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Analysis

Sub. S.B. 219 – Sen. Grendell *(As Passed by the Senate)*

April 14, 2010

ORSC Position

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S.B. 219 would make the following changes to the laws governing the Ohio Public Employees Retirement System (OPERS), the State Teachers Retirement System (STRS), the School Employees Retirement System (SERS), the Ohio Police and Fire Pension Fund (OP&F), the Highway Patrol Retirement System (HPRS), the Cincinnati Retirement System (CRS), or an Alternative Retirement Plan for higher education employees (ARP):

- Authorize 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 plead guilty to.
- Expand the definition of “position of honor, trust, or profit” to include a position in which in the course of public employment, an employee has control over the expenditure of public funds of \$100,000 or more annually.

Staff Comments – S.B. 219 would authorize 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 plead guilty to. The current specified offenses, which are not changed under this bill, include bribery, engaging in a pattern of corrupt behavior, theft in office, or conspiracy or complicity in committing any of the aforementioned offenses.

The bill would also expand the definition of “position of honor, trust, or profit” to include a position in which in the course of public employment, an employee has control over the expenditure of public funds of \$100,000 or more annually. Current law defines “position of honor, trust, or profit” as the following:

- An elective office of the state or any political subdivision of the state;
- A position on any board or commission of the state that is appointed by the governor or the attorney general;
- A position as a public official or employee, as defined in R.C. §102.01 who is required to file a disclosure statement under R.C. §102.02;
- A position as a prosecutor, as defined in R.C. §2935.01;
- A position as a peace officer, as defined in R.C. §2935.01, or as the superintendent or a trooper of the state highway patrol.

Under the bill, when the system or provider receives notice that a member who is receiving a disability benefit has been charged with an offense in R.C. §2929.192(D), the system or provider is required to send written notice to the prosecutor that the member has been granted a disability benefit and may be subject to garnishment of the benefit.

The bill would require the court to hold a hearing prior to sentencing regarding the condition for which the offender was granted a disability. The court must give written notice at least ten days prior to the scheduled hearing date to the offender, the prosecutor who handled the case, and the appropriate public retirement system, alternative retirement plan provider, or if more than one is providing a disability benefit, the applicable combination. The hearing is

limited to a consideration of whether the offender's disabling condition arose out of the commission of the offense the offender was convicted of or pleaded guilty to.

The system or provider is required to submit to the court documentation of the evidence on which the offender's disability benefit was granted. The documentation of evidence submitted to the court is excluded from the definition of "personal history record" and, therefore, is a public record.

If the court determines the disabling condition arose out of the commission of the offense the offender was convicted of or plead guilty to, then the court must order the disability benefit to be terminated. The bill authorizes the system or the provider to recover any disability benefits paid prior to termination.

S.B. 219 arose out of a situation in which a public employee plead guilty in a corruption case involving his public employment. Prior to sentencing he applied for and was granted a disability benefit based on a disability that arose out of the commission of the crime. Because the disability benefit was granted prior to sentencing, the member was able to apply for and receive the disability benefit. Once the benefit was granted, it could not be terminated under current law even though the disability was caused by the member's criminal actions.

Last session S.B. 3 was enacted (eff. 5-13-08) to prevent a public employee who pleads guilty to or is convicted of a specified felony while serving in a position of honor, trust, or profit from receiving a future pension, annuity, allowance, or any other benefit other than the member's accumulated contributions. Under the provisions of S.B. 3, however, the member is not ordered to forfeit the right to a retirement allowance, pension, disability benefit, or other right or benefit, other than payment of the offender's accumulated contributions until sentencing.

This bill would expand the provisions enacted last session as part of S.B. 3 to include a situation where a disability benefit had already commenced prior to sentencing for a specified felony by allowing the retirement systems to terminate the benefit. It is limited in application because the disabling condition must be caused by the commission of the offense the member was convicted of or plead guilty to. This bill is consistent with current law.

Actuarial Impact – According to the OPERS actuary, Gabriel Roeder Smith & Company, there is no data available upon which to make a detailed actuarial analysis of S.B. 219. However, it is their opinion that passage of the bill would have no measurable financial impact on the system. To the extent that benefits in the future are forfeitable and/or recoverable due to the proposed benefits provisions, this would result in actuarial gains to the system.

ORSC Position – The Ohio Retirement Study Council voted at its April 14, 2010 meeting to recommend that the 128th Ohio General Assembly approve S.B. 219.