ORSC

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# *Analysis*

## H.B. 154 - Rep. Stapleton
**(As Introduced)**

March 10, 1999

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H.B. 154 - (As Introduced)

The bill would make the following changes in the Public Employees Retirement System (PERS):

- Exempt from PERS membership public employees whom employers intend to employ for less than six months and who are under age 18 throughout such employment (O.R.C. §145.03);

- Extend disability coverage from two to five years after termination of contributing service in PERS (O.R.C. §145.35).

Details of the changes follow.

**PERS Membership Exemption** - Current law generally provides for compulsory membership in PERS for all state and local government employees not covered by one of the other four statewide retirement systems upon being employed. Employees are required to contribute 8.5% of their earnable salary; employers, 13.31% for state employees and 13.55% for local employees.

Current law provides an exemption from PERS membership for students who are employed by the school, college or university in which they are enrolled and regularly attending classes, which mirrors the student exemption provided under Social Security law. Accordingly, students are not required to contribute to either PERS or Social Security.

The bill would exempt from PERS membership employees whom public employers intend to employ for less than six months and who will not attain age 18 during such employment. This exemption would cause such employees to contribute to Social Security under existing federal law which mandates Social Security coverage for all state and local government employees not covered by a governmental pension plan and *not* otherwise exempted under Social Security law. Under Social Security and Medicare (health insurance component), the employee and employer are required to contribute each 7.65% of salary (6.2% of first $72,600 in 1999 - Social Security; 1.45% of full salary - Medicare).

Should the employment extend beyond the period originally intended, the exemption would cease upon the earlier of the employee's attainment of age 18 or the expiration of six months after the initial employment date, at which time contributions would be required to be made to PERS and contributions would cease to be made to Social Security. Also, employees would not be permitted under current PERS law to purchase credit for exempted service covered under Social Security.

The exemption provided under the bill differs from the student exemption provided under current PERS law. The current student exemption is made at the election of the student by filing an application within the first month of employment with the PERS board; as drafted, the bill provides *no* similar election or notification process. Therefore, it is not clear whether eligible employees are to be given a choice between contributing to PERS or Social Security under the bill. Also, it is not clear how PERS is to determine when the exemption ceases and contributions begin under the bill.

**PERS Disability Coverage Extension** - Current PERS law provides that an application for disability benefits may be made within two years from the date the member's contributing service terminates, unless the retirement board determines that the member's medical records demonstrate that at the expiration of the two year period, the member was physically or mentally incapacitated for duty and unable to make application. The bill would extend the application period to five years after termination of the member's contributing service.

Currently, the PERS, State Teachers Retirement System and School Employees Retirement System disability provisions are uniform. The bill excludes STRS and SERS from the proposed change. The current coordination-of-benefit provisions among these three retirement systems with respect to service retirement and disability benefits are largely premised upon this uniformity.

**Staff Comments -** Ohio has a long-standing policy of opposing Social Security coverage for its public employees. With combined assets of $115 billion, Ohio's public retirement systems provide comprehensive service, disability, survivor and health care coverage to nearly 1.3 million members, retirees and their beneficiaries. The two largest retirement systems, PERS (1933) and STRS (1920), predate the Social Security System, as do many local police and fire pension funds prior to their consolidation into the statewide Police and Fire Pension Fund in 1967. Ohio's public retirement systems are actuarially funded to meet their long-term pension obligations, well-managed by their respective retirement boards, and effectively monitored by the legislature through the Ohio Retirement Study Council.

The Ohio General Assembly enacted H.B. 382 (eff. 6/30/91) in response to a provision in the 1990 federal budget act which mandated Social Security coverage for all state and local government employees not covered by a governmental pension plan effective July 1, 1991. H.B. 382 generally eliminated all previous exemptions under the state retirement systems, thereby making membership in the state retirement systems compulsory for part-time, temporary and seasonal employees not otherwise exempted under Social Security law. The stated rationale for the bill was that to allow Social Security to "get a foot in the door" would mark a significant departure from past policy, and might lead to mandatory Social Security coverage for all public employees. While it was recognized that many part-time, temporary and seasonal employees would never vest a right to a pension under the state retirement systems, they would have an immediate vested right to their contributions, which could be rolled over tax-free to another qualified retirement plan or individual retirement account.[1] Also, it was unlikely that such part-time employment would have any significant impact on the receipt or amount of future Social Security benefits for those individuals who otherwise qualify since Social Security benefits are based on the average of the individual's 35 highest years of covered earnings. H.B. 154 would undermine, this previous legislative enactment, and set a precedent for other groups of public employees to seek exemption from PERS membership.

Today there is current consensus in Washington about Social Security: The Social Security System is in need of reform. While the various proposed reforms differ widely, one common thread among several of the proposals provides for mandatory Social Security coverage for new state and local government employees currently not covered. In response, the Ohio House of Representatives has unanimously passed H. Con. R. No. 4 which urges Congress to reject and oppose any federal proposals that would require Ohio's public employees to participate in Social Security. H.B. 154 would undermine the intent of this House concurrent resolution, and send a mixed-signal to Congress regarding Ohio's historic opposition to mandatory Social Security for its public employees.

The proposed change in PERS disability coverage would create additional liability exposure for the retirement system. Currently, members may apply for disability benefits within two years after termination of contributing service. Similarly, PERS survivor coverage is provided for two and one-quarter years after the member terminates contributing service. The purpose of these

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[1]S.B. 82 required PERS, STRS and SERS to propose an alternative benefit program for their members. If enacted, PERS' proposal would provide for annual compound interest on the employee's contributions upon withdrawal, and for employees with at least five years of service, a portion of the employer contributions.

provisions is to provide some continuing coverage between jobs. Extending disability coverage for a period of five years would appear to be excessive. Federal law generally requires private and public employers to make health insurance coverage available to former employees for a maximum period of 18 months after termination of employment under COBRA. Unlike Social Security, PERS members qualify for disability benefits if the board determines that the member is physically or mentally incapacitated for the performance of duty; Social Security requires a determination that the individual is unable to perform any substantial gainful employment, a much higher standard that significantly restricts eligibility and disability costs.

**Fiscal Impact** - The actuarial cost statement prepared by the PERS actuary is not yet available.

**ORSC Position** - At its meeting of March 10, 1999 the Ohio Retirement Study Council voted to recommend that the 123rd Ohio General Assembly disapprove H.B. 154 for the following public policy reasons:

- The bill would undermine Ohio's long-standing opposition to Social Security coverage for its public employees, including part-time, seasonal and temporary employees not otherwise exempted under Social Security law, as previously established in H.B. 382 and recently affirmed in H. Con. R. No. 4.

- The bill would allow Social Security to "get a foot in the door," and would send a mixed-signal to Congress regarding Ohio's position concerning mandatory Social Security proposals for state and local government employees currently not covered.

- The bill would create additional liability exposure under the PERS disability program which appears to be inconsistent with recent legislative reforms enacted in H.B. 648 that are intended to control disability costs under the state retirement systems. Also, the bill would eliminate the current uniformity between the PERS disability program and the disability programs under STRS and SERS.