



**Ohio
Retirement
Study
Council**

30 East Broad Street, Suite 219
Columbus, Ohio 43215
PHONE: 614-228-1346
FAX: 614-228-0118

Voting Members

Representatives

Phil Plummer, Chairman
Adam Bird
Brigid Kelly

Senators

Kirk Schuring, Vice- Chair
Hearcel Craig
Jay Hottinger

Governor's Appointees

Lora Miller
Dr. Anthony Podojil
Vacant

Non-Voting Members

Karen Carraher, *PERS*
Mary Beth Foley, *OP&F*
William Neville, *STRS*
Dr. Carl Roark, *HPRS*
Richard Stensrud, *SERS*

Director/General Counsel

Bethany Rhodes

***H.B. 499 of the 134th
General Assembly***

Rep. Adam Miller

April 14, 2022

ORSC Recommendation

**Staff Contact
Jeffery A. Bernard
(614) 228-5644**

Summary of H.B. 499

H.B. 499 would allow a Public Employees Retirement System (PERS) disability benefit recipient to continue to receive a disability benefit if elected as a member of a board of township trustee, a village legislative authority, a school district board of education, or an educational service center governing board. Similarly, the bill would allow a School Employees Retirement System (SERS) disability recipient to continue to receive a disability benefit if elected as a member of a board of education or an educational service center governing board.

Background and H.B. 499

PERS and SERS provide disability benefits to eligible defined plan and combined plan members.¹ Those benefits are required to terminate under two broad categories: 1) the recipient reaches the age that the benefit transitions to an age and service benefit, or 2) the member no longer meets disability requirements and the benefit is terminated by action of the respective board. Under current law, a PERS disability benefit *always* ceases when a disability recipient is employed or in elective service in a position covered by PERS, and a SERS disability benefit *always* ceases when a disability recipient is employed or in elective service in a position covered by SERS.

H.B. 499 does not alter the other conditions under which a disability benefit may be terminated by the board, but would result in members receiving a disability benefit from the system in which they are currently working.

ORSC Comments

H.B. 499 raises both policy and implementation issues.

Policy: Working in a system in which the individual receives a disability benefit

The policy question is whether certain elected members classified as disabled from a retirement system should be permitted to be in elected service covered by that retirement system and still receive the disability benefit. These members would then 1) receive a disability benefit, 2) receive compensation for service, and 3) contribute to an annuity payment and subsequently get an additional benefit when the member retires. Additionally, only certain elected members may avail themselves of these benefits.

The 1978 Principles Governing Pensions state that "there should be equal pension treatment among the various groups of non-uniformed public employees and as nearly as practicable retirement benefits should be uniform."² H.B. 499 would violate

¹ Because PERS and SERS members do not participate in Social Security for their PERS or SERS covered service, those members are not eligible for Social Security Disability Insurance.

² Ohio Retirement Study Council, "Principles Governing Pensions," (1978), E.1.

this principle by treating those elected as a board of township trustee, a village legislative authority, a school district board of education, or an educational service center governing board differently with regard to disability benefits than all other PERS or SERS members. This principle of "equal pension treatment" was reaffirmed by the ORSC and General Assembly under H.B. 572 of the 132nd General Assembly regarding employees of County Boards of Developmental Disabilities.

With regard to the actual benefit provided under the bill, there is considerable interest from the legislature to control what is called "double-dipping," where a retired member receives a retirement benefit and a salary for working.³ H.B. 499 could provide three separate benefits earned during the member's actual career as the member would receive a salary, a disability benefit, and an annuity benefit (see implementation issues, below) when the member fully retires. Because retirement system disability benefits are designed to provide a benefit for a member who is unable to work in the system in which they are receiving a disability benefit, permitting some members to work for a PERS or SERS covered position and receive a disability benefit from that system would set a new precedent on the purpose of a disability benefit.

Implementation

There are a number of implementation questions in the legislation. ORSC would note that the manner in which these implementation issues would be resolved would likely cause policy issues that would need further analysis by the ORSC, as well as clarifying the actuarial effect of the bill.

- 1) An elected member of a school district board of education and educational service center governing board is not a member of PERS. It is unclear why they are included in the legislation under PERS statute.
- 2) The legislation lacks a mechanism under which a member actively receiving a disability benefit contributes to the retirement system (they must do so under the state's non-coverage agreement with Social Security). The legislation should specify that the employer and employee are subject to the applicable PERS or SERS contributions.
- 3) Disabled members may be eligible for health care benefits. Under the PERS health insurance program and federal law, members who are actively contributing to PERS cannot participate in the PERS health reimbursement arrangement. As H.B. 499 would permit disabled members to actively serve and contribute to the retirement system, the legislation should specify that PERS members are not eligible for health care benefits during the period in which they are in active service and receiving a disability benefit.
- 4) The bill lacks language specifying that a member may not receive double service credit during the period of receiving a disability benefit while in elective service. Continuing law permits a disability recipient to receive

³ See, ORSC Recommendation on H.B. 270 of the 127th General Assembly.

service credit during a period of disability if the member returns to employment or elective service.

- 5) If the bill envisions contributions made during the elective service being paid as an annuity, the bill lacks language stating such and how and when that annuity would be paid.
- 6) It is unclear what would happen if the member became disabled under the elected position and seeks a disability benefit from that elected position; would the member then be eligible for two disability benefits? This implementation issue relates to the policy issue of elective service or employment while being classified as disabled by the retirement system.

The resolution of each of these implementation issues would have policy implications that would need further review.

ORSC Recommendation

At its April 14, 2022, ORSC meeting, the ORSC recommended that the General Assembly disapprove H.B. 499 due to a violation of the principles governing pensions regarding equal treatment of members and unresolved implementation issues.