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# *Analysis*

## **S.B. 225 - Sen. Hottinger** *As Introduced*

May 12, 2004

## **ORSC Position**

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The bill would conform the law of the Public Employees Retirement System (PERS) with the current law of the Ohio Police and Fire Pension Fund (OP&F) with respect to the election of a joint and survivor annuity plan following marriage or remarriage. Excluded from the bill are any changes to the comparable laws governing the State Teachers Retirement System (STRS), the School Employees Retirement System (SERS) and the Highway Patrol Retirement System (HPRS).

Specifically, the bill would make the following two changes in PERS:

1. The election of a joint and survivor annuity plan must be made *no later than one year after the date of the marriage or remarriage* for any marriage or remarriage by a retired member that occurs on or after the effective date of the bill. Presently, a retired member may make such election at any time prior to the member's death.
2. The election *shall become effective upon receipt of the application form approved by the PERS board*, though any change in the benefit amount shall commence on the first day of the month following receipt of the application. Under present law, the election becomes effective on the first day of the month following receipt of the application form by the board.

The bill would also provide that no later than 90 days after the effective date of the bill, the surviving spouse of a deceased retirant may apply to PERS for payment under the joint and survivor annuity plan elected by the retirant, provided:

- The retirant and surviving spouse married after the retirant began receiving payments from PERS;
- In calendar year 2003, the retirant filed with PERS an application to elect a joint and survivor annuity plan under which the surviving spouse would receive payments after the retirant's death; *and*
- The surviving spouse was determined to be ineligible for the payments because the retirant died before the election took effect.

On receipt of such application, PERS shall put into effect the joint and survivor annuity plan elected by the retirant. Payments shall commence on the first month after PERS puts such plan into effect.

Am. Sub. H.B. 648 (eff. 9/16/98) made similar changes to OP&F law with respect to the election of a joint and survivor annuity plan following marriage or remarriage by retired police officers and firefighters.

**Staff Comments** - The proposed changes to the PERS law under this bill are modeled after those made to the OP&F law in 1998, and are intended to serve two important purposes. First, by limiting the time period for the election of a joint and survivor annuity plan in the case of post-retirement marriages to no more than one year after the date of marriage, the bill would mitigate the creation of additional liabilities resulting from adverse selection by the member against the retirement system as permitted under existing PERS law. For example, a member who is receiving a single life annuity (payable for the life of the member only) and subsequently marries has a financial incentive to delay making an election as long as possible to a joint and survivor annuity plan (payable for the life of the member and for the life of the member's spouse) due to the actuarial reduction required in the member's benefit. Therefore, the member may attempt to "game" the retirement system by making an election to a joint and survivor annuity just prior to the member's death.

Second, by making the election of a joint and survivor annuity plan effective upon receipt of the application form by the retirement system (rather than upon the first day of the month following such receipt), the bill would allow the PERS board to give effect to the member's intention in the event the member were to die between the retirement system's receipt of the election and the first payment thereunder. There have been instances in the past where members have made an election to change from a single life annuity to a joint and survivor annuity but have died between receipt of the election by the retirement system and the first payment thereunder, thereby preventing the retirement board under existing law from giving effect to the member's election and paying a joint and survivor annuity to the member's spouse.

*It is recommended that the proposed changes under the bill be made to the comparable laws governing STRS, SERS and HPRS not only to limit their potential liability exposure resulting from adverse selection against the retirement system but also to allow these retirement boards to give effect to the retired member's intentions should the member die between the receipt of an election to switch from a single life annuity to a joint and survivor annuity plan and the first payment made thereunder. It is further recommended that the bill be made prospective only by eliminating the temporary section of law that would apply the proposed changes retroactively to a very limited group of survivors; such retroactive application of the bill would discriminate against all other similarly-situated survivors who were denied benefits from the other retirement systems in the past and encourage the retroactive application of these and other retirement changes to the entire beneficiary class affected creating the potential for significant liabilities to the retirement systems in the future.*

**Fiscal Impact** - According to the PERS Actuary Gabriel, Roeder, Smith & Co., S.B. 225 would have no measurable financial effect on PERS. The ORSC Actuary Milliman USA generally concurs, though points out that the retroactive application of the bill would create some measurable, though de minimis, cost to PERS not otherwise incurred under H.B. 455 - the House counterpart to this legislation - or existing law.

**ORSC Position** - At its meeting of May 12, 2004 the Ohio Retirement Study Council voted to recommend that the 125th Ohio General Assembly approve S.B. 225 upon the adoption of the following amendments:

- That the proposed changes under the bill be made to the comparable laws governing STRS, SERS and HPRS;
- That the proposed changes under the bill be made prospective only.