



**Ohio
Retirement
Study
Council**

30 East Broad Street, 2nd Floor
Columbus, Ohio 43215
PHONE: 614-228-1346
FAX: 614-228-0118

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Edna Brown
Jay Hottinger

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*H.B. 520 of the 131st
General Assembly*

*Reps. Schuring and
Ramos*

*October 13, 2016
(Effective date April 6, 2017)*

ORSC Recommendation and Enactment

Staff Contact
Jeffery A. Bernard
(614) 228-5644

Summary of H.B. 520

H.B. 520 makes administrative and clarifying changes to the laws governing the five state retirement systems. It makes a number of substantive changes. It also modifies the calculation used to determine the mitigating rate applying to alternative retirement plan (ARP) participants. The bill expands PERS Law Enforcement positions.

ORSC Comments

The majority of the changes in the bill relate to administrative and clarifying changes which are listed below as dot pots. The ORSC recommends approval of all of the following changes as they improve the operation of the retirement systems:

Changes affecting multiple systems

- Provides survivor benefits until age 22 to the qualified child of a Public Employees Retirement System (PERS), State Teachers Retirement System (STRS), or Ohio Police and Fire Pension Fund (OP&F) member who dies before retirement regardless of whether the child is attending an institution of learning or training.
- Provides death benefits from the Ohio Public Safety Officers Death Benefit Fund until age 22 to the surviving child of a public safety officer regardless of whether the child is attending an institution of learning or training.
- Eliminates provisions under which a PERS, STRS, or School Employees Retirement System (SERS) member who earns service credit in more than one system during the same time period receives partial credit from each system in which credit is earned.
- Requires that any legal action commenced against OP&F or STRS be filed in Franklin County.
- Provides that, to transfer service credit between CRS and either STRS or SERS, the member must have a majority of credit in the system being transferred to.
- Removes a number of obsolete provisions and makes technical corrections.

Public Employees Retirement System

- Requires a PERS disability benefit recipient to undergo a periodic, rather than annual, medical examination.
- Reduces to two months (from three) the time a PERS member or re-employed retirant must wait to receive a refund of the member or retirant's PERS contributions.

- Specifies that the last established beneficiary of a deceased PERS member who was also a member of STRS or SERS is the sole beneficiary in all the systems if a survivor benefit may be paid under provisions coordinating PERS, STRS, and SERS benefits.

Ohio Police and Fire Pension Fund

- Establishes as conditions for return of contributions of an OP&F member who terminates active service that two months have elapsed and the member has not returned to active service during the two-month period.
- Requires a deceased member's accumulated contributions that are not claimed within seven years to be transferred to the Guarantee Fund and paid to the member's survivor or the member's or survivor's estate on application to the OP&F Board.
- Specifies that money due or to become due to an individual from OP&F is not subject to the operation of bankruptcy or insolvency laws but is subject to an order for division of marital property.
- Requires an application submitted to OP&F to be in the form and manner specified by the Fund.

State Teachers Retirement System

- Excludes from "compensation" for purposes of STRS contributions and benefits any portion of the amount paid to a teacher as a retroactive payment of earnings, damages, or back pay under a court order or settlement agreement that is excluded from compensation under continuing law.
- Revises when the STRS Board terminates payment of a disability benefit.
- Eliminates the dollar amount multiplier that may be used to calculate the pension portion of an STRS disability retirement benefit.
- Allows an STRS member to receive credit for the period as a recipient of an STRS disability benefit if the member has become a contributor to the STRS defined contribution plan and earns at least two additional years of service credit.
- Makes a recipient of an STRS allowance or benefit beginning on or after August 1, 2013, that was immediately preceded by a disability benefit that was terminated on or after that date, eligible for a cost-of-living adjustment on the date that would have been the disability benefit's next anniversary date.
- Authorizes the STRS Board to establish a plan for retirants re-employed as teachers under which the retirant's STRS contributions are invested at the retirant's direction in accordance with investment options established by the Board and, if the Board establishes a plan, requires STRS to transfer each retirant's contributions to it.

- Requires STRS to withhold or recover from the recipient of an STRS retirement or disability benefit who is employed in a position subject to the Cincinnati Retirement System (CRS) any amount that is to be forfeited under CRS requirements.
- Requires certain STRS members who purchase service credit for an absence or leave due to illness, injury, or professional reasons to purchase the credit by paying STRS instead of treating it as a pass through from the member's employer.
- Includes in the benefit used to calculate future cost-of-living adjustments paid a survivor of a deceased STRS member who was receiving a disability benefit any increases the member received while receiving the disability benefit.
- Eliminates the minimum survivor benefit dollar amount for qualified STRS survivors whose benefits are based on the number of qualified survivors.
- Clarifies that any return of contributions or unpaid disability benefits payable to a deceased STRS member's beneficiaries are to be paid to the beneficiaries designated by the member.

State Highway Patrol Retirement System

- Provides for designation of beneficiaries by State Highway Patrol Retirement System (SHPRS) members and retirants.
- Specifies that a surviving spouse of a deceased SHPRS member or retirant is eligible for a monthly pension based on the member's or retirant's age and service only if the member or retirant had at least 20 years of service credit.
- Clarifies that only SHPRS members who are eligible for retirement with an unreduced pension may elect to participate in the system's deferred retirement option plan (DROP).
- Changes the effective date of a member's election to participate in DROP to the first day of the first payroll period immediately following the SHPRS Board's receipt of the election (instead of the date the member files the election).
- Permits SHPRS retirants to authorize dues checkoffs on behalf of certain organizations composed of retired State Highway Patrol employees.

The bill includes the following changes of note:

- Suspends or terminates the PERS disability benefit of a recipient who *fails*, rather than *refuses*, to file required information with the PERS Board. LSC staff noted in their analysis that the change does not include an exception for an individual who is incapacitated and incapable of submitting the form.¹ However, the ORSC

¹ LSC Analysis, "H.B. 520 of the 131st General Assembly, As Introduced," 11.

is comfortable with the change as PERS currently has a one year suspension period during which an incapacitation issue is resolved.²

- Requires for transfer to PERS or purchase of CRS credit in PERS that a PERS member have more PERS service credit than the amount of CRS credit to be transferred or purchased.³
- Requires for transfer of PERS credit to CRS that a CRS member have more CRS service credit than the amount of PERS credit to be transferred.⁴
- Eliminates provisions under which an STRS member may purchase credit for school board service only if the member is or will be eligible to retire and retires within 90 days after purchasing the credit. Note that this is not altering the cost of service credit purchases made under pension reform. The 90-day requirement is no longer necessary as all purchases must be 100% of the additional liability.⁵
- Causes certain future community (charter) school non-teaching employees to be excluded from SERS. The change removes a membership determination for individuals that do not exist due to the timing of the effective date of the charter school changes. The amendment removes a provision that had no effect as the specified individuals do not, and will not, ever exist.⁶
- Provides that SERS members who are eligible to participate in Medicare prior to age 65 must do so in order to be eligible for SERS health care coverage. As with other current provisions of law, such as a requirement to enroll in employer health care coverage if reemployed and requirement to participate in Medicare Part B, members are expected to utilize available health coverage options prior to enrolling in SERS health care.⁷
- As with the other systems, a SERS member who is subject to a retirement benefit forfeiture order for certain offenses may instead request for withdraw of contributions. The bill clarifies that, if the member has a spouse, the spouse must provide written consent of the withdraw (the spouse must provide written consent for the other systems under existing law unchanged by the bill).⁸
- Requires an SHPRS member to have at least five years of service credit to be eligible for off-duty disability retirement. SHPRS currently provides *on-duty* disability retirement immediately on employment. The other law systems require five years of employment prior to being eligible for *off-duty* disability retirement. *The ORSC, therefore, recommends this policy change as it would standardize the off-duty disability retirement provisions between the law enforcement systems.*⁹

² R.C. 145.362(B).

³ R.C. 145.2911.

⁴ R.C. 145.2912.

⁵ R.C. 3307.78.

⁶ R.C. 3309.013.

⁷ R.C. 3309.392.

⁸ R.C. 3309.42.

⁹ R.C. 5505.18(A).

- Requires a disability pension to be terminated if an SHPRS disability retiree is re-employed as a law enforcement officer. *While this is a policy change, it is a logical extension of disability re-employment provisions applicable to all of the state retirement systems; therefore, the ORSC recommends the change be approved.*¹⁰
- Removes the requirement that actions of the SHPRS Board be approved by a majority of the Board's members. Currently only SHPRS and SERS require a majority of members, rather than a majority of a quorum, to take action. The ORSC is neutral on this change as there are valid arguments to be made under both voting requirements. However, as this change would make SERS the only system requiring a majority of members voting, the ORSC advise SERS staff to consider whether their current voting requirements make sense.¹¹
- Provides that SHPRS DROP participants are "retired" for purposes of electing membership to the Board. Because these individuals remain "active" employees in all other ways, the change provides that SHPRS DROP participants be treated as "active" for Board election purposes. The amendment would make the SHPRS DROP provisions consistent with OP&F as OP&F DROP participants are "active" for purposes of electing membership to the Board.¹²

H.B. 520 includes the following provision that the ORSC recommends be modified or removed for further review and interested party discussion:

- Excludes employer contributions from "compensation" for purposes of STRS additional annuity payments amounts that are in excess of certain percentage increases.¹³ The ORSC recommends that the portion of the employer match returned to the member be tied to the withdrawal portion, as this provision appears to be closest to a withdrawal (although the comparison is not exactly the same), which is currently provided at 50%. The ORSC agrees that the member should not receive 100% of the employer contribution (as provided in current law) as there is no other situation of full withdrawal of employer contributions in STRS law. *However, the ORSC recommended that this provision either be pulled from H.B. 520 for further review or set to match the withdrawal rate, rather than 0%, of those employer amounts.*¹⁴

Actuarial analysis of administrative changes

¹⁰ R.C. 5505.18(F) and (G).

¹¹ R.C. 5505.04.

¹² R.C. 5505.52.

¹³ R.C. 3307.501(D).

¹⁴ As Enacted, H.B. 520 excludes the entirety of employer amounts under this provision.

According to analyses done by the retirement systems and as reviewed by the ORSC consulting actuary, the actuarial impact of the above changes would be negligible.¹⁵

The bill also includes the following policy changes.

Mitigating Rate

Background

In December of 2014, ORSC staff issued a report on the employer contribution rate diverted to a retirement system in order to mitigate the negative financial effect of the alternative retirement plan (ARP).¹⁶ That study noted that the calculation was unnecessarily opaque, inconsistent, and not in line with the directives of the General Assembly. Staff listed six considerations that could be included in developing a new formula. Subsequent to that study, Am. Sub. H.B. 64 of the 131st General Assembly froze the mitigating rate as follows but did not adjust the statutory formula:

PERS 0.77%

STRS 4.50%

SERS 6.0%

H.B. 520 eliminates the frozen rates and modifies the actual formula used in determining the mitigating rate in PERS, STRS, and SERS. Described simply, the amendment establishes a rate that is one-fourth of that needed to amortize unfunded accrued liability (UAL) payments resulting from the ARP, capped at 4.5%. The calculation under the bill is as follows:

1) Determine the “historical liability.” The historical liability is the difference between the cumulative mitigating rate contributions received from ARP members for UAL payments and the cumulative contributions that would have been applied to the UAL had the member not participated in ARP. This historical liability is used both in determining the initial mitigating rate and also as a floor on the mitigating rate in the future.

2) For the initial mitigating rate study in December 2016, determine the following:

a) Calculate the percentage contribution necessary to amortize the “historical liability” determined in 1 above over an indefinite period (greater than 100

¹⁵ William B. Forna, “Analysis of House Bill 520 – General Issues” (October 11, 2016).

¹⁶ Jeff Bernard, “Alternative Retirement Plan Mitigating Rate: Report on Rate History and Operation, as Required by Am. H.B. 483 of the 130th General Assembly” (December 11, 2014).

years). Add to this the percentage contribution necessary to amortize over a 30-year period the portion of existing UAL (**excluding** the historical liability figure) attributed to ARP payroll.¹⁷

b) Determine the mitigating rate which will be one-fourth of the percentage sum determined under 2a above, not to exceed 4.5%.

3) For each subsequent 5-year study after 2016, determine the following:

a) Determine the percentage contribution necessary to amortize over a 30-year period the portion of existing UAL (**excluding** the historical liability) of the most recent actuarial valuation attributed to ARP payroll.

b) Determine the mitigating rate which will be one-fourth of the sum of the indefinite historical liability percentage contribution rate determined above under 2a plus the updated UAL percentage contribution rate determined under 3a, not to be less than one-fourth of the indefinite historical liability percentage contribution rate under 2a, but not to exceed 4.5%.

While not simple, any interested party will be able to calculate the figure using retirement system financial reports. The mitigating rate calculation under the bill is a determinable number that follows the original six suggestions made by ORSC staff (*italicized* below) in its 2014 report to clarify the mitigating rate formula:

1) *Recognize that there is a negative financial impact on the retirement system due to ARP participation and that this effect is related to the UAL.* The proposed formula acknowledges the negative financial impact both historically and currently and ties that negative impact directly to UAL in a predictable, measurable manner.

2) *That a consistent formula be established in statute to provide clarity and consistency for employees, employers, and the retirement systems.* As a statutory formula based on an actual UAL figure present in the systems financial statements, the proposed formula will provide consistency over time and eliminate the opaqueness of the current formula.

3) *That the formula use as its central data point the most recent unfunded accrued liability rate for the relevant system.* The key data point in the proposed formula is the UAL attributed to ARP membership and payroll.

4) *That the General Assembly consider and specify the extent of the mitigation provided by ARP employers and whether there is a cap on that amount.* The formula answers this question by providing for a rate that is at least one-fourth of percentage rate needed to amortize historical ARP liabilities, with a cap of 4.5%.

¹⁷ By considering the compensation of those existing ARP members, the UAL attributed to ARP could be higher, if ARP participants on average earn more than a typical retirement system member, or lower, if ARP participants on average earn less than a typical retirement system member.

5) *Whether the mitigation of the unfunded accrued liability owed by employers has a termination date.* The formula addresses this recommendation by establishing a rate that continues into the future at not less than one-fourth of the historical liability rate.

6) *Whether adjustments to the unfunded accrued liability should be made to account for benefit increases, benefit decreases, 13th check provisions (in the case of STRS), and health care contributions made in the post-1999 period for the defined benefit plan, and how that would be expressed.* Perhaps the most difficult suggestion to implement, the proposal addresses this issue by calculating the historical liability as a function of what would have been collected by the system had the member not participated in ARP. This formula excludes just the types of benefit changes that could artificially affect these historical liabilities.

According to analyses done by the actuaries for PERS, STRS, and SERS, the bill results in the following mitigating rates:

System	Current Rate	H.B. 520	Rate Floor
PERS	0.77%	2.44%	0.61%
STRS	4.50%	4.47%	0.70%
SERS	6.00%	3.48%	0.36%

Actuarial analysis of mitigating rate proposal

The ORSC consulting actuary reviewed the bill and made the following comments:

We have reviewed the mitigating rate provisions in depth including a review of sample calculations and the ORSC draft discussion of the provisions. We believe that the process in HB 520 is unnecessarily cumbersome, but is a reasonable actuarial approach given the various objectives of setting a mitigating rate. In particular, we question the necessity of treating the “historical liability” any different from other unfunded liabilities, particularly considering the arbitrary use of a multiple of one-fourth and a limit of 4.5%.

But notwithstanding our questioning of the basic calculation process, we have thoroughly reviewed the language and examples and find that they develop a reasonable (albeit complex) approach for setting a mitigating rate.¹⁸

ORSC recommends that the new mitigating rate formula be approved by the General Assembly to provide consistency and measurability to the mitigating rate.

Additional Amendments and General Assembly Modifications

PERS Law Enforcement and PERS-OP&F Transfer of Credit

¹⁸ William B. Fornia, “Analysis of House Bill 520 – Mitigating Rate” (October 11, 2016).

The ORSC approved for inclusion in H.B. 520 an amendment, AM2391-4, as discussed below. Amendment AM2391-7 was incorporated into the bill instead, as discussed in bold below. The ORSC approved an amendment (AM2391-4) that has two distinct parts. First, AM2391-4 provides that a number of employment positions be included in the definition of a "law enforcement officer." "Law enforcement officers" are eligible for enhanced law enforcement benefits but are subject to additional employee and employer contributions. The expanded positions are as a bureau of criminal identification and investigation investigator, gaming agent, Department of Taxation investigator, special police officer for a port authority, and special police officer for a municipal airport. The amendment would provide a one-time opportunity for those employed in the expanded positions on the effective date of the bill to elect to receive *future* credit as a law enforcement officer. The election is irrevocable and must be made in 90 days or less. The amendment is prospective in nature and will not create additional liabilities for prior service as that service will not be retrospectively converted to PERS-LE credit.

The original intent of the law enforcement program was to provide benefits for law enforcement officers whose duties and training were similar to those of police officers, but who, at that time, did not have the career longevity needed to receive a retirement benefit from OP&F. The first groups of employees eligible for benefits under the law enforcement divisions were required to have as primary duties preserving the peace, protecting life and property, and enforcing the laws of the state. As later groups have been added to the division, the emphasis for eligibility has shifted from the primary duties of the employee to the type of training the employee has received. While training is important, it is the duties of the officer of preserving the peace, protecting life and property, and enforcing the laws of the state that justifies the enhanced benefit.

AM2391-4 requires both the specified training and the requirement to have primary duties preserving the peace, protecting life and property, and enforcing the laws of the state to be eligible for law enforcement credit. Including these individuals would be consistent with prior ORSC recommendations in 2002 (H.B. 158 and 215 of the 124th GA) and 2006 (H.B. 286 of the 126th GA) to include new members with requisite training and duties, and consistent with ORSC recommendations in 2005 (H.B. 66 of the 126th GA) and 2006 (H.B. 270 of the 126th GA) to not include those without requisite training and duties.

ORSC does note that anytime the PERS law enforcement division is expanded, it may cause other individuals to seek inclusion. Additionally, the amendment would increase costs for employees and employers due to the increased contribution rates.

The second part of AM2391-4 relates to the transfer of service credit between OP&F and PERS.

S.B. 42 of the 130th GA modified the transfer of service credit provisions of STRS, SERS, and PERS. One provision was to provide that a member who transfers credit must do so into the system in which the member has the most credit, the logic being that the benefit paying system should be the system in which the member had the most

service and most contributions. S.B. 42 also provided that, for PERS (but not SERS or STRS), the “majority of credit provision” applied to transfers involving the uniform systems (HPRS and OP&F).

However, in existing law, credit from a non-uniform system (including PERS) may not be transferred to a uniform system unless the member is an *active member* of that uniform system. The combination of the changes in S.B. 42 and existing law had the effect of orphaning certain members with credit in both PERS and a uniform system: those members are unable to get a career benefit from any system even though, combined, they had sufficient credit. For instance, a member with 20 years of credit with OP&F who then becomes a PERS member for 5 years would not be permitted to transfer the 5 years of PERS credit to OP&F or the 20 years of OP&F credit to PERS. As Ohio is a non-Social Security state, this could result in significant unplanned hardship on those individuals, requiring the member to work additional years or receive a substantial reduction in benefits.

The amendment would remove this impediment for uniform service transfers between OP&F and PERS by removing the active service requirement in OP&F for uniform service (Law Enforcement and Public Safety service) transfers to OP&F. As a result, those with *full-time* service credit in PERS-LE and PERS-PS may freely transfer credit to OP&F regardless of if they are an active member of OP&F at the time of transfer. As under continuing law, *part-time* credit will continue to be non-transferable to OP&F. The transfer of funds between the systems would follow the same principles as under current law. This includes a provision allowing OP&F to reduce the amount of credit granted in OP&F if the member does not pay additional contributions to OP&F. This means that PERS uniform credit will continue to be treated differently in OP&F.

The amendment also provides for a 90-day period in which those PERS members who have a majority of credit in OP&F as police or fire fighters may elect to transfer that OP&F credit into PERS for retirement eligibility purposes. After the 90-day period, those individuals will have to have a majority of credit in PERS to transfer the OP&F credit.

ORSC comments

One guiding principle for the ORSC is prior precedent. On this issue prior precedent is mixed. For most of ORSC’s history, OP&F has not permitted credit to be transferred into OP&F unless the member was actively serving in a position covered by OP&F. One reason for this was likely because the non-uniform systems did not have the law enforcement duties that would justify an earlier, enhanced benefit. Therefore, it would not make sense for an individual with 15 years of OP&F credit and 10 years serving in a non-law position, who is currently serving in that non-law position, to instead retire early as a law enforcement officer. Current law’s active requirement prevented this type of enhanced benefit for non-uniform employees.

However, two conditions suggest that this prior precedent may need to be revisited. First, PERS has, since 1975, included a law enforcement benefit. Currently, this includes approximately 8,884 individuals. Transfers, therefore, may be uniform to

uniform. Second, portability of credit has always been promoted in Ohio, and the recent trend has been to standardize transfers. The active service requirement has been one of the most significant blocks to portability, even if this was an intentional block.

Current situation

The combination of S.B. 42 and existing law has created an untenable position for certain members. AM2392-4 would remove a barrier to retirement by removing the active service requirement in OP&F for PERS uniform service transfers. ORSC note a number of issues that would continue to be inconsistent and could continue to prevent consolidation of uniform service credit:

- a) Part-time credit continues to be non-transferable to OP&F, reduced or otherwise.
- b) OP&F may continue to reduce the value of PERS uniform service credit when transferred to OP&F, even though both are uniform service.
- c) The “majority credit” provision is not standard between uniform and non-uniform systems.
- d) The active service requirement still applies to SHPRS credit.
- e) The principles of joint retirement expressed in S.B. 42 will not be uniformly expressed.

Actuarial analysis of transfer credit provisions

The ORSC consulting actuary reviewed the concept of the amendment and had the following comments:

We understand that the draft amendment would modify [the bill] so that the PERS to OP&F transfer would only be available under certain circumstances and only for LE and PS positions. This would effectively eliminate our actuarial cost concerns. Furthermore, we understand that OP&F can reduce the amount of incoming credit by rule. For example, if the PERS-LE transfer amount only covers 90% of the cost of full OP&F credit, then only 90% of the credit would be granted. Once again, this alleviates our concern over actuarial costs.

While there are clearly some winner and loser systems with the general transfer rules, as long as there is an approximate balance between members transferring from System A to System B to those transferring from System B to System A, there is no significant actuarial concern.

In conclusion, as planned to be modified, HB 520 does not have an unfavorable actuarial impact for its transfer methodology.¹⁹

ORSC AM2391-4 recommendation

Given that some members are currently unable to retire even though they have sufficient credit, ORSC recommends that **AM2391-4** be added to H.B. 520 for the following reasons:

¹⁹ William D. Fornia, “Analysis of House Bill 520 – Transfer Provisions” (October 12, 2016).

- a) ORSC has consistently advocated for portability.
- b) The amendment continues the long-term trend of standardizing transfer provisions by allowing uniform to uniform service transfers.
- c) Currently, a number of members are unable to retire even though they have sufficient credit. In the absence of an alternative on this pressing issue and giving deference to the more recent action of the General Assembly, ORSC recommends maintaining the change under S.B. 42 and eliminating the active service in OP&F that applies to PERS uniform service. This will enable a number of members to again retire.
- d) The expansion of law enforcement personnel is consistent with prior ORSC recommendations.

As enrolled, the bill includes AM2391-7, which includes the expansion of PERS Law Enforcement as described above. AM2391-7 does not include any of the changes to the transfer of service credit. Instead, the bill provides for a 90-day period in which certain OP&F and PERS members may transfer service credit irrespective of the transfer restrictions discussed above. As a result, it is probable that subsequent to the 90-day period certain individuals will again be unable to transfer credit and will therefore be unable to retire under continuing law.

ORSC Recommendation

At its October 13, 2016 meeting the ORSC recommended that the General Assembly approve H.B. 520

The ORSC recommend that the compensation exclusion for certain STRS contributions be tied to the withdrawal rate, rather than being set to 0%. The current withdrawal employer match is 50%. If this amendment were added, STRS would increase the amount of employer amounts withheld from these excess contribution from 0% (under current law), to 50%.²⁰

As discussed above, subsequent action from the GA modified an ORSC recommendation regarding service credit transfers between PERS and OP&F.

Effective Date: April 6, 2017.

²⁰ R.C. 3307.501(D).