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Analysis

Sub. S.B.138 (LSC 125 1410-2)
Sub. H.B.311 (LSC 125 1188-6)

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Staff Recommendation

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The bill would generally create the Ohio's Best Rx Program under which eligible residents of Ohio would receive discounted prices on covered prescription drugs. This analysis is limited to those provisions of the bill that relate to the five state retirement systems in Ohio: the Public Employees Retirement System (PERS), the State Teachers Retirement System (STRS), the School Employees Retirement System (SERS), the Ohio Police and Fire Pension Fund (OP&F), and the Highway Patrol Retirement System (HPRS).

The bill would require each retirement system to submit the following information to the Ohio Department of Job and Family Services (ODJFS):

- The name of each health care plan offered by the retirement system;
- The number of individuals eligible for benefits under each health care plan;
- The formula used to determine the per unit price for each drug covered by the plan and dispensed through means other than a mail order system, the per unit price for each drug, or both the formula and per unit price for each drug, if available;
- The per unit rebate for each drug covered by the plan and dispensed through a mail order system or other means.

In submitting the above information about drugs covered by the plan(s), the retirement systems would be required to do all of the following:

- Compute and submit information separately for each covered drug according to its national drug code number;
- Submit the formula, per unit price, or both the formula and per unit price, if available, for each covered drug after each change to the formula or per unit price *not less than weekly* should the formula or per unit price change more than once a week;
- Provide for the formula or per unit price information to reflect the formula or per unit price as most recently changed;
- Submit the information regarding per unit rebates once a year, including the per unit rebates for the previous calendar year.

(ODJFS would be required to use the above information, along with identical information submitted by the Department of Administrative Services, to compute weighted average prices and rebates and use those weighted averages in determining the discounted price for drugs covered under the Ohio's Best Rx Program and the amount paid thereunder to participating pharmacies.)

If a pharmaceutical manufacturer has not entered into a rebate agreement under the program with respect to a drug for which the retirement systems receive a rebate, ODJFS shall ask each retirement system to determine whether the drug should be placed for the following plan year on a prior authorization list.

Staff Comments - Since 1974, the legislature has granted the state retirement systems discretionary authority to offer retiree health care plans to the extent that resources not otherwise required to fund the pension plans are available. This authority recognizes that post-retirement health care benefits (which are **not** guaranteed by statute) are secondary to pension benefits (which are guaranteed by statute upon the granting thereof) by allowing the individual retirement boards to change the level of coverage and the costs paid by benefit recipients at any time and to terminate such coverage, if necessary.

The retirement systems currently spend nearly \$670 million on prescription drugs costs alone, and have experienced double-digit increases in such costs over the last several years. These costs are summarized in the following table:

Retirement System	Prescription Drug Costs
PERS	\$314,213,257
STRS	\$200,000,000 (approx.)
SERS	\$99,249,656
OP&F	\$53,762,570
HPRS	\$2,650,000 (annualized)
Total	\$669,875,483

To give some perspective on the significance of the retirement systems' prescription drug costs, the total retiree health care costs paid by the retirement systems were over \$1.6 billion last year; prescription drug costs constituted 42 percent of these costs.

Under the proposed bill, the state retirement systems would be required to submit their negotiated prescription drug discounts and rebates from pharmaceutical manufacturers and distributors to the Ohio Department of Job and Family Services (ODJFS) which, in turn, would use this information as the basis for determining the discounted price for drugs covered under Ohio's Best Rx Program and the amount paid thereunder to participating distributors. This requirement would likely cause prescription drug costs to increase for the retirement systems by hampering their ability to negotiate for such discounts and rebates in the future, since manufacturers and distributors wishing to participate in the Ohio Best Rx Program would be required to offer the same terms to individuals enrolled in that Program as well. It is likely that fewer manufacturers and distributors will be willing or able to offer the same level of discounts or rebates previously achieved by the retirement systems. The likely effect will mean smaller discounts and rebates spread over a larger population and, thus, greater costs for the retirement systems and their participants.

A recent actuarial report prepared by Milliman USA on the adequacy of the contribution rates under OP&F, STRS and SERS generally shows that significant reductions in retiree health care benefits, including perhaps elimination thereof, will be necessary to place the retirement systems in compliance with the maximum 30-year funding period required by law *unless* contribution rates are increased, pension benefits are reduced and/or the funding periods are extended well beyond 30 years. A similar review of PERS and HPRS is under way. Potentially increasing the cost of retiree health care benefits at this critical juncture will only exacerbate the existing challenges facing the retirement boards as well as the legislature. It should be noted that to the extent that the retirement systems pay for retiree health care benefits, the law provides that such costs shall be included as part of the employer contribution rate.

The proposed bill could also add significant administrative costs to the retirement systems by requiring them to provide ODJFS with detailed, up-to-date reports on the cost of each drug covered under each plan offered by the systems, not less than weekly each time a drug cost changes. This raises a significant legal issue of whether the use of retirement system funds for purposes of enabling the ODJFS to administer the Best Rx Program is a breach of the retirement boards' fiduciary duty to discharge their duties with respect to the funds "solely in the interest of the participants and beneficiaries; for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the retirement system ..."

Under the bill, each retirement system would be an integral part of the on-going administration of the Ohio Best Rx Program by serving as the pricing mechanism, along with DAS, for the discounts and rebates offered under the Program.

The proposed bill further provides that if a manufacturer has not entered into a rebate agreement with respect to a drug covered by a retirement system's health care plan that receives a rebate from that manufacturer, ODJFS shall ask the retirement system to determine whether the drug should be placed for the following plan year on a prior authorization list. As indicated above, each retirement board's discretionary authority to offer retiree health care plans and determine the type of coverage offered, if any, dates back some 30 years. As a matter of public policy, the legislature should be cautious about any implications that may be drawn by involving the retirement systems with any state-sponsored health care plans so as not to jeopardize the ability of the retirement systems to change or terminate their retiree health care plans, if necessary, and inadvertently cause the legislature to assume future responsibility for such plans. In this regard, it should be noted that unlike the authority of DAS which mandates the provision of health care coverage for all eligible state employees and elected officials as evidenced by the use of the word "shall" under R.C. §124.81, the authority of the retirement systems to provide health care coverage for their beneficiaries is generally permissive as evidenced by the use of the word "may" under R.C. §§145.58, 742.45, 3307.39, 3300.69 and 5505.28.¹

Fiscal Impact - This bill would have no impact on the actuarial funding of the retirement systems because health care benefits are discretionary and could be discontinued if the systems no longer could afford to offer them in the future. However, there would be administrative costs incurred by the retirement systems and it is likely that prescription drug costs could increase for the systems and their participants.

Staff Recommendation - That the Ohio Retirement Study Council recommend that the 125th Ohio General Assembly remove the state retirement systems from the provisions of S.B. 138 and H.B. 311 for the following reasons:

- the retirement systems could see above normal price increases for prescription drugs as a result of this legislation which already constitute 42% of their total health care costs. Also, a recent actuarial report prepared by Milliman USA generally shows that significant reductions in retiree health care benefits, including perhaps elimination thereof, will be necessary to place the retirement systems in compliance with the 30-year funding period required under existing law *unless* contribution rates are increased, pension benefits are reduced and/or the funding periods are extended well beyond 30 years.
- the bill raises a significant legal issue of whether the use of retirement system funds (administrative costs incurred by the retirement systems) for purposes of enabling the ODJFS to administer the Best Rx Program is a breach of the retirement boards' fiduciary duty to discharge their duties with respect to their funds "*solely in the interest of the participants and beneficiaries; for the exclusive purpose of providing benefits to participants and their beneficiaries and defraying reasonable expenses of administering the retirement system ...*"
- As a matter of public policy, the legislature should be very cautious about any implications that may be drawn by involving the retirement systems with any state-sponsored health care plans so as not to jeopardize the system's ability to change or terminate their retiree health care plans, if necessary, and inadvertently cause the legislature to assume future

¹The only mandate relates to reimbursements for Medicare Part B premiums under these sections (eff. 8/20/76).

responsibility for such plans. In this regard, it should be noted that unlike the authority of DAS which mandates the provision of health care coverage for all eligible state employees as evidenced by the use of the word “shall” under R.C. §124.82, the authority of the retirement systems to offer health care coverage to their beneficiaries is generally permissive as evidenced by the use of the word “may” under R.C. §§145.58, 742.45, 3307.39, 3309.69 and 5505.28.