

OR SC

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Analysis

Sub. H.B. 244 - Rep. Niehaus (As Passed by the House)

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ORSC Position

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H.B. 244 would make the following changes to the Ohio Police and Fire Pension Fund (OP&F):

- Change the penalties assessed against employers who fail to submit to OP&F certain statutorily required payments and reports.
- Reduce penalties against employers who submit the reports by the bill's effective date and pay the reduced penalty by March 1, 2002.

Staff Comments

Delinquent Employee and Employer Contributions and Reports - The OP&F board was first authorized to assess penalties on past due employee and employer contributions in 1998 with the passage of H.B. 648 (eff. 9-16-98). These provisions were intended to indemnify the OP&F against losses resulting from delinquent contributions.

Employee Contributions: Current law requires employers to submit to the fund a report of employee contributions the employer deducted, along with the actual contributions. If the employer fails to submit the employee contributions and the required report within 30 days after the end of the reporting period, the employer is subject to a penalty for late payment equal to 5% of the total amount due. The penalty is added to and collected on the next succeeding regular employer billing. If the penalty is not paid within three months after it is added to the employer billing, the fund may charge interest at a rate determined by the board on the amount of the penalty from the date the amount is due to the date of payment.

Under this bill, the report must include the name of each member for whom deductions were made and the portion of the payment attributed to that member. The deadline for sending in the employee contributions and the report would be changed from 30 days after the end of the reporting period to the last day of the month following the last day of the reporting period. For example, if the reporting period ended June 30, the contributions and report would be due by July 31. If the penalty is not paid within 60 days, rather than three months, interest may be charged on the total amount due and the amount of the penalty from the date the amount is due to the date of payment.

Employer Contributions: Current law also provides that employer contributions that remain unpaid after 60 days are subject to the penalty of 5% of the total amount due. The fund may charge interest at a rate determined by the board on past due amounts and penalties from the date the contributions are due to the date of payment.

Under this bill, if the employer contributions are not submitted within 60 days after the last day of the calendar quarter, a penalty will be assessed.

Unless the board adopts rules specifying lesser penalty amounts, the penalty for late submission of either employee or employer contributions and the accompanying reports is changed to the following:

Days Past Deadline	Penalty Amount
1-10	\$100
11-30	The greater of \$1,000 or 1% of total payroll reported
31-180	The greater of \$3,000 or 2% of total payroll reported
181-210	The greater of \$7,500 or 5% of total payroll reported
211 or more	The greater of \$7,500 or 5% of total payroll reported, plus \$50 for each day beyond 210

Payroll Deduction for the Purchase of Service Credit - H.B. 244 changes the deadline for transmitting amounts deducted from a member’s salary for the purchase of service credit. Currently, OP&F board rules require the employer to report the amount of the deductions and submit the amounts deducted with the regular monthly payment of employee contributions. There is no penalty for late transmission. This bill statutorily establishes a deadline for transmitting the deductions as the last day of the month following the last day of the reporting period and assesses the same penalty as is assessed for late transmission of employee or employer contributions. Additionally, the bill provides that upon certification by the OP&F board that the employer is delinquent in transmitting the amounts due, the county auditor is authorized to pay OP&F the delinquent payments.

Retirement Form - Last year, H.B. 628 (eff. 9-14-00) was enacted, which required the OP&F board, on receipt of an application for retirement, to request from the employer verification of the member’s termination date and any other information necessary to calculate and pay a retirement benefit. The request form must be received by the fund not later than 60 days after the form is sent to the employer. If the fund does not receive the completed form from the employer, the fund sends notice by certified mail to the employer that *unless* the form is received by the fund not later than 30 days after the initial due date, a fine will be assessed against the employer. The OP&F board is required to assess a \$100 per day fine beginning on the 31st day after the notice is mailed and ending on the day before receipt of the information. The purpose of the assessment is to enforce the employer’s obligations under OP&F law so OP&F can process retirement applications in a timely manner.

H.B. 244 changes the penalty from \$100 per day to the following, unless the board adopts rules establishing lower penalties:

Days Past Deadline	Penalty Amount
1-10	\$100
11-30	\$1,000
31-180	\$3,000
181-210	\$7,500
211 or more	\$7,500 plus \$3.75 for each day beyond 210

Pre-employment Physicals - H.B. 648 also required the OP&F board to adopt rules establishing minimum statewide medical testing and diagnostic standards for physical examinations of prospective members of the fund. The standards include evaluation of the existence of any heart, cardiovascular or respiratory diseases. These provisions are intended to assist the OP&F board in its determination of on-duty disability awards, especially with respect to the applicability of the existing on-duty presumptions regarding heart, cardiovascular and respiratory diseases.

The standards took effect on December 1, 1998 and since then the employer has been required to incorporate them into the physical examination of all employees who become members of the fund after the effective date of these standards. The employer must forward the physician's report of the physical examination to the board no later than 30 days after an employee becomes a member of the fund. If the employer fails to forward the report, the board must assess a penalty of \$100 per day against the employer, beginning with the first day after the report is due and ending on the last day before the report is received.

Additionally, H.B. 648 provided that upon application for disability by an employee who became a member of the fund prior to the effective date of the standards, the board may request the employer to send a copy of the member's physical examination taken upon entry into the police of fire department. The employer must forward the examination to the board or, if no examination exists, a written statement certifying this fact to the board, no later than 28 days after receiving the request. If the employer fails to forward either the examination or statement, the board must assess a penalty of \$100 per day against the employer.

H.B. 244 changes the penalty assessed for missing the deadline and the deadline for submitting the pre-employment physical for all employees who become members of the fund after the effective date of the minimum standards from 30 days to 60 days after the employee becomes a member of the fund. Under the bill the deadline for submitting the pre-employment physical or

statement that the employer does not have a copy of the report for employees who became members of the fund prior to the adoption of the standards would remain the same, but the penalty is changed.

The penalty for missing the deadline in submitting the pre-employment physical or statement that the employer does not have a copy of the report is changed from \$100 per day to the same as that charged for failing to submit a retirement form. The bill provides that the total penalties paid by an employer for failing to submit the retirement form and the pre-employment physical cannot exceed \$20,000 in a calendar year. Additionally, the county auditor is given the authority to pay the penalty.

Reduction of Penalty -

Pre-employment Physicals - The bill requires OP&F to reduce by 90% any penalty incurred prior to the effective date of the bill by reason of an employer failing to meet the deadline for submitting pre-employment physicals for all employees who become members of the fund after the effective date of the standards. If, after the reduction, the penalty exceeds \$30,000, OP&F must reduce the penalty to \$30,000. However, if the penalty is not paid by June 1, 2002, the original penalty will be reinstated. If an employer paid the penalty prior to the effective date of this bill, the penalty will be reduced and the board can either refund the amount of the reduction or reduce any outstanding amounts owed by the employer.

Employer and Employee Payments and Reports - The bill also requires the OP&F board to reduce by 50% the penalties incurred between January 1, 2000 and ending on the effective date of this bill by reason of the employer's failure to submit the required reports for submitting the employee and employer contribution reports if the board receives the report within six months after it was due. However, if the penalty is not paid by June 1, 2002, the original penalty will be reinstated. If an employer paid the penalty prior to the effective date of this bill, the penalty will be reduced and the board can either refund the amount of the reduction or reduce any outstanding amounts owed by the employer. Under the bill, there is no requirement that the employer submit the required payments with the report in order for the fine to be reduced. Furthermore, the bill does not address the reduction of penalties assessed by reason of submitting late employer contributions, which do not require a report to be submitted. Therefore, the bill should be amended to clarify that the fine will be reduced if the employer submits the report and the required payment for employee contributions and/or the required payment for employer contributions within six months after it was due.

Fiscal Impact

According to the OP&F actuary, Watson Wyatt, the bill would cause a negligible change in Fund assets and no change in actuarial liabilities. Therefore, they consider H.B. 244 to be cost-neutral.

ORSC Position

At its meeting of June 13, 2001, the Ohio Retirement Study Council voted to recommend that the 124th General Assembly approve H.B. 244 upon the adoption of an amendment that would clarify that the fine will be reduced by 50% if the employer submits the report and the required payment for employee contributions and/or the required payment for employer contributions within six months after it was due.

This amendment was adopted in the House Retirement and Aging Committee.