



The Ohio Retirement Study Council

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Analysis

H.B. 628 - Rep. Hollister

S.B. 277 - Drake

(As Introduced)

May 2, 2000

ORSC POSITION

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The bill would make the following changes to the Public Employees Retirement System (PERS):

- Increases the age and service retirement benefit formula from 2.1% to 2.2% for each of the first 30 years of service under the state and local government divisions of PERS;
- Increases the age and service retirement benefit formula from 2.1% to 2.5% for each of the 21st through 25th years of service under the law enforcement division of PERS;
- Increases the benefit formula under the pre-1992 disability retirement plan from 2.1% to 2.2% for each year of accrued service, plus projected service credit until age 60, up to the current maximum of 75% of the disabled member’s final average salary (FAS);
- Increases the benefit formula under the post-1992 disability allowance plan from 2.1% to 2.2% for each year of accrued service, up to the current maximum of 60% of FAS;
- Creates an alternative survivor benefit based upon the member’s years of service in lieu of the number of qualified survivors under current law, and provides the greater of such amounts:

No. of Survivors	% of FAS	Minimum Benefit/Mo.
1	25%	\$250
2	40%	\$400
3	50%	\$500
4	55%	\$500
5 or more	60%	\$500

OR

Years of Service	% of FAS
20	29%
21	33%
22	37%
23	41%
24	45%
25	48%
26	51%

27	54%
28	57%
29 or more	60%

- Increases the above minimum monthly survivor benefit from the current \$96 to \$250 for one qualified survivor, \$186 to \$400 for two qualified survivors, and \$236 to \$500 for three or more qualified survivors, and eliminates the current age requirement of 50 for spouses to qualify for survivor benefits in cases where they are neither caring for surviving children nor physically or mentally competent, provided the member had at least ten years of service. The bill also provides that the final average salary used in the calculation of a benefit payable to the survivor of a disability benefit recipient shall be increased by the lesser of 3% or the actual percentage change in the CPI-W for each year between the effective date of the disability benefit and the date of death;
- Requires the PERS board to recalculate all benefits granted prior to the effective date of the bill in accordance with the above changes, and to add thereto all benefit increases authorized and granted prior to the effective date of the bill. The recalculated benefit shall be used as the new base amount for purposes of calculating cost-of-living allowances (COLA) as well as the ad hoc post-retirement increase described below;
- Requires the PERS board to provide an ad hoc post-retirement increase to individuals receiving a service, disability or survivor benefit that became effective on or before December 31, 1979 in accordance with the following schedule:

Effective Calendar Year	Percentage Increase
1955 or earlier	25.0%
1956	28.3%
1957	38.4%
1958	23.2%
1959	27.1%
1960	28.2%
1961	24.6%
1962	27.9%
1963	26.6%
1964	30.1%
1965	23.5%

1966	25.5%
1967	28.7%
1968	21.9%
1969	23.9%
1970	21.5%
1971	22.2%
1972	22.4%
1,973	21.3%
1,974	21.1%
1975	20.7%
1976	20.6%
1977	20.5%
1978	13.5%
1979	4.0%

- Requires the PERS board to pay a simple, annual 3% COLA to all benefit recipients receiving a benefit for at least twelve months, regardless of the annual percentage change in the CPI-W, and eliminates the current COLA bank;
- Permits the PERS board to establish a qualified governmental excess benefit arrangement in order to pay that portion of an individual’s benefit that exceeds the annual benefit limits established under Section 415 of the Internal Revenue Code (IRC);
- Permits the PERS board to establish one or more alternative defined contribution plans, in conjunction with the current defined benefit plan. If established, the plan(s) shall be made available to all PERS members;
- Reorganizes Chapter 145. of the Revised Code to accommodate the above changes and creates Chapter 148. of the Revised Code to relocate the current provisions governing the Ohio Public Employees Deferred Compensation Program, with corresponding amendments to other sections of law throughout the Revised Code that reference Chapters 145 and 148.

Further details regarding the above provisions of the bill follow:

Defined Benefit Formula Increases - The bill would increase the defined benefit formula for active members who retire or become disabled on or after the effective date of the bill for purposes of calculating a service

retirement benefit or a disability benefit.

Under current law, the defined benefit formula for age and service retirement under the state and local government divisions of PERS is 2.1% for the first 30 years of service, plus 2.5% for each year of service in excess of 30.¹ The bill would increase the percentage multiplier from 2.1% to 2.2% for each of the first 30 years of service; the current percentage multiplier of 2.5% for each year of service in excess of 30 would remain unchanged under the bill.

For example, a state or local government employee with 30 years of service receives 63% of FAS ($2.1\% \times 30 = 63\%$) under current law. Under the bill, the employee would receive 66% of FAS ($2.2\% \times 30 = 66\%$).

Under current law, the defined benefit formula for age and service retirement under the law enforcement division of PERS is 2.5% for the first 20 years of service, plus 2.1% for each year of service in excess of 20.² The bill would increase the percentage multiplier to 2.5% for the first 25 years of service, plus the current 2.1% for each year of service in excess of 25.

For example, a PERS law enforcement officer with 25 years of service currently receives 60.5% of FAS [$2.5\% \times 20 = 50\%$, plus ($2.1\% \times 5 = 10.5\%$) = 60.5%]. Under the bill, the law enforcement officer would receive 62.5% of FAS ($2.5\% \times 25 = 62.5\%$).

Under current law, PERS members qualify for coverage under one of two disability plans: the pre-1992 disability plan or the post-1992 disability plan.³ The defined benefit formula under the pre-1992 disability plan would increase from 2.1% to 2.2% for each year of service, plus each year of projected service until age 60, up to the current maximum of 75% of FAS. The defined benefit formula under the post-1992 disability plan would also increase from 2.1% to 2.2% for each year of service, up to the current maximum of 60% of FAS. The current minimum disability benefit under the pre-1992 disability plan and the post-1992 disability plan would remain 30% of FAS and 45% of FAS, respectively.

Under current law, the disability allowance under the post-1992 plan terminates upon the member's attainment of age 65 or the expiration of the following benefit period for members who become disabled on or after age 60:

¹ The maximum service retirement benefit under the state and local government divisions of PERS would remain the lesser of 100% of FAS or the annual dollar limit established under IRC Section 415.

²The maximum service retirement benefit under the law enforcement division of PERS would remain the lesser of 90% of FAS or the annual limit established under IRC Section 415.

³Individuals who were members of PERS on July 29, 1992 were given an opportunity to make a one-time, irrevocable election between disability coverage under the pre-1992 plan and the post-1992 plan. Individuals who became members after July 29, 1992 are automatically covered under the post-1992 disability plan.

Attained Age at Date of Disability	Benefit Period
60 or 61	60 months
62 or 63	48 months
64 or 65	36 months
66, 67 or 68	24 months
69 or older	12 months

On termination of the disability allowance, the member may apply for a service retirement benefit. Under current law, the service retirement benefit is the greater of the following amounts:⁴

- 2.1% for each year of service, *including* service credit for the period the member was receiving a disability allowance, up to a maximum of 45% of final average salary; or
- a benefit calculated under the defined benefit formula for age and service retirement, *excluding* service credit for the period the member was receiving a disability allowance.

The bill would increase the defined benefit formula for calculating the service retirement benefit to 2.2% for each year of service, *including* service credit for the period the member was receiving a disability allowance, up to the current maximum of 45% of final average salary. The defined benefit formula for age and service retirement, as modified under the bill, would also be used for determining the service retirement benefit for each year of service, *excluding* service credit for the period the member was receiving a disability allowance. The member would continue to receive the greater of the two amounts as under current law.

Survivor Benefit Improvements - The bill would make several changes to the benefits payable to the survivors of PERS members who die prior to eligibility for service retirement or, at the time of death, are receiving disability benefits.⁵

Currently, survivor benefits for these individuals are based upon the number of qualified survivors as follows:⁶

⁴Added to these amounts would be any additional cost-of-living adjustments the member would have received had the member retired as of the effective date of the disability allowance.

⁵The member must have had at least one and one-half years of contributing service, with at least one-quarter year of contributing service within the two and one-half years prior to the date of death, to qualify for survivor coverage.

⁶Qualified survivors currently include a spouse who is age 62, age 50 if the member had at least ten years of service, or regardless of age if the spouse is either caring for a qualified child or physically or mentally incompetent; unmarried child who is under age 18, age 22 if the child is a full-time student, or regardless of age if the child is physically or mentally incompetent; and a dependent parent who is age 65 or regardless of age if the parent is physically or mentally incompetent.

No. of Survivors	% of FAS	Minimum Benefit/Mo.
1	25%	\$96
2	40%	\$186
3	\$50%	\$236
4	55%	\$236
5 or more	60%	\$236

The bill would increase the minimum monthly survivor benefit from \$96 to \$250 for one survivor, \$186 to \$400 for two survivors, and \$236 to \$500 for three or more survivors.

The bill would create an alternative survivor benefit in lieu of the above schedule of benefits based upon the member’s years of service, and provide the greater of the two amounts as follows:

Years of Service	% of FAS
20	29%
21	33%
22	37%
23	41%
24	45%
25	48%
26	51%
27	54%
28	57%
29 or more	60%

For example, the surviving spouse of a member who had 29 years of service and no other survivors currently receives 25% of the member’s FAS. Under the bill, such spouse would receive 60%.

Under the bill, qualified survivors shall share equally in the alternative survivor benefit, except that if there is a surviving spouse, then the spouse shall receive the greater of 25% of FAS or \$250 per month and the other qualified survivors shall share equally in the remainder.

The bill would provide that the FAS used in the calculation of the above benefits payable to qualified survivors

of a disability benefit recipient shall be adjusted by the lesser of 3% or the percentage change in the CPI-W for each year between the effective date of the disability benefit and the date of death. Currently, the calculation of survivor benefits is based upon the FAS used in the calculation of the disability benefit.

The bill would change the qualification requirements for the spouse of a member who had at least ten years of service. Currently, the spouse must attain age 50 to qualify for survivor benefits if the spouse is neither caring for a qualified child(ren) nor physically or mentally incompetent. The bill would eliminate the age 50 requirement for such spouses, and thus make them eligible for benefits at any age. The bill would also clarify the qualification requirements for an unmarried child of a member to mean a child who has never been married.

Post-Retirement Benefit Increases - The bill would require PERS to recalculate the original benefit amount of all individuals receiving a benefit on the effective date of the bill in accordance with the above changes, and to add thereto all benefit increases authorized and granted by PERS prior to the effective date of the bill. The recalculated benefit would become payable on the first day of the month following the effective date of the bill, and would be used as the new base for purposes of calculating cost-of-living allowances (COLA) as well as the ad hoc post-retirement increase described below.

The bill would require PERS to provide an ad hoc post-retirement increase to all individuals receiving a benefit that became effective on or before December 31, 1979 in accordance with the following schedule:

Effective Calendar Year of Benefit	Percentage Increase
1955 or earlier	25.0%
1956	28.3%
1957	38.4%
1958	23.2%
1959	27.1%
1960	28.2%
1961	24.6%
1962	27.9%
1963	26.6%
1964	30.1%
1965	23.5%
1966	25.5%
1967	28.7%

1968	21.9%
1969	23.9%
1970	21.5%
1971	22.2%
1972	22.4%
1,973	21.3%
1,974	21.1%
1975	20.7%
1976	20.6%
1977	20.5%
1978	13.5%
1979	4.0%

The ad hoc post-retirement increase would become payable on the first day of the month following the effective date of the bill, and would be applied to the individual’s recalculated benefit as determined above. The ad hoc post-retirement increase would be included in the calculation of future COLA’s.

Current law requires PERS, along with the other four state retirement systems, to determine annually the average percentage change in the CPI-W. Whenever the CPI-W increases, PERS is required to pay a COLA equal to the percentage increase or that increase plus any prior accumulations in the benefit recipient’s COLA bank, up to a maximum of 3%, to each eligible benefit recipient who, during the period July 1 through June 30, has received a benefit for at least twelve months. The COLA is paid on the original benefit amount (unless the legislature establishes a new base). Any percentage increase in the CPI-W in excess of the maximum 3% is accumulated in the benefit recipient’s COLA bank and combined with the percentage increase in the CPI-W in succeeding years. Pursuant to Attorney General’s Opinion 87-044, each benefit recipient begins accumulating any excess percentages upon first becoming eligible for a COLA.

The bill would eliminate the COLA bank, and require PERS to pay a simple, annual 3% COLA to all benefit recipients receiving a benefit for at least twelve months, regardless of the annual percentage change in the CPI-W.

Excess Governmental Benefit Arrangements Authorized - The bill would authorize PERS to establish and maintain a qualified governmental excess benefit arrangement that meets the requirements of Section 415 (m) of the Internal Revenue Code, as amended, and any regulations adopted thereunder. If established, the excess benefit plan shall be maintained solely for the purpose of providing that portion of the member’s annual benefit

otherwise payable under the terms of PERS that exceeds the limits established under Section 415 of the Internal Revenue Code as applicable to governmental pension plans. Members shall not be permitted to elect to defer compensation under such excess benefit plan. Also, excess benefits shall not be paid from a trust forming part of PERS unless such trust is maintained solely for the purpose of providing such benefits. The PERS board may adopt rules to administer such excess benefit plans so established.

S.B. 190 which recently passed the Ohio General Assembly and is awaiting the Governor's signature included identical authority for all five state retirement systems.

Alternative Retirement Plan (ARP) Authorized - The bill would permit, but not require, the PERS board to establish one or more plans consisting of benefit options that provide for an individual account for each participating member. Benefits shall be based solely on the amounts accumulated in the participant's account. The plan may include options which provide definitely determinable benefits to the participant. *Each plan shall be made available to all PERS members.* The board may administer the plan and/or contract with other entities to administer it.

Each plan shall meet the tax qualification requirements under Section 401(a) of the Internal Revenue Code in order to avoid payment of federal income tax on contributions or the amounts earned thereon prior to the individual's receipt of a benefit. Each plan shall also satisfy the minimum retirement benefit requirements under the Internal Revenue Code to qualify as a retirement system maintained by a state or local government entity. A plan generally satisfies these federal requirements if allocations to the participant's account are at least 7.5% of the participant's compensation, regardless of whether such allocations are made by the participant, employer, or some combination of the two. Failure of the plan to satisfy these requirements would cause the participant and employer to contribute to the Social Security System under existing federal law.

Under the bill, the PERS board shall adopt rules to implement each plan so established. The board may also do all things necessary to avoid the payment of federal or state income taxes on plan contributions and earnings thereon.

The bill would create the "Defined Contribution Fund" in PERS, the fund in which contributions deducted from the earnable salaries of PERS members participating in the ARP shall be accumulated, along with any earnings and employer contributions credited thereon. Under the bill, ARP members would contribute the same percentage as Defined Benefit (DB) members which is currently 8.5% for state and local government employees and 9.0% for law enforcement officers. Employers may "pick-up" these contributions on a pre-tax basis pursuant to Section 414(h) of the Internal Revenue Code. Under the bill, contributions shall not exceed the limits established under Section 415 of the Internal Revenue Code.

Employers of ARP members would contribute the same percentage as employers of DB members which is currently 13.31% under the state division, 13.55% under the local government division, and 16.7% under the law enforcement division. For each ARP member, PERS shall transfer to the Employers' Accumulation Fund a portion of the employer contribution equal to a percentage of the member's earnable salary determined annually by the PERS actuary to be necessary to mitigate any negative financial impact on the DB plan resulting from participation of members in the ARP plan. The percentage transferred shall be increased or decreased

based on the annual results of the PERS actuary's determination; any change in the percentage shall take effect on the first day of the month following the date the actuarial results are reported to the PERS board. Under the bill, PERS shall make the above transfers to the Employers' Trust Fund until the unfunded actuarial accrued liabilities, *excluding health care benefits and any benefit increases provided to members and former members participating in the DB plan after the effective date of the bill*, is fully amortized, as determined by the annual actuarial valuation prepared by the PERS actuary.

Contributions made by and on behalf of ARP members shall be deposited and credited in accordance with the plan selected by the member. Contributions shall cease upon the member's death, termination of employment or any other reason specified under the ARP selected by the member.

The right of each member participating in the ARP to a retirement, disability, survivor, death, health care, and/or long-term health care benefit, or the withdrawal of any amounts accumulated in the member's account, shall be governed exclusively by the plan selected by the member. Subject to the current PERS reemployment restrictions, withholding orders for spouse and child support or as restitution for theft in public office and certain sex offenses committed in the context of the member's public employment, the member's right to any payment or benefit under the ARP shall vest as follows:

- The member's right to any payment or benefit that is based on member contributions is nonforfeitable;
- The member's right to any payment or benefit that is based on employer contributions is nonforfeitable as specified by the ARP selected by the member.

For married ARP members, the bill would require PERS or the entity administering the ARP to obtain, prior to making any payment, the consent of the spouse to the form of payment selected by the member. The ARP plan shall include the same requirements for consent as required under Section 417 of the Internal Revenue Code. Each ARP plan may waive consent if the spouse cannot be located or for any other reason permitted under the Internal Revenue Code. Consent or waiver shall only be effective with respect to the spouse who is the subject of the consent or waiver.

Each ARP shall permit each participating member to do all of the following:

- Maintain on deposit with PERS or the entity administering the ARP any amounts that have accumulated in the member's account;
- Redeposit with PERS or the entity administering the ARP any amounts withdrawn by the member;
- Make additional deposits as permitted under the Internal Revenue Code, as amended.

The bill would generally provide that the provisions governing the DB plan shall not apply to the ARP, except that the ARP may incorporate those provisions as specified by its plan document. The bill, however, specifically specifies that the following provisions governing the DB plan shall apply to each ARP established by PERS:

- The actuarial reporting requirements under R.C. §145.22;
- The maximum 30-year funding period established under R.C. §145.221;
- The various funds created under R.C. §145.23, including the Defined Contribution Fund;
- The establishment of each fund as a separate legal entity as provided under R.C. §145.25;
- The Treasurer of State as the custodian of each fund as provided under R.C. §145.26;
- The open records and confidentiality provisions under R.C. §145.27;
- The payment of contributions during disability leave as provided under R.C. §145.296;
- The reemployment rights and restrictions of retired public employees under R.C. §145.38;
- The reemployment rights of certain PERS retirees under R.C. §145.382;
- The excess governmental benefit arrangements authorized under R.C. §145.391;
- The employee contribution requirements under R.C. §145.47;
- The employer “pick-up” of employee contributions as authorized under R.C. §145.471;
- The employer contribution requirements under R.C. §145.48;
- The delinquent contribution statements as provided under R.C. §145.483;
- The separate calculation of PERS-LE contribution rates as provided under R.C. §145.49;
- The PERS administrative expense provisions under R.C. §145.54;
- The consent to deductions as provided under R.C. §145.55;
- The tax exemption and non-assignability provisions under R.C. §145.56;
- The vested rights statute under R.C. §145.561;
- The recovery of erroneous payments under R.C. §145.563;
- The withholding orders as restitution for theft in office and certain sex offenses as provided under R.C. §145.57;
- The budget appropriation requirements under R.C. §145.69; and
- The prompt payment from the Treasurer of State under R.C. §145.70.

Staff Comments -

Defined Benefit Formula Increases - The current defined benefit formula for service retirement under the state and local government divisions of PERS is 2.1% for the first 30 years of service, plus 2.5% for each year of service in excess of 30, up to a maximum of 100% of FAS. The current defined benefit formulas for service retirement in SERS and STRS are very similar, providing 2.1% for the first 30 years of service and a constant 2.5% for each year of service in excess of 30 years in SERS and an escalating percentage for each year of earned service in excess of 30 in STRS (2.5% for 31st year, 2.6% for 32nd year, 2.7% for 33rd year, etc.). The current maximum service retirement benefit is 100% of FAS in STRS and 90% in SERS.

The current defined benefit formula for service retirement under the law enforcement division of PERS is 2.5% for the first 20 years of law enforcement service, plus 2.1% for each year of law enforcement service in excess of 20, up to a maximum of 90% of FAS. The current defined benefit formulas for service retirement in OP&F and HPRS are very similar. Under OP&F, the formula is 2.5% for the first 20 years of service, plus 2.0% for the 21st - 25th years, plus 1.5% for each year of service in excess of 25, up to a maximum of 72% of FAS. The formula under HPRS, as revised under S.B. 189 this session, is 2.5% for the first 20 years of service, plus 2.25% for the 21st - 25th years, plus 2.0% for each year of service in excess of 25, up to a maximum of 79.25% of FAS.

The following table provides a history of the changes in the defined benefit formula in PERS since 1968:

Bill	Old Formula	New Formula
H.B. 959 (eff. 6/10/68)	1.65% x FAS x YOS, up to a maximum of 75% of FAS.	1.9% x FAS x YOS, up to a maximum of 80% of FAS.
H.B. 100 (eff. 12/31/71)	1.9% x FAS x YOS, up to a maximum of 80% of FAS.	2.0% x FAS x YOS, up to a maximum of 80% of FAS.
H.B. 430 (eff. 11/20/73)	Maximum: 80% of FAS.	Maximum: 90% of FAS.
H.B. 1312 (eff. 3/4/75) (PERS Law Enforcement)		2.5% x FAS x first 20 YOS, plus 1.5% x FAS over 20, up to a maximum of 66% of FAS
H.B. 548 (eff. 9/8/82) (PERS Law Enforcement)	2.5% x FAS x first 20 YOS, plus 1.5% x FAS over 20, up to a maximum of 66% of FAS	2.5% x FAS x first 20 YOS, plus 2.0% x FAS x 21 - 25 YOS, plus 1.5% x FAS x YOS over 25, up to a maximum of 72% of FAS.
H.B. 232 (eff. 2/16/84)	2.0% x FAS x YOS, up to a maximum of 90% of FAS.	2.1% x FAS x YOS, up to a maximum of 90% of FAS.
H.B. 552 (eff. 12/15/88) (PERS Law Enforcement)	2.5% x FAS x first 20 YOS, plus 2.0% x FAS x 21 - 25 YOS, plus 1.5% x FAS x YOS over 25, up to a maximum of 72% of FAS.	2.5% x FAS x first 20 YOS, plus 2.1% x FAS x YOS over 20, up to a maximum of 90% of FAS
H.B. 760 (eff. 1/1/89)	2.1% x FAS x YOS, up to a maximum of 90% of FAS.	2.1% x FAS x first 30 YOS, plus 2.5% x FAS x YOS over 30, up to a maximum of 100% of FAS

The bill would increase the defined benefit formula under the state and local government divisions to 2.2% for the first 30 years of service, with the same 2.5% multiplier for each year of service in excess of 30. Therefore, a member who retires with 30 years of service at any age would receive **66%** ($2.2\% \times 30 = 66\%$) of FAS under the bill rather than **63%** ($2.1\% \times 30 = 63\%$) of FAS under current law.

The bill would also increase the defined benefit formula under the law enforcement division to 2.5% for the first 25 years of service, with the same 2.1% multiplier for each year of service in excess of 25. Therefore, a member who retires with 25 years of law enforcement service would receive **62.5%** ($2.5\% \times 25 = 62.5\%$) of FAS under the bill rather than **60.5%** [$2.5\% \times 20 = 50\%$, plus $(2.1\% \times 5 = 10.5\%) = 60.5\%$] of FAS under current law.

The following table provides a comparison of the normal service retirement benefit formulas for other non-Social Security statewide retirement systems:

<u>State</u>	<u>Defined Benefit Formula for Normal Service Retirement</u>	<u>Percent of FAS Based upon 30 YOS</u>
Alaska	2.0% x first 20 YOS, plus 2.5% x YOS in excess of 20	65% of FAS
California	2.2% x YOS payable at age 60 2.3% x YOS at age 60 3/4 2.4% x YOS at age 61 1/2	66% of FAS 69% of FAS 72% of FAS
Colorado	2.5% x YOS	75% of FAS
Connecticut	2.0% x YOS	60% of FAS
Illinois	1.67% x first 10 YOS, plus 1.9% x second 10 YOS, plus 2.1% x third 10 YOS, plus 2.3% x YOS over 30 2.2% x YOS after 6/30/98 (Non-retired members may upgrade service prior to 6/30/98 to the 2.2% formula)	56.7% of FAS 66% of FAS
Kentucky	2.0% x YOS prior to 7/1/83, plus 2.5% x YOS after 7/1/83	68% of FAS
Louisiana	2.0% x YOS for teachers who joined prior to 7/1/99 2.5% x YOS for teachers who joined after 7/1/99	60% of FAS 75% of FAS
Maine	2.0% x YOS	60% of FAS
Massachusetts	1.0% x YOS payable at age 50 1.5% x YOS at age 55 2.0% x YOS at age 60 2.5% x YOS at age 65	30% of FAS 45% of FAS 60% of FAS 75% of FAS
Missouri	2.5% x YOS	75% of FAS
Nevada	2.5% x YOS	75% of FAS

Ohio	2.1% x YOS, plus 2.5% x 31st year of earned service, 2.6% x 32nd year, and so on.	63% of FAS
Texas	2.2% x FAS	66% of FAS

As shown in the above table, the current service retirement benefit formula under the state and local government divisions of PERS is higher than a few, but lower than most non-Social Security statewide retirement systems. Many states have recently increased their benefit formulas, including California, Illinois, Louisiana, and Texas. The proposed increase in the PERS service retirement formula seems well within reason in comparison to the other non-Social Security states' current service retirement formulas.

One of the principles adopted by the Ohio Retirement Study Council in its review and recommendations of retirement bills is that “there should be equal pension treatment among the various groups of non-uniformed public employees and as nearly as practicable retirement benefits should be uniform.” (March 1978) As indicated above, the service retirement benefit formulas for PERS, STRS and SERS are currently very similar, as are the disability and survivor provisions of the three non-uniformed retirement systems. The current coordination-of-benefit provisions providing for joint service and disability retirement and the portability of service credit provisions are largely predicated upon maintaining similar benefit structures in these retirement systems. *However, an overriding principle adopted by the ORSC is that “no proposed increase in pension benefits be seriously considered or granted until there is established adequate funding to cover its cost .”* (March 1978)

The proposed change in the defined benefit formula to 2.2% under the state and local government divisions of PERS is generally consistent with the changes made in S.B. 190 as passed by the 123rd Ohio General Assembly. Under S.B. 190, the STRS defined benefit formula is increased to 2.2%. It is also consistent with the proposed change included in S.B. 270 which would increase the SERS defined benefit formula to 2.2% as well. S.B. 270 is still pending review by the ORSC and the 123rd Ohio General Assembly.

The proposed change in the defined benefit formula to 2.5% for the first 25 years of service under the law enforcement division of PERS would provide a slightly higher service retirement benefit for PERS law enforcement officers (62.5%) than OP&F members (60%) and state troopers (61.25%). Just as members of the PERS law enforcement division have sought legislative action to establish parity in the eligibility requirements for normal age and service retirement, members of OP&F and HPRS are likely to use the same argument(s) to seek legislative action to achieve parity in the benefit formula for normal age and service retirement.

Neither this bill nor the proposed changes included in S.B. 270 would provide the significant financial incentive offered under S.B. 190, as passed by the 123rd Ohio General Assembly, for teachers to work beyond 30 years (normal retirement). Under S.B. 190, STRS members who have 35 years of earned service would receive **2.5%** rather than **2.2%** for each of the first 30 years of earned service, plus 2.5% for the 31st year, 2.6% for the 32nd year, 2.7% for the 33rd year, 2.8% for the 34th year and 2.9% for the 35th year, for a total benefit of 88.5% of FAS. PERS members and SERS members who have 35 years of service would receive

78.5% of FAS under their respective bills. The financial incentive offered under S.B. 190 is intended to respond to changing demographics in the STRS membership and the predicted shortage of teachers in the near future. The number of service retirements is expected to double in STRS within the next ten years, creating a growing need for experienced teachers. The stated purpose of the incentive is to retain experienced teachers who otherwise qualify for normal service retirement by encouraging them to defer their actual retirement by at least five years. Though there appears to be no similar labor shortage to justify such incentive for state and local government employees and non-certificated school employees, the continuing improvements in life expectancy in all five state retirement systems may provide justification, in and of itself, to consider incentives for members to work beyond normal retirement in the future.

Survivor Benefit Improvements - The bill would create an alternative survivor benefit based upon the member's years of service in lieu of the current survivor benefit based upon the number of qualified survivors, and provide the greater of the two amounts. The proposed change is intended to allow a survivor of a member who dies prior to eligibility for service retirement and has significant service credit to receive benefits that are commensurate with the member's service. Currently, a surviving spouse with no other qualified survivors receives the greater of 25% of the member's final average salary or \$96 per month, regardless of the member's years of service. The proposed change is modeled after a similar change made to STRS law in H.B. 721 (eff. 12/14/92) and is consistent with a proposed change to SERS law in S.B. 270 which, as indicated above, is still pending review by the ORSC and the 123rd Ohio General Assembly.

The bill provides that all qualifying survivors shall share equally in the alternative survivor benefit, except that if there is a surviving spouse, such spouse shall receive the greater of 25% of the member's final average salary or \$250 per month and the other qualifying survivors shall share equally in the remainder of the benefit. As drafted, the language could result in a surviving child actually receiving more than the surviving spouse if the member had significant service credit, contrary to the intent of this provision. The intent of this provision is to establish a minimum benefit amount for the spouse under the alternative survivor benefit option if there are other qualifying survivors. *Therefore, the bill should be amended to provide that the spouse shall receive no less than 25% of the member's final average salary (or \$250 per month).* For example, if a member has 29 years of service and dies prior to eligibility service retirement leaving a spouse and one surviving child, each survivor would share equally in the alternative survivor benefit of 60% of the member's final average salary (30% - spouse; 30% - child).

The bill would provide that the FAS used in the calculation of a survivor benefit payable to qualified survivors of a disability benefit recipient shall be adjusted by the lesser of 3% or the percentage change in the CPI-W for each year between the effective date of the disability benefit and the date of death. Currently, the calculation of survivor benefits is based upon the FAS used in the calculation of the disability benefit. This proposed change is consistent with a recent change made to STRS law in S.B. 190, as passed by the 123rd Ohio General Assembly, as well as a proposed change to SERS law in S.B. 270.

The bill would change the qualification requirements for the spouse of a member who had at least ten years of service. Currently, the spouse must attain age 50 to qualify for survivor benefits if the spouse is neither caring for a qualified child(ren) nor physically or mentally incompetent. The bill would eliminate the age 50 requirement for such spouses, and thus make them eligible for benefits at any age. This proposed change is

consistent with a change made to STRS law in S.B. 305 (eff. 3/29/88) as well as a proposed change to SERS law in S.B. 270.

The bill would increase the minimum monthly survivor benefit from the current \$96 to \$250 for one qualified survivor, \$186 to \$400 for two qualified survivors, and \$236 to \$500 for three or more qualified survivors. The current minimum monthly survivor benefits were established in H.B. 430 (eff. 9/1/73), and are the same in PERS, STRS and SERS. This bill would increase them in PERS only; the current minimum monthly survivor benefits would remain the same in STRS and SERS as neither the changes made in S.B. 190, as passed by the 123rd Ohio General Assembly, nor the proposed changes in S.B. 270 include such increase.

Post-Retirement Increases - Current PERS law provides for the following methods of retirement income protection: (1) Annual Cost-of-Living Allowances (COLA); (2) Comprehensive Retiree Health Care Program; and (3) Ad Hoc Legislative Post-Retirement Increases.

The annual COLA is generally payable upon receiving a benefit for at least 12 months, calculated upon the original benefit amount (unless the legislature establishes a new base), and limited to a maximum of three percent. The annual COLA became effective on July 1, 1971.

The bill would require PERS to pay an annual, simple 3% COLA, irrespective of the actual percentage change in the CPI-W. The COLA provisions of all five state retirement systems were last amended in H.B. 365 (eff. 7/1/96), which authorized each retirement board to pay a COLA equal to the actual percentage change in the CPI-W or such change plus any prior accumulations in the benefit recipient's COLA bank, up to the current maximum of 3%. Prior to this change, no COLA was paid whenever the CPI-W was less than 3%, except for eligible benefit recipients who had accumulated sufficient excess percentages in their COLA banks from prior years of inflation over and above 3% to make up the difference between the actual percentage change in the CPI-W and the minimum 3% required by statute.

This proposed change in the PERS COLA provisions raises a number of public policy issues. It would undermine the current uniformity among PERS, STRS, SERS and OP&F relative to the payment of COLA's to benefit recipients. It would also serve to increase long-term costs. The fact that the retirement system's actuary assumes that a 3% COLA will be paid each year does not mean that the proposed change will have no cost. To the extent that future benefit payments under a fixed 3% COLA exceed current payments under existing law, the provision will increase long-term costs. For the last eight consecutive years, the average percentage change in the CPI-W has been below 3%, thus resulting in actuarial gains (savings) to the retirement system. It would benefit recent retirees whose benefits have been eroded by inflation the least more than older retirees whose benefits have been eroded the most, thus creating an issue of equity. Under existing law, older retirees are, in effect, guaranteed a 3% COLA for life due to significant accumulations in their COLA banks from prior years of inflation over and above 3%, whereas recent retirees who retired on or after July 1, 1990 have accumulated 0 in their COLA banks due to very low inflation over the past decade. To provide a COLA that exceeds the effect of inflation on an individual's benefit seems inequitable to individuals who have been retired longer and provided less than a full adjustment to their benefits.

The PERS retiree health care program is perhaps the most valuable in terms of retirement income protection. It

provides comprehensive hospital, medical and prescription drug coverage. It also provides for reimbursement of the full cost of Medicare Part B monthly premiums (\$45.50). PERS was first authorized to pay the cost of retiree health insurance coverage on January 1, 1974.

The legislature has enacted various ad hoc post-retirement increases from time to time in an effort to offset in part the loss in the purchasing value of benefits during periods of high inflation. The last PERS ad hoc increase was granted in H.B. 365 (eff. 9/27/96), and restored the purchasing value of PERS members who retired prior to 1978 to a minimum of 70% of their original benefit amount, as adjusted for the cumulative change in the cost-of-living since retirement. These ad hoc increases were included in the benefit recipient's base for purposes of calculating the annual COLA.

The bill would provide similar ad hoc post-retirement increases. The bill would require the PERS board to recalculate all benefits granted prior to the effective date of the bill in accordance with the changes made in the bill, and to add thereto all benefit increases authorized and granted prior to the effective date of the bill. The recalculated benefit shall be used as the new base amount for purposes of calculating cost-of-living allowances (COLA) as well as the ad hoc post-retirement increase described below. S.B. 190, as passed by the 123rd Ohio General Assembly, provided for a similar recalculation, though the recalculation was limited to STRS service retirees and was based on the defined benefit formula in effect *prior to* the effective date of the bill. Under this bill, PERS would be required to recalculate the benefits of all benefit recipients, including service retirees, disability benefit recipients, and surviving beneficiaries, based upon the defined benefit formula and other benefit changes in effect on the effective date of the bill.

The bill would also require the PERS board to provide an ad hoc post-retirement increase to individuals receiving a service, disability or survivor benefit that became effective on or before December 31, 1979. The percentage increases vary from 4% to 38.4% based on the effective calendar year of the benefit. The percentage increases are calculated so that, on a cumulative basis, the purchasing value of the benefit is restored to 85%, as adjusted for inflation. This ad hoc increase shall be included in the benefit recipient's base for purposes of calculating the annual COLA, and is consistent with the STRS ad hoc increase included in S.B. 190, as passed by the 123rd Ohio General Assembly.

Excess Benefit Plans - The bill would authorize PERS to establish and maintain a qualified governmental excess benefit arrangement. Through the passage of the Small Business Job Protection Act of 1996, Congress permitted state and local retirement plans to establish these "excess benefit arrangements" under Section 415(m) of the Internal Revenue Code in order to pay plan benefits otherwise lost due to the Section 415 limits. An excess benefit plan may be established within the framework of a governmental pension plan. The qualified portion of the governmental plan can provide a benefit up to the Section 415 limit, while the amount above that limit can be provided by the excess benefit plan. In establishing an excess benefit plan, the governmental pension plan must adhere to the following constraints associated with such plans:

- The excess plan can only provide benefits that are not payable from the qualified governmental defined benefit plan due to the Section 415 limits.
- Operationally, benefits from the excess plan can not be paid from the qualified governmental defined

benefit plan's trust. Benefits can be paid on a pay-as-you-go basis or through a separate trust established for the sole purpose of providing excess benefits.

- The excess plan can not allow members to elect to defer additional compensation through the plan.

Identical provisions were adopted in S.B. 190, as passed by the Ohio General Assembly, which authorized the boards of all five state retirement systems to establish and maintain qualified governmental excess benefit arrangements. *Accordingly, such provision in this bill as well as the SERS proposal (S.B. 270) are unnecessary, and should be removed from both bills upon the impending Governor's signature of S.B. 190.*

Defined Contribution Plan - One of the ORSC staff recommendations made in the final report to the Joint Legislative Committee to Study Ohio's Public Retirement Plans (December 11, 1996) was that "an alternative defined contribution plan be established, in conjunction with the existing defined benefit plan, in the three non-uniformed employee systems to provide greater portability and options for employees."

By way of background, the Ohio General Assembly enacted H.B. 586 (eff. 3/31/97) which established an alternative defined contribution plan administered by outside providers for full-time academic and chief administrative employees of public institutions of higher education electing such plan in lieu of participation in the defined benefit plans of PERS, STRS or SERS. The bill also required STRS to pay interest upon the withdrawal of the member's contributions due to death or separation of employment, along with a 50% match from employer contributions for members who had at least five years of service. These legislative changes were favorably recommended by the ORSC and intended to address the issue of pension portability.

S.B. 144 was introduced this session which would require the PERS board to credit interest on the member's contributions, along with a 33% match of employer contributions for members with five but less than 10 years of service and a 67% match for members with ten or more years of service. The bill has been favorably recommended by the ORSC, passed by the Senate, and is pending before the House Health, Retirement & Aging Committee. S.B. 190, which requires the STRS board to establish an alternative defined contribution plan for its members, has also been favorably recommended by the ORSC, passed by the 123rd Ohio General Assembly and is pending the Governor's signature. Most recently, H.B. 623 was introduced, which would establish an alternative defined contribution plan administered by outside providers for elected officials and non-classified state employees. The bill is pending review by the ORSC and the 123rd Ohio General Assembly. All of these legislative measures seek to address the need for greater pension portability and options for Ohio's public employees, especially short-service, mobile employees, and are generally consistent with prior ORSC recommendations and positions concerning this issue. It should be noted that the SERS proposal embodied in S.B. 270 includes neither an alternative defined contribution plan nor an alternative benefit payout for its members.

Unlike S.B. 190, this bill would permit, but not require, the PERS board to establish an alternative defined contribution plan for its members. *Accordingly, the bill should be made consistent with S.B. 190, as passed by the 123rd Ohio General Assembly, by requiring the PERS board, like the STRS board, to establish such plan for its members.*

Also, unlike S.B. 190, the alternative DC plan established under H.B. 586 (eff. 3/31/97) and the alternative DC plan proposed under H.B. 623, the bill would require the PERS board to make the plan available to all PERS members. All of the other legislation relative to alternative DC plans has limited participation to new hires and current members who have less than five years of service (non-vested members) as a means of controlling additional benefit costs resulting from adverse selection. *Accordingly, the bill should be made consistent with these other legislative enactments and proposals by limiting participation in the PERS DC plan to new hires and current members with less than five years of service.*

Moreover, as indicated in our analysis of H.B. 199 (4/21/99), the very nature of law enforcement and public safety employment calls into question the appropriateness of extending an alternative DC plan to these public employees. The extensive disability and survivor coverage provided under the current defined benefit plans immediately upon employment is of particular value to these public employees due to the hazardous nature of their employment. Moreover, law enforcement officers and public safety officers tend to be career employees. The PERS alternative benefit payout proposed under S.B. 144 may address any pension portability issues of such employees, while simultaneously affording them the disability and survivor income protection provided under the existing PERS DB plan. *Accordingly, consideration should be given to limit participation in the PERS DC plan to members covered under the state and local government divisions of PERS, and not to members covered under the law enforcement division of PERS.*

Unlike S.B. 190, the alternative DC plan established under H.B. 586 (eff. 3/31/97) and the alternative DC plan proposed under H.B. 623, the bill fails to specify the various investment options available under the PERS DC plan. S.B. 190, as passed by the 123rd Ohio General Assembly, and the proposed changes included in H.B. 623 provide that the DC plan may include life insurance, annuities, variable annuities, regulated investment trusts, pooled investment funds, or other forms of investment. This language is modeled after the statute governing the Ohio Public Employees Deferred Compensation Program. H.B. 586 provides that the DC plan may provide benefits through the purchase of annuity contracts or certificates, fixed or variable in nature. *Accordingly, it is recommended that the bill be made consistent with the more expansive investment options provided under S.B. 190 and H.B. 623 in order to provide the PERS board the necessary flexibility to design such plans to meet the needs of its membership.*

The bill would require PERS or the contracting entity to obtain, prior to making any payment under the DC plan, the consent of the spouse to the form of payment selected by the member, including lump sum payments. *In the interest of consistency, the consent of the spouse should also be required under S.B. 144, which would establish the PERS alternative benefit payout plan.* Such recommended change would also be consistent with STRS law governing its alternative DC plan and alternative benefit payout plan.

The bill would require a supplemental employer contribution to be made on behalf of members electing the DC plan and to be paid to the DB plan in order to mitigate any negative financial impact upon the DB plan resulting from members participating in the DC plan. The amount of the supplemental employer contribution would be determined annually by the PERS actuary and would remain payable until the PERS unfunded actuarial accrued liabilities, excluding health care benefits and benefit increases provided to members and former members participating in the DB plan after the effective date of the bill, are fully amortized. This provision is consistent with S.B. 190, as recommended by the ORSC and passed by the 123rd Ohio General Assembly.

Miscellaneous - The PERS staff has requested that the current law governing death benefits be amended to provide that such benefits shall be funded solely from employer contributions and earnings thereon and shall be treated as life insurance, but shall not be subject to the state insurance laws. The purpose of this amendment is to allow such benefits to remain exempt from federal tax. The other four state retirement systems have similar provisions. Accordingly, it is recommended that the death benefit provisions of all five state retirement systems be amended in order to retain the favorable federal tax treatment of such benefits.

Fiscal Impact - See the attached actuarial analysis prepared by the ORSC actuary, Milliman & Robertson.

ORSC Position - At its meeting of May 2, 2000, the Ohio Retirement Study Council recommended that the 123rd Ohio General Assembly approve H.B. 628/S.B. 277 upon the adoption of the following amendments: (Sub. H.B. 628 incorporates all of these amendments.)

- Retain the existing statutory authority governing the 3% COLA under PERS;
- Clarify the language governing the alternative survivor benefit plan to provide that the spouse shall receive no less than the minimum benefit amount established under the existing survivor benefit plan;
- Eliminate the language authorizing a qualified governmental excess benefit arrangement since S.B. 190, as enacted by the 123rd Ohio General Assembly, includes identical authority for all five state retirement systems;
- Mandate rather than permit the PERS board to establish an alternative DC plan;
- Limit participation in the alternative DC plan to new hires and current members who have less than five years of service (non-vested members);
- Exclude PERS members covered under the law enforcement division from participation in the alternative DC plan;
- Provide that the PERS DC plan may include life insurance, annuities, variable annuities, regulated investment trusts, pooled investment funds, or other forms of investment;
- Amend the death benefit provisions of all five state retirement systems to provide that such benefits shall be funded solely by employer contributions and earnings thereon and treated as life insurance in order to allow such benefits to remain tax exempt; and
- Make the technical changes included in the attached appendix.

Appendix: Technical Changes: H.B. 628/S.B. 277 (As Introduced)

M _____ moved to amend as follows:

In line 148, after “section” insert “742.01,”; after “3307.01” delete “or” and insert a comma; after “3309.01” insert “, OR 5505.01”

Delete lines 989 delete everything after “investments”

Delete lines 990 through 991

In line 992 delete “persons”

In line 995 delete “CONSIST OF” and insert “ADMINISTER’

In line 996 delete “, IF ESTABLISHED,”

In lines 1,244, 1,290 and 1,338 delete “commission” and insert “COUNCIL”

In line 1,378 before “shall” insert “UNDER SECTION 145.48 OF THE REVISED CODE”

In line 1,469 delete everything after “(G)”

In line 1,470 delete “OF THE REVISED CODE, THE” and insert “THE”

In line 1,477 after the period insert “THE DEFINED CONTRIBUTION FUND IS ALSO THE FUND FROM WHICH SHALL BE PAID ALL BENEFITS, ANNUITIES, AND BENEFITS IN LIEU THEREOF, AS ALLOWED UNDER A PLAN ESTABLISHED UNDER SECTION 145.81 OF THE REVISED CODE.”

Delete lines 2,704 through 2,730

Between lines 3,060 and 3,069 insert Section 145.451 of the Revised Code, as amended:

“(A) Upon the death of a retirant or disability benefit recipient, who at the time of death is receiving an age and service retirement benefit or a disability benefit from this system, a death benefit shall be paid, following the completion of an application on a form approved by the public employees retirement board, to one of the following in the order given:

(1) The person he has designated in writing duly executed on a form provided by the board, signed by him , and filed with the board. If more than one such designation has been made, the person last designated shall be considered the person designated.

Appendix: Technical Changes: H.B. 628/S.B. 277 (As Introduced)

- (2) His surviving spouse;
 - (3) His children, share and share alike;
 - (4) His parents, share and share alike;
 - (5) The person responsible for burial expenses;
 - (6) The retirant's or disability benefit recipient's estate.
- (B) The amount of the death benefit shall be as follows:
- (1) If the retirant or disability benefit recipient had at least five years' but less than ten years' total service credit, five hundred dollars;
 - (2) If the retirant or disability benefit recipient had at least ten years' but less than fifteen years' total service credit, one thousand dollars;
 - (3) If the retirant or disability benefit recipient had at least fifteen years' but less than twenty years' total service credit, one thousand five hundred dollars;
 - (4) If the retirant or disability benefit recipient had at least twenty years' but less than twenty-five years' total service credit, two thousand dollars;
 - (5) If the retirant or disability benefit recipient had twenty-five or more years' total service credit, two thousand five hundred dollars.
- (C) “A BENEFIT PAID UNDER THIS SECTION SHALL BE TREATED AS LIFE INSURANCE FOR PURPOSES OF THIS CHAPTER AND SHALL BE FUNDED SOLELY FROM EMPLOYER CONTRIBUTIONS UNDER SECTION 145.48 OF THE REVISED CODE AND EARNINGS ATTRIBUTABLE THERETO.”

Delete lines 3,350 through 3,357

In line 3,423 before “IF” insert “(4)”

In line 3,480 delete everything after “CHAPTER”

In line 3,481 delete everything before “less”; and insert “PAYMENT” before “less”

In line 3,498 delete “sections” and insert “CHAPTER”

In line 3,529 delete “PESON” and insert “PERSON”

In line 3,573 delete “MAY” and insert “SHALL”

In line 3,579 delete “SHALL” and insert “MAY”

In line 3,644 after “145.49” insert “145.51”

In line 3,671 delete “COMPENSATION” and insert “EARNABLE SALARY”

In line 3,684 delete “MONTH” and insert “YEAR”

Appendix: Technical Changes: H.B. 628/S.B. 277 (As Introduced)

In line 3,786 delete “sections”

In line 3,841 delete “those sections” and insert “THIS CHAPTER”

The motion was _____ agreed to.