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The Ohio Retirement Study Council
88 E. Broad St., Suite 1175
Columbus, Ohio 43215
(614)228-1346 Phone
(614)228-0118 Fax
www.orsc.org Website

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Analysis

Sub. H.B. 416 - Rep. Ford (As Enacted by the General Assembly)

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ORSC Position

Anne Erkman - Contact Person
(614)228-1346

Sub. H.B. 416 - Rep. Ford

Sub. H.B. 416 would make the following changes to the Public Employees Retirement System (PERS):

- Eliminate R.C. §145.203, a provision in the laws governing PERS that allows elected officials to contribute an additional amount to PERS on the basis of their earnable salary as an employee of an Ohio not-for-profit professional sports organization that has pledged to transfer all receipts in excess of actual expenses to the board of county commissioners. Any contributions made or service credit earned as an employee of an Ohio not-for-profit professional sports organization prior to the bill's passage would not be affected.

Current law allows the member's retirement benefit to be calculated based on the combined salaries as an elected official and an employee of the sports organization.

- Reference the limitations recently established under the federal Taxpayer Relief Act of 1997 with respect to the purchase of 35% additional service credit for elected officials.

Current law allows elected officials to purchase an additional 35% of full-time service as an elected official without limit.

- Lower the normal retirement age from 52 to 48 with 25 years of service while serving as a sheriff, deputy sheriff, or township constable or police officer under the Public Employees Retirement System Law Enforcement division (PERS-LE).¹ There is **no** reduction in benefits on account of the member's age under normal service retirement.

Presently, PERS law enforcement officers may retire at age 52 with 25 years of service without any reduction in benefits. They may also retire as early as age 48 with 25 years of service on a reduced benefit.

Staff Comments

Elimination of R.C. §145.203 - Elected officials were first allowed to contribute an additional amount to PERS on the basis of their earnable salary as an employee of an Ohio not-for-profit professional sports organization in 1988 (S.B. 138, eff 7-20-88). At that time, the Ohio Retirement Study Council recommended approval of S.B. 138, but did not take a position on this provision because it was a last-minute amendment offered after the Council had taken a position on the bill. However, staff raised several public policy objections to the provision.

First, staff objected because it is discriminatory on its face by giving only elected officials the preferential treatment. No other employee of the sports organization has this option, even if that employee is also a public employee by virtue of other employment. Second, it sets a precedent for other public employees to contribute to PERS on the basis of what is essentially private employment. For example, should state university physicians be permitted to also contribute to a

¹The PERS-LE program covers sheriffs, deputy sheriffs, township police officers, state university police officers and several other miscellaneous law enforcement groups. Like both the Ohio Police and Fire Pension Fund (OP&F) and the Highway Patrol Retirement System (HPRS), PERS-LE provides for earlier retirement ages and higher benefit formulas than the state pension funds for general employees.

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public pension fund on the basis of their private practice earnings? Third, it provides a lucrative incentive for the member to begin contributing on the basis of the outside income just prior to retirement for the sole purpose of spiking the member's final average salary because there is no requirement that the member begin contributing based on the outside income immediately upon becoming employed with the sports organization. For example, an elected official with 20 years of public service could begin work for a sports organization in 1989, with the intention of retiring in 1999. Under current law, that member could wait until 1996 to begin contributing to PERS on the basis of the income from the sports organization. The retirement system will have received the additional contributions for a limited time but will have to pay a lifetime retirement allowance based on the spiked final average salary. These public policy issues continue to be relevant today.

Limitation on purchase of additional 35% service credit - The Taxpayer Relief Act of 1997 recently provided relief from former conflicts between federal tax qualification rules relating to limitations on benefits and contributions under section 415 of the Internal Revenue Code and state laws relating to the purchase of service credit in a governmental defined benefit plan. Under the Taxpayer Relief Act, no more than five years of service credit can be purchased for "nonqualified service," defined as service other than service (1) as a federal, state or local government employee, (2) as an employee of an association representing federal, state or local government employees, (3) as an employee of a public, private or sectarian school which provides elementary or secondary education, and (4) military service. Moreover, section 415 is violated if "nonqualified service" is taken into account for an individual who has less than five years of participation under the plan. While the provision is effective with respect to contributions to purchase service credit in years beginning after December 31, 1997, a grandfather rule would apply. Under this rule, the section 415 limits will not reduce the amount of service credit an eligible participant is allowed under the terms of the plan as in effect on August 5, 1997. For this purpose, eligible participants are "individuals who first became participants in the plan before the first plan year ends following the last day of the calendar year in which the next regular session (following the date of enactment of this Act) of the governing body with authority to amend the plan ends."

The purchase of 35% additional service credit in PERS is considered "nonqualified service" (sometimes referred to as "air time") for purposes of the Taxpayer Relief Act of 1997. Therefore, elected officials who first establish membership on or after January 1, 2001 will become subject to the following two limitations established pursuant to these recent changes in the federal tax law: (1) the purchase of 35% additional elective service is limited to those elected officials who have at least five years of service credit in PERS and (2) the purchase of 35% additional elective service is limited to a maximum of five years.

This bill references the limitations established under section 415 regarding these purchases, thereby making Ohio law consistent with federal law. The various benefit provisions, other than the purchase of service credit, of all five state retirement systems were similarly amended for the same reasons in Sub. S.B. 240 (eff. 7/24/90) to ensure compliance with federal tax law and maintain the federal tax qualification status of the retirement systems.

Reduced retirement age for certain members of PERS-LE - Generally, the PERS-LE program, OP&F and HPRS have maintained similar eligibility requirements and benefit levels for retiring law enforcement and safety personnel. These retirement programs provide for earlier retirement ages and higher benefit formulas than the state pension plans covering general employees (PERS, STRS, SERS).

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This provision is in response to H.B. 389 (eff. 9/9/88 - OP&F) and H.B. 340 (eff. 11/2/89 - HPRS), which lowered the normal retirement age from 52 to 48 with 25 years of service for police and firefighters and state troopers, respectively. This provision is intended to maintain the traditional parity among the PERS-LE, OP&F and HPRS retirement programs in this regard.

When the normal retirement age was lowered in the police and fire pension fund (H.B. 389) and the state highway patrol retirement system (H.B. 340), the employee contribution rate was increased as part of the funding of the additional liabilities created under those bills. The employee contribution rate was increased from 9.5% to 10% for police and firefighters and from 9% to 10.5% for state troopers. Should the legislature decide as a matter of public policy to establish the traditional parity among the three law enforcement retirement programs in Ohio by lowering the normal retirement age for PERS-LE members, it is recommended that the employee contribution rate be increased to fund the normal cost of such change going forward.

The PERS-LE division was created by the General Assembly in 1975. The General Assembly recognized that certain law enforcement officers deserved special retirement benefits due to the nature of their employment. At that time, only sheriffs and deputy sheriffs were included in the PERS-LE division. In 1979 township constables and police officers were added to the PERS-LE division based upon an ORSC study. Like sheriffs and deputy sheriffs, township constables and police officers were required to be employed as full-time peace officers; possess a peace officer training certificate; and have primary duties of preserving the peace, protecting life and property, and enforcing the laws of the state to be eligible for the PERS-LE division.

Since then the PERS-LE division has grown to include drug agents, department of public safety enforcement agents, parks officers, forest officers, game protectors, state watercraft officers, preserve officers, natural resources law enforcement staff officers, park district police officers, conservancy district officers, Ohio veterans' home police officers, special police officers for mental health institutions and for institutions for the mentally retarded and developmentally disabled, state university law enforcement officers, and Hamilton County Municipal Court bailiffs. Numerous other groups have also sought inclusion in the PERS-LE division, such as regional transit authority police and prison guards.

The original intent of the PERS-LE division was to provide a special set of retirement benefits for law enforcement officers whose duties and training were similar to those of police officers, but who at that time, did not have the career security needed to become vested in a retirement benefit under OP&F. Accordingly, a separate law enforcement division in PERS was created with a special "back up" provision for law enforcement officers who failed to obtain the necessary years of law enforcement service to qualify for a retirement benefit thereunder. Such officers were and continue to be eligible to retire under the regular PERS retirement program, which requires only five years of service to qualify for a benefit.

The first groups of employees eligible for benefits under PERS-LE (sheriffs, deputy sheriffs, township constables, township police officers) were required to have as their primary duties preserving the peace, protecting life and property, and enforcing the laws of the state. As later groups have been added to PERS-LE, the emphasis for eligibility has gradually shifted from the primary duties of the employee to the type of training the employee has received. While the training of a member of the law enforcement division is important, it is the primary duties of the officer that justify the special set of retirement benefits, including earlier retirement age and higher benefit formula. It is, thus, recommended that future participation in PERS-LE be limited to full-

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time law enforcement officers whose position requires a certificate from the Ohio Peace Officer Training Commission under R.C. §109.77 *and* whose primary duties are to preserve the peace, protect life and property, and enforce the laws of the state as certified by the employer.

Fiscal Impact

Revised Code section 145.203 creates unfunded liabilities for the system because, as noted above, the retirement system must pay a lifetime benefit on the basis of a spiked final average salary. The amount of the unfunded liability created depends on the salary from the professional sports organization, the years of service of the member, and the years the member contributed on the outside salary prior to retirement. H.B. 416 would eliminate this additional unfunded liability.

ORSC Position

At its meeting of September 8, 1999, the Ohio Retirement Study Council voted to recommend that the 123rd General Assembly approve H.B. 416 as introduced because the current provision (R.C. §145.203) is actuarially unsound and bad public policy.

At its meeting of August 25, 1999, the Ohio Retirement Study Council voted to recommend that the 123rd General Assembly approve the provision referencing the limitations recently established under the federal Taxpayer Relief Act of 1997 with respect to the purchase of 35% additional service credit in PERS.

At its meeting of March 29, 2000 the Ohio Retirement Study Council voted to recommend that the 123rd General Assembly approve the reduction of the retirement age for members of the law enforcement division of PERS upon the adoption of the following changes:

- the provisions of the bill become effective January 1, 2001, the date the temporary reduction in the employer contribution rate for law enforcement officers adopted by the PERS board for calendar year 2000 terminates (This recommendation was incorporated in the Senate Ways and Means Committee);
- the employee contribution rate for law enforcement officers is increased by 1.1%, the additional amount necessary when combined with the return in the employer rate to 16.7% to fund the cost of the bill and S.B. 144 within the maximum 30-year funding period required by statute (This recommendation was incorporated in the Senate Ways and Means Committee);
- future participation in the law enforcement division of PERS is limited to full-time law enforcement officers whose position requires a certificate from the Ohio Peace Officer Training Commission and whose primary duties are to preserve the peace, protect life and property, and enforce the laws of the state as certified by the employer (This recommendation was incorporated in the Senate Ways and Means Committee by limiting those members who are eligible for the reduced retirement age to sheriffs, deputy sheriffs, and township constables and police officers).