the period of reemployment and become members of PERS, with all the rights and obligations of membership, except survivor coverage. They were eligible for a supplemental formula benefit based upon their years of service and final average salary earned during the period of reemployment or a refund of their accumulated contributions during the period of reemployment.

Since the enactment of H.B. 382, the reemployment statutes have been amended in an ad hoc manner. H.B. 151 (eff. 2/9/94) increased the waiting period from two to six months for PERS retirees who were reemployed in positions covered by PERS; the two-month waiting period, however, still applied to PERS retirees who were reemployed in positions covered by another state retirement system. Also, H.B. 151 prohibited an elected official from retiring from PERS during the period beginning 31 days prior to the election date through 31 days after the commencement of the new term of office. S.B. 82 (eff. 12/6/96) further changed the restrictions applicable to elected officials who retired from PERS and were elected or appointed to the same office by requiring them to forego their retirement allowance during the period of reemployment and become once again members of PERS under the special option described above.

As shown above, prior to 2000 various reemployment restrictions applied to different groups of retired public employees. This raised the public policy issue of whether the reemployment restrictions among the Ohio retirement systems should be made more uniform, where practicable. The legislature enacted S.B. 144 (eff. 9/14/00), which modified the reemployment statutes of the state retirement systems. *The purpose of these modifications was to provide a single, uniform set of rules applicable to all retired public employees, including elected officials, who were reemployed in a position covered by any of the five state retirement systems in Ohio. Another purpose was to alleviate shortages in experienced personnel in some critical areas (teachers, township trustees). The prior reemployment statutes often served as a disincentive or obstacle for retired public employees to fill such vacancies. In this regard, S.B. 144 made three major changes to the reemployment statutes.*

First, S.B. 144 amended the reemployment provisions of PERS and STRS with respect to the minimum waiting period. The bill reduced the minimum waiting period in PERS and STRS from six and eighteen months, respectively, to two months, which is consistent with the reemployment statutes of the other state retirement systems.

Second, S.B. 144 permitted members of PERS, STRS or SERS who have concurrent service covered under PERS, STRS or SERS to retire from the position having the higher salary and continue contributing on the other position(s) toward a money purchase benefit. Under prior law, such members were prohibited from retiring prior to termination of all employment covered by PERS, STRS or SERS. Under S.B. 144, the determination of eligibility for retirement and the amount of the retirement allowance on the higher-salaried position is based on the member's total service credit and contributions in PERS, STRS and/or SERS **prior to** the effective date of retirement, except that no more than one year of service credit shall be granted for any twelve-month period. The retiree continues to contribute to PERS, STRS or SERS on the position(s) having the lower salary. Upon termination of employment in the lower-paid position, the retiree is eligible for a money purchase benefit equal to the member's accumulated contributions **on or after** the effective date of retirement, with interest, along with an amount from employer contributions.

Third, S.B. 144 amended the PERS reemployment statute to eliminate the previous option provided to PERS retirees who were employed in PERS-covered positions to forego their retirement allowance during the period of reemployment, reestablish membership in PERS with all the rights and obligations thereof, except survivor coverage, and accrue additional service credit toward a supplemental retirement allowance based on such service. None of the other state retirement systems provided for this option. S.B. 144 grandfathered in all PERS retirees who chose this option prior to the effective date of the bill in recognition of the prospective application of new laws in Ohio. S.B. 144 also permitted those elected officials who were required by statute to choose the option to revoke it.

Less than one year after the enactment of S.B. 144, the reemployment restrictions for elected officials that existed prior to S.B. 144 were reinstated by H.B. 84 (eff. 7/31/01).

However, elected officials who provided written notice of their intent to retire 90 days prior to the election were exempted from the provisions. The notice requirement was subsequently changed in H.B. 95 to 90 days prior to the *primary* election (H.B. 95; eff. 6/26/03).

H.B. 95 also enacted the current provision that a member of PERS, STRS, or SERS who retires from a position that is customarily filled by a vote of members of a board or commission or, for a PERS retiree, by the legislative authority of a county, municipal corporation, or township, the board, commission, or legislative authority must give public notice and hold a meeting on the issue of reemployment before the employment is to begin.

**Staff Comments** – This bill raises the public policy issue of whether public employers should be limited in their hiring of employees based on the retirement status of the employee. The current requirement that retirees must forfeit their allowance during the two-month waiting period is intended to deter public employees from retiring and immediately resuming public employment. However, it does not prevent a public employer from hiring a retiree, nor does it prevent a retiree from resuming public employment. Based on the numerous bills over the years that have attempted to limit reemployment, allowing a public employee to receive a retirement benefit and immediately become reemployed in the same public position without a break in service has been a central issue. One way to deter this would be to increase the time period for the benefit forfeiture. Rather than limiting the forfeiture of the allowance to just the two-month waiting period, the legislature could consider extending the forfeiture period to the entire reemployment period if the retiree returns to the same position before the expiration of the two-month waiting period.

Another option would be to allow members of all systems to enroll in a deferred retirement option plan (DROP) similar to those offered by OP&F and HPRS. Generally, participation in a DROP is limited to members who are otherwise eligible for normal service retirement. The member continues to be employed for some defined period during which the member's monthly service retirement benefit is credited to the member's DROP account, along with annual compound interest at some specified rate. Upon termination of employment, the member receives a lump sum distribution of the member's DROP account or some alternative distribution thereof, and begins receiving a monthly service retirement benefit based upon the member's final average salary and service credit calculated at the time the member elects participation in the DROP. DROPs are intended to be cost neutral to the retirement systems.

According to a survey conducted by Watson Wyatt, phased retirement arrangements, such as DROPs, are becoming increasingly popular in both the private and public sectors. The reasons for this include longer life spans and improved health at older ages, employers' need to retain skilled and valued workers, and individuals' need to supplement retirement income. Recently, Congress eliminated the Social Security earnings test for workers who reach full retirement age, which had penalized older

workers by reducing their Social Security benefits. Additionally, the Pension Protection Act of 2006 allows in-service distributions to employees who have reached age 62.

The concept of a DROP is generally consistent with the objective of one of the recommendations included in the final report of the Joint Legislative Committee dated December 11, 1996. Staff recommended that the normal retirement age in both the uniform and non-uniform employee retirement systems be increased. Allowing members to select participation in a DROP rather than retiring and then applying for the same position would encourage public employees to continue working longer than they otherwise would have without receiving a retirement benefit. As an active member in a DROP, the public employee receives health care benefits from his or her employer rather than from the retirement system. A DROP also prevents the public employee from receiving both a salary and a pension benefit simultaneously.

**Fiscal Impact** – According to the PERS actuary, Gabriel Roeder Smith & Company, the bill makes return to work less attractive, and is likely to result in a greater number of regular, contributing members than would otherwise be the case. Therefore, more contributions would be available to fund the unfunded liability than would otherwise be the case. This effect, while favorable for PERS, is likely to be too small to measure reliably.

According to the STRS actuary, Buck Consultants, they expect the bill will impact a sufficiently small number of members so that the financial impact on the system will be negligible.

According to the SERS actuary, Buck Consultants, it is expected that the number of potential employees affected by the bill would be minimal. Therefore, the actuary believes the overall impact on SERS would be negligible given the magnitude of SERS' overall liabilities.

According to the OP&F actuary, Buck Consultants, the bill will impact a sufficiently small number of members so they expect the financial impact on the fund to be negligible.

**ORSC Position** – At its October 10, 2007 meeting the Ohio Retirement Study Council voted to recommend that the 127<sup>th</sup> Ohio General Assembly disapprove H.B. 240 and instead consider (1) discouraging public employees from returning to the same position from which they retired without a break in service by requiring them to forfeit their allowance during the entire period of reemployment rather than just during the two-month waiting period if the retirant returns to the same public position prior to the two-month waiting period and (2) allowing members of PERS, STRS, and SERS to participate in a deferred retirement option plan.