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Analysis

Sub. H.B. 272 – Rep. Schneider
(As Enacted by the General Assembly)

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ORSC Position

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Sub. H.B. 272 makes the following changes to the Public Employees Retirement System (PERS):

- Requires employers to remit employer contributions on a monthly rather than quarterly basis (145.483; 145.51; 145.52; 145.53);

- Credits earnings rather than interest on voluntary deposits made to the existing additional annuity program; permits contributors to make such deposits through payroll deduction and to select among optional plans of payment subject to the same spousal consent requirements; and permits contributors to select a separate beneficiary for such deposits (145.23, 145.294, 145.43, 145.471, 145.472, 145.62, 145.63, 145.64, 145.65);

- Clarifies that a lump sum payment of the member's accumulated contributions or additional annuity deposits shall be divided equally among two or more beneficiaries unless the member specifies the percentage to be paid to each beneficiary (145.43);

- Makes the spouse of a PERS law enforcement officer who is killed in the line of duty immediately eligible for survivor benefits upon the officer's death regardless of years of service (145.45); and

- Permits PERS members who purchased an additional 35% credit for their elective or appointed service to apply for a refund of the amount paid or a portion of the amount paid for such credit that does **not** result in an increase in their service retirement allowance (145.201).

The bill also makes the following changes to PERS, the State Teachers Retirement System (STRS), the School Employees Retirement System (SERS), the Ohio Police and Fire Pension Fund (OP&F), and the Highway Patrol Retirement System (HPRS):

- Clarifies the procedure for filling a board vacancy (145.06, 742.05, 3307.06, 3309.06, 5505.043);

- Eliminates the five-year sunset provision for the submission of annual disability experience reports by the five state retirement systems, thereby making it a permanent part of their laws (145.351, 742.381, 3307.513, 3309.391, 5505.181);

- Authorizes the five state retirement systems to establish a program under which a member, the member's employer or a retirant may make deposits for the purpose of providing funds for the payment of health, medical, hospital, surgical, dental, vision care or drug expenses, including insurance premiums, deductible amounts and copayments (145.294, 145.583, 742.451, 742.56, 3307.393, 3307.70, 3309.27, 3309.692, 5505.203, 5505.281); and

- Changes the venue for the commencement of an action to remove a retirement system board member from the court of appeals to the court of common pleas of the county in which the board member resides, with a right of review or appeal of such decision to the court of appeals (145.057, 742.046, 3307.061, 3309.061, 5505.048).

The bill further makes the following change to OP&F:

- Staggers the terms of office for the retired police board member and the retired firefighter board member (Section 3 of the bill).

Details and comments of the above changes follow.

Remittance of Employer Contributions - Current law requires employers to remit employer contributions to PERS on a quarterly basis, though the overwhelming majority of employers are currently remitting contributions on a monthly basis. Ninety (90) days after a quarterly period, any amounts that remain unpaid are subject to a five (5) percent penalty assessment and interest at a rate set by the board.

The bill requires all employers to remit employer contributions to PERS on a monthly basis. Such contributions must be received by PERS within thirty (30) days after the last day of the calendar month in which related member contributions are withheld. Unless the PERS board adopts a rule establishing a lesser interest rate and penalty for delinquent contributions, the statutory maximum interest rate and penalty shall be as follows:

- Interest, compounded annually and charged monthly, for each day after the due date equal to six (6) percent per annum on the past due amount and any penalties assessed;

- If at least eleven (11) but not more than thirty (30) days past due, a penalty equal to one (1) percent of the past due amount;

- If at least thirty-one (31) but not more than sixty (60) days past due, an additional penalty equal to one and one-half (1.5) percent of the past due amount;

- If sixty-one (61) or more days past due, an additional penalty equal to two and one-half (2.5) percent of the past due amount.

The bill permits the PERS board to adopt rules to lessen the maximum statutory interest rates and penalties on past due amounts, and to lengthen the period of time or enter into agreements with employers to comply with the statutory requirements.

These changes are intended to afford PERS the opportunity to earn additional investment income on these contributions, which income funds up to 80 percent of the benefits provided by PERS and enables contribution rates to remain relatively stable over the years.

In order to mitigate any budgetary concerns on the part of employers who currently remit contributions on a quarterly basis, the bill would provide for a transitional period for those contributions due for the fourth quarter of next year; namely, October 2007, November 2007 and December 2007. The employer contributions due for October 2007 would be payable no later than December 31, 2008; the employer contributions for November 2007, December 31, 2009; the employer contributions for December 2007, December 31, 2010. Interest and penalties for failing to pay the amounts when due would be subject to the interest and penalties established under the bill.

The bill also provides for a transfer from the DB Plan to the DC plan, as a credit, those employer contributions due for the months of October, November and December 2007 under the DC plan to satisfy the transitional liability previously described which would be paid from the employer contributions for the month of February 2008. The amount transferred shall be added to the transitional liability of such employers and paid back to the DB plan in accordance with the schedule outlined above.

Additional Annuity Program - Current law provides that members in the DB plan may make voluntary deposits in the additional annuity program established under PERS. Such deposits are credited with annual fixed interest at a rate determined by the board. The DB member may elect, at the time of retirement, either an annuity having a reserve equal to the amount on deposit or a refund of such amounts, with interest. Such deposits shall be refunded in the event of death prior to retirement or withdrawal of accumulated contributions or upon application of the member prior to retirement in accordance with existing law.

The bill allows contributors in the DB plan (currently members) and reemployed retirants to make voluntary deposits to the additional annuity program. Under the bill, such deposits may be made through payroll deduction, and shall accrue earnings beginning on the first day following deposit as opposed to annual fixed interest beginning on the first day of the calendar year next following the deposit under existing law. According to PERS, the funds will be invested in the Ohio PERS Stable Value Fund.

The bill provides for either an annuity having a reserve equal to the amount deposited or a refund of the amount deposited, together with earnings, as under existing law, except that if the annuity amount would be less than $25 per month, the contributor shall receive a refund.

Deposits shall be refunded under the following circumstances, as applicable:

- On withdrawal of the member's accumulated contributions;
- On the death of the contributor prior to retirement;
- On application of the contributor prior to attaining eligibility for age and service retirement under the DB plan;
- On application of the reemployed retirant prior to attaining eligibility for the money purchase benefit;

- On application of the contributor who has attained eligibility for age and service retirement under the DB plan or the money purchase benefit and who is not married; and

- On application of the contributor who has attained eligibility for age and service retirement under the DB plan or the money purchase benefit and is married, provided spousal consent is obtained or the spousal consent requirement is waived by the board.

The bill allows contributors to select one of the optional plans of payment currently available upon service retirement under PERS for payment of their additional annuity deposits subject to the same spousal consent requirements under existing law for married contributors. The effective date of the additional annuity payment shall be the same as the effective date of the contributor's age and service retirement benefit or, if the contributor is a reemployed retirant, the same as the effective date of the retirant's money purchase benefit under existing law.

The bill also allows contributors to designate a separate beneficiary for payment of their additional annuity deposits apart from any other benefits or amounts payable under PERS subject to the same provisions governing all other beneficiaries under existing law.

Lump Sum Payments – Current law generally permits contributors to designate two or more beneficiaries jointly for receipt of any lump sum payment of accumulated contributions or additional annuity deposits under PERS. PERS administration interprets this provision to require equal division of such accumulated contributions or additional annuity deposits among the designated beneficiaries.

The bill permits contributors to specify the percentage of accumulated contributions or additional annuity deposits each beneficiary is to be paid. If no percentages are specified, the accumulated contributions or additional annuity deposits shall be divided equally among the beneficiaries.

Survivor Benefits for PERS Law Enforcement Officers – Current law generally provides that the spouse of a PERS Law Enforcement Officer is eligible for monthly survivor benefits at any age **if** the deceased officer has ten or more years of service **or** the spouse is caring for dependent children **or** the spouse is adjudged physically or mentally incompetent. Otherwise, the spouse of a PERS Law Enforcement Officer becomes eligible for benefits at age 62.

The bill makes the spouse of a PERS Law Enforcement Officer **who is killed in the line of duty** eligible for monthly survivor benefits at any age regardless of whether the deceased officer had ten or more years of service. The term "killed in the line of duty" means either that death occurred in the line of duty or that death occurred as a result of injury sustained in the line of duty. This is consistent with the survivor benefit provisions under the Ohio Police and Fire Pension Fund (OP&F) and the Highway Patrol Retirement System (HPRS).

<u>Refund of 35% Elective or Appointed Service Credit</u> – The bill permits members who purchased an additional 35% credit for their elective or appointed service to apply for a refund of the amount paid or a portion of the amount paid for such credit that does not result in an increase in their service retirement allowance. This is generally consistent with similar provisions under existing OP&F and HPRS law.

<u>Board Vacancies</u> **–** The bill provides that the PERS, STRS, SERS, OP&F and HPRS boards need not elect a successor member to their respective boards for any vacancy that occurs less than 90 days before the end of the predecessor member's term of office. The bill also makes a technical correction to the laws governing the term of office for successor members of the board who fill a board vacancy to make it consistent with changes enacted in S.B. 133 (eff. 9/15/04).

<u>Disability Experience Reports</u> **–** The bill eliminates the five-year sunset provision for the submission of annual disability experience reports by PERS, STRS, SERS, OP&F and HPRS, which expired in 2005, thereby making it a permanent part of their laws.

<u>Health Savings Accounts</u> **–** The bill authorizes PERS, STRS, SERS, OP&F and HPRS to establish a program under which a member, the member's employer or a retirant may make deposits for the purpose of providing funds for the payment of health, medical, hospital, surgical, dental, vision care or drug expenses, including insurance premiums, deductible amounts and copayments. The program may be a voluntary employees' beneficiary association, a medical savings account, or similar type program. It would allow such participants or their employers to make additional deposits, on a voluntary basis, for the purposes of providing funds for the payment of the previously described expenses. Such additional, voluntary deposits could be made through payroll deduction. It would authorize the retirement boards to enter into agreements with insurance companies or other entities authorized to conduct business in Ohio to implement the program. It would also authorize the boards to adopt rules to establish and administer the program.

Given the escalating cost of health care coverage and greater cost sharing with covered individuals, this change is intended to provide members an opportunity to save the necessary funds to meet their future health care needs upon retirement.

<u>Removal of Board Members</u> - S.B. 133 (eff. 9/15/04) established a procedure for the removal of a board member of any of the five state retirement systems who engages in certain conduct (R.C. §§145.057, 742.046, 3307.061, 3309.061, 5505.048). Under current law, proceedings for such removal shall commence in the court of appeals of the district in which the board member resides.

The bill changes the venue for the commencement of such proceedings from the court of appeals to the court of common pleas of the county in which the board member resides, with a right of review or appeal of such decision to the court of appeals.

<u>OP&F Board</u> **–** Under current OP&F law, the terms of office for the retired firefighter board member and the retired police officer board member are for four years and expire in the same year. The current terms for the retired firefighter board member and the retired police officer board member are scheduled to expire on the first Monday in June 2007.

The bill staggers the terms of office for the retired firefighter board member and the retired police officer board members by extending the current four-year term of the retired police officer board member by one year. Accordingly, the term of the retired firefighter board member would expire on the first Monday in June 2007 as under existing law, but the term of the retired police officer board member would expire on the first Monday in June 2008.

The rationale for the proposed amendment is to avoid the terms of office for both retired board members from expiring at the same time, thereby resulting in the loss of institutional knowledge. The proposed change would result in staggered terms of office, like those of the elected board members representing the active membership.

Fiscal Impact – According to the PERS actuary, Gabriel, Roeder, Smith & Company, the accelerated receipt of employer contributions would have a small positive effect on PERS. The other provisions of the bill would have no fiscal impact upon PERS or the other four state retirement systems.

ORSC Position – At the November 15, 2006 meeting of the Ohio Retirement Study Council, the ORSC voted to recommend that the 126th Ohio General Assembly approve H.B. 272 upon the adoption of the following amendment:

- That the current procedures for the removal of board members in STRS, SERS, OP&F and HPRS be amended to make them consistent with that of PERS, as amended under the bill. (This recommendation was incorporated in the substitute bill as reported by the House Financial Institutions, Real Estate & Securities Committee.)

Effective Date – April 6, 2007