

**OR
SC**

The Ohio Retirement Study Council
88 East Broad Street, Suite 1175
Columbus, OH 43215-3506
Phone: (614) 228-1346
Fax: (614) 228-0118
Website: www.orsc.org

Voting Members

Representatives

Lynn Wachtmann, *Chair*
Kirk Schuring
Dan Ramos

Seators

Shannon Jones, *Vice-Chair*
David Burke
Charleta B. Tavaras

Governor's Appointees

Lora Miller
Seth Morgan
Vacant

Non-Voting Members

Mark Atkeson, *HPRS*
Karen Carraher, *PERS*
John Gallagher, *OP&F*
Lisa Morris, *SERS*
Mike Nehf, *STRS*

Director

Bethany Rhodes

***Report on Board Authority
Provisions of S.B. 340,
341, 342, and 345 of the
129th General Assembly***

April 9, 2013

ORSC RECOMMENDATION

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

Ohio Retirement Study Council Staff Review of Board Authority

In September of 2012, the 129th General Assembly enacted retirement reform through S.B. 340 (Ohio Police & Fire Pension Fund; OP&F), 341 (School Employees Retirement System; SERS), 342 (State Teachers Retirement System; STRS), 343 (Public Employees Retirement System; PERS) and 345 (State Highway Patrol Retirement System; SHPRS).

Three of these bills (S.B. 341, 342, and 345) require the Ohio Retirement Study Council (ORSC) to study and make recommendations regarding the authority granted to the SERS, STRS, and SHPRS board to independently adjust the plan design features of their respective retirement system.¹ This report responds to that legislative requirement. While S.B. 340 did not specifically require ORSC to review OP&F board authority, this report also addresses that authority pursuant to the Council's duties to review and study changes in retirement laws.²

Recommendation Summary: Because the board authority provisions authorized under pension reform bypass the legislative review process held by ORSC, lack opportunity for public input, create great inconsistency between the retirement system boards, and lack measurable and objective standards, the recommendation of ORSC staff is to amend the board authority provisions to ensure all of the following:

- 1) That plan design adjustments receive actuarial review, as with any other introduced legislation that would have a measurable financial effect (positive or negative) on the system.
- 2) That plan design adjustments receive review and prior-approval by ORSC and the opportunity for input from the general public, as with any other introduced legislation relating to the state's public retirement systems.
- 3) That the board authority be consistent among the retirement systems.

¹ Section 5 of S.B. 341, Section 6 of S.B. 342, and Section 4 of S.B. 345.

"Plan design" generally refers to the components of a pension plan directly relating to a normal retirement benefit, such as eligibility requirements, benefit formulas (for instance, final average salary calculations), cost-of-living adjustments, and contribution rates. Plan design does not include administrative features or other post-retirement benefits, such as healthcare.

² Revised Code (R.C.) 171.04(A) and (C).

4. That objective, measurable standards be established to determine when a board is authorized to propose or make plan design adjustments.

Board Authority

The pension reform bills of 2012 provide four of the five public retirement systems with the authority to modify specific plan design components without first amending the Ohio Revised Code. The authority to adjust plan design has been historically reserved for the legislature. PERS was not granted with authority to adjust plan design.³ The following details the board authority provisions; a table comparison summary of those changes follows.

S.B. 340 (OP&F)

- Authority, each quinquennial period beginning November 1, 2017, to adjust employee contributions as follows:⁴

--If the Board determines that "an increase in the contribution rate is necessary to preserve the fiscal integrity of the fund, increase the contribution rate."

--If the Board determines that "a decrease in the contribution rate would not materially impair the fiscal integrity of the fund, decrease the contribution rate."

- Authority, each quinquennial period beginning November 1, 2017, to adjust the age and years of service requirements necessary to receive a pension or benefit as follows:⁵

--If the Board determines that "increasing the age and years of service requirements is necessary to preserve the fiscal integrity of the fund, increase the age and years of service credit required to receive a pension or benefit."

--If the Board determines that "reducing the age and years of service requirements would not materially impair the fiscal integrity of the fund, reduce the age and years of service credit required to receive a pension or benefit."

The Board is authorized to take these actions pursuant to rules and in consultation with the Board's actuary.

S.B. 341 (SERS)

- Authority, beginning June 24, 2013, to adjust the retirement eligibility requirements of an individual with less than 25 years of service credit on

³ PERS was granted the authority to set the contribution based benefit cap (CBBC), a limit on retirement allowances and on survivor benefits based on contributions. PERS refers to the CBBC as the "anti-spiking provision." While the CBBC factor established independently by PERS can affect a member's eventual benefit, it is not explicitly a plan design change and is therefore not reviewed in this report (R.C. 145.333).

⁴ R.C. 742.31.

⁵ R.C. 742.161.

August 1, 2017, if the Board's actuary determines that "an adjustment is necessary to ensure that the retirement system meets the thirty-year amortization period requirement."⁶

The Board is authorized to take these actions pursuant to rules.

S.B. 342 (STRS)

- Authority, beginning with compensation earned after July 1, 2017, to *reduce* employee contribution rates below 14% of employee compensation if the Board's actuary determines that "a reduction in the rate does not materially impair the fiscal integrity of the retirement system."⁷
- Authority, beginning June 24, 2013, to "adjust the retirement eligibility requirements...if the board's actuary...determines that an adjustment does not materially impair the fiscal integrity of the retirement system or is necessary to preserve the fiscal integrity of the system."⁸
- Authority, beginning June 24, 2013, to "adjust the [cost-of-living adjustment] if the board's actuary...determines that an adjustment does not materially impair the fiscal integrity of the retirement system or is necessary to preserve the fiscal integrity of the system."⁹

The act does not specify that these actions be taken pursuant to rules.

S.B. 345 (SHPRS)

- Authority, beginning June 24, 2013, to "adjust the [employee contribution rate] as it considers necessary to meet the amortization period requirement," but limited to a range of 10-14%.¹⁰
- Authority to provide a COLA of not more than 3%, except that certain low-income retirees must receive a 3% COLA, based on compliance with the 30-year amortization period.¹¹

The act does not specify that these actions be taken pursuant to rules.

⁶ R.C. 3309.34.

⁷ R.C. 3307.26.

⁸ R.C. 3307.58.

⁹ R.C. 3307.67.

¹⁰ R.C. 5505.15.

¹¹ R.C. 5505.174.

Comparison Summary of Board Authority

<u>Retirement system</u>	<u>Employee contribution rate</u>	<u>Eligibility requirements</u>	<u>COLA</u>	<u>By rule</u>	<u>When authority begins</u>	<u>Standard to adjust</u>
OP&F	Yes	Yes	No	Yes	November 1, 2017 and each 5-year period thereafter	Adjustment must meet "fiscal integrity of the fund"
SERS	No	Yes (limited)	No	Yes	June 24, 2013	As necessary to ensure compliance with 30-year funding period.
STRS	Yes (limited to a reduction of rates)	Yes	Yes	Not specified	Various 2013 and 2017	As necessary for the "fiscal integrity of the retirement system"
PERS	No	No	No	N/A	N/A	N/A
SHPRS	Yes, limited to a range of 10-14%	No	Yes (limited)	Not specified	June 24, 2013	"As it considers necessary to meet the [30-year] amortization period"

ORSC Authority to Review Changes to Public Retirement System Law

Since its creation in 1968, ORSC has advised the General Assembly on all proposed legislative changes to the state's five public retirement systems. The Council is required to "recommend to the General Assembly any changes it may find desirable with respect to the allowances and benefits, sound financing of the cost of benefits, the prudent investment of funds, and the improvement of the

language, structure, and organization of the laws.”¹² ORSC is further required to “study all changes in the retirement laws proposed to the General Assembly and report to the General Assembly on their probable costs, actuarial implication, and desirability as a matter of public policy.”¹³

To facilitate in these duties, Ohio law requires each of the public retirement systems to provide the Council with an actuarial evaluation of all introduced legislation; that is, any proposed change to a public retirement system that would have a measurable financial impact is required to have an actuarial analysis publicly presented to the Council:

The board shall have prepared by or under the supervision of an actuary an actuarial analysis of any introduced legislation expected to have a measurable financial impact on the retirement system. The actuarial analysis shall be completed in accordance with the actuarial standards of practice promulgated by the actuarial standards board of the American Academy of Actuaries...

Not later than sixty days from the date of introduction of the legislation, the board shall submit a copy of the actuarial analysis to the Legislative Service Commission, the standing committees of the House of Representatives and the Senate with primary responsibility for retirement legislation, and the Ohio Retirement Study Council.¹⁴

Ohio law has vested each of the public retirement boards with the general administration and management of their respective retirement system.¹⁵ However, the General Assembly has traditionally reserved the authority to modify plan design features. Eligibility requirements, cost-of-living adjustments, and contribution rates have traditionally been constrained, if not completely prescribed, by statute.

The General Assembly has provided limited discretionary authority to the boards. For instance, the PERS Board has the authority to adjust employee contribution rates, but is constrained to the range of 8-10%.¹⁶ This allows the Board the ability to make changes within a set of legislatively-approved parameters. Further changes beyond this range require legislative approval. This approval also provides transparency by ensuring public hearings and the opportunity for public input if the Board seeks additional changes. Without a statutory range, it would be difficult for members of the General Assembly or members of the public to know what an individual’s contribution rate or retirement eligibility requirements would be.

Recommendations on Board Authority

¹² R.C. 171.04(A).

¹³ R.C. 171.04.

¹⁴ R.C. 145.22, 742.14, 3307.51, 3309.21, and 5505.12.

¹⁵ R.C. 145.04, 742.03, 3307.04, 3309.04, and 5505.04.

¹⁶ See R.C. 145.47.

The board authority provisions contained in S.B. 340, 341, 342, and 345 would effectively create two separate systems for adjusting plan design features. Changes to a retirement system proposed through the legislative branch would be subject to actuarial review, ORSC approval, and public hearing. Under the board authority provisions of pension reform, plan design changes initiated by a board would not be subject to actuarial review, not be subject to ORSC review, and subject to public hearing only through the Joint Committee on Agency Rule Review (JCARR) process. This is inconsistent with the oversight responsibilities of ORSC specified in R.C. 171.04 and the actuarial review process required by R.C. 145.22(D), 742.14(C), 3307.51(D), 3309.21(D), and 5505.12(D).

While JCARR does provide limited oversight, the General Assembly chose to create ORSC for the express purpose of reviewing changes to the public retirement systems by those with knowledge of those systems. Shifting this oversight responsibility away from ORSC is inconsistent with current law and past practice.

Considering the above, ORSC staff recommend all of the following:

1) Recommendation: That plan design adjustments proposed by a board receive actuarial review, as with any other introduced legislation that would have a measurable financial impact (positive or negative) on the system.

Rationale: Current law requires any proposed bill that would have a measurable financial impact (positive or negative) to receive an actuarial analysis. A plan design adjustment that would have a measurable financial impact should be subject to the same statutorily required actuarial analysis regardless of if the proposal originated with a retirement board or with a member of the General Assembly.

2) Recommendation: That plan design adjustments receive review and prior-approval by ORSC and the opportunity for public review and input, as with any other introduced legislation relating to the state's public retirement systems.

Rationale: ORSC is required by law to review and make recommendations to the General Assembly on changes it may find desirable with respect to the public retirement systems. Permitting a board to adjust plan design features outside of the established review procedure, one which would remove review by ORSC, is inconsistent with state law and the responsibilities of the Council. Historically, when the legislature has granted authority to a board to adjust plan design, it has constrained that authority by specifying a range in which the board may exercise this authority (for example, S.B. 345 restricts the SHPRS board to adjust employee contributions between 10-14%). The board authority provisions should be constrained to a limited range and a board requested plan design change should not be permitted to go into effect until receiving ORSC approval.

In addition, the board authority provisions contained in pension reform afford no opportunity for public review or input by the general public. This reduces the transparency of board actions and reduces the opportunity of the general public to weigh in on proposed changes to the five public retirement systems.

3) Recommendation: That the board authority be consistent among the retirement systems.

Rationale: The retirement systems cover different populations with unique needs and require different plan design. However, to the extent that it is possible, the General Assembly has attempted to standardize the responsibility and authority of the retirement boards. As demonstrated in the above chart, the board authority provisions vary considerably among the retirement systems and the PERS board is provided with no authority to adjust plan design. Any board authority should be standardized to facilitate review by ORSC and to maintain consistency between the systems, including providing authority to the PERS Board to adjust plan design features consistent with this report's recommendations.

4) Recommendation: That objective, measurable standards be established to determine when a board is authorized to make or propose plan design adjustments.

Rationale: The power to adjust plan design is significant. That authority should be based on objective, measurable conditions. Under pension reform, two systems, SHPRS and SERS, tie authority to adjust pan design features to the measurable 30-year amortization period. The authority granted to OP&F and STRS wholly relies upon the board's definition and interpretation of "fiscal integrity." Without any parameters, the power to adjust plan design features lacks any process for the General Assembly or public to comment or provide a mechanism for oversight or transparency. The objective, measurable conditions under which a board may take action provided under SHPRS and SERS should be used as a model and the standard based on board-determined "fiscal integrity" should be removed.