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***H.B. 184 of the 134th
General Assembly***

Rep. Carfagna

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Staff Recommendation-As Passed by the Senate

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Summary of Am. 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 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 advanced practice registered nurses and physician assistants, in addition to current law's physicians and vocational evaluators, 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, vocational evaluation, or both.

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.¹ 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.² 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.³

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.

Am. H.B. 184

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

¹ 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).

² R.C. 745.38(D)(3).

³ 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.⁴

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 to also adopt rules for these examinations to be conducted by advanced practice registered nurses and physician assistants.⁵ The bill specifies that these examinations may only be done within the advanced practice registered nurse or physician's scope of practice⁶ and requires a physician to review, approve, and sign any examination report provided to the Board.⁷

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 a physician, vocational evaluator, advanced practice registered nurse, or physician assistant.

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.⁸ The change would suggest that the Board will be granted greater latitude in determining if a member is required to receive a medical

⁴ R.C. 745.38(A)(1).

⁵ R.C. 745.38(C).

⁶ R.C. 745.38(E).

⁷ R.C. 745.38(D).

⁸ O.A.C. 742-3-05(B)(1) and (C)(5).

examination, but the authority to *not* conduct the examination already exists in current law and practice.

“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.

Staff Comments

The policy implications of the bill are essentially ones of board authority, for which the ORSC has provided guidance in the past.⁹ 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 expands the specified medical professionals that may provide examinations to include advanced practice registered nurses and physician assistants. The bill further specifies that these examinations must be within the professional’s scope of practice. 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. The bill complies with this established standard as the General Assembly is providing specific guidance on the medical professionals they deem appropriate to provide medical examinations.

⁹ Report on Board Authority Provisions of S.B. 340, 341, 342, and 345 of the 129th General Assembly (2013) and Legislative Analysis of H.B. 242 of the 132nd General Assembly (2017).

Staff Recommendation

ORSC staff recommends that the General Assembly approve H.B. 184 in order to address OP&F's concerns regarding the unavailability of physicians but to continue to provide standards of medical expertise on those examinations. Staff would also advise that the annual disability report provided by OP&F to ORSC be amended to include this legislative expansion.

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.