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Analysis

Sub. H.B. 239 - Rep. Tavares

(LSC 122 0649-4)

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Sub. H.B. 239

The bill would make the following change to the Public Employees Retirement System (PERS), the State Teachers Retirement System (STRS) and the School Employees Retirement System (SERS):¹

- Upon the death of a PERS, STRS or SERS member, the member’s designated beneficiary or surviving spouse would **not** be permitted to elect a refund of the member’s accumulated contributions if the retirement system receives notice that the deceased member has one or more surviving children. The bill would provide only for the election of monthly survivor benefits based on the number of qualified survivors.²

# of Qualified Survivors	Annual Benefit as % of FAS	Minimum Monthly Benefit
1	25%	\$96
2	40%	\$186
3	50%	\$236
4	55%	\$236
5 or more	60%	\$236

If, after determining the monthly benefits described above, the retirement system receives notice that there is a qualified survivor who was not considered when the initial determination was made, then the system shall recalculate the monthly benefits for all qualified survivors, effective on the first day of the month following the system’s receipt of such notice.

If the monthly benefits described above terminate to all persons other than a surviving spouse or other sole beneficiary, such surviving spouse or beneficiary may elect to receive a joint and survivor annuity providing the actuarial equivalent of the deceased member’s lesser retirement allowance, provided the deceased member was eligible for service retirement at the time of death.

If the retirement system receives no notice that the deceased member has one or more surviving children prior to making payment of the member’s accumulated contributions, such payment would be a full discharge and release of the system from any future claims.

¹It should be noted that upon the death of a member of the Police and Firemen’s Disability and Pension Fund (PFDPF) or Highway Patrol Retirement System (HPRS), there is no option to elect a refund of the member’s accumulated contribution. Therefore, all qualified survivors of the deceased member, including surviving children, are guaranteed monthly survivor benefits under these systems.

²Qualified survivors include the following individuals: (1) the spouse of the deceased member who is age 62, *or* age 50 (any age in STRS only) if the deceased member had ten or more years of service, *or* any age if caring for a surviving child or physically or mentally incompetent; (2) the surviving child(ren) of the deceased member who is under age 18, *or* under age 22 if a full-time equivalent student, *or* any age if physically or mentally incompetent; and (3) a dependent parent who is age 65 or older *or* [any age if physically or mentally incompetent (PERS only).]

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Current law provides that the designated beneficiary may elect a refund of the member's accumulated contributions. If there is no designated beneficiary, the surviving spouse may elect a refund. A refund of the member's accumulated contributions cuts off the rights of certain qualified survivors, including surviving children, to receive the monthly benefits described above.

The bill would, therefore, prevent the designated beneficiary or spouse from electing a refund of the member's accumulated contributions if the deceased member has one or more surviving children, thereby guaranteeing such children monthly survivor benefits.

- The bill would eliminate the current dependency criteria for surviving children who are not domiciled in the member's household at the time of death to qualify for monthly survivor benefits. Under the bill, any surviving child who is under age 18, *or* age 22 if a full-time student, or any age if physically or mentally incompetent would be eligible for monthly survivor benefits.

Under current law, if a surviving child is not domiciled in the member's household at the time of death, the deceased member must have contributed to one-half or more of the child's support in order for the child to qualify for monthly survivor benefits.

This proposed change would make PERS, STRS and SERS' laws consistent with PFDPF and HPRS' laws.

- The bill would clarify existing language that prohibits payment to a beneficiary found guilty of feloniously contributing to the member's death in the absence of a court order to the contrary. The current prohibition would apply under the following circumstances:
 - A beneficiary who is convicted of, pleads guilty to, or is found not guilty by reason of insanity of aggravated murder, murder or voluntary manslaughter under Ohio law or a substantially equivalent law of another state, the United States or a foreign nation;
 - A beneficiary who is indicted for the above offenses and is adjudicated incompetent to stand trial;
 - A beneficiary who is a juvenile found to be a delinquent child by reason of committing an act that, if committed by an adult, would be a violation of the above offenses.

The bill would also make the following change to PERS, STRS, SERS and PFDPF:³

- Upon retirement under PERS, STRS, SERS or PFDPF, the automatic plan of payment for a married member would be a joint and survivor annuity providing 50% of the member's actuarially-reduced pension to the surviving spouse for life upon the member's death unless

³It should be noted that HPRS law provides the surviving spouse of a retired member 50% of the retiree's benefit; therefore, HPRS is excluded from the spousal consent requirements proposed under this bill.

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the spouse **consents** in writing to the member's election of a different plan of payment. The bill would require the written consent to be signed by the spouse and witnessed by an employee of the retirement system or a notary public. The bill would permit the retirement board to waive the spousal consent requirement if the spouse is incapacitated *or* cannot be located *or* for any other reason specified by the board.

Upon application for retirement, the applicable retirement system would be required to send notice to the member's spouse with an explanation of the following items:

- That unless the spouse consents to another plan of payment, the member's retirement allowance will be paid under a joint and survivor annuity providing 50% of the allowance to the spouse for life upon the member's death;
- A description of the alternative plans of payment available with the consent of the spouse;
- That the spouse may consent to another plan of payment and the procedure for giving consent;
- That consent is irrevocable once notice of consent is filed with the retirement board.

The bill would require the consent to be signed, in writing, and witnessed by an employee of the retirement board or a notary public in order to be valid.

Under current law, the spouse of a married member has no legal right in the member's selection of a plan of payment upon retirement. The choice of providing a spouse's benefit is the member's alone. The law provides that the member must simply submit a statement signed by the spouse attesting that the spouse is aware that the member selected a single life annuity or a plan of payment providing less than 50% of the member's actuarially-reduced benefit, which is otherwise the automatic plan of payment for married members.

Once a joint and survivor annuity is selected by the member, the law requires the written consent of the spouse or a court order to cancel the joint and survivor annuity.

Staff Comments

The laws of all five state retirement systems recognize the societal interest in providing for the financial security of children. Specifically, the laws are structured to enforce the member's financial obligations to dependent children by subjecting retirement benefits, including refunds of accumulated contributions, to both administrative and judicial withholding orders for child support while the member is alive.

The bill would extend this recognition after the member's death by preventing a designated beneficiary or spouse from electing a refund of the member's accumulated contributions with the effect of cutting off the rights of surviving children to receive monthly survivor benefits. The bill would ensure that surviving children remain eligible for monthly survivor benefits upon the member's death.

The laws of all five state retirement systems also recognize the societal interest in providing for the

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financial security of the member's spouse. Specifically, the laws are structured to enforce the member's financial obligations to spouses by subjecting retirement benefits, including refunds of accumulated contributions, to both administrative and judicial withholding orders for spousal support. Monthly survivor benefits are provided to the spouse upon the death of active members (and retired members in PFDPF and HPRS only.) Health insurance coverage is also made available to the member's spouse and is partially or, in certain circumstances, totally subsidized by the retirement systems.

In 1984 the Retirement Equity Act (REA) amended the Employee Retirement Income Security Act (ERISA) which applies to private pension plans (not governmental plans). The REA was primarily intended to provide basic protection to women who often rely on their spouse's pension benefits for financial support and who tend to suffer the most when pension benefits are unavailable. REA provided, among other things, that all defined benefit plans and certain defined contribution plans must provide benefits in the form of a qualified joint and survivor annuity providing not less than 50% of the member's actuarially-reduced annuity for the life of the spouse. Under REA, the spouse's written and informed consent is required to waive the joint and survivor annuity requirement. Therefore, the bill raises a significant public policy issue: Should spouses of Ohio's public retirees be entitled to the same basic protection as spouses of retirees covered by private pension plans?

REA is neither the first nor the only law that recognizes the pension rights of an employee's spouse/ex-spouse and the principle that pension benefits are the shared earnings of a married couple. The Social Security System, the major federal retirement programs and numerous state retirement systems have granted various pension rights in the employee's spouse/ex-spouse as evidenced by the provision of benefits based on the employee's work record, the requirement of spousal consent to waive a joint and survivor annuity, and the recognition of qualified domestic relation orders in the division of retirement benefits upon divorce.

There is an inherent conflict between Ohio's domestic relations laws and Ohio's public pension laws. Ohio's domestic relations laws define "marital property" to include retirement benefits that were acquired by either or both spouses during the marriage (R.C. §3105.171) However, with limited exceptions, Ohio's public pension laws recognize only the member's right to the retirement benefit. Therefore, though public retirement benefits are legally considered "marital property," the member's spouse has no legal rights with respect to the distribution of those benefits, including the selection of the plan of payment upon the member's retirement.

While the current spousal acknowledgment requirements under PERS, STRS, SERS and PFDPF may have addressed the problem of the spouse being shocked to learn that no benefits are payable upon the member's death, these requirements fall short of providing any legal protection for the financial security of the spouse. It appears that both the legislature and society at large has a legitimate interest in ensuring that an adequate source of income exists for the support of not only members who are unable to earn income due to age or disability but also their dependents.

Fiscal Impact

According to the PERS actuary, Gabriel, Roeder, Smith & Company, data for a detailed measure of the potential cost of H.B. 239 was not available. However, based on the present cost of survivor benefits and the fact that payments to dependent children represent less than 10% of the total cost, the actuary estimates that the overall financial impact of the bill on PERS would be very small - less

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than 0.01% of covered payroll. The actuary also indicates that the cost could be absorbed within the current contribution rate structure without any affect on the current funding periods. The STRS actuary, Buck Consultants, also indicates that the cost of H.B. 239 would be immaterial. The SERS actuary, Gabriel, Roeder, Smith & Company, assumes that no surviving spouses elect refunds and, therefore, this proposed change would have no effect on the annual contribution requirements calculated for SERS.

The spousal consent requirements would **not** create any additional actuarial accrued liabilities since current law requires any joint and survivor annuity to be the actuarial equivalent of a single life annuity.

ORSC Position - At its meeting of October 8, 1997 the Ohio Retirement Study Council voted to recommend that the 122nd General Assembly approve Sub. H.B. 239 (LSC 122 0649 - 1) upon the adoption of certain amendments. These amendments have been incorporated in Sub. H.B. 239 (LSC 122 0649 - 4).