Ohio
Retirement
Study
Council

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H.B. 305 of the 131st General Assembly

Rep. Schuring

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ORSC Staff Recommendation

Summary of H.B. 305

Under current law, non-teaching employees of the University of Akron participate in the School Employees Retirement System (SERS), and teaching employees participate in the State Teachers Retirement System (STRS). H.B. 305 would provide that any non-teaching employee initially employed by the University of Akron on or after the effective date of the bill participate instead in the Public Employees Retirement System (PERS). Teaching employees would continue to participate in STRS. Existing SERS members employed by the University prior to the effective date of the bill would continue to participate in SERS.

In addition, the bill provides an appropriation of $1.1 million dollars in FY2016 and FY2017. These funds are to be distributed to the University of Akron for the purpose of funding the University's SERS employer surcharge[1] during those years.

Background

The University of Akron is the only state university in Ohio whose nonteaching employees are covered under SERS; the nonteaching employees of all other state universities are covered under PERS. Pursuant to H.B. 648 (effective 9/16/1998), the University of Akron law enforcement officers were transferred from SERS to the PERS law enforcement division. This transfer was enacted to provide them with the same benefits as all other law enforcement officers at state universities who were previously transferred from PERS state division to PERS law enforcement division pursuant to H.B. 379 (effective 11/6/1996).

In 2002, consideration was made to move the remaining SERS nonteaching staff to PERS (LSC 124 1524). After an actuarial analysis was completed, ORSC staff recommended that the transfer be made, subject to two major qualifications:

1) PERS receives from SERS an amount equal to the member's actuarial accrued liability to minimize any actuarial loss to PERS and provide no actuarial gain to SERS; and

2) Any differential employer rate and employer surcharge be paid by the University for 25 years (the funding period of SERS at the time) to fund the already accrued benefits of those members. This idea is consistent with the concept of a mitigating rate under which the employer pays the system amounts for previously accrued benefits.

The ORSC took no action on this report.

Staff comments

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[1] Authorized under R.C. 3309.491, SERS is required to impose a surcharge on employers for the provision of healthcare to retirees. The amount is a formula based on member compensation, but cannot exceed 1.5% of all SERS employer payroll.

One principle guiding the evaluation of retirement system law is the development of consistent retirement system membership standards. H.B. 305 would achieve this by removing an historical legacy decision by the University of Akron and place nonteaching faculty in PERS, where such employees would be if they were employed in any other state university. It also complies with another retirement law standard of minimizing disruption to existing members; this is achieved by maintaining SERS membership for existing employees.

Actuarial Impact. These principles must be balanced by an actuarial analysis of the effect of the legislation. The SERS actuary, Cavanaugh Macdonald, prepared an actuarial analysis of H.B. 305. Their conclusion was that the loss of future University of Akron members would have no immediate impact on the *pension obligation* of SERS, but in the long run, SERS would be losing *healthcare* contributions which do have a relative impact. In the Cavanaugh analysis, the baseline funded ratio for SERS in 2033 under the bill would decrease from 92.34% to 91.73%. The healthcare surcharge loss would be $654,734 by 2024.[2] ORSC staff asked PTA/KMS to review the work completed by Cavanaugh. They did so and found that analysis to be reasonable. However, they did note that the Cavanaugh analysis did not reflect the savings from the value of health benefits not being provided to those Akron employees not becoming a member of SERS. PTA/KMS also noted that Akron's future contributions might be higher than for other SERS employers, resulting in a decrease in funding available for healthcare benefits. This would need to be explored further to identify the full effects of the bill on SERS healthcare. ORSC staff notes that healthcare is a discretionary benefit provided by SERS.

SERS contractors. SERS law requires those who perform services common to the daily operation of an educational unit be a member of SERS even if those services have been contracted out and the contractor is not a public entity.[3] PERS law includes specific provisions under which a contract employee may be deemed an independent contractor and exempt from PERS membership.[4] ORSC staff cannot anticipate the employer-employee relationship that the University of Akron may establish for the positions covered under the bill, and it is possible that a number of these positions will be deemed independent contractors. Should this occur, future employees who formerly would have been in SERS would instead be in neither SERS nor PERS and therefore excluded from participation in any state retirement system.

Additionally, it is possible that the employer-employee relationship could be altered for existing employees of the University of Akron, resulting in them being considered "newly employed" under the bill. This would result in the member having split service in two systems even though they are employed in substantially similar positions, a situation the ORSC has been cautious of in the past. Further, should the employer-employee relationship change during this process, it is possible that the member would be considered an independent contractor and exempt from PERS membership and instead subject to Social Security. Because the intent of the bill is to prevent just this sort of in-service alteration, ORSC staff suggest language be added to

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[2] Cavanaugh Macdonald, "RE: HB 305" (letter to SERS dated September 9, 2015).
[3] R.C. 3309.01(B)(2).
[4] R.C. 145.038.

provide that any existing SERS members on the effective date of the amendment, should their employment relationship alter, remain in SERS if they continue to conduct the same or substantially similar services to the University, as determined by SERS.

Because the appropriation item is provided to the University and not SERS, ORSC has no comments on the GA providing these funds to the University.

Staff recommendation

1) ORSC staff recommend that the 131st General Assembly **approve H.B. 305** based on the following retirement law principles:

- The bill removes an historical legacy to make retirement membership more consistent;
- The bill does not shift liabilities from one system or one generation to another; and
- The bill is prospective in nature and minimizes the impact on existing University of Akron SERS members.

2) In accordance with the third principle detailed above, ORSC staff recommend an amendment be added to protect existing University of Akron SERS members from any resulting employer-employee structural changes so that those members may continue in SERS.

3) ORSC staff recommend the addition of a technical amendment to R.C. 3309.011 to exclude the individuals specified in the bill from SERS membership.