



**Ohio
Retirement
Study
Council**

30 East Broad Street, 2nd Floor
Columbus, Ohio 43215
PHONE: 614-228-1346
FAX: 614-228-0118

Voting Members

Senators

Bill Beagle, *Chair*
Edna Brown
Jay Hottinger

Representatives

Kirk Schuring, *Vice-Chair*
Ron Amstutz
Dan Ramos

Governor's Appointees

Lora Miller
Seth Morgan
Vacant

Non-Voting Members

Mark Atkeson, *HPRS*
Karen Carragher, *PERS*
John Gallagher, *OP&F*
Lisa Morris, *SERS*
Mike Nehf, *STRS*

Director/General Counsel

Bethany Rhodes

***H.B. 292/S.B.27 of the
131st General Assembly***

***Rep. C. Hagan
Sen. Patton***

June 9, 2016

Staff Recommendation

Jeffery A. Bernard
(614) 228-5644

H.B. 292 and S.B. 27

H.B. 292 and S.B. 27 are broadly similar bills providing a statutory presumption that a firefighter who is disabled as a result of specified types of cancer incurred the cancer while performing his or her official duties. As a result, these individuals would be eligible for an on-duty disability benefit in the Ohio Police and Fire Pension Fund (OP&F). Effectively, the bill expands the conditions that would shift a disability from being considered "off-duty" to one that is considered "on-duty." On-duty disability benefits are greater than off-duty benefits and would therefore be more costly to OP&F.

Summary of H.B. 292

H.B. 292 provides that a firefighter assigned to at least five years of hazardous duty who has one of the following cancers is presumed to have incurred that cancer while performing the firefighter's official duties:

- Cancer of the breast, bone, lung, brain, kidney, bladder, skin, prostate, scrotum, testicle, cervix, ovary, or uterus;
- Gastrointestinal cancer, including cancers of the anus, colon, bile duct, esophagus, liver, pancreas, peritoneal cavity, rectum, small intestine, and stomach;
- Laryngeal, hypopharyngeal, nasopharyngeal, pharyngeal, or tracheal cancer;
- Hodgkin's or non-Hodgkin's lymphoma;
- Leukemia;
- Multiple myeloma;
- Mesothelioma;
- Soft tissue sarcoma.

The presumption created by the bill can be rebutted upon the presentation of competent evidence to the contrary of the presumption or if there is any evidence of the cancer on the physical examination passed by the member upon entry to the fire department.¹

Summary of S.B. 27

S.B. 27 provides that a firefighter assigned to at least three years of hazardous duty who has one of the following cancers is presumed to have incurred that cancer while performing the firefighter's official duties:

- Cancer of the lung, brain, kidney, bladder, rectum, stomach, skin, prostate, breast, cervix, or uterus;
- Non-Hodgkin's lymphoma;
- Leukemia;

¹ R.C. 742.38.

- Multiple myeloma;
- Testicular or colorectal cancer.

The presumption created by the bill can be rebutted upon presentation of any of the following:

- 1) Competent evidence to the contrary;
- 2) If there is any evidence of the cancer on the physical examination passed by the member upon entry to the fire department;
- 3) The presentation of competent evidence that the firefighter was a substantial and consistent user of cigarettes or other tobacco products within ten years immediately preceding date of diagnosis of the cancer and that this use was a significant factor in the cause, aggravation, or progression of the cancer;
- 4) The individual is 75 years or older.

H.B. 292 and S.B. 27 Differences

H.B. 292 and S.B. 27 are broadly similar in providing an on-duty disability benefit for certain cancers. The following details the differences between the two bills:

- 1) H.B. 292 requires **five** years of hazard duty prior to the presumption taking effect; S.B. 27 requires **three** years.
- 2) S.B. 27 provides more ways that the presumption can be rebutted, including an age cut-off of 75 and a disqualification for tobacco use.

Finally, the cancers covered under the bill vary as follows:

H.B. 292 AND S.B. 27	ONLY H.B. 292	ONLY S.B. 27
Cancer of the lung, brain, kidney, bladder, rectum, stomach, skin, prostate, breast, cervix, or uterus	Cancer of the bone, scrotum, and ovary	Colorectal
Non-Hodgkin's lymphoma; Leukemia	Gastrointestinal cancer, (including cancers of the anus, colon, bile duct, esophagus, liver, pancreas, peritoneal cavity, small intestine, laryngeal, hypopharyngeal, nasopharyngeal, pharyngeal, or tracheal cancer)	
Multiple myeloma	Hodgkin's	
Testicular or colorectal cancer	Mesothelioma	
	Soft tissue sarcoma	

Actuarial Impact

The ORSC actuary, PTA/KMS, reviewed the bills and the work done by the OP&F actuary, Buck Consultants. Based on previous disability grants, it is estimated that H.B. 292 (the more expansive of the two bills) would increase the actuarial accrued liability by \$1.4 million and the normal cost by \$648,000. S.B. 27 would increase the actuarial accrued liability by \$700,000 and the normal cost by \$325,000. Therefore, the bills would have “a negligible, albeit negative impact on OP&F’s financial position.”²

Staff Comments

When reviewing any legislation, ORSC staff looks to (1) the ORSC Principles Governing Pension adopted in 1978, (2) existing law, and (3) prior actions of the ORSC to maintain consistency.

The two ORSC governing principles applying to H.B. 292 and S.B. 27 are:

- 1) There should be equal treatment in the burden of pension financing between generations of taxpayers. Ad hoc post-retirement increases should be financed separately and not merely added to the unfunded accrued liability of the pension funds.
- 2) The nature of the services employees perform for state or local governmental units should determine the retirement system under which they are covered. Protective and safety force employees are considered a special category of employees deserving of a special set of benefits.³

H.B. 292 and S.B. 27 do not conflict with either of these principles. According to PTA/KMS, while H.B. 292 and S.B. 27 do have a negative impact, that impact is negligible. Further, the benefit applies equally to generations of taxpayers by applying to all OP&F members. While the bills do expand benefits, the second principle clearly acknowledges the special category for safety employees and the bills’ benefits are directly related to that employment.

Within existing law there are precedents for the proposed benefit expansion. Under current law, a firefighter with heart disease or any cardiovascular or respiratory disease is presumed to have incurred the disease as part of the firefighter’s official duties.⁴ Research indicates that, as with heart disease or respiratory disease, firefighters may be subject to increased risk from certain cancers due to on-duty service. One recent meta-analyses suggest that firefighters have an employment related elevated risk for

² Forna, William, “Review of Proposed Legislation for Ohio Police and Fire Funding Presumptive On Duty Disability” (Letter to Bethany Rhodes dated May 20, 2016).

³ Ohio Retirement Study Council, “Principles Governing Pensions,” (1978), D3 and E2.

⁴ R.C. 742.38.

multiple myeloma, non-Hodgkin's lymphoma, prostate, and testicular cancers.⁵ The same study found a statistically significant increased risk of skin, malignant melanoma, brain, rectum, stomach, and colon cancers, but no increased risk for lung cancer. Another study by the CDC found an association between firefighting and cancer, including malignant mesothelioma.⁶ The on-duty disability coverage of cancer is broadly provided in the United States for firefighters, although the specific cancers covered vary widely and some states use exposure to carcinogens recognized by the International Agency for Research on Cancer or the National Toxicology Program rather than focus on specific cancers.⁷ The bills would therefore be consistent with existing precedent in Ohio and in line with recent research and US trends.

Finally, ORSC staff reviewed the past twenty years of legislation with both a benefit increase and slight fiscal impact. This review demonstrated that ORSC has approved minimal actuarial impact benefit increases as long as they were 1) in line with current precedent and 2) the systems were not currently over the 30-year amortization period. OP&F is currently within the 30-year amortization period.

ORSC Recommendation

ORSC staff recommends the ORSC **approve H.B. 292/S.B. 27** based on the following principles:

- 1) H.B. 292/S.B. 27 has a minimal impact on the systems' finances and preserves intergenerational equity;
- 2) H.B. 292/S.B. 27 provides a benefit for which there is existing precedent both in Ohio and other US states and recognizes the health risks for firefighters in hazardous duty positions;
- 3) H.B. 292/S.B. 27 provides an increased benefit with existing precedent, has minimal actuarial impact, and the system is currently not exceeding its 30-year amortization period.

ORSC staff suggests the following standardizations to the two bills:

- 1) Provide that the on-duty presumption of cancer starts after five years of hazardous duty, as in H.B. 292;
- 2) Include the rebuttals of S.B. 27, including tobacco use and a cut-off presumption at 75-years of age;
- 3) Lacking medical degrees, ORSC staff suggests that the list use a verifiable scientific-based study or establish standards in the code for cancer inclusions.

⁵ LeMasters GK, et al., "Cancer Risk Among Firefighters: A Review and Meta-Analysis of 32 Studies," *Journal of Occupational and Environmental Medicine*, (November 2006), 1200.

⁶ Daniels et al., "Mortality and cancer incidence in a pooled cohort of US firefighters from San Francisco, Chicago and Philadelphia (1950–2009)," CDC, National Institute for Occupational Safety and Health (2013).

⁷ Currently, 34 states provide an on-duty presumption of disability coverage for cancer.
<http://phi.iaff.org/Coverages.aspx>