



The Ohio Retirement Study Council
88 East Broad Street, Suite 1175
Columbus, OH 43215-3506
Phone: (614)228-1346
Fax: (614)228-0118
Website: www.orsc.org

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Analysis

H.B. 270 – Rep. Schneider *(As Introduced)*

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ORSC Position

Anne Erkman - Contact Person
(614) 228-1346

H.B. 270 would require a retirant of the Public Employees Retirement System (PERS), the State Teachers Retirement System (STRS), the School Employees Retirement System (SERS), or the Ohio Police and Fire Pension Fund (OP&F) to forfeit the pension portion of their retirement benefit if they return to the same position or a position that is substantially equivalent to their prior position with the same public employer less than 180 days after their retirement benefit commences.¹ The forfeiture would begin on the day reemployment begins and would end on the first day of the month following the month in which the employment ends. The annuity portion would be suspended and paid to the reemployed retirant in a lump sum following termination of employment.

The pension portion of a retirement benefit is the portion that is derived from contributions made by the employer and is paid in monthly or less frequent installments. The annuity portion of a retirement benefit is the portion of the benefit that is derived from contributions made by the former member and is paid in monthly or less frequent installments.

The bill provides that if there is any doubt as to whether the duties of the position are the same or substantially equivalent, the retirement board shall make the determination. Its decision is final. However, the employer is better suited to determine whether the duties are the same or substantially equivalent because the employer would be familiar with the job. *Therefore, we recommend that the bill be amended to require the employer rather than the retirement board to determine whether the duties of the position are the same or substantially equivalent.*

Current law limits reemployment of retirees in several different ways. First, reemployed retirees are required to wait two months before becoming reemployed with a public employer regardless of whether the retiree is reemployed in the same position. If a retiree returns to employment before the expiration of the two-month waiting period, the retirement allowance is forfeited for any month in which the retirant is reemployed prior to the expiration of the two-month period. Reemployed retirees are not considered members of the retirement system and do not earn an additional defined benefit, but they and their employers still must contribute to the retirement system toward a “money purchase benefit.” The calculation of the money purchase benefit is the amount of the retiree's accumulated contributions, excluding contributions made during the two-month waiting period, plus an amount determined by the board (an equal amount in the case of OP&F), plus interest at a rate determined by the board.

Another limitation to reemployment concerns elected officials who retire and are re-elected or appointed to the same office for the remainder of their term or the term immediately following. They are prohibited from receiving their retirement allowance while drawing a salary for that office unless they file notice of an intent to retire at least 90 days prior to the primary election. If notice is filed, the official is treated the same as all other PERS members. A reelected official who does not file notice becomes a new

¹ The Highway Patrol Retirement System is not included in the bill because persons age 35 or older are ineligible to become state troopers.

member of PERS and receives a refund of accumulated contributions, plus interest or a supplemental retirement allowance based on the reemployment period. H.B. 270 would eliminate this provision and apply the 180-day waiting period to all retirees who are reemployed in the same or substantially same position with the same employer.

Finally, if a member of PERS, STRS, or SERS retires from a position that is customarily filled by a vote of members of a board or commission or, for a PERS retiree, by the legislative authority of a county, municipal corporation, or township, the board, commission, or legislative authority must give public notice and hold a meeting on the issue of reemployment before the employment is to begin.

From an actuarial funding perspective, the state retirement systems are designed so that the employee and employer contributions made to the system over the working life of the member, together with investment earnings thereon, are sufficient to fund in full the retirement allowance payable to the member upon retirement. Therefore, the fact that the retired member may be employed subsequent to retirement by a public employer rather than a private employer has no actuarial cost impact upon the retirement system's funding of the retirement allowance earned by the member.

Background – Prior to 1991, reemployed retirees did not contribute to any of the public retirement systems. That changed in response to a federal mandate that would have otherwise required certain reemployed retirees to contribute to the Social Security System on or after July 1, 1991. Because Ohio has consistently opposed mandatory Social Security coverage for public employees, the legislature enacted H.B. 382 (eff. 6/30/91), which required retirees who become reemployed in the public sector to contribute to a public retirement system in lieu of Social Security. Under the federal law, public employees not contributing to a state or local retirement system are generally required to contribute to Social Security.

Accordingly, the prior reemployment restrictions were amended in 1991 to require contributions from all reemployed retirees toward a money purchase benefit equal to the member's accumulated contributions during reemployment, with interest, along with a matching amount from employer contributions. Reemployed retirees continued to receive their original retirement allowance during the period of reemployment, provided they waited at least two months after retirement before returning to employment (18 months after retirement in STRS before returning to full-time teaching). The money purchase benefit was payable as a lump sum payment or monthly annuity upon the later of the first day of the month following termination of employment, attainment of age 65 (age 60 in OP&F) or 12 months after the effective date of their last money purchase benefit.

Unlike any of the other state retirement systems, PERS retirees who were reemployed in a position covered by PERS were given the option to forego their original retirement allowance during the period of reemployment and become members of PERS, with all the rights and obligations of membership, except survivor coverage. They were eligible for a supplemental formula benefit based upon their years of service and final average salary

earned during the period of reemployment or a refund of their accumulated contributions during the period of reemployment.

Since the enactment of H.B. 382, the reemployment statutes have been amended in an ad hoc manner. H.B. 151 (eff. 2/9/94) increased the waiting period from two to six months for PERS retirees who were reemployed in positions covered by PERS; the two-month waiting period, however, still applied to PERS retirees who were reemployed in positions covered by another state retirement system. Also, H.B. 151 prohibited an elected official from retiring from PERS during the period beginning 31 days prior to the election date through 31 days after the commencement of the new term of office. S.B. 82 (eff. 12/6/96) further changed the restrictions applicable to elected officials who retired from PERS and were elected or appointed to the same office by requiring them to forego their retirement allowance during the period of reemployment and become once again members of PERS under the special option described above.

As shown above, prior to 2000 various reemployment restrictions applied to different groups of retired public employees. This raised the public policy issue of whether the reemployment restrictions among the Ohio retirement systems should be made more uniform, where practicable. The legislature enacted S.B. 144 (eff. 9/14/00), which modified the reemployment statutes of the state retirement systems. *The purpose of these modifications was to provide a single, uniform set of rules applicable to all retired public employees, including elected officials, who were reemployed in a position covered by any of the five state retirement systems in Ohio. Another purpose was to alleviate shortages in experienced personnel in some critical areas (teachers, township trustees). The prior reemployment statutes often served as a disincentive or obstacle for retired public employees to fill such vacancies. In this regard, S.B. 144 made three major changes to the reemployment statutes.*

First, S.B. 144 amended the reemployment provisions of PERS and STRS with respect to the minimum waiting period. The bill reduced the minimum waiting period in PERS and STRS from six and eighteen months, respectively, to two months, which is consistent with the reemployment statutes of the other state retirement systems.

Second, S.B. 144 permitted members of PERS, STRS or SERS who have concurrent service covered under PERS, STRS or SERS to retire from the position having the higher salary and continue contributing on the other position(s) toward a money purchase benefit. Under prior law, such members were prohibited from retiring prior to termination of all employment covered by PERS, STRS or SERS. Under S.B. 144, the determination of eligibility for retirement and the amount of the retirement allowance on the higher-salaried position is based on the member's total service credit and contributions in PERS, STRS and/or SERS **prior to** the effective date of retirement, except that no more than one year of service credit shall be granted for any twelve-month period. The retiree continues to contribute to PERS, STRS or SERS on the position(s) having the lower salary. Upon termination of employment in the lower-paid position, the retiree is eligible for a money purchase benefit equal to the member's accumulated contributions **on or**

after the effective date of retirement, with interest, along with an amount from employer contributions.

Third, S.B. 144 amended the PERS reemployment statute to eliminate the previous option provided to PERS retirees who were employed in PERS-covered positions to forego their retirement allowance during the period of reemployment, reestablish membership in PERS with all the rights and obligations thereof, except survivor coverage, and accrue additional service credit toward a supplemental retirement allowance based on such service. None of the other state retirement systems provided for this option. S.B. 144 grandfathered in all PERS retirees who chose this option prior to the effective date of the bill in recognition of the prospective application of new laws in Ohio. S.B. 144 also permitted those elected officials who were required by statute to choose the option to revoke it.

Less than one year after the enactment of S.B. 144, the reemployment restrictions for elected officials that existed prior to S.B. 144 were reinstated by H.B. 84 (eff. 7/31/01). However, elected officials who provided written notice of their intent to retire 90 days prior to the election were exempted from the provisions. The notice requirement was subsequently changed in H.B. 95 to 90 days prior to the *primary* election (H.B. 95; eff. 6/26/03).

H.B. 95 also enacted the current provision that a member of PERS, STRS, or SERS who retires from a position that is customarily filled by a vote of members of a board or commission or, for a PERS retirant, by the legislative authority of a county, municipal corporation, or township, the board, commission, or legislative authority must give public notice and hold a meeting on the issue of reemployment before the employment is to begin.

Staff Comments –The current requirement that retirants must forfeit their allowance during the two-month waiting period is intended to deter public employees from retiring and immediately resuming public employment. However, it does not prevent a public employer from hiring a retirant, nor does it prevent a retirant from resuming public employment. Based on the numerous bills over the years that have attempted to limit reemployment, allowing a public employee to receive a retirement benefit and immediately become reemployed in the same public position without a break in service has been a central issue. One way to deter this would be to increase the time period for the benefit forfeiture similar to what H.B. 270 does. However, H.B. 270 requires only the pension portion of the benefit to be forfeited not the entire benefit if the retiree returns to the same position before the expiration of the waiting period. *We recommend that the bill be amended to require retirants who return to the same or substantially same position from which they retired without a break in service to forfeit the full benefit during the entire period of reemployment. We further recommend that the bill be amended to reduce the waiting period from 180 days to 2 months in order to be consistent with the current reemployment provisions.*

Another option would be to allow members of all systems to enroll in a deferred retirement option plan (DROP) similar to those offered by OP&F and HPRS. Generally, participation in a DROP is limited to members who are otherwise eligible for normal service retirement. The member continues to be employed for some defined period during which the member's monthly service retirement benefit is credited to the member's DROP account, along with annual compound interest at some specified rate. Upon termination of employment, the member receives a lump sum distribution of the member's DROP account or some alternative distribution thereof, and begins receiving a monthly service retirement benefit based upon the member's final average salary and service credit calculated at the time the member elects participation in the DROP. DROPs are intended to be cost neutral to the retirement systems.

According to a survey conducted by Watson Wyatt, phased retirement arrangements, such as DROPs, are becoming increasingly popular in both the private and public sectors. The reasons for this include longer life spans and improved health at older ages, employers' need to retain skilled and valued workers, and individuals' need to supplement retirement income. Recently, Congress eliminated the Social Security earnings test for workers who reach full retirement age, which had penalized older workers by reducing their Social Security benefits. Additionally, the Pension Protection Act of 2006 allows in-service distributions to employees who have reached age 62.

The concept of a DROP is generally consistent with the objective of one of the recommendations included in the final report of the Joint Legislative Committee dated December 11, 1996. Staff recommended that the normal retirement age in both the uniform and non-uniform employee retirement systems be increased. Allowing members to select participation in a DROP rather than retiring and then applying for the same position would encourage public employees to continue working longer than they otherwise would have without receiving a retirement benefit. As an active member in a DROP, the public employee receives health care benefits from his or her employer rather than from the retirement system. A DROP also prevents the public employee from receiving both a salary and a pension benefit simultaneously. *Therefore, we recommend that the bill be amended to allow members of PERS, STRS, and SERS to participate in a deferred retirement option plan.*

Finally, we note that current law allows PERS retirees who return to public employment in certain positions to have their retirement benefit recalculated based on the retiree's original service **and** the retiree's service as a reemployed retiree (R.C. §145.382). The positions that currently can be used to recalculate a benefit are:

- (1) any position authorized by R.C. §§101.31 (Senate clerk, chief administrative officer, House clerk, sergeant-at-arms), 121.03 (administrative department heads), or 121.04 (certain positions created in administrative departments, e.g., commissioner of securities in the Department of Commerce, deputy superintendent of insurance in the Department of Insurance);
- (2) a position to which appointment is made by the Governor with the advice and consent of the Senate;
- (3) the head of a division of a state department.

These are the only groups who are eligible to have their benefit recalculated based on reemployment. In 2000 as part of S.B. 144, the legislature repealed a similar provision. That provision had allowed an elected official of the state or a political subdivision who had retired independently from STRS or SERS to have his retirement benefit recalculated to include the elected service when he retired under PERS. *We recommend that the bill be amended to repeal R.C. §145.382, which allows certain reemployed PERS retirees to have their retirement benefit recalculated upon termination of reemployment.*

Fiscal Impact – According to the PERS actuary, Gabriel Roeder Smith & Company, it can be expected that very few, if any, people will forfeit their pension amounts because they would either delay retirement or retire and return to work in a different position. Therefore, the bill is likely to result in a small cost savings to PERS with respect to both pension and retiree health to the extent that people delay retirement. However, the savings is likely to be too small to measure reliably. The actuary noted that there would be an unspecified, but probably small administrative cost to the system as the board would have to determine whether a position is the same or substantially equivalent to the pre-retirement position.

According to the STRS actuary, Buck Consultants, the financial impact of H.B. 270 would depend on how STRS members react. However, it would have no immediate impact on the unfunded liabilities or funded status of STRS because the bill impacts only future retirees and the actuarial valuation does not anticipate future reemployment savings or costs. Over time, the unfunded liabilities and funded status would be impacted by the gains or losses associated with H.B. 270.

According to the SERS actuary, Buck Consultants, if H.B. 270 were enacted it would be expected to be favorable to the system. The overall impact on the system would ultimately depend on the number of the affected reemployed retirants, their level of compensation upon reemployment, and the length of their reemployment period. The actuary believes the overall impact on SERS would be negligible given the magnitude of SERS' overall liabilities.

According to the OP&F actuary, Buck Consultants, they believe the impact of H.B. 270 would be favorable, but given the insignificant number of retirees who would be affected compared to the magnitude of the OP&F liabilities in general, the financial impact would be negligible. The enactment of H.B. 270 would have no significant impact on either the unfunded accrued liability or the funding period.

ORSC Position – At its October 10, 2007 meeting, the Ohio Retirement Study Council voted to recommend that the 127th Ohio General Assembly approve H.B. 270 upon the adoption of the following amendments:

- *An amendment that would require retirants who return to the same or substantially same position from which they retired without a break in service to forfeit the full benefit during the entire period of reemployment.*

- *An amendment to reduce the waiting period from 180 days to 2 months in order to be consistent with the current reemployment provisions.*
- *An amendment to require the employer rather than the retirement board to determine whether the duties of the position are the same or substantially equivalent.*
- *An amendment to allow members of PERS, STRS, and SERS to participate in a deferred retirement option plan.*
- *An amendment to repeal R.C. §145.382, which allows certain reemployed PERS retirees to have their retirement benefit recalculated upon termination of reemployment.*