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*H.B. 261 of the 135<sup>th</sup>  
General Assembly*

*Reps. Patton and Sweeney*

*February 8, 2024*

ORSC Recommendation

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## Summary of H.B. 261

H.B. 261 would include in the Public Employees Retirement System (PERS) public safety division (PERS-PS) an individual who becomes employed full time in a position that requires a certificate under Ohio Revised Code (R.C.) 4765.30 to practice as a first responder, emergency medical technician (EMT) basic, EMT-intermediate, or EMT-paramedic (collectively “EMS workers”) after the bill’s effective date.

PERS members employed full time as an EMS worker on or before the effective date of this bill may elect to participate in PERS-PS for their future service. This election shall be made, and PERS receive notice of the election, no later than ninety days after the effective date of the bill. This election is irrevocable, and all service credit previously earned will be treated as regular PERS credit. These members are, under current law, in the regular divisions of PERS.

## Background

PERS is made up of four divisions: local, state, law enforcement (PERS-LE), and PERS-PS. The local and state divisions make up the regular divisions of PERS and are not eligible for the early retirement and unique benefit provisions for PERS members who are in PERS-LE and PERS-PS. The PERS-LE and PERS-PS employer and employee contribution rates are higher to support these benefits. The table below provides an overview of the contribution rates and benefit provisions.

	Regular PERS Divisions	PERS-LE	PERS-PS
Employer Contribution Rate	14%	18.1%	18.1%
Employee Contribution Rate	10%	13%	12%
Normal Retirement Eligibility	32 YOS at age 55 (Group C)	25 YOS at age 52, or 15 YOS at age 64 (Group C)	25 YOS at age 56, or 15 YOS at age 64 (Group C)
Normal Retirement Benefit	2.2% of FAS for first 35 YOS, 2.5% for each additional year (Group C)	2.5% of FAS for first 25 YOS, 2.1% for each additional year	2.5% of FAS for first 25 YOS, 2.1% for each additional year

Federal law provides a list of public safety employees who are eligible to be provided early retirement from a qualified government retirement plan, such as PERS. Included in this list is “any employee of a State or political subdivision of a State who provides (...) emergency medical services.”<sup>1</sup> Therefore, inclusion of EMS workers in

<sup>1</sup> 26 U.S.C. 72(t)(10).

PERS-PS would be consistent with federal limits on which public safety employees are eligible for the accelerated retirement benefits above.

PERS-LE was created in 1975 for individuals whose “primary duties are to preserve the peace, protect life and property, and enforce the laws of this state.”<sup>2</sup> The list of individuals who fall under that definition is located in R.C. 145.01<sup>3</sup> As later groups have been added to the division, the emphasis for eligibility has shifted from solely the primary duties of the employee to also include the type of training the employee has received.

The ORSC has previously recommended the following be included in PERS-LE: regional transit authority police officers, state highway patrol police officers, municipal park rangers, township police cadets, metropolitan housing authority police officers, Bureau of Criminal Investigation investigators, Department of Taxation investigators, port authority police officers, and municipal airport police officers.<sup>4</sup> Inclusion of these individuals was predicated on the fact that these individuals had completed a Peace Officer Basic Training Academy approved by the Ohio Peace Officer Training Commission and maintain Continuing Professional Training requirements (“OPOTA certification”). Further, they had the “primary duties to preserve the peace, to protect life and property, and to enforce the laws of their jurisdiction.”<sup>5</sup>

Under continuing law, PERS also has special retirement and benefit provisions for members who are considered public safety officers under PERS-PS. These officers hold the same positions as those who fall under PERS-LE but “whose primary duties are other than to preserve the peace, protect life and property, and enforce the laws of this state.”<sup>6</sup> This list also includes a Hamilton county municipal court bailiff and “a person serving as a municipal public safety director at any time during the period from September 29, 2005, to March 24, 2009, if the duties of that service were other than to preserve the peace, protect life and property, and enforce the laws of this state.”<sup>7</sup>

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<sup>2</sup> R.C. 145.01(Y).

<sup>3</sup> R.C. 145.01(Y) “A sheriff or any of the following whose primary duties are to preserve the peace, protect life and property, and enforce the laws of this state: a deputy sheriff, township constable or police officer in a township police department or district, drug agent, department of public safety enforcement agent, natural resources law enforcement staff officer, wildlife officer, forest-fire investigator, natural resources officer, park district police officer, conservancy district officer, veterans' home police officer, special police officer for a mental health institution, special police officer for an institution for persons with developmental disabilities, state university law enforcement officer, municipal police officer, house sergeant at arms, assistant house sergeant at arms, regional transit authority police officer, or state highway patrol police officer (...) a person employed as a bureau of criminal identification and investigation investigator, gaming agent, department of taxation investigator, special police officer for a port authority, or special police officer for a municipal airport who commences employment in any of those positions on or after April 6, 2017, or makes the election described in section 145.334 of the ORC (...) a person serving as a municipal public safety director at any time during the period from September 29, 2005, to March 24, 2009, if the duties of that service were to preserve the peace, protect life and property, and enforce the laws of this state.”

<sup>4</sup> Am. Sub. H.B. 158 ORSC Position, January 7, 2002; Sub. H.B. 215 ORSC Position, May 30, 2002; H.B. 520 ORSC Recommendation and Enactment, October 13, 2016.

<sup>5</sup> Am. Sub. H.B. 158 ORSC Position, January 7, 2002; Sub. H.B. 215 ORSC Position, May 30, 2002.

<sup>6</sup> R.C. 145.01(AAA).

<sup>7</sup> R.C. 145.01(AAA).

The ORSC has also previously recommended against the inclusion of municipal public safety directors in PERS-LE and corrections officers in PERS-PS<sup>8</sup>. The exclusion of individuals from these divisions was due to the lack of OPOTA certification.<sup>9</sup> The funding status of the PERS-LE and PERS-PS divisions have also been a consideration when making recommendations. The ORSC has recommended against the inclusion of OPOTA certified individuals with the requisite duties, despite recommending their inclusion in the past, due to the funding level of PERS-LE at the time.<sup>10</sup>

## ORSC Comments

Prior ORSC precedent favors the inclusion of individuals in PERS-LE or PERS-PS when those individuals maintain OPOTA certification and have the requisite duties for each division. Further consideration has been given to the financial consequences of adding individuals to either division.

While H.B. 261 does require that EMS workers have a certificate under R.C. 4765.30, much like prior precedent for corrections officers, this training does not include OPOTA certification. Inclusion of EMS workers in PERS-PS would, therefore, go against the longstanding ORSC precedent that individuals in PERS-PS maintain OPOTA certification.

The ORSC has also made past recommendations based on financial and cost considerations. The ORSC's consulting actuary, PTA/KMS/Bolton, provided that there would be, at most, an insignificant impact in the funding position of PERS as a whole. Further, there will be an increased cost to employers of 29% for impacted positions and an increased cost to employees as their contribution rates will raise from 10% to 12%. It is estimated that 60% of EMS workers that are currently members of PERS would take advantage of the election to PERS-PS.<sup>11</sup>

The ORSC also notes that an individual's prior service credit may be converted or prorated to public safety credit as described in Ohio Administrative Code (O.A.C.) Rule 145-2-16. The O.A.C. provides that a PERS-PS member who has regular service credit may elect to either convert up to five years of total service credit and pay the cost to convert the credit or prorate their total amount of regular and public safety credit to the amount of public safety credit that would have no additional liability to the system.<sup>12</sup> Both the conversion and proration offered by this rule ensure no additional liabilities arise for PERS.

Further consideration should be made regarding individuals who serve under a collective bargaining agreement. Since these individuals may make their election to PERS-PS during an existing contract, there could be potential legal ramifications to

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<sup>8</sup> Am. Sub. H.B. 66 ORSC Position, April 13, 2005; H.B. 270 ORSC Position, February 8, 2006.

<sup>9</sup> H.B. 270 ORSC Position, February 8, 2006.

<sup>10</sup> Am. Sub. H.B. 66 ORSC Position.

<sup>11</sup> William B. Fonia and Thomas Vicente, "Review of Ohio Public Employees Retirement System Proposed Bill HB 261," (January 29, 2024).

<sup>12</sup> O.A.C. Rule 145-2-16(B).

changing the terms of their employment and pension plan selection when it comes to contribution rates and years of service.

Finally, the ORSC has noted in the past that anytime the PERS-LE or PERS-PS divisions are expanded, it opens the door for other individuals to seek inclusion.

### **ORSC Recommendation**

The ORSC re-affirms the policy recommendation that PERS-LE and PERS-PS additions be predicated on OPOTA certification, the requisite duties of each division, and the funding status of PERS. Further, the ORSC recommends against passage of the bill due to EMS workers lacking OPOTA certification.