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*S.B. 296/H.B. 621 of the
132nd General Assembly*

*Sen. LaRose and
Hottinger
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ORSC Recommendation and S.B. 296 Enactment

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Summary of S.B. 296/H.B. 621

S.B. 296/H.B. 621 are companion bills to expand death benefits paid by the Ohio Public Safety Officers Death Benefit Fund (DBF) to survivors of law enforcement officers and firefighters (public safety officers) killed in the line of duty. The bills also allow DBF recipients to elect for health care coverage under the state employees' health benefit plan. As S.B. 296 was the enacted version, the remainder of this analysis will discuss only that version of the bill.

S.B. 296 makes the following changes to the DBF amounts paid to survivors:

- Extend payment of the initial death benefit to the date of the officer's maximum age and service pension eligibility for the officer's position, instead of limiting the payment to the date the officer would have first been eligible for retirement;
- Increase the transitional benefit paid after the officer's maximum retirement eligibility date from 50% to 75% of the officer's salary at the time of death, including salary increases;
- Eliminate a requirement that the DBF amount be reduced/offset by any survivor benefits payable by the officer's respective retirement system.

Additionally, S.B. 296 permits DBF recipients to elect to participate in any medical, dental, or vision benefit that the Department of Administrative Services (DAS) contracts for or provides for regular state employees. The bill requires the DAS Director to prescribe procedures for the administration of benefits for DBF recipients. ORSC comments in this analysis will address only the DBF changes as the health care changes are outside of staff purview.

An amendment was added to S.B. 296 which increased pay for elected officials. This analysis addresses only the retirement related provisions of the bill.

Background

In 1976, the 111th General Assembly established the Ohio Public Safety Officers Death Benefit Fund to provide benefits to the survivors of public safety officers who die from an injury sustained in the line of duty or from an injury or disease incurred as a result of the performance of those duties.¹ The DBF is administered by OP&F and therefore subject to review by the ORSC.² A flow chart is provided at the end of this analysis showing the composition of benefits provided to DBF recipients.

Officers covered by the DBF include members of the Ohio Police and Fire Pension Fund (OP&F), members of the State Highway Patrol Retirement System (HPRS), certain members of

¹ AM. H.B. 1010 of the 111th General Assembly.

² R.C. 171.04.

the Public Employees Retirement System (PERS), including county sheriffs and deputy sheriffs, and certain members of a municipal corporation's retirement system, including Cincinnati Law Enforcement.³

Survivors may be eligible for the DBF if the public safety officer's death is attributed to any of the following, regardless of whether the death occurred while the officer was on duty, or whether the officer was active or retired at time of death:

- An injury or disease incurred as a result of the performance of duty;
- Death from an injury sustained in the line of duty, including suicide that can be attributed to an on-duty incident, cancers that can be attributed to injury or incident while in the performance of duty, or pulmonary disease that can be attributed to an on-duty incident;
- Heart disease, with fatal attack while in the performance of duty; or
- Heart disease while off-duty, if the fatal attack can be attributed to an incident while in the performance of duty. For example, if the decedent had been awarded a disability benefit and later dies due to an on-duty disabling condition, the eligible survivors may qualify for the benefit.⁴

The DBF provides a continuing salary payment to eligible survivors of public safety officers killed in the line of duty. Survivors receive 100% of the public safety officer's salary, along with salary increases the officer would have received had the officer continued working.⁵ Under current law, this initial 100% death benefit is payable to a survivor until the deceased officer's retirement eligibility date; this is the first date on which the officer would have been eligible to retire, if the officer had survived and continued in employment (for most officers this is 25 years of service at age 48 or 52, depending on system membership). At this point, the survivors are eligible for what is generally referred to as a "transitional benefit." This DBF transitional benefit is 50% of the officer's salary, along with salary increases. According to OP&F, there are 939 surviving spouses and 79 children receiving benefits from the DBF.⁶ The majority of these survivors (899, or 88%) are of OP&F members.

³ Other members include full-time state park rangers and patrol officers, full-time law enforcement officers of the state Department of Natural Resources, full-time Department of Public Safety enforcement agents, state and local corrections officers, and state university law enforcement officers (R.C. 742.63). A full list of members can be found in the LSC Bill Analysis, available online at <https://www.legislature.ohio.gov/download?key=9618&format=pdf>.

⁴ Ohio Police & Fire's Pension Fund, Member's Guide to: Death Benefit Fund (April 2018), 2. Available online at: https://www.op-f.org/Files/MGdeath_benefit.pdf

⁵ R.C. 742.63 (A)(11) and (B).

⁶ LSC Fiscal Note and Local Impact Statement, S.B. 296, Page 3, Available online at <https://www.legislature.ohio.gov/download?key=9834&format=pdf>

Funding for DBF payments is provided through the General Revenue Fund (GRF), not assets of any of the five state retirement systems.⁷ If the spouse of the deceased officer has children who are also eligible to receive DBF benefits, the benefit amounts available to the surviving spouse are reduced so as to provide benefits to surviving children.⁸

For a public safety officer that was on probation or under disciplinary action at the time of death, the question of whether or not their survivors will receive benefits from the DBF will go to the legal department. However, if the member had over 25 years of service, the officer's survivors will automatically be eligible for DBF payments.⁹

Other state retirement system benefits¹⁰

A DBF benefit is in addition to any benefits to which the survivor is otherwise eligible from a state retirement system. A DBF benefit does not preclude a member from receiving another retirement system survivor's benefit. The DBF is, however, reduced by these other benefits during the period in which the survivor is eligible for the initial full 100% benefit.

Statutory survivor benefit: OP&F and HPRS survivors receive a statutory survivor benefit amount that is set by law (currently \$410 for pre-retirement and active at death/\$842.60 post-retirement eligibility or retired at death in OP&F and \$900 in HPRS, both of which increase each year by law).¹¹ The DBF is reduced dollar for dollar by the statutory survivor benefit during the period in which the member receives the full 100% DBF benefit.

Retirement annuity: In addition, if the decedent had achieved retirement eligibility, or had retired, at the time of death, the survivor will receive the annuity amount selected by the member. Since the annuity occurs after retirement eligibility, it does not offset the DBF (note that under current law this is the period in which the DBF is modified into the transitional benefit and reduced to 50% of the deceased salary).

For instance, under current law if a public safety officer of a system was *active*, their survivor(s) receive 100% of the member's base pay from the DBF, *which is then offset* by the amount each survivor is receiving from the member's pension fund (PERS, HPRS, or Cincinnati

⁷ R.C. 742.62 and 742.63.

⁸ If the member leaves behind a surviving spouse and a surviving child, the DBF is split evenly between the two survivors. If the member leaves behind a surviving spouse and multiple surviving children, the surviving spouse receives one third of the DBF and the remaining two thirds base pay is divided equally amongst the surviving children. If the member has no surviving spouse, a surviving child will receive the full DBF, or if there are multiple surviving children, the base pay is divided equally amongst them. DBF benefits terminate in the case of a child when the child reaches age 22, marries, or, if a dependent disabled child, if the child recovers from the disability. When a DBF for a survivor terminates, the fund will reallocate the death fund benefits to the remaining survivors.

⁹ Phone conversation between Ali Yogmour, ORSC Research Associate, and Sunea Johnson, OP&F Customer Service Representative, 5/30/2018

¹⁰ This analysis does not include any potential survivor benefits from federal sources.

¹¹ R.C. 742.37 and R.C. 5505.17.

LE).¹² Effectively this means that the survivors receive 100% of the decedent's salary prior to the time the decedent would have been eligible to retire (the funding of that benefit is split between the system and the GRF). However, if the public safety officer was retired or eligible to retire, the 50% transitional benefit provided to the survivors *will not be offset* by any other retirement benefits.

Appendix A "current law" details examples of how these payments change over time, depending on retirement eligibility at time of death and the retirement system in which the decedent was a member.

S.B. 296

S.B. 296 increases benefits to all DBF recipients. The bill makes the following changes to the DBF:

- Extend payment of the initial death benefit (100% continuing salary payment) to the date the officer would have been eligible to retire with the *maximum age and service pension* for the officer's position, instead of the date the officer would first have been eligible to retire;
- Increase the "transitional benefit" paid after the officer's maximum pension eligibility date to 75% of the officer's salary, rather than 50%;
- Eliminate a requirement that the death benefit amount be reduced by any survivor benefits payable by the officer's retirement system.

For a detailed review of the benefits survivors would be eligible to receive, please refer to Appendix A "S.B. 296" which demonstrates different scenarios for survivors of OP&F members killed in the line of duty.

Extension of death benefit to the maximum pension eligibility date

Under current law the initial DBF payments are provided to survivors until the member's earliest retirement eligibility date. Under this legislation, initial DBF payments will be extended until the deceased officer's maximum pension eligibility date, which is the date on which the officer would have become eligible for the maximum annual retirement allowance or pension that could be paid from the member's retirement system had the officer continued to accrue service credit from that system by working longer. As survivors of deceased OP&F members comprise 88% of DBF recipients, this change will increase the duration of the initial,

¹² An OP&F member who was active as a DROP participant at time of death uses an alternative calculation providing 50% DBF *and* offset by retirement benefits. According to OP&F there are only 16 survivors of individuals in this type of situation (Gallagher, John, OP&F Executive Director, Letter to Timothy Keen, Office of Budget and Management Director, June 25, 2018 (pg. 2).

100% continuing salary payments that would be made to the majority of eligible DBF recipients by eight years.¹³

“Transitional benefit” increase

After the deceased member's maximum pension eligibility date is reached, the death benefit ceases and is replaced by the transitional benefit, as in current law. S.B. 296 increases the amount of the transitional benefit from 50% (plus salary increases) of the member's salary under current law to 75% of the member's salary (plus salary increases) under the bill.

The legislation specifies that survivors who have already begun to receive their transitional benefit will begin to receive the increased amount upon its passage. Furthermore, initial DBF payments to a benefit recipient that terminated before the bill's effective date will resume if the DBF payments were terminated on the deceased member's earliest retirement eligibility date and the deceased member's maximum pension eligibility date is after the bill's effective date.

A benefit recipient's initial DBF payment that resumes under this provision is paid in the same manner as any other initial DBF and continues until the deceased member's maximum pension eligibility date, at which time the benefit terminates. A benefit recipient is not entitled to any additional payment for the time between the deceased member's retirement eligibility date under current law and the bill's effective date. Any transitional benefits a DBF recipient receives will cease during the time that the initial death benefit resumes. Then, after the deceased member's maximum pension eligibility date is attained, the transitional benefit will recommence.

Elimination of offset of retirement system survivor benefits

As discussed above, DBF survivors may be eligible for additional statutory survivor's benefits or a retirement annuity, but these may offset DBF payments. S.B. 296 eliminates the offset provision. Therefore, under the bill, survivors will receive the full amount of any DBF or transitional benefits in addition to the full amount of the deceased member's respective retirement system survivor benefit or annuity.

DBF recipient participation in state health benefits

¹³ LSC Fiscal Note and Local Impact Statement, S.B. 296, pg. 4. Available online at <https://www.legislature.ohio.gov/download?key=9834&format=pdf>

The payments would extend as follows:

OP&F – Eight Years

HPRS – Nine Years

PERS – Thirteen Years

Lastly, S.B. 296 extends medical coverage to any recipient of the DBF, with the exception of a surviving parent or a DBF recipient who is eligible to enroll in Medicare. If a child is under the age of 18, their parent or guardian may elect coverage for them. Recipients of the DBF will be able to elect to participate in medical, dental, and vision benefits that DAS contracts for or provides for state employees. After the survivor elects to receive coverage, they will be required to pay DAS the percentage of the premium or cost of the applicable benefits that a regular state employee would pay for their coverage through DAS.

Under the bill, the DAS Director will be required to prescribe procedures for the administration of medical, dental, and vision benefits for DBF recipients, including the development of required forms for recipients to enroll, un-enroll, and re-enroll for benefits. Further, the OP&F Board of Trustees will be required to provide required benefit information to DAS, including identities, ages, and family relationship to the DBF recipient.

ORSC Comments

The ORSC is required by law to review the administration of the retirement systems. Because the DBF is administered by OP&F, ORSC is required to provide an analysis and recommendation of the bill. However, because DBF benefits are not financed with retirement system funds, instead being funded by the GRF, ORSC will not provide either an actuarial analysis or comments on the cost.

As for its administration, the DBF results in a fairly complicated payment structure. As seen in the appendix, different scenarios result in various payments (that change across time). For instance, even though two individuals may have the exact same *salary* at time of death, the benefits the survivors are eligible to receive may vary. This is because retirement eligibility at time of death and system of membership can play a large role in the eventual payment. While this is a complex model, this is quite common in retirement law. The retirement systems have different contribution levels and benefits, and it is normal for income to fluctuate, and go downward, as a member transitions from employment to retirement. While S.B. 296 may cause even greater fluctuations and differences between members, and those differences may be difficult to explain to survivors, it is not inconsistent with existing law.

What would be inconsistent with existing law is providing initial benefits that exceed the member's original salary at retirement.¹⁴ A retirement benefit is not designed to replace the entirety of a member's pre-retirement income; this is both because it is cost prohibitive and because an individual's expenses typically are less than they were during working years. Under Ohio law, no retirement system will allow an initial retirement benefit to exceed 100% of the final average salary of the member (the final average salary is itself a reduced amount from the

¹⁴ ORSC staff note that, due to COLA increases, benefits may, over time, exceed that member's original ending salary.

salary of an individual at time of retirement).¹⁵ Benefits exceeding 100% of salary at time of retirement will happen under S.B. 296 because of existing statutory benefits available to all survivors, the elimination of the offset, and increase of the DBF to 75% of the base salary after maximum retirement age. This has not typically been the goal of retirement benefits in Ohio and would be a change to prior precedent.

Actuarial Impact

As the funding source of the bills is from GRF and therefore outside of the funding of the retirement systems and are not used in determining the system's actuarial status, ORSC have no comments on the funding effect of the bills.

ORSC Recommendation

ORSC recommends that the GA approve SB 296 with the addition of language limiting an initial retirement and survivor benefit to 100% of the deceased member's salary (plus salary increases as under current law) to maintain the general cap effectively placed on all retirement income throughout the systems.

Effective date: 12/27/2018

The 132nd General Assembly passed SB 296 as an emergency measure without additional language recommended by ORSC. SB 296 was vetoed by the Governor and subsequently both the House and Senate passed SB 296 notwithstanding the objections of the Governor.

¹⁵ R.C. 145.33, 742.37, 3307.58, 3309.36, and 5505.17.

Active, Eligible for Service Retirement

Active, Not Eligible for Service Retirement

<p>Statutory Survivor Pension - \$842.60 (This monthly amount is increased by \$16.50 each July*)</p> <p style="text-align: center;"><i>PLUS</i></p>	<p>Statutory Survivor Pension - \$410.00 (This monthly amount is increased by \$16.50 each July*)</p> <p style="text-align: center;"><i>PLUS</i></p>
<p>Death Benefit Fund – 50% of base salary</p>	<p>Death Benefit Fund – 100% of the base salary, increasing with any base pay increase by ordinance, statute, or contract. This amount is decreased by \$410 as an offset of the statutory survivor pension.</p>
<p style="text-align: center;"><i>Reduced dollar for dollar by</i></p> <p>Pre-Retirement Survivor Annuity (PRSA) – OP&F pension as if the member had retired on the date of death and had selected a continuous survivor’s annuity. This is roughly 50% of the member’s final average salary.</p> <p style="text-align: center;"><i>PLUS</i></p>	<p><i>Transition of Benefits at Age & Service</i> When the member would have qualified for age and service retirement, benefits transition from active, not eligible for service retirement to active, eligible for service retirement</p>
<p>DROP Benefits (if participant) – Full balance of DROP benefits paid in lump sum or other distribution</p>	

<p>Retired, Eligible for Service Retirement</p>	<p>Retired, Not Eligible for Service Retirement (For instance, a disability retirement recipient who dies from a qualifying injury before reaching age and service requirements)</p>
<p>Statutory Survivor Pension - \$842.60 (This monthly amount is increased by \$16.50 each July*)</p> <p style="text-align: center;"><i>PLUS</i></p>	<p>Statutory Survivor Pension - \$410.00 (This monthly amount is increased by \$16.50 each July*)</p> <p style="text-align: center;"><i>PLUS</i></p>
<p>Death Benefit Fund – The greater of:</p> <p>50% of the base salary at the time the member qualified for normal OP&F age and service retirement if the member went out on disability</p> <p style="text-align: center;"><i>OR</i></p> <p>50% of the base salary the member received on the member’s date of retirement if the member continued working.</p>	<p>Death Benefit Fund – 100% of the base salary, increasing with any base pay increase by ordinance, statute, or contract. This amount is decreased by \$410 as an offset of the survivor’s pension (i.e., active not eligible benefit).</p> <p>Changes to 50% of the base salary when member becomes eligible for normal age/service retirement (i.e., retired, eligible for benefit calculation) on the date the member would have reached retirement age</p>
<p style="text-align: center;"><i>PLUS</i></p>	<p style="text-align: center;"><i>PLUS</i></p>
<p>Annuity, as selected by the member prior to death</p> <p style="text-align: center;"><i>PLUS</i></p>	<p>Annuity, as selected by the member prior to death</p> <p style="text-align: center;"><i>PLUS</i></p>
<p>Lump Sum Death Benefit: \$1,000 one-time payment</p>	<p>Lump Sum Death Benefit - \$1,000 one-time payment</p>

Benefits Available for Survivors of OP&F Members Killed in the Line of Duty

* \$842.60 was the base rate as of January 1, 2018

HPRS Monthly/Annual Death Benefit Fund and Survivor Benefits

Deceased Ineligible for Age and Service Retirement Benefit at Time of Death (\$60,000 FAS)

Benefits Prior to Age Deceased Would have been Eligible to Retire				Benefits After Age Deceased Would have been Eligible to Retire			
Current Law Proposed law	DBF	Survivor Benefit	Annual Benefit	Total			Annual Benefit
				Monthly Benefit	Monthly Benefit	Monthly Benefit	
\$4,100	\$900	\$900	\$60,000	\$5,000	\$3,400	\$900	\$40,800
\$5,000	\$900	\$900	\$70,800	\$5,900	\$4,650	\$900	\$55,800

Deceased Had 25 YOS and was Eligible for Survivor Annuity (\$60,000 FAS)

Current Law	DBF	Survivor Benefit	Survivor and Service Annuity	Total		
				Monthly Benefit	Monthly Benefit	Annual Benefit
\$2,500	\$900	\$900	\$1,456	\$4,856	\$58,272	
Proposed DBF Expansion Period (9 Years Maximum Extension)						
\$5,000	\$900	\$900	\$1,456	\$7,356	\$88,272	
Proposed Law After Expansion Period Ends						
\$3,750	\$900	\$900	\$1,456	\$6,106	\$73,272	

PERS Monthly/Annual Death Benefit Fund and Survivor Benefits (R.C. 145.45(B))

Deceased Ineligible for Age and Service Retirement Benefit at Time of Death (\$60,000 FAS)

Benefits Prior to Age Deceased Would have been Eligible to Retire			
	DBF	Survivor Benefit	Total Monthly Benefit
Current Law	\$3,750	\$1,250	\$5,000
Proposed Law	\$5,000	\$1,250	\$6,250
			Annual Benefit
			\$60,000
			\$75,000

Benefits After Age Deceased Would have been Eligible to Retire			
	DBF	Survivor Benefit	Total Monthly Benefit
Current Law	\$2,500	\$1,250	\$3,750
Proposed Law	\$3,750	\$1,250	\$5,000
			Annual Benefit
			\$45,000
			\$60,000

Deceased Had 25 YOS and Was Eligible for a Survivor Annuity (\$60,000 FAS)

	DBF	Survivor Age and Service Annuity	Total Monthly Benefit	Annual Benefit
Current law	\$2,500	\$2,400	\$4,900	\$58,800
Proposed DBF Expansion Period (13 Years Maximum Expansion)	\$5,000	\$2,400	\$7,400	\$88,800
Proposed Law After Expansion Period Ends	\$3,750	\$2,400	\$6,150	\$73,800

OP&F Monthly/Annual Death Benefit Fund and Survivor Benefits

Deceased Ineligible for Age and Service Retirement Benefit at Time of Death (\$60,000 FAS)

Benefits Prior to Age Deceased Would have been Eligible to Retire			
	DBF	Survivor Benefit	Total Monthly Benefit
Current Law Proposed Law	\$4,590 \$5,000	\$410 \$410	\$5,000 \$5,410
			Annual Benefit \$60,000 \$64,920

Benefits After Age Deceased Would have been Eligible to Retire			
	DBF	Survivor Benefit	Total Monthly Benefit
Current Law Proposed Law	\$2,500 \$3,750	\$843 \$843	\$3,343 \$4,593
			Annual Benefit \$40,116 \$55,116

Deceased Had 25 YOS and Was Eligible for Survivor Annuity (\$60,000 FAS)

Benefits if the Deceased was Active at Time of Death			
	DBF	Survivor Benefit	Survivor Age and Service Annuity
Current Law Proposed Expansion Period (8 Years Maximum)	\$1,096 \$5,000	\$843 \$843	\$1,404 \$1,404
			Total Monthly Benefit \$3,343 \$7,247 \$86,964
Proposed Law After the Expansion Period Ends	\$3,750	\$843	\$1,404
			Annual Benefit \$5,997 \$71,964

Benefits if the Deceased Was Retired at Time of Death			
	DBF	Survivor Benefit	Survivor Age and Service Annuity
Current Law Proposed Expansion Period (8 Years Maximum)	\$2,500 \$5,000	\$843 \$843	\$1,404 \$1,404
			Total Monthly Benefit \$4,747 \$7,247 \$86,964
Proposed Law After the Expansion Period Ends	\$3,750	\$843	\$1,404
			Annual Benefit \$5,997 \$71,964