(124th General Assembly)
(Substitute House Bill Number 244)

AN ACT

To amend sections 742.32, 742.35, 742.351, 742.38, and 742.56 and to enact sections 742.352 and 742.353 of the Revised Code to modify the penalties assessed against employers who fail to submit certain reports and information to the Ohio Police and Fire Pension Fund and to reduce the amount of certain penalties currently owed by employers.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 742.32, 742.35, 742.351, 742.38, and 742.56 be amended and sections 742.352 and 742.353 of the Revised Code be enacted to read as follows:

Sec. 742.32. The fiscal officer of each employer shall transmit monthly to the secretary of the board of trustees of the Ohio police and fire pension fund a report of employee deductions in such form as the board requires. The report shall show all deductions for the fund made pursuant to section 742.31 of the Revised Code and shall be accompanied by payments covering the total of such deductions. The report shall also include the name of each member for whom deductions were made and the portion of the payment attributed to that member. Separate payments shall be so transmitted for that portion of such deductions made from the salaries of members of the police department and for that portion of such deductions made from the salaries of members of the fire department. The report and payment are due the last day of the month following the last day of the reporting period. A penalty ~~of five per cent of the total amount due for the particular reporting period~~ determined under section 742.352 of the Revised Code shall be ~~added when~~ assessed if any of the following occur:

(A) The report~~, together with payments~~ is received by the board after the due date or is not in the form required by the board.

(B) Payments to cover the total amount due from the salaries of all employees of the employer~~, is transmitted thirty or more days after the last day of the reporting period~~ are received by the board after the due date. ~~The~~

The penalty shall be added to and collected on the next succeeding regular employer billing. If the penalty is not paid within ~~three months~~ sixty days after it is added to the regular employer billing, interest at a rate determined by the board may be charged on the total amount due and the amount of the penalty from the date the amount is due to the date of payment.

The secretary of the board, after making a record of all such receipts and crediting each employee's individual account with the amount deducted from the employee's salary, shall deposit the receipts with the treasurer of state for use as provided by this chapter. Where an employer fails to deduct contributions for any employee and transmit such amounts to the fund, the board may make a determination of the employee's liability for contributions and certify to the employer the amounts due for collection in the same manner and subject to the same penalties as payments due the employer's contributions funds.

Sec. 742.35. ~~Each~~ As used in this section, "calendar quarter" means the three-month period ending on the last day of March, June, September, or December.

Each employer shall pay its annual police officer employers' contribution and firefighter employers' contribution in four equal installments promptly as provided in sections 742.33 and 742.34 of the Revised Code. ~~Sixty~~ If an employer fails to make a payment on or before the date that is sixty days after the ~~date an installment is due, any amounts which remain unpaid shall be subject to~~ last day of the calendar quarter, a penalty ~~for late payment in the amount of five per cent~~ determined under section 742.352 of the Revised Code shall be assessed against the employer. In addition, interest on past due accounts and penalties may be charged at a rate determined by the board ~~of trustees of the Ohio police and fire pension fund~~ from the date the installment is due to the date of payment.

Upon certification by the board to the county auditor of an amount due from any employer within the county who is subject to this chapter, by reason of such employer's delinquency in making employer contribution payments to the fund for past ~~years~~ months, such amount shall be withheld from such employer from any funds in the hands of the county treasurer for distribution to such employer. Upon receipt of such certification, the county auditor shall draw a warrant against such funds in favor of the fund for the amount.

Sec. 742.351. (A) On receipt of written notice of a member's election to retire under division (C) of section 742.37 of the Revised Code, the Ohio police and fire pension fund shall request from the employer verification of

the member's termination date and any other information the fund determines necessary to calculate and pay a pension under that division. The request shall be on a form created by the fund and specify the date by which the information must be received by the fund, which shall be sixty days after the form is sent by the fund.

(B)(1) On receipt of a request for information under division (A) of this section, the employer shall complete the form and return it to the fund not later than the date specified by the fund.

(2) If the fund does not receive the completed form by the specified date, the fund shall send notice by certified mail to the employer that unless the completed form is received not later than thirty days after the specified date a ~~fine~~ penalty will be imposed.

(C) The fund shall assess against an employer that fails to return the completed form by the end of the period described in division (B)(2) of this section a ~~fine of one hundred dollars per day. The period for which the fine shall be imposed begins the thirty-first day after the date notice is mailed under division (B)(2) of this section and ends on the day before the day the completed form is received by the fund. Any amount due from an employer under this division shall be collected from the county auditor in the manner provided in section 742.35 of the Revised Code for delinquent contributions~~ penalty determined under section 742.353 of the Revised Code.

(D) The fund shall make one or more monthly payments to a member whose pension does not commence by the ninety-first day after the fund sends a request for information under division (A) of this section due to the employer's failure to return the completed form required under this section. Payment under this division shall commence on the first day of the second month following a month that includes a day for which an assessment against the employer is required under division (C) of this section. The payment shall be an amount equal to ~~one hundred dollars for every day that an assessment is required~~ the penalty assessed under division (C) of this section less any administrative costs incurred by the fund in complying with this section. Payment shall continue on a monthly basis until the member receives the total amount attributable to the required penalty for an employer's failure to return the form that was requested for that member's information.

Sec. 742.352. (A) Unless rules are adopted under division (C) of this section, the penalties for failing to transmit reports and payment in accordance with sections 742.32 and 742.56 of the Revised Code or payments in accordance with section 742.35 of the Revised Code shall be as follows:

(1) If a report or payment is at least one but not more than ten days past due, one hundred dollars;

(2) If a report or payment is at least eleven but not more than thirty days past due, the greater of one thousand dollars or one per cent of the payment;

(3) If a report or payment is at least thirty-one but not more than one hundred eighty days past due, the greater of three thousand dollars or two per cent of the payment;

(4) If a report or payment is at least one hundred eighty-one days but not more than two hundred ten days past due, the greater of seven thousand five hundred dollars or five per cent of the payment;

(5) If a report or payment is at least two hundred eleven days past due, the sum of the penalty described in division (A)(4) of this section and, for each day that the report or payment is past due after two hundred ten days, fifty dollars.

(B) Any amount due from an employer under division (A) of this section shall be collected from the county auditor in the same manner as is provided in section 742.35 of the Revised Code.

(C) The board of trustees of the Ohio police and fire pension fund may adopt rules to do all of the following:

(1) Establish penalties in amounts that do not exceed the amounts described in this section;

(2) Establish standards to determine whether an employer has submitted a report in the form required by the board;

(3) Lengthen the periods of time for employers to comply with sections 742.32, 742.35, and 742.56 of the Revised Code.

Sec. 742.353. (A) Unless rules are adopted in accordance with division (C) of this section, the penalties assessed under sections 742.351 and 742.38 of the Revised Code shall be as follows:

(1) If a form, report, or statement is at least one but not more than ten days past due, one hundred dollars;

(2) If a form, report, or statement is at least eleven but not more than thirty days past due, one thousand dollars;

(3) If a form, report, or statement is at least thirty-one but not more than one hundred eighty days past due, three thousand dollars;

(4) If a form, report, or statement is at least one hundred eighty-one days but not more than two hundred ten days past due, seven thousand five hundred dollars;

ee dollars and thirty-seven cents.

The total of the penalties paid by an employer under this section in a calendar year shall not exceed twenty thousand dollars.

(B) Any amount due from an employer under division (A) of this section shall be collected from the county auditor in the same manner as is provided in section 742.35 of the Revised Code.

(C) The board of trustees of the Ohio police and fire pension fund may adopt rules to do all of the following:

(1) Establish penalties in amounts that do not exceed the amounts described in this section;

(2) Establish standards to determine whether an employer has submitted a form, report, or statement in the form required by the board;

(3) Lengthen the periods of time for employers to comply with sections 742.351 and 742.38 of the Revised Code.

Sec. 742.38. (A)(1) The board of trustees of the Ohio police and fire pension fund shall adopt rules establishing minimum medical testing and diagnostic standards or procedures to be incorporated into physical examinations administered by physicians to prospective members of the fund. The standards or procedures shall include diagnosis and evaluation of the existence of any heart disease, cardiovascular disease, or respiratory disease. The rules shall specify the form of the physician's report and the information to be included in it.

The board shall notify all employers of the establishment of the minimum standards or procedures and shall include with the notice a copy of the standards or procedures. The board shall notify all employers of any changes made to the standards or procedures. Once the standards or procedures take effect, employers shall cause each prospective member of the fund to submit to a physical examination that incorporates the standards or procedures.

(2) Division (A)(2) of this section applies to an employee who becomes a member of the fund on or after the date the minimum standards or procedures described in division (A)(1) of this section take effect. ~~Not later than thirty days after such an~~ For each employee ~~becomes a member of the fund~~ described in division (A)(2) of this section, the employer shall forward to the board a copy of the physician's report of a physical examination that incorporates the standards or procedures described in division (A)(1) of this section. If an employer fails to forward the report in the form required by the board on or before the date that is sixty days after the employee becomes a member of the fund, the board shall assess against the employer a ~~fine of one hundred dollars per day, beginning with the first day after the date the~~

~~report is due and ending on the last day prior to the date the report is received by the board. Any amount due from an employer under division (A)(2) of this section may be collected from the county auditor in the same manner as is provided in section 742.35 of the Revised Code~~ penalty determined under section 742.353 of the Revised Code.

(B) Application for a disability benefit may be made by a member of the fund or, if the member is incapacitated as defined in rules adopted by the board, by a person acting on the member's behalf. Not later than fourteen days after receiving an application for a disability benefit from a member or a person acting on behalf of a member, the board shall notify the member's employer that an application has been filed. The notice shall state the member's position or rank. Not later than twenty-eight days after receiving the notice or filing an application on behalf of a member, the employer shall forward to the board a statement certifying the member's job description and any other information required by the board to process the application.

If the member applying for a disability benefit becomes a member of the fund prior to the date the minimum standards or procedures described in division (A)(1) of this section take effect, the board may request from the member's employer a copy of the physician's report of the member's physical examination taken on entry into the police or fire department~~. Not later than twenty-eight days after receiving a request from the board, the employer shall forward a copy of the report~~ or, if the employer does not have a copy of the report, a written statement certifying that the employer does not have a copy of the report. If an employer fails to forward the report or statement in the form required by the board on or before the date that is twenty-eight days after the date of the request, the board shall assess against the employer a ~~fine of one hundred dollars per day, beginning with the first day after the date the report or statement is due and ending on the last day prior to the date the report or statement is received by the board. Any amount due from an employer under this division may be collected from the county auditor in the same manner as is provided in section 742.35 of the Revised Code~~ penalty determined under section 742.353 of the Revised Code. The board shall maintain the information submitted under this division and division (A)(2) of this section in the member's file.

(C) For purposes of determining under division (D) of this section whether a member of the fund is disabled, the board shall adopt rules establishing objective criteria under which the board shall make the determination. The rules shall include standards that provide for all of the following:

(1) Evaluating a member's illness or injury on which an application for

disability benefits is based;

(2) Defining the occupational duties of a police officer or firefighter;

(3) Providing for the board to assign competent and disinterested physicians and vocational evaluators to conduct examinations of a member;

(4) Requiring a written report for each disability application that includes a summary of findings, medical opinions, including an opinion on whether the illness or injury upon which the member's application for disability benefits is based was caused or induced by the actual performance of the member's official duties, and any recommendations or comments based on the medical opinions;

(5) Providing for the board to consider the member's potential for retraining or reemployment.

(D) This division does not apply to members of the fund who have elected to receive benefits and pensions in accordance with division (A) or (B) of section 742.37 of the Revised Code or from a police relief and pension fund or a firemen's relief and pension fund in accordance with the rules of that fund in force on April 1, 1947.

(1) As used in division (D)(1) of this section:

(a) "Totally disabled" means a member of the fund is unable to perform the duties of any gainful occupation for which the member is reasonably fitted by training, experience, and accomplishments. Absolute helplessness is not a prerequisite of being totally disabled.

(b) "Permanently disabled" means a condition of disability from which there is no present indication of recovery.

A member of the fund who is permanently and totally disabled as the result of the performance of the member's official duties as a member of a police or fire department shall be paid annual disability benefits in accordance with division (A) of section 742.39 of the Revised Code. In determining whether a member of the fund is permanently and totally disabled, the board shall consider standards adopted under division (C) of this section applicable to the determination.

(2) A member of the fund who is partially disabled as the result of the performance of the member's official duties as a member of a police or fire department shall, if the disability prevents the member from performing those duties and impairs the member's earning capacity, receive annual disability benefits in accordance with division (B) of section 742.39 of the Revised Code. In determining whether a member of the fund is partially disabled, the board shall consider standards adopted under division (C) of this section applicable to the determination.

(3) A member of the fund who is disabled as a result of heart disease or

any cardiovascular or respiratory disease of a chronic nature, which disease or any evidence of which disease was not revealed by the physical examination passed by the member on entry into the department, is presumed to have incurred the disease while performing the member's official duties, unless the contrary is shown by competent evidence.

(4) A member of the fund who has completed five or more years of active service in a police or fire department and has incurred a disability not caused or induced by the actual performance of the member's official duties as a member of the department, or by the member's own negligence, shall if the disability prevents the member from performing those duties and impairs the member's earning capacity, receive annual disability benefits in accordance with division (C) of section 742.39 of the Revised Code. In determining whether a member of the fund is disabled, the board shall consider standards adopted under division (C) of this section applicable to the determination.

(5) The board shall notify a member of its final action awarding a disability benefit to the member within thirty days of the final action. The notice shall be sent by certified mail, return receipt requested. Not later than ninety days after receipt of notice from the board, the member shall elect, on a form provided by the board, either to accept or waive the disability benefit award. If the member elects to waive the disability benefit award or fails to make an election within the time period, the award is rescinded. A member who later seeks a disability benefit award shall be required to make a new application, which shall be dealt with in accordance with the procedures used for original disability benefit applications.

A person is not eligible to apply for or receive disability benefits under this division, section 742.39 of the Revised Code, or division (C)(2), (3), (4), or (5) of former section 742.37 of the Revised Code unless the person is a member of the fund on the date on which the application for disability benefits is submitted to the fund.

With the exception of persons who may make application for increased benefits as provided in division (2) or (4) of this section or division (C)(3) or (5) of former section 742.37 of the Revised Code on or after July 24, 1986, or persons who may make application for benefits as provided in section 742.26 of the Revised Code, no person receiving a pension or benefit under this section or division (C) of former section 742.37 of the Revised Code may apply for any new, changed, or different benefit.

Sec. 742.56. (A) The board of trustees of the Ohio police and fire pension fund may by rule establish a payroll deduction plan for payment of the following:

(1) The cost of service credit members of the fund are eligible to purchase under this chapter;

(2) Charges for participation in programs established under section 742.53 of the Revised Code.

(B) In addition to any other matter considered relevant by the trustees, the rules shall specify all of the following:

(1) The types of service credit that may be paid for through payroll deduction, including the section of the Revised Code that authorizes the purchase of each type of service credit for which payment may be made by payroll deduction;

(2) The procedure to be followed by a member to inform the member's employer and the Ohio police and fire pension fund that the member wishes to purchase service credit under this chapter or pay for participation in programs established under section 742.53 of the Revised Code and chooses to pay for it through payroll deduction;

(3) The procedure to be followed by the fund to determine for each request the amount to be deducted, the number of deductions to be made, and the interval at which deductions will be made. The rules may provide for a minimum amount for each deduction or a maximum number of deductions for the purchase of any type of credit, but shall provide that no deduction may exceed the member's net compensation after all deductions and withholdings required by law.

(4) The procedure to be followed by employers in transmitting amounts deducted from the salaries of their employees to the fund;

(5) The procedure to be followed by the fund in crediting service credit to members who choose to purchase it through payroll deduction.

(C) If the trustees of the fund establish a payroll deduction plan under this section, the trustees shall certify to the member's employer for each member for which deductions are to be made, the amount of each deduction and the payrolls from which deductions are to be made. The employer shall make the deductions as certified and transmit the amounts deducted ~~in accordance with the rules established by the trustees under this section~~ on or before the last day of the month following the last day of the reporting period during which the deductions are made. The deduction shall be accompanied by a report, in such form as the board requires, that includes the name of each member for whom deductions were made and the deductions attributed to that member. If the employer fails to transmit the deductions or the report on or before the last day of the month following the last day of the reporting period during which the deductions are made, a penalty determined under section 742.352 shall be assessed against the

employer. On certification by the board to the county auditor of an amount due from an employer within the county who is subject to this division, by reason of the employer's delinquency in transmitting amounts due under this division for past months, those amounts shall be withheld from the employer from any funds in the hands of the county treasurer for distribution to the employer. On receipt of the certification, the county auditor shall draw a warrant against the funds in favor of the Ohio police and fire pension fund for the amount.

(D) Rules adopted under this section shall not affect any right to purchase service credit conferred by any other section of the Revised Code, including the right of a member under any such section to purchase only part of the service credit the member is eligible to purchase.

SECTION 2. That existing sections 742.32, 742.35, 742.351, 742.38, and 742.56 of the Revised Code are hereby repealed.

SECTION 3. (A) As used in this section, "employer" has the same meaning as in division (D) of section 742.01 of the Revised Code.

(B)(1) Notwithstanding section 742.38 of the Revised Code, as that section existed immediately prior to the effective date of its amendment by this act, and subject to division (C) of this section, the Board of Trustees of the Ohio Police and Fire Pension Fund shall reduce by ninety per cent a fine incurred prior to the effective date of this section under division (A)(2) of section 742.38 of the Revised Code if, prior to that date, the Board received from the employer who is subject to the fine the report that is the subject of the fine and the report was in the form provided in rules adopted by the Board. If the total amount of outstanding fines assessed against an employer under division (A)(2) of section 742.38 of the Revised Code exceeds $30,000 after the reduction required by this division, the board shall further reduce the total amount of the outstanding fines to $30,000.

(2) Notwithstanding sections 742.32 and 742.35 of the Revised Code, as those sections existed immediately prior to the effective date of their amendment by this act, and subject to division (C) of this section, the Board shall reduce by fifty per cent a penalty incurred under section 742.32 or 742.35 of the Revised Code during the period beginning January 1, 2000, and ending on the effective date of this section, if on or before the date that is six months after the date the report and payment were due, the Board receives from the employer the report and payment that are the subject of the penalty and the report is in the form provided in rules adopted by the

Board.

(C)(1) Not later than June 1, 2002, an employer shall pay to the Fund the amount of all fines and penalties described in division (B) of this section, as reduced under this section.

(2) If an employer fails to pay all amounts due in accordance with division (C)(1) of this section or to file all required reports, the Board shall reinstate to the original amount any fine or penalty that was reduced and the employer shall pay to the Fund the reinstated fine or penalty amount. If the employer fails to pay the reinstated fine or penalty amount, that amount shall be collected from the county auditor in the same manner as is provided in section 742.35 of the Revised Code.

(3) To each employer that, prior to the effective date of this section, paid the full amount of a fine or penalty reduced under division (B) of this section, the Board shall either refund the amount of the reduction or use the amount to reduce any outstanding amounts owed by the employer to the Fund under Chapter 742. of the Revised Code.

(D) Notwithstanding sections 117.28, 117.30, 117.33, 117.36, 117.42, and 131.02 of the Revised Code, no civil action shall be instituted to recover the amount of a reduction made under division (B)(1) or (2) of this section. An employer who meets the requirements of divisions (B) and (C)(1) or divisions (B) and (C)(3) of this section shall not be required to reimburse the Fund for any amount not paid as the result of the reduction.

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Speaker _____ of the House of Representatives.

_____

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

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Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

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Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ____ day of _____, A. D. 20____.

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Secretary of State.

File No. _____ Effective Date _____