

Legislative Analysis



SERS - DUTY DISABILITY/DUTY DEATH BENEFITS

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House Bill 5093 (Substitute H-2)

Sponsor: Rep. Paul Condino

Committee: Senior Health, Security and Retirement

First Analysis (3-23-04)

BRIEF SUMMARY: The bill revises the calculations for the duty disability benefit and the duty death benefit, which are capped at \$6,000 and \$2,400, respectively, for members less than 60 years of age. Instead, each benefit would be a minimum of \$6,000.

FISCAL IMPACT: Cost increases to the State Employees Retirement System are indeterminate, but are considered to be actuarially insignificant. The September 30, 2003 SERS actuarial evaluation shows that there are only 477 duty disability retirants and 22 duty disability survivors out of a total of 45,491 retirants/beneficiaries. The average annual pension benefit for the duty disability retirants is \$5,624; and \$2,075 for duty disability survivors. Their combined total pension allowances were less than four tenths of one percent of the \$708.6 million in total FY 2003 pension allowances paid.

THE APPARENT PROBLEM:

Under the State Employees Retirement Act, a member of the retirement system is eligible for a duty disability retirement if he or she becomes totally incapacitated for duty “without willful negligence” on his or her part, because of a personal injury or disease that occurred as the natural and proximate result of the member’s employment. There is no minimum service requirement for a duty disability retirement. To receive duty disability retirement, a person must be examined by the system’s medical advisor, who must certify that the member is mentally or physically totally incapacitated for further performance of duty and that the incapacity is likely to be permanent. The retirement board must approve the retirement. The maximum benefit payable on a duty disability retirement is \$6,000 per year for retirees who are not yet 60 years of age. When the member turns 60 years of age, the benefit is recalculated based on the regular pension formula, with service credit given for the time the member was receiving a duty disability benefit.

In addition, under the act, the spouse, minor children, and dependent parents of a member of the retirement system are eligible for duty death benefits if the member dies because of a personal injury or disease that occurred in the course of the member’s employment with the state, with such injury or disease being the “sole and exclusive” result of state employment. The benefit is also available to the spouse, children, and dependent parents of disability retirees who die prior to attaining 60 years of age and within three years after the disability retirement of the same causes for which he or she retired from the state. The maximum benefit payable is \$2,400 annually.

When originally enacted, the duty disability payment was capped at \$1,800 until a person reaches 60 years of age. Public Act 126 of 1954 increased the cap to \$2,200, and Public Act 237 of 1955 increased the age requirement to 65 years of age. The most recent amendment came in 1987 with Public Act 241, which increased the duty disability cap to \$6,000 and lowered the age requirement back to 60 years of age. Similarly, when originally enacted, the duty death benefit was capped at \$1,500 for benefits paid to the spouse or children of the deceased member and \$600 for each dependent parent or \$900 for both parents. Public Act 237 of 1955 capped the duty death benefit provided to all beneficiaries at \$2,400 and increased the age requirement to 65 years of age. Public Act 241 of 1987 lowered to age requirement back to 60 years of age, but did not increase the maximum allowable benefit. Given that the maximum allowable duty disability benefit and duty death benefit have not increased in quite some time (nearly 50 years in the case of the duty death benefit) it has been suggested that the benefits be increased.

THE CONTENT OF THE BILL:

The bill would amend provisions in the State Employees Retirement Act regarding duty disability and duty death disability allowances paid, and make other ostensibly technical amendments regarding parental leave time and duty-non-duty disability benefits to participants in the defined contribution system.

Duty Disability Benefits

Under the State Employees Retirement Act, until a member reaches 60 years of age, the disability benefit is two-thirds of the member's final average compensation, subject to the cap of \$6,000 or an amount which when added to any worker's compensation benefits exceeds the member's final compensation. The bill would revise the calculation for the duty disability benefit, so that the benefit would be calculated in the same manner as section 20(1) of the act. Under that section, the retirement allowance is the number of years of service multiplied by 1.5 percent of the final average compensation. The minimum amount of the benefit would be \$6,000, but would not be more than an amount that when added to worker's compensation benefits, exceeds the member's final compensation.

Under the act, the duty disability benefit is payable on the date of the member's disability, and the later of (1) not more than six months prior to the member's application for disability retirement, and (2) not before the date the member's name last appears on a state payroll with pay. Under the bill, the benefit would be payable not before the first day of the month after the later of (1) 12 months prior to the date of the disability retirement application, and (2) the date the member's name last appeared on the state payroll with pay.

Duty Death Benefits

Under the State Employees Retirement Act, the spouse, minor children, and dependent parents of a member of the retirement system are eligible for duty death benefits if the

member dies because of a personal injury or disease that occurred in the course of the member's employment with the state, with such injury or disease being the "sole and exclusive" result of state employment. The benefit is also available to the spouse, children, and dependent parents of disability retirees who die prior to attaining 60 years of age and within three years after the disability retirement of the same causes for which he or she retired from the state. The maximum benefit payable is \$2,400 annually.

The bill provides that except as otherwise provided, the duty death benefit would be calculated as if the deceased member had retired the day prior to the date he or she died, elected "option A" under section 31(1), and nominated his or her spouse as the beneficiary. The benefit would be based on the amount of the deceased member's years of credited service. If the deceased member does not have the minimum number of years, the amount necessary to reach the minimum would be granted to the member. The minimum benefit would be \$6,000 per year, except that when payable to a surviving spouse, it would not be more than an amount that, when added to the member's workers compensation payable to the surviving spouse, exceeds the deceased member's final compensation. [Option A of Section 31(1) provides that "[u]pon the retirant's death, his or her reduced retirement allowance shall be continued throughout the life of and paid to the retirement allowance beneficiary whom the member nominated by written designation executed and filed with the retirement board before the effective date of his or her retirement."]

Under the act, the benefit payable to a surviving spouse (at the time employment with the state ended) is equal one-third of the deceased member's final compensation, subject to the \$2,400 cap. The total benefit payable to any surviving children under 18 years of age is equal one-fourth of the deceased member's final compensation. The benefits provided to any child cease upon that child dying, marrying, or turning 18 years of age, whichever occurs first. If there is no surviving spouse, each child under 18 years of age is provided a benefit equal to one-fourth of the deceased member's final compensation, except that the total amount paid shall not exceed one-half of the deceased member's final compensation. If there is no surviving spouse or minor children, but there are dependent parents of the deceased members, those parents are provided a benefit equal to one-sixth of the deceased member's final compensation.

Under the bill, if the deceased member had a surviving spouse and children under 21 years of age, the benefit would be divided so that the spouse would receive half of the benefit and the children would receive the other half. Benefits provided a child would cease upon that child dying, marrying, or turning 21 years of age, whichever occurred first. If there is no surviving spouse, the surviving children would be entitled to the benefit, payable in equal shares to each child and until the child dies, marries, or turns 21 years of age, whichever occurs first. If there is no surviving spouse or children, a monthly allowance would be provided to one surviving dependent parent (i.e., total and permanently disabled and dependent upon the deceased member for at least half of the parent's financial support). The allowance would be calculated in the same manner as if the deceased member had retired because of age and service on the day prior to the date of death, elected the option in section 31(1)(a), and nominated the surviving parent as the

beneficiary. The benefit provided to a surviving dependent parent would cease upon that parent marrying or dying.

Duty death benefit payments granted prior to the bill's effective date and due on or after June 1, 2004, would be adjusted as follows: (1) benefit payments could not be less than \$6,000 per year, or (2) a portion of the payment payable to a surviving child or parent could not be less than that portion of a benefit than that parent or child was receiving prior to the bill's effective date.

Duty Disability Benefit Medical Examination Requirement

The act permits the retirement board to require any member with a disability retirement under the age of 60 to undergo a medical examination at the time of application for duty disability benefits. If a member refuses to undergo the examination, his or her benefits could be discontinued until he or she assents to the examination. If the refusal continues for at least a year, all rights in the benefit may be revoked by the retirement board.

The bill would expand this section to also include non-duty disability retirees (see Section 24) and participants in the defined contribution system who retired and receive duty and non-duty disability supplemental benefits.

Duty/Non-Duty Disability Benefits - Defined Contribution Participants

The act provides a "supplemental benefit" to participants in the defined contribution system who become totally incapacitated for duty in the service of this state because of a personal injury or disease that is found to be a "natural and proximate" result of his or her employment with the state. This supplemental benefit is equal to the duty disability benefit provided under section 21 to members of the state employees retirement system (defined benefit plan)

The bill adds that, with certain exceptions, a qualified participant who becomes totally incapacitated because of injury or disease would be retired if the participant (or certain other individuals on the participant's behalf) files an application for benefits with the retirement board within one year after becoming incapacitated, the retirement board finds that the injury or disease is the "natural and proximate result" of the participants performance of duty, a medical advisor examines the participant and certifies that the participant is mentally or physically totally incapacitated for further performance of duty, and the retirement board concurs in with the recommendation of the medical advisor.

The act also provides a "supplemental benefit" to participants in the defined contribution system who have been employed with the state for at least 10 years and who become totally and permanently incapacitated for duty because of reasons not in the performance of duty. The supplemental benefit is equal to the non-duty disability benefit provided under section 24 to members of the state employees retirement system (defined benefit plan).

The bill adds that, with certain exceptions, a qualified participant who becomes totally incapacitated for duty because of an injury or disease that is not the natural and proximate result of his or her performance of duty could be retired if the participant (or certain other individuals on the participant's behalf) file an application with the retirement board, a medical advisor examines the participant and certifies that the participant is mentally or physically totally incapacitated for further performance of duty and the participant should be retired, and the participant has been a state employee for at least 10 years.

Parental Leave

The act permits members who leave state service for parental leave reasons, and then return to service without other intervening employment of more than 20 hours per week to purchase service credit for the time during which they were on parental leave. The bill would also permit members who have left service for a reporting unit of the public school employees' retirement system to purchase service credit for time on parental leave.

The bill would require a member requesting to purchase service credit to submit an application certifying the time period claimed for parental leave and the purpose of that leave. If the leave claimed is leave that is taken to care for the member's children, he or she would also have to provide a copy of the child's birth certificate or an adoption document. Credit for parental leave could only be claimed until the child marries or turns 18 years of age, whichever occurs first.

ARGUMENTS:

For:

The bill provides some much needed financial support to state retirees and their families in cases in which the state workers were disabled or died in the performance of their duties to the state. The maximum duty disability payment was set at \$6,000 in 1987, without any cost of living adjustments. That \$6,000 in 1987 is now worth less than \$4,000. Also, the \$2,400 duty death benefit cap, which was set in 1955, is worth approximately \$350. Clearly, these amounts need to be increased. By setting the floor amount of these benefits at \$6,000, the bill provides some financial support to many state retirees.

In addition, by revising the calculation for the duty disability and duty death benefits for those retirees when they reach 60 years of age to make it conform with the calculations of other retirees, the bill creates some parity and equity in the state employees retirement system.

For:

The amendments relating to the duty and non-duty disability benefits provided to participants in the defined contribution system provide equal treatment to workers in the two kinds of state retirement system, the defined benefit and defined contribution plans. Certain provisions that already apply to members in the defined benefit plan under

Section 21 (duty disability benefits) and Section 24 (Non-duty disability benefits) would now also apply to participants in the defined contribution system.

For:

The bill also makes some technical amendments related to the purchase of credit for parental leave time. In a performance audit of the State Employees Retirement System from 1993, the auditor general included a finding that while the State Employees Retirement Act allowed for the purchase of service credit for parental leave, it did not specify the age limits or the purposes to which the credit can be applied. Moreover, the Office of Retirement Services during the time of the audit between 1987 and 1993, did not always require members to certify the reason for purchasing parental leave service credit.

The auditor general added, “[t]hese conditions allow for the possible purchase of service credit that is not intended by the acts. For example, the acts permit the purchase of service credit by individuals who leave service for child rearing. However, ORS permitted the purchase of child rearing service credit by an employee whose child was 24 years old, married, and living out of the State during the credited period. Also, this employee’s retirement file lacked documentation to certify the purpose of the purchase of the service credit. The acts require that the employee certify the reason for the child rearing service credit.” Further, “[c]larification of what constitutes allowable child rearing time and ensuring that members certify the purpose for purchasing child rearing service credit would help prevent the purchase of service credit not intended by the acts.”

POSITIONS:

The Office of Retirement Services supports the bill. (3-19-04)

The UAW indicated that it supports the bill. (3-18-04)

The Retirement Coordinating Council indicated that it supports the bill. (3-18-04)

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.