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# *Analysis*

## **Sub. S.B. 343 – Sens. Niehaus and Kearney (As Enacted)**

**September 20, 2012**

**Staff Recommendation**

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Sub. S.B. 343 makes the following changes to the laws governing the Ohio Public Employees Retirement System (OPERS) in order to ensure the continued solvency of the retirement system:

- Increase the retirement eligibility for members who are more than five years away from retirement as of the effective date of the bill. (R.C. §§145.32, 145.33, 145.332)
- Change the benefit accrual rate for members in the State and Local Divisions of OPERS who are more than 10 years away from retirement or have less than 20 years of service (YOS) as of the effective date of the bill and repeals alternative benefit calculations. (R.C. §§145.33, 145.34)
- Increase from three to five the number of years used to determine final average salary (FAS) for who are more than 10 years away from retirement or have less than 20 YOS as of the effective date of the bill. (R.C. §§145.01, 145.017)
- Change the cost of living allowance (COLA) for all members who retire on or after the effective date of the bill to a 3% COLA for the first five years after the effective date of the bill, the lesser of the actual change in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) or 3% and specify they are not vested. (R.C. §§145.323, 145.561, 145.95)
- Increase the minimum earnable monthly salary from \$250 to \$600. (R.C. 145.016)
- Implement the Contribution Based Benefit Cap (CBBC), which would limit, in certain instances, the benefit a retiree could receive. (R.C. §145.333)
- Require members to pay 100% of the additional liability resulting from the purchase of service credit for most types of credit. (R.C. §§ 145. 20, 145.201, 145.29, 145.452)
- Change the amount transferred among OPERS, the State Teachers Retirement System (STRS), and the School Employees Retirement System (SERS) when a member retires with service credit in more than one of those systems. (R.C. §§145.37, 3307.57, 3309.35)
- Change the amount transferred to OPERS from the Ohio Police and Fire Pension Fund (OP&F), the Highway Patrol Retirement System (HPRS), and the Cincinnati Retirement System (CRS) upon retirement in OPERS of a member with service in one of those systems; require the member to retire within 90 days of transfer. (R.C. §§145. 295, 145.2911, 145.2912, 145.2913)

- Change the additional amount a member who has five or more years of service receives when taking a refund of contributions by allowing the board to determine the additional amount by rule. (R.C. §145.401)
- Establish a five-year limit for individuals to initiate a request for membership determination. (R.C. §§145.036, 145.037, 145.038)
- Limit retroactive benefit payments for inactive members and members coordinating benefits with STRS and/or SERS to within 90 days of application. (R.C. §§145.32(E), 145.57(B))
- Remove the term “prior service” from the Revised Code and allow members who earned service credit in the OPERS Defined Contribution (DC) plan to have that credit count as “contributing service” in the OPERS Defined Benefit (DB) plan if they elect to switch plans. (R.C. §145.01)
- Allow up to five years of service earned in the regular OPERS division and the Public Safety (PS) division to be used toward a benefit in the Law Enforcement (LE) division if the member elects to either have the amount of non-LE service credit earned reduced so there is no additional liability to the system or if the member pays the additional liability. (R.C. §145.2914)
- Make changes to the DC Plan. (R.C. §§145.19, 145.191, 145.193, 145.194, 145.195, 145.813, 145.814, 145.82, 145.83 145.87)
- Make changes to the disability program. (R.C. §145.35, 145.36, 145.362, 145.363, 145.37)
- Make changes to the amount a re-employed retiree and their survivor receive upon termination of employment or death prior to termination of employment. (R.C. §§145.38, 145.383, 145.384)
- Authorize the termination of a disability benefit of a member who pleads guilty to or is convicted of a felony if the disabling condition arose out of the commission of the offense the member was convicted of or plead guilty to. (R.C. §§145.574, 2329.66, 2901.431, 2929.194)
- Make changes to health care provisions and Medicare Part B premium reimbursement. (R.C. §§145.58, 145.584.)
- Make changes to board members’ terms and requirements to serve on board. (R.C. §§145.04, 145.041, 145.05, 145.057, 145.06)
- Reduce and simplify the number plans of payments a retiree can select. (R.C. §145.46)

- Make changes to the additional annuity program. (R.C. §145.64)
- Allow the board to offer health care coverage to Deferred Compensation employees. (R.C. §145.09)
- Require any action brought against the system, the board, or its officers, employee, or members in their official capacities to be brought in the Franklin County Court of Common Pleas. (R.C. §145.101)
- Allow for transfers among the various funds in the system. (R.C. §§145.23, 145.43, 145.54)
- Allow board records to be made available in printed or electronic format and would allow the board to maintain records in either form. It also would allow the board to provide information requested by Social Security Administration, Medicare, Medicaid, Ohio Deferred Compensation, OP&F, SERS, STRS, and HPRS. (R.C. §145.27)
- Allow the board to establish one uniform beneficiary designation form that could be used for all plans in which the member has contributions when a member dies before retiring. (R.C. §145.431)
- Change the interest rate charged on delinquent contributions from a rate set by the board to the assumed actuarial rate of interest. (R.C. §145.483)
- Allow the system to adjust an allowance or benefit if an error occurs in calculating the allowance or benefit. It also would allow the system to recover money that was paid erroneously to a third party. (R.C. §145.563)
- Provide that a change in a retirement benefit that results from the death of a beneficiary would take effect the month following the date of death instead of the month following the notice of death. (R.C. §145.64)
- Delete obsolete provisions regarding past credit and benefit increases. (R.C. §§145.02, 145.292, 145.321, 145.322, 145.324, 145.326, 145.327, 145.328, 145.329, 145.3210, 145.3211, 145.3212, 145.3213, 145.332, 145.42, 145.44, 145.461, 145.462)
- Establish the effective date of the bill as January 7, 2013. (Section 6)
- State that the changes in the cost of purchasing service credit shall not be construed as an intent by the System to increase the cost of the purchase of certain military credit. (Section 7)

**Background**

Pursuant to Senate Bill (S.B.) 82 (eff. 12-6-1996), each retirement system whose funding period exceeds 30 years in any given year is required to submit to the Ohio Retirement Study Council (ORSC) and the standing committees of the Ohio House of Representatives and Senate with primary responsibility for pension legislation a plan approved by the retirement board that reduces the funding period to no more than 30 years, along with any progress made by the board in meeting the 30-year funding period. This standard was modeled after the national standard adopted by the Governmental Accounting Standards Board for all governmental pension plans. The change was intended to maintain inter-generational equity among taxpayers and system members by limiting the ability to fund benefit costs by extending the funding period beyond 30 years.

In 2003, the ORSC voted to have its actuary, Milliman USA, review the adequacy of the contribution rates in all five retirement systems. That report, which was updated in 2004, generally concluded that in the case of the Ohio Police and Fire Pension Fund (OP&F) and the State Teachers Retirement System (STRS) one or more of the following actions would need to occur to achieve compliance with the 30-year funding requirement: contribution limits increased; mandated pension benefits reduced; state subsidies provided; and/or contributions reallocated from discretionary health care benefits to mandated pension benefits.

Given the severe decline in investment market values since the end of fiscal year 2008 and the need to begin evaluating options to address this situation proactively, the Council approved a motion to have staff work with OP&F on December 10, 2008, on March 11, 2009, with STRS, and with OPERS, the School Employees Retirement System (SERS), and the Highway Patrol Retirement System (HPRS) on April 8, 2009. All five systems, in consultation with the ORSC, developed legislative proposals that would reduce their unfunded actuarial accrued liability periods.

STRS, SERS, OP&F, and HPRS presented their board-approved funding plans at the September 9, 2009, ORSC meeting. PERS presented its board-approved plan at the December 9, 2009, ORSC meeting. Both STRS and OP&F presented updated plans in early 2011. S.B. 343 contains the OPERS board approved plan.

In 2011, the ORSC hired Pension Trustee Advisors and KMS Actuaries (PTA/KMS) to complete a review of the boards' plans and make recommendations related to pension reform. PTA/KMS presented its review at the July 11, 2012, ORSC meeting. They found that the plans are a positive step and will, generally, enable the majority of the systems to meet the 30-year maximum funding period while providing reasonable health care benefits at no increased cost to taxpayers.

**Staff Comments**

**Phase-in of Changes** - (R.C. §145.32) Sub. S.B. 343 divides members into three groups and the effect of the bill's provisions would be determined based on which group the member is in. The following chart explains the determining factors for each group:

<b>Group A</b>	<b>Group B</b>	<b>Group C</b>
Must be eligible to retire within 5 years after effective date of bill.	Must be eligible to retire within 10 years after effective date of bill OR have 20 YOS prior to effective date.	All other members and employees hired after the effective date of the legislation.

The bill specifies that purchased service credit can be used to determine eligibility under Groups A and B only if the purchase is completed within five years for Group A or 10 years for Group B and the member was a member on the effective date or obtains credit under R.C. §145.483 (employer delinquent contributions). Additionally, it provides that service credit includes credit for previous service under OP&F, HPRS, and CRS.

**Retirement Eligibility** - (R.C. §§145.32, 145.33, 145.332) Sub. S.B. 343 increases the retirement eligibility for members in Groups B and C.

<b>State and Local Division</b>		
<b>Current Law and Group A</b>	<b>Group B</b>	<b>Group C</b>
Normal age and service: 30 YOS at any age <u>or</u> Age 65 w/ 5 YOS.	Normal age and service: Age 52 w/ 31 YOS <u>or</u> any age w/ 32 YOS <u>or</u> Age 66 w/ 5 YOS.	Normal age and service: Age 55 w/ 32 YOS <u>or</u> Age 67 w/ 5 YOS.
Early retirement (reduced benefit): Age 55 w/ 25 YOS <u>or</u> Age 60 w/ 5 YOS.	Early retirement (reduced benefit): Age 55 w/ 25 YOS <u>or</u> Age 60 w/ 5 YOS.	Early retirement (reduced benefit): Age 57 w/ 25 YOS <u>or</u> Age 62 w/ 5 YOS.

<b>Law Enforcement Division</b>		
<b>Current Law and Group A</b>	<b>Group B</b>	<b>Group C</b>
Normal age and service: Age 48 w/ 25 YOS <u>or</u> age 62 w/ 15 YOS.	Normal age and service: Age 50 w/ 25 YOS <u>or</u> Age 64 w/ 15 YOS.	Normal age and service: Age 52 w/ 25 YOS <u>or</u> Age 64 w/ 15 YOS.
Early retirement (reduced benefit): Not Applicable	Early retirement (reduced benefit): Age 48 w/ 25 YOS <u>or</u> Age 52 w/ 15 YOS.	Early retirement (reduced benefit): Age 48 w/ 25 YOS <u>or</u> Age 52 w/ 15 YOS.

<b>Public Safety Division</b>		
<b>Current Law and Group A</b>	<b>Group B</b>	<b>Group C</b>
Normal age and service: Age 52 w/ 25 YOS <u>or</u> Age 62 w/ 15 YOS.	Normal age and service: Age 54 w/ 25 YOS <u>or</u> Age 64 w/ 15 YOS.	Normal age and service: Age 56 w/ 25 YOS <u>or</u> Age 64 w/ 15 YOS.
Early retirement (reduced benefit): Age 48 w/ 25 YOS <u>or</u> Age 52 w/ 15 YOS.	Early retirement (reduced benefit): Age 48 w/ 25 YOS <u>or</u> Age 52 w/ 15 YOS.	Early retirement (reduced benefit): Age 52 w/ 25 YOS <u>or</u> Age 56 w/ 15 YOS.

The bill provides that the normal benefit for members in Group B would be reduced by a percentage determined by the board’s actuary for each year the member retires before whichever of the following occurs first: attaining age 66, attaining age 52 with 31 YOS, or earning 32 YOS. Members in Group C would have their benefit reduced by a percentage determined by the board’s actuary for each year the member retires before whichever of the following occurs first: attaining age 67, or attaining age 55 with 32 YOS.

Current law provides for the benefit to be reduced based on statutory schedule that has no correlation between the reduction factors and the actuarial impact of early retirement.

As part of the report of the Joint Legislative Committee to Study Ohio’s Public Retirement Plans (JLC) dated December 11, 1996, three of the recommendations included therein, but not acted upon by the legislature, were (1) that the normal retirement age of 65 should be increased in tandem with Social Security for PERS, STRS, and SERS, the 30-year service requirement should be increased at the same rate, and benefits prior to normal retirement age or service should be reduced; (2) the normal retirement age in the uniformed employee systems should be increased from 48 to 52 with a four-year phase-in and benefits prior to normal retirement age should be reduced; and (3) the statutory reduction rates for early retirement should be repealed and reduction rates for early retirement should be determined on an actuarial basis in all five systems. These recommendations were made in response to the continual improvements in life expectancies experienced among the memberships of all five retirement systems in Ohio, which directly increase each retirement system’s benefit costs, including post-retirement health care costs.

The provisions of Sub. S.B. 343 are generally consistent with the JLC report, the 2004 Milliman report, and the 2012 PTA/KMS report.

**Benefit Accrual Rate** (R.C. 145.33) - The benefit accrual rate is changed for Group C in the State and Local Divisions of OPERS under this bill. The benefit accrual rate for the Law Enforcement and Public Safety Divisions are not changed. The table below illustrates the change in the benefit accrual rate.

<b>Current Law and Groups A &amp; B</b>	<b>Group C</b>
State/Local: 2.2% x FAS x 1 <sup>st</sup> 30 YOS, plus 2.5% x FAS x YOS over 30.	State/Local: 2.2% x FAS x 1 <sup>st</sup> 35 YOS, plus 2.5% x YOS over 35.

Under current law a member retiring with 35 YOS and \$40,000 FAS would earn an annual benefit equal to \$31,400 [(66% x \$40,000) + (12.5% x \$40,000)]. A member with 35 YOS and \$40,000 FAS who retires under the formula proposed by S.B. 343 would earn an annual benefit equal to \$30,800.

**Alternative Benefit Calculation** (R.C. §§145.33, 145.34) – The bill eliminates the alternative benefit calculations. Current law provides alternative benefit calculations of (1) \$86 for each year of service and (2) a benefit consisting of an annuity equal to the member’s accumulated contribution, plus a pension of an equal amount, plus an additional pension if the member qualifies for prior service.

**Final Average Salary (FAS)** – (R.C. §§145.01, 145.017) Current law defines FAS as the sum of three full calendar years of contributing service in which the member’s earnable salary was highest divided by three. The bill increases the number of years used to determine FAS from three to five years for members in Group C. FAS for Groups A and B would continue to be determined using the member’s three highest salary years.

This change is generally consistent with the 2004 Milliman report and the 2012 PTA/KMS report.

**Cost of Living Allowance (COLA)** - (R.C. §§145.323, 145.561, 145.95) – The bill changes the annual COLA provided to all members who retire on or after the effective date of the bill. Current law provides that retirees receive a 3% COLA annually. Sub. S.B. 343 provides a 3% COLA for the first five years after the effective date of the bill, then the COLA would be the lesser of the actual change in the CPI-W or 3%. Current retirees would not be affected by the change and would continue to receive a flat 3% COLA annually. The COLA was last changed in 2002 from the lesser of the change in the CPI-W or 3% to a flat 3% annual COLA (H.B. 157; eff. 2-1-01).

Furthermore, the bill specifies that COLAs granted to members who retire on or after the effective date of the bill are not vested.

This change is consistent with the 2012 report of PTA/KMS and the 2004 Milliman report.

**Minimum Monthly Salary** - (R.C. 145.016) Sub. S.B. 343 increases the minimum monthly salary needed to accrue one month of service credit. Under current law, members earning \$250 per month (\$3,000 annually) receive one full month of service credit. Effective January 1, 2014, a member will be required to earn \$600 per month to



earn one full month of service credit. The minimum monthly salary for each year after 2014 will be the sum of the prior year's amount and the prior year's amount multiplied by the average percentage increase, if any, made to the compensation of township trustees made in the prior year. Service for any month in which the member earned less than the minimum salary would be prorated by dividing the member's actual salary by the minimum monthly salary.

The current minimum monthly salary threshold of \$250 was adopted in 1984 when the Legislature increased it from \$150 (H.B. 232; eff. 2-16-84). Since 1984 the CPI-W has increased 120.5% through December 31, 2004. In today's terms that equals \$551.26. Additionally, the 2012 minimum hourly wage in Ohio is \$7.70. A minimum wage earner would meet the minimum monthly threshold of \$250 after working approximately 32.5 hours. An employee earning the minimum wage and working 40 hours per week would earn \$16,016 annually or \$1,334.67 monthly.

With the current minimum monthly threshold, part-time public employees have achieved eligibility for both pension (service, disability, survivor) and health care benefits at an accelerated rate over the years, which poses a significant concern with respect to funding these benefits, especially health care costs which, as a percent of payroll, are disproportionate to earnings. Moreover, the minimum monthly threshold exacerbates the actuarial funding problems related to spiking "final average salary," whereby a member can work part-time for 27 years and take a full-time job with a higher salary for three years prior to retirement, leaving the retirement system with an actuarial unfunded liability on the pension side of the equation and an inequitable funding problem on the health care side of the equation vis-a-vis the member who works full-time and contributes on a full-time salary for 30 years. Although Sub. S.B. 343 addresses the spiking issue and increases the number of years used in calculating final average salary, those changes address only the pension portion of the benefit.

We understand that the originally proposed increase of \$1,000 would have largely affected certain elected officials whose salary is set in statute, such as township trustees and election officials. The minimum monthly threshold was lowered to \$600 in response to their concerns. This raises an additional issue that elected officials can purchase an additional 35% of their elected service credit. Sub. S.B. 343 would increase the purchase price to 100% of the additional liability, but again, this is only the pension liability. If the additional credit is used toward eligibility for or subsidy of health care benefits, this would create additional liabilities that ultimately are subsidized by other members.

**Anti-Spiking Provision** – (R.C. §145.333) Sub. S.B. 343 implements the Contribution Based Benefit Cap (CBBC), which limits, in certain instances, the benefit a retiree can receive. Prior to determining a retiree's benefit, the system will be required to (1) determine the value of the member's accumulated contributions, with interest compounded at a rate approved by the board; (2) determine the amount of a single life annuity that is the actuarial equivalent of that amount; and (3) multiply the annuity amount by the CBBC factor, which will be determined by the system's actuary. If the member's normal benefit exceeds the CBBC, the member's benefit will be reduced to

equal the CBBC. The bill states that members in Group A will not have their benefit reduced by more than 5% of the member’s single life annuity before the application of the CBBC unless during any full month of service earned after 1-1-87, the member’s earnable salary was less than \$1,000.

This provision is intended to prevent spiking of final average salary, which can occur when a member works the majority of their public career in a lower paid position, then a few years prior to retirement, the member receives a considerable salary increase. The member’s final average salary is then increased out of proportion to the salary he or she received during the majority of their career. The CBBC is designed so it will not impact members who receive typical salary increases and promotions throughout their careers.

This is consistent with the JLC recommendation made in 1996 to limit disproportional increases in salary prior to retirement. STRS is currently the only retirement system that has a percentage limit on salary increases (H.B. 180; eff. 10-29-91).

**Purchase of Service Credit** - (R.C. §§ 145. 20, 145.201, 145.29, 145.294, 145.452, Section 4, Section 8) Sub. S.B. 343 changes the purchase price for a number of types of service credit.

Type of Service	Current Purchase Price	Purchase Price Under S.B. 343
Service while on Workers’ Compensation (up to 3 years) (R.C. §145.2915)	No cost to member	Member pays employee contributions that would have been paid, plus interest; employer pays employer contributions that would have been paid, plus interest at rate determined by board
In-term increase in salary for elected officials Constitutionally barred from receiving increase (R.C. §145.2916)	Employee contributions on the additional salary official would have otherwise been eligible to receive, plus interest if paid at later date	Member pays employee and employer contributions on the salary the official would have otherwise been eligible to receive (the employer contribution is excluded from the definition of “earnable salary”)
Prior service for elected officials (R.C. §145.20)	Member rate in effect at time of payment x salary for period of service, plus interest	100% of the additional liability
Additional 35% service for elected officials and certain appointed officials (R.C.	Member rate in effect at time of payment x salary for period of service x 2	100% of the additional liability

§145.201)		
Exempted service (R.C. §145.28)	Member salary for 12 months preceding purchase x rate established by board (currently 20%)	100% of the additional liability
Service while on leave of absence or resignation due to pregnancy (R.C. §145.291)	Member rate in effect at time of payment x salary prior to leave, plus interest	100% of the additional liability
Credit for service between 1/1/1935 and date of becoming member (R.C. §145.292)	Member rate in effect at time of payment x salary for period of service, plus interest	100% of the additional liability
Out-of-state, federal, or service covered under municipal retirement system in Ohio (R.C. §145.293)	Member contribution for first year of full-time Ohio service following termination of service to be purchased, plus interest	100% of the additional liability
Employee prevented from making contributions due to injury, illness, or other approved reason (R.C. §145.47(G))	Contributions that would have been paid (payment must be made within one year)	100% of the additional liability

The board is authorized to establish rules regarding payment plans for the cost of purchasing or restoring credit.

The new purchase price will be applicable to all purchases initiated six months or longer after the bill’s effective date. Additionally, it would prohibit a member who has already begun payroll deductions for the purchase of service credit from initiating a new purchase for the same type of credit, unless the member is purchasing additional service credit for service as an elected official. The purchase must be completed within five years and six months after the effective date of the bill. It also states that the change in the cost of service credit does not express an intent to increase the cost for certain military service.

Sub. S.B. 343 also changes the provision that specifies how full-time service is determined for board and commission members who purchase the additional 35% service credit. Current law states that the service is considered full-time if full-time service is required by law or if the Director of Administrative Services determines that the position is full-time. The bill would allow the board to determine by rule what constitutes full-time or part-time service for this provision.

The bill also allows a surviving spouse to continue any service credit purchase the member initiated. A purchase of credit is considered “initiated” if the member made one or more payments. Current law allows a surviving spouse to initiate a purchase of service credit.

Sub. S.B. 343 clarifies that R.C. §145.30 applies only to military service that occurred prior to 10-13-94 (the adoption of the Federal Uniformed Services Employment and Reemployment Rights Act of 1994). This section grants up to 10 years of service credit for military service that interrupted public employment. Additionally, the bill allows the board to require payment for this credit and states that if the board chooses to require payment for this credit, the credit will be granted only if payment is made and it allows the member to purchase only part of the credit. Additionally, the bill eliminates the prohibition against purchasing military service credit if the credit is used toward another retirement benefit (i.e., a military benefit). (R.C. §§145.30, 145.301)

In 2007, the ORSC asked its actuary, Milliman, Inc., to complete a report on the cost of purchasing service credit. The report, entitled *Report Regarding Service Purchases Experience of the Five Ohio Retirement Systems During FY Ending 2005* was presented at the March 14, 2007 ORSC meeting. The report revealed that the retirement systems subsidized the purchase of credit in nearly every case in 2005. This was true even for service credit for which the member was required to pay the full actuarial cost. The actuarial cost of service is dependent upon the member's final average salary, years of service, and age at retirement. None of these factors are known until a member retires. Therefore, the true actuarial cost of purchasing service can be known only at retirement. This raised the public policy issue of whether a member's purchase of service credit should be subsidized by the retirement system. When a member pays less than the full cost of the additional liability created by the purchase, an unfunded liability is created. This unfunded liability must be paid for out of employer contributions.

The purchase of credit creates two types of additional liabilities: pension and health care. Although pension benefits are set by statute and become vested once a member retires, health care is discretionary and, therefore, the additional health care liability will fluctuate as changes are made to the health care plan. As Milliman noted in the report, health care liabilities created by the purchase of service could be eliminated if the purchased service did not count toward eligibility for or the amount of health care benefits.

In response to that report, staff recommended, and the Council approved at the 9/12/2007 ORSC meeting that

1. The purchase price for all types of service should be the full actuarial liability resulting from the purchase of service credit, except as prohibited by federal law, and members should be required to retire within 90 days of purchasing service.
  - The rationale behind this change would end the current practice whereby all members of the system subsidize a member's purchase of service credit. It is also consistent with recent legislative changes that have required members to pay more of the additional actuarial liability resulting from the purchase of service credit.
2. Purchased credit should be prohibited from being counted for purposes of health care eligibility or subsidy.

- As noted in the Milliman report, this would eliminate the additional health care liabilities created by the purchase of credit. This could be done by legislation or administrative rule.

This bill is consistent with those recommendations because it would require the member to pay the full additional liability resulting from the purchase and it would allow the board to establish rules regarding whether purchased credit may be used toward health care eligibility or subsidy. However, it does not require the member to retire within 90 days of purchasing the service. *Therefore, we recommend that the bill be amended to require the member to retire within 90 days of purchasing the credit.*

**Coordination of Benefits with STRS and SERS** – (R.C. §§145.37, 3307.57, 3309.35) Historically, public employees with service credit in any of the non-uniform systems (OPERS, STRS, SERS) have been able to coordinate their service credit and receive a benefit from the system in which they have earned the most service credit. The coordination occurs at retirement and the system from which the member retires receives twice the member’s accumulated contributions from the other non-uniform system(s) in which the member has earned service credit. This allows for complete portability of service among the non-uniform system.

The bill changes the amount of money transferred to the non-uniform system paying the benefit from a non-uniform system in which the member has earned service credit. Under the bill, the system paying the benefit will receive from the system in which service credit was earned the following amount: (1) the amount contributed by the member, or in the case of service credit purchased, the amount paid by the member, that is attributable to the year of service; (2) an amount equal to the lesser of the employer’s contributions made on behalf of the member or the amount that would have been contributed by the employer for the service had the member been a member of the system paying the benefit at the time the credit was earned; (3) if applicable, an amount equal to the amount paid on behalf of the member by an employer under R.C. §145.483 (delinquent contributions); and (4) interest compounded annually at the lesser of actuarial assumption rate of OPERS or the system transferring money.

**Transfers from OP&F, HPRS, or Cincinnati Retirement System (CRS)** - (R.C. §§145.295, 145.2911, 145.2912, 145.2913) The bill limits the transfer or restoration of service credit from OP&F, HPRS, and CRS in two ways: (1) the member must be eligible with or without the credit to retire or receive a disability and (2) member must agree to retire or go on disability within 90 days. If the member does not retire/go on disability within 90 days, OPERS would withdraw the credit.

This provision is generally consistent with the Council’s position on the purchase of service credit.

**Refund of Contributions** – (R.C. §145.401) Sub. S.B. 343 changes the additional amount a member who has five or more YOS receives when taking a refund of contributions by allowing the board to determine the additional amount by rule. Current

law sets the amount in statute for a member with five or more YOS as an additional 33% and for a member with 10 or more YOS as an additional 66%. It also includes purchased military service and restored credit as credit eligible for the enhanced refund.

**Membership Determination** - (R.C. §§145.036, 145.037, 145.038) The bill requires employers to submit to the system a list of all individuals who provided personal services at any time during the preceding calendar year but did not contribute to the system because they were considered independent contractors. The list must be submitted to the systems on or before January 31 of each year. If there is any doubt as to the individual's status as an independent contractor, the employer is required to make a written request to the board for determination of whether the individual is a public employee. The board's determination is final.

The bill requires a public employer who employs an individual classified as an independent contractor on or before the effective date of the bill to send notice and the appropriate form to the individual that they have the right to seek a determination as to whether he or she should have been classified as a public employee rather than an independent contractor. This must be done within 60 days of the bill's effective date. It also allows an individual who was classified as an independent contractor on or before the effective date of the bill to request a determination of the board as to his or her employment status. The board would have 30 days to respond to the request. This request must be made within one year of the effective date of the bill.

We note a technical change that should be made on line 4365 regarding when an application must be made. The bill states that "if the recipient's application for a disability benefit was received by the system *before* the effective date of this amendment, or if *after* that date..." [emphasis added]. *We recommend the words "on or" should be added to line 4413 before "after."*

For individuals who begin employment on or after the effective date of the bill and are classified as independent contractors, the employer is required to inform the individual within 30 days of employment that the employer considers the employee to be an independent contractor and the employee is required to acknowledge that classification in writing. The individual has five years from the date personal services first began to initiate a request for membership determination. The only exceptions to this five-year limit would be if the individual demonstrates that he or she was physically or mentally incapacitate or the employer did not obtain or failed to retain the written acknowledgement.

**Retroactive Benefit Payments** - (R.C. §§145.32(E), 145.332145.57(B)) The bill limits retroactive benefit payments for inactive members and members coordinating benefits with STRS and/or SERS to within 90 days of application. Current law provides that a retirement benefit is effective the first day of the month following the later of (1) the last day compensation was paid or (2) the member's attaining the minimum age or service eligibility. This change would add a third limit of 90 days prior to receipt by the board of a member's completed application for retirement. In the case of a retirement application

that is received between the bill’s effective date and 90 days after, the effective date of the retirement allowance is not earlier than the first day of the month following the bill’s effective date.

**Service Credit** (R.C. §§145.01, 145.2914) - The bill removes the term “prior service” from the Revised Code. “Prior service” is defined as service as a public employee rendered prior to 1935.

The bill allows members who earned service credit in the OPERS DC plan to have that credit count as “contributing service” in the OPERS Defined Benefit (DB) plan if they elect to switch plans.

The bill allows up to five years of service earned in the regular OPERS division and the PS division to be used toward a benefit in the LE division if the member elects to either have the amount of non-LE service credit earned reduced so there is no additional liability to the system or if the member pays the additional liability. Current law does not provide for the option of receiving reduced credit.

Sub. S.B. 343 also allows the board to treat service as a public safety officer as service as a law enforcement officer if fewer than 1% of the system’s members are contributing as public safety officers. If this occurs, the contribution rate for public safety officers will be the same rate charged to law enforcement officers. (R.C. §§145.332, 145.49)

**Defined Contribution Plan** – (R.C. §§145.19, 145.191, 145.193, 145.194, 145.195, 145.23, 145.813, 145.814, 145.82, 145.83, 145.87, 145.88, 145.97) – The bill prohibits a new employee from electing to participate in the OPERS DC plan if the employee had previously elected to participate in the OPERS DB plan. Likewise, a new employee is prohibited from electing to participate in the OPERS DB plan if the employee had previously elected to participate in the OPERS DC plan. Current law allows any member with less than five YOS to make an election between the two plans. However, the bill would allow a member who terminates employment and receives a refund of contributions to make an election upon reemployment.

Sub. S.B. 343 requires any member who participates in the DC plan and later becomes employed as an OPERS PS or LE officer to cease making contributions to the DC plan and contribute to the DB plan instead. Any credit already earned in the DC plan may be credited to the DB plan. This is necessary because OPERS LE officers and PS officers are not eligible to elect to participate in the DC plan.

The bill also allows members who have participated in both the DB and DC plans to combine YOS in order to be eligible for retirement and would allow the board to adopt rules specifying how DB credit may be converted to DC credit.

Additionally, the bill permits, rather than requires, OPERS to transfer a portion of employer contributions made on behalf of DC plan participants to the account used to fund the DB plan. This amount is known as the mitigating rate. It also authorizes the

board rather than the actuary to determine whether there should be a transfer of funds to mitigate any negative impact upon the DB plan as a result of participants electing the DC plan.

Finally, the bill eliminated a provision under which a defined contribution plan participant may maintain on deposit with OPERS or the entity administering the plan any amounts that have accumulated on behalf of the member.

**Disability** – (R.C. §145.35, 145.36, 145.362, 145.363, 145.37) The bill keeps the standard for determining whether a member is eligible for disability as whether the member is mentally or physically incapable of performing the duties of the position the member held at the time the disabling condition began or of a position with similar duties. This is known as the “own occupation” standard. The bill changes from “own occupation” to “any occupation” the termination standard for members whose disability application was received by the system on or after the effective date of the bill, have been receiving disability benefits for three or more years (up to maximum five years if continued treatment through active case management), and who were not working as an LE or PS officer when the disability occurred. The definition of “any occupation” is that the employee is not capable of gainful employment that would replace 75% of FAS, that could reasonably be found in the employee’s regional job market, and for which the employee is qualified by experience, education and station in life.

Members whose disability application was received by the system before the effective date of the bill, or who on or after that date had been receiving disability benefits for less than three years, or who was employed as an LE officer when the disability occurred would remain subject to the “own occupation” standard.

We note that at the end of line 4364, the words “on or” were inadvertently excluded in regard to excluding certain members from the new standard. *Therefore, we recommend that the words “on or” be added in regard to clarifying that the “own occupation” standard would apply to members who had been receiving a benefit for less than three years on or after the bill’s effective date.*

Sub. S.B. 343 limits an employer’s duty to reinstate a member to their former job to three years after the disability, *except if member is on continued treatment, then up to maximum five-year period.* Current law considers a member receiving disability to be on a leave of absence for up to five years and the employer is required to reinstate the member during that time if the member is no longer disabled. Members whose disability application was received by the system before the effective date of the bill, will continue to be considered on leave of absence for up to five years.

The bill also prohibits post-separation eligibility for a disability benefit unless the disability began during employment or if it is work-related and becomes evident within two years of separation from employment.



The bill mandates that a member apply within 90 days of the disability benefit being granted for Social Security Disability Insurance (SSDI) if eligible. If the member does not apply, the benefit would be suspended. The member's annual disability benefit would be reduced if the disability benefit and SSDI exceeds the recipient's CPI-adjusted FAS. The offset would not apply to those who maintained an OPERS-covered job and a Social Security-covered job simultaneously for at least five years prior to the disability. Neither of these provisions would apply to OPERS LE officers.

The bill eliminates free credit for time while receiving disability, but would allow the member to purchase up to five years of disability credit. The board can charge up to the full additional liability to purchase.

Additionally, in the case of a member who has service credit in OPERS and STRS and/or SERS, the bill provides that the retirement system that will pay the benefit (i.e., the system in which the member had the most YOS) is the system that will determine whether the member qualifies for a disability benefit.

The bill excludes disabilities that were the result of a voluntary commission of a felony or elective cosmetic surgery other than reconstructive surgery.

The bill allows the board to specify by rule circumstances under which a disability benefit recipient is not required to be reexamined each year.

Sub. S.B. 343 changes the applicable age for disability benefit recipients in Group C to transition to a retirement benefit from age 60 to 62. The age for Groups A and B remains 60.

**Re-employed Retiree** – (R.C. §§145.38, 145.383, 145.384) The bill changes the lump sum payment made to the survivor of a re-employed retiree who dies while working and is under the age of 65 to equal the retiree's contributions, plus interest. Current law provides the survivor receives that amount plus a portion of the employer contribution as determined by the board. This change is consistent with what a re-employed retiree would receive as a lump sum payment prior to age 65.

The bill changes the interest credited to a re-employed retiree's account from an amount determined by the system's actuary, to an amount determined by the board.

**Forfeiture of Benefit** - (R.C. §§145.574, 2329.66, 2901.431, 2929.194) Authorize the termination of a disability benefit of a member who pleads guilty to or is convicted of a felony if the disabling condition arose out of the commission of the offense the member was convicted of or plead guilty to. The bill expands current law, which authorizes the termination of a disability benefit of a member who pleads guilty to or is convicted of *a specified offense committed while serving in a position of honor, trust, or profit* if the disabling condition arose out of the commission of the offense the member was convicted of or to which the member plead guilty. This new provision applies this particular

forfeiture of a disability benefit provision to all members and any felony if the disabling condition arose out of the commitment of the felony.

**Health Care** – (R.C. §145.58) The bill gives the board the authority to establish eligibility for health care coverage. Current law sets eligibility for health care coverage at 10 years of specific types of service credit. Additionally, the bill makes it a first degree misdemeanor (falsification 2921.13) to make a false statement in order to receive health care benefits from the system. Any person convicted of falsification is ineligible for health care coverage provided by OPERS.

Additionally, the bill removes the minimum monthly amount of \$96.40 that the board must reimburse for Medicare Part B. The bill also changes the current requirement that OPERS pay one-half of the premium for a spouse or surviving spouse who is age 65 but not eligible for Medicare Part A coverage (hospital). The bill allows the board to pay a portion of the premium instead of requiring they pay half.

**Board Changes** – (R.C. §§145.04, 145.041, 145.05, 145.057, 145.06) – Sub. S.B. 343 provides that any appointed board member remains a member of the board until the member's term ends or the date the member's successor take office, whichever is later. Current law provides for the appointed board member to remain on the board until a successor is appointed or 60 days, whichever occurs first.

The bill also requires each board member to complete an orientation program within 90 days of beginning board service. Current law requires only newly elected members and individuals appointed to fill a vacancy to complete an orientation program.

The bill includes appointed board members in the current prohibition against serving on the board if the member has plead guilty to or been convicted of a violation of R.C. §§102.02 (duty to file ethics disclosure statement), 102.03 (revolving door), 102.04 (compensation or services received other than from employer), 2921.02 (briber), 2921.11 (perjury), 2921.13 (falsification), 2921.31 (obstructing official business), 2921.41 (theft in office), 2921.42, (having unlawful interest in public contract), 2921.43 (soliciting or receiving improper compensation), or 2921.44 (dereliction of duty).

Sub. S.B. 343 also adds a provision stating that if an employee member of the board is no longer employed in the group the member represents, that office is considered vacant.

**Plan of Payment** – (R.C. §§145.46, 145.64) The bill reduces and simplifies the number of plans of payments a retiree can select. Furthermore, it renames the plans “single life,” “joint live,” and multiple life” instead of referring to them by letter. The bill removes reference to “surviving spouse” and replaces it with “designated beneficiary.” It also allows a retiree to have two, three, or four surviving beneficiaries rather than only one.

**Additional Annuity Program** – (R.C. §145.64) The bill provides for a refund of contributions if the contributor begins to receive a benefit from STRS or SERS. Additionally, the bill requires the application for a benefit from this program to be filed

before filing for a retirement benefit (money purchase for a re-employed retiree). If the application is not filed prior, the contributor is eligible for only a refund of contributions rather than an annuity.

**Miscellaneous** – The bill allows the board to offer health care coverage to Deferred Compensation employees. (R.C. §145.09)

The bill requires any action brought against the system, the board, or its officers, employee, or members in their official capacities to be brought in the Franklin County Court of Common Pleas. (R.C. §145.101)

Sub. S.B. 343 allow accumulated contributions that were forfeited because they were never claimed by the member, member's estate, or member's beneficiary to either remain in the employees savings fund or be transferred to the income fund, rather than requiring them to be transferred to the income fund. The bill also allows the system to credit employer contributions for DC plan members to either the employer's accumulation fund or to the defined contribution fund; allow DC benefits to be paid from the annuity and pension reserve fund if reserves have been transferred there for that purpose. (R.C. §§145.23, 145.43)

The bill allows board records to be made available in printed or electronic format and would allow the board to maintain records in either form. It also allows the board to provide information requested by Social Security Administration, Medicare, Medicaid, Ohio Deferred Compensation, OP&F, SERS, STRS, and HPRS. (R.C. §145.27)

For members who have contributed to more than one plan, the bill allows the board to establish one uniform beneficiary designation form that could be used for all plans in which the member has contributions when a member dies before retiring. (R.C. §145.431)

The bill requires employee contributions to be transmitted to the system at intervals and in a form specified by the system. (R.C. §145.47)

The bill changes the interest rate charged on delinquent contributions from a rate set by the board to the assumed actuarial rate of interest. (R.C. §145.483)

The bill allows for the transfer of money from the employer's accumulation fund if the amount in the expense fund is not sufficient to cover the administrative expenses for the coming year. Current law allows the board to apportion the needed amount among contributors, up to \$3 per contributor. (R.C. §145.54)

The bill allows the system to adjust an allowance or benefit if an error occurs in calculating the allowance or benefit. It also allows the system to recover money that was paid erroneously to a third party. (R.C. §145.563)

The bill provides that a change in a retirement benefit that results from the death of a beneficiary would take effect the month following the date of death instead of the month following the notice of death. (R.C. §145.64)

The bill would delete obsolete provisions regarding past credit and benefit increases. (R.C. §§145.02, 145.292, 145.321, 145.322, 145.324, 145.326, 145.327, 145.328, 145.329, 145.3210, 145.3211, 145.3212, 145.3213, 145.332, 145.42, 145.44, 145.461, 145.462)

**Effective Date** – (Section 6) The effective date of the bill is January 7, 2013.

**Fiscal Impact**

According to the OPERS actuary, Gabriel Roeder Smith & Company, S.B. 343 would decrease the actuarial accrued liabilities by nearly \$4.1 billion. The amortization period would decrease by 13.63 years to 10.43 years. If the amount of contributions allocated to health care is increased to 4%, the amortization period would decrease by 7.59 years to 16.47 years. Both scenarios result in a funding period well below the maximum allowable 30-year period.

**Staff Recommendation**

The staff recommendation is that the Ohio Retirement Study Council vote to recommend that the 129<sup>th</sup> General Assembly vote to approve Sub. S.B. 343 with the following amendments:

1. *That the words “on or” be added to line 4413 before “after” in regard to clarifying that the “own occupation” standard would apply to members who had been receiving a benefit for less than three years on or after the bill’s effective date, and*
2. *Require the member to retire within 90 days of purchasing the credit.*

The Ohio Retirement Study Council voted at its September 10, 2012 meeting to accept staff’s recommendations.

**Effective Date**

January 7, 2013