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H.B. 94 of the 135th General Assembly

Reps. Click and Willis

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Staff Recommendation

Staff Contact

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Summary of H.B. 94

H.B. 94 would eliminate the “majority of credit” provision that applies to the transfer of service credit from either the Ohio Police and Fire Pension Fund (OP&F) or the Highway Patrol Retirement System (HPRS) to the Public Employees Retirement System (PERS).

The bill would eliminate the requirement that a PERS member have more PERS service credit than the amount of OP&F or HPRS service credit in order to transfer that credit to PERS.

Background

Members of the state retirement systems may, with some limitations, transfer service credit between the state systems. This is in line with (E)(3) of the 1978 Principles Governing Pensions: “Maximum mobility of memberships and service credits between the five Ohio systems should be fostered and encouraged.”

Limitations on these credit transfers are designed to prevent an individual in a *non-law* position from retiring under the reduced age and service requirements of the state’s law positions. This is achieved by prohibiting credit transfers from a non-uniform system (PERS, the State Teachers Retirement System (STRS), or School Employees Retirement System (SERS)) to a uniform system unless the member is an active member of the uniform system. Additionally, OP&F may reduce the value of credit transferred to OP&F from a non-law system (including the law divisions of PERS) if additional contributions are not made.¹

In 2014, S.B. 42 of the 130th GA standardized and clarified the transfer of credit between STRS, SERS, and PERS; this was in line with the governing principles regarding credit transfer. One provision of that act was to provide that a member who transfers credit must do so into the system in which the member has the most credit, the logic being that the benefit paying system should be the system in which the member had the most service, the most liability, and most contributions. S.B. 42 also provided that, for PERS (but not SERS or STRS), the “majority of credit provision” applied to transfers involving the uniform systems (HPRS and OP&F).

However, in the continuing law discussed above, credit from a non-uniform system may not be transferred to a uniform system unless the member is an *active member* of that uniform system. The combination of the changes in S.B. 42 and existing law had the effect of orphaning certain members with credit in both PERS and a uniform system: those members are unable to get a career benefit from any system even though, combined, they had sufficient credit. For instance, a member with 20 years of credit with OP&F who then becomes a PERS member for 5 years would not be permitted to transfer the 5 years of PERS credit to OP&F or the 20 years of OP&F credit to PERS. As Ohio is a non-Social Security state, this could result in significant unplanned hardship

¹ R.C. 742.21(I)(3).

on those individuals, requiring the member to work additional years or receive a substantial reduction in benefits.

Noting this untenable situation, the ORSC recommended in its analysis of H.B. 520 of the 131st General Assembly that an amendment be added to that bill to remove the active service requirement in OP&F for PERS uniform service (Law Enforcement and Public Safety service) transfers to OP&F. This would have permitted full-time service credit in PERS-LE and PERS-PS to freely transfer to OP&F, regardless of whether the individual was an active member of OP&F at the time of transfer.² The General Assembly did not accept this amendment, but neither did they remove the PERS “majority of credit” provision. Instead, a brief 90-day window was opened in which transfers could be made. As noted by ORSC at the time, “it is probable that subsequent to [the window] certain individuals will again be unable to transfer credit and will therefore be unable to retire under continuing law.”

ORSC Staff comments

The comments applicable to H.B. 520 inform staff review of H.B. 94, particularly since the ORSC has indicated their policy preference for addressing this non-transfer issue.

A guiding principle for the ORSC is prior precedent. On this particular transfer issue, prior precedent is mixed. For most of ORSC’s history,³ OP&F has not permitted credit to be transferred into OP&F unless the member was actively serving in a position covered by OP&F. One reason for this was likely because the non-uniform systems did not have the law enforcement duties that would justify an earlier, enhanced benefit. Therefore, it would not make sense for an individual with 15 years of OP&F credit and 10 years serving in a non-law position, who is currently serving in that non-law position, to instead retire early as a law enforcement officer. Current law’s active requirement prevented this type of enhanced benefit for non-uniform employees.

However, three conditions suggest that this prior precedent may need to be revisited. First, PERS has, since 1975, included a law enforcement benefit. Currently, this includes approximately 13,804 active and retired individuals. Transfers, therefore, may be uniform to uniform. Second, portability of credit has been a governing principle of pensions, and the recent trend has been to standardize transfers. The active service requirement has been one of the most significant blocks to portability, even if this was an intentional block. Finally, the ORSC, in its analysis of H.B. 520, recommended that the active service requirement in OP&F be removed for PERS uniform transfers.

² The recommended amendment maintained other existing restrictions on transfer: *part-time* credit continued to be non-transferable to OP&F and OP&F could continue to reduce the amount of credit granted in OP&F if the member does not pay additional contributions to OP&F. This meant that PERS uniform credit continued to be treated differently in OP&F.

³ The active service requirement has been in law since the transfer sections were enacted in 1974 (R.C. 742.379 (renumber R.C. 742.21)).

In recommending that the active service requirement be removed from OP&F law, the ORSC stated that:

- a) ORSC has consistently advocated for portability.
- b) Removing the active service requirement continues the long-term trend of standardizing transfer provisions by allowing uniform to uniform service transfers.
- c) Currently, a number of members are unable to retire even though they have sufficient credit. In the absence of an alternative on this pressing issue and giving deference to the more recent action of the General Assembly, ORSC recommended maintaining the change under S.B. 42 and eliminating the active service in OP&F that applies to PERS uniform service. This will enable a number of members to again retire.

Fiscal effect

Based on prior actuarial analyses of the transfer provisions, there is anticipated to be no significant actuarial concern in either H.B. 94 as currently drafted or the proposed staff recommendation. As expressed in the H.B. 520 analysis by the ORSC actuary:

While there are clearly some winner and loser systems with the general transfer rules, as long as there is an approximate balance between members transferring from System A to System B to those transferring from System B to System A, there is no significant actuarial concern.⁴

According to material provided by both OP&F and PERS, there have been 174 individuals affected between 2009-2023. According to an actuarial analysis by the PERS internal actuary, each transfer from OP&F to PERS of an individual with a *majority of service credit at OP&F* (33 of the 174) results in average of approximately quarter million actuarial liability added to PERS.⁵

Staff Recommendation

ORSC staff recommend that H.B. 94 be amended to:

- 1) Maintain existing “majority of service” requirements in PERS law and;
- 2) Remove the active service requirement in current OP&F law applying to PERS uniform service transfers.

This amendment would achieve the urgent policy objective of H.B. 94 while aligning the bill with prior ORSC recommendations. The active service requirement in OP&F law should continue for the transfer of *non-uniform* service (non-law enforcement PERS, STRS, and SERS) to OP&F.

⁴ William D. Fonia, “Analysis of House Bill 520—Transfer Provisions” (October 12, 2016).

⁵ Email correspondence between OP&F Director Foley and Jeff Bernard, ORSC Senior Research Associate (October 23, 2023) and email correspondence between PERS Government Relations Officers and Jeff Bernard (November 1, 2023).