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*H.B. 184 of the 134<sup>th</sup>  
General Assembly*

*Rep. Carfagna*

*August 12, 2021*

ORSC Recommendation

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## Summary of H.B. 184

H.B. 184 expands the personnel authorized to conduct pre-employment and disability related medical examinations for the Ohio Police and Fire Pension Fund (OP&F), in general removing physicians as the *required* examiner. The bill:

- 1) Removes the requirement that the pre-employment examination of a prospective member be conducted by a physician;
- 2) Authorizes the OP&F Board to assign “health care professionals”<sup>1</sup> to conduct disability application examinations; and
- 3) Authorizes the OP&F Board to grant a disability (1) based solely on a review of the disability application materials and medical review, or (2) by requiring an applicant to undergo a medical examination by a physician, health care professional, or vocational evaluator.

The bill also specifies that “permanent disability” in continuing OP&F law means a disabling condition that is expected to last for a continuous period of no less than 12-months.

## Background

OP&F provides disability benefits to disabled members.<sup>2</sup> The benefit amount varies depending on if the disability is partial or permanent and whether it occurred on- or off-duty, with on-duty total and permanent being a higher benefit. OP&F law specifically includes oncological, heart disease, cardiovascular, or respiratory conditions as having occurred on-duty as long as those conditions were not revealed in a pre-employment examination.<sup>3</sup> As part of the disability determination process, the OP&F Board is to establish rules that, among other requirements, provide for a competent and disinterested physician and vocational evaluator to examine the member.<sup>4</sup>

According to testimony and conversations with OP&F staff, the OP&F Board is having difficulties contracting with a sufficient number of physicians to conduct these examinations. The bill, in general then, broadens those that may conduct these examinations to resolve this difficulty.

## H.B. 184

H.B. 184 expands the personnel authorized to conduct pre-employment and disability determination examinations on behalf of OP&F.

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<sup>1</sup> “Health care professionals” are not defined under the bill.

<sup>2</sup> According to the most recent 2019 OP&F Valuation, of the 22,005 service and disability retirees, 6,062 are disability retirees (28%) (January 1, 2020 OP&F Actuarial Valuation, page 19).

<sup>3</sup> R.C. 745.38(D)(3).

<sup>4</sup> R.C. 745.38(C). Current rules provide for a member to be examined unless the examination would be medically inadvisable (O.A.C. 742-3-05(C)(5)).

## **Pre-employment examinations**

The bill removes the requirement that a physician administer the pre-employment examinations of prospective members of OP&F. The bill does not specify those who are to administer the examinations, but continuing law requires the OP&F Board to adopt rules establishing the minimum medical testing and diagnostic standards and procedures for conducting the examination.<sup>5</sup>

## **Disability determinations**

The bill modifies both who is authorized to provide a medical examination and the situations in which examinations are required.

### **Expansion of those authorized to provide examinations**

Continuing law requires that the OP&F Board adopt rules for providing physician and vocational evaluators to examine disability applications. The bill requires the Board also adopt rules for these examinations to be conducted by “health care professionals” as specified by the Board. The bill does not provide statutory requirements for the health care professionals that the Board may appoint.<sup>6</sup>

### **Granting of disability benefits**

H.B. 184 makes a number of changes to the process by which the OP&F Board makes a disability determination. With the exception of one substantive change, these are mostly clarifying in nature. Substantively, the bill permits the Board to grant a disability benefit solely on the basis of the disability application and supporting medical documentation. Alternatively, the bill provides that the Board may require the applicant to undergo a medical examination by the expanded list of professionals (“health care professionals” as determined by OP&F) that are authorized to provide a medical examination under the bill.

It is not clear what, if any, net effect this will have on the disability process currently conducted by OP&F. While current law is silent on whether a member is *required* to undergo a medical examination before receiving benefits, the Board has an existing rule providing for applicants to receive a medical examination unless it is medically inadvisable to do so.<sup>7</sup> The change would suggest that the Board will be granted greater latitude in determining if a member is required to receive a medical examination, but the authority to *not* conduct the examination already exists in current law and practice.

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<sup>5</sup> R.C. 745.38(A)(1).

<sup>6</sup> R.C. 745.38(C).

<sup>7</sup> O.A.C. 742-3-05(B)(1) and (C)(5).

## **“Permanent Disability”**

Finally, the bill provides that a “permanent disability” is one that is presumed to continue for a 12-month period. This standard is similar to the other retirement systems. However, as this standard has been adopted by the other systems the language across the systems has differed slightly. If the same standard is meant across the systems, it would be advisable to standardize the language. The ORSC recommends that the systems coordinate language to be used across the systems for consistency.

## **ORSC Comments**

The policy implications of the bill are essentially ones of board authority, for which the ORSC has provided guidance in the past.<sup>8</sup> Specifically, how much discretion and control should be delegated to the OP&F Board in conducting disability determinations? Existing law delegates a significant amount of authority to the OP&F Board as it is. This is logical as neither the ORSC nor ORSC staff are medical experts and the disability hearings are conducted in executive session. ORSC oversight responsibilities are confined to the broad statistics of disability retirement and actuarial valuation projections.

The retirement boards themselves delegate a significant amount of authority to the medical professionals who are qualified to make medical judgements on disability applicants. Again, this is logical as the boards are not medical professionals. The current delegation of authority functions as the General Assembly has set the standard of professionals they deem appropriate to provide a medical examination – physicians. ORSC oversight of the disability program relies heavily on these licensed medical professionals.

H.B. 184 removes physicians as the required examiners but does not specify the professional standards of their replacement. The bill completely shifts the authority to determine professionals appropriate to provide medical examinations from the General Assembly to the OP&F Board. The ORSC in the past has not been opposed to board authority, as long as that authority is done with ORSC oversight or according to standards established by the General Assembly. In this case, since ORSC oversight is necessarily limited, it would be appropriate for the General Assembly to retain some measure of control over the medical examiner standards used by the OP&F Board.

The ORSC would, therefore, recommend that OP&F specify what medical professionals they envision being used in the review process, and to list those professionals in H.B. 184. This could be done by amending the bill to define “health care professional.” This would provide assurance and clarity to the ORSC and General Assembly that disability applicants are receiving a proper review by those professionals

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<sup>8</sup> Report on Board Authority Provisions of S.B. 340, 341, 342, and 345 of the 129<sup>th</sup> General Assembly (2013) and Legislative Analysis of H.B. 242 of the 132<sup>nd</sup> General Assembly (2017).

qualified to make determinations, but also permit OP&F to remedy their existing difficulty with finding physicians to review applications.

## **ORSC Recommendation**

In order to address OP&F's concerns regarding the unavailability of physicians but to provide standards of medical expertise, the ORSC recommends that the General Assembly approve H.B. 184 only with the inclusion of an amendment defining the "health care professionals" that may conduct the pre-employment and disability determination applications. ORSC would also recommend that the retirement systems coordinate language regarding permanent disability, and this language be prepared for any future retirement system corrective bill.