



**H.B. 199**

123rd General Assembly  
(As Introduced)

**Reps. Cates, Allen, Buehrer, Carey, Corbin, Goodman, Jordan, Mottley,  
Terwilleger, Trakas, Van Vyven, Willamowski**

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**BILL SUMMARY**

- Expands the existing alternative retirement program for academic and administrative employees of public institutions of higher education to include eligible public employees covered by Ohio's state retirement systems who elect to participate.
- Requires employers to enter into contracts with at least three (rather than all) entities offering an alternative retirement plan designated by the Ohio Department of Insurance under the program.
- Requires the Ohio Retirement Study Council to submit to the Director of Administrative Services and the chairpersons of the standing committees and subcommittees of the House of Representatives and Senate (rather than the Ohio Board of Regents) the actuarial study required under the program.
- Permits restitution to the victim of certain felony sex offenses to be paid from any payment, benefit, or other right accruing under an alternative retirement plan, if the offender had contact with the victim within the context of the offender's public employment.

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## CONTENT AND OPERATION

### **Background**

Amended Sub. H.B. 586 of the 121st General Assembly created an alternative retirement program for certain academic and administrative employees of public institutions of higher education who are covered by the Public Employees Retirement System (PERS), School Employees Retirement System (SERS), or State Teachers Retirement System (STRS). The stated purpose for establishing the program was to provide three or more retirement plans to academic or administrative employees as alternatives to participating in a state retirement system.

Under current law, "academic or administrative employee" is defined as any full-time employee who is (1) a member of the faculty or administrative staff of a public institution of higher education, (2) serving in a position in Ohio's unclassified civil service, and (3) not receiving a benefit, allowance, or other payment from a state retirement system. "Public institution of higher education" means a state university, university branch, technical college, state community college, community college, or municipal university, or the Medical College at Toledo or Northeastern Ohio Universities College of Medicine.

### **Establishment; definitions; purpose**

(secs. 143.01(A) to (D) and 143.02)

The bill expands the existing alternative retirement program for academic and administrative employees of public institutions of higher education to include public employees electing to participate who are covered by one of Ohio's state retirement systems: PERS, the Police and Firemen's Disability and Pension Fund, SERS, STRS, and the State Highway Patrol Retirement System.

The stated purpose for establishing the alternative retirement program is to provide three or more retirement plans to public employees as alternatives to participating in a state retirement system. Each alternative retirement plan offered

under the program to employees electing to participate ("electing employees") must be a defined contribution plan providing retirement and death benefits through the purchase of annuity contracts or certificates. At the option of the electing employee, the annuity contracts or certificates may be fixed or variable in nature, or a combination of fixed and variable. Any retirement plan previously established by an employer as an alternative to participating in a state retirement system may continue in effect, for all employees eligible to participate in it, without regard to the provisions contained in the bill.

The following is a summary of the provisions of the alternative retirement program.

**Designation of alternative retirement plans; review**

(sec. 145.05)

The Department of Insurance must designate three or more alternative retirement plans provided by at least three different entities. Currently, the Department has designated seven alternative retirement plans.

In order for a plan to be designated an alternative retirement plan, the entity providing the plan must provide the plan in at least ten other states and be authorized to conduct business in Ohio with regard to the annuity contracts or certificates offered under the plan. The designation of an alternative retirement plan, or the execution of any contract in relation to the designation of an alternative retirement plan, is not subject to competitive bidding. The Department of Insurance must consider all of the following when designating an alternative retirement plan:

- (1) The entity's experience in providing the plan in other states;
- (2) The potential effectiveness of the plan in recruiting and retaining employees;
- (3) The nature and extent of the rights and benefits to be provided under the plan;
- (4) The relationship between the rights and benefits and the amount of the contributions made;
- (5) The suitability of the rights and benefits to the needs and interests of employees;
- (6) The entity's capability to provide the rights and benefits under the plan;

(7) Any other matters the Department considers relevant.

The Department must periodically review each plan it designates, and each entity offering the plan, to ensure that the requirements and purposes under current law are being met. If the Department finds that an entity offering an alternative retirement plan is not in compliance, or the plan is not satisfactorily meeting those purposes, it may rescind its designation of the plan.

**Establishment of plans at each institution**

(sec. 143.06)

Under current law, the board of trustees of each public institution of higher education must enter into a contract with each entity offering an alternative retirement plan designated by the Department of Insurance. Under the bill, an employer must enter into a contract with at least three entities offering a plan. If fewer than three entities offering a plan include as participants employees of the type employed by the employer, the employer must enter into a contract with each plan that does include as participants employees of that type.

There is no time limit within which the contracts must be entered into. Each contract must provide for its termination if the plan ceases to be designated by the Department. An employer may perform functions and provide as necessary for the administration of each plan.

**Election by employee**

(secs. 143.01(E) and 143.09)

Under the bill, only public employees who (1) are hired after an alternative retirement program is established or (2) have less than five years of service credit in their current state retirement systems at the time it is established may participate.<sup>1</sup>

Employees with less than five years service must elect to participate no later than 120 days after the program is established. New employees hired after the program is established must make the election no later than 90 days after their starting dates. Employees who fail to make an election will be deemed to have elected to participate in a state retirement system.

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<sup>1</sup> See *COMMENT*.

Each election must be made in writing and submitted to a designated officer of the employer. The officer must file a certified copy of the election within ten days with the state retirement system to which the employee otherwise would be subject. A new employee's election takes effect on the employee's employment starting date. The election of a person already employed when the program is established takes effect on the date that determines the person's eligibility to elect to participate in the program.

If a person ceases to be "continuously employed" and subsequently is employed in a position for which an alternative retirement program is available, the employee may make another election. A person is "continuously employed" if no more than one year intervenes between each period of employment by an employer in a position for which three or more alternative retirement plans are available. If an employee's elected alternative retirement plan ceases to be designated by the Department of Insurance, the employee may elect another alternative plan.

**Return of contributions to a state retirement system for electing employees**

(sec. 3305.051--not in the bill)

The state retirement system covering the position of an employee who elects to participate in an alternative retirement program must return to the employing institution a portion of the contributions made to the retirement system. For an individual who is a retirement system member at the time the alternative retirement program is established, the retirement system must return employee and employer contributions made during the period in which the individual is eligible to elect to participate, less an amount equal to 6% of the employee's compensation for that period. For an individual who becomes employed after the establishment of an alternative retirement program, the retirement system must return employee and employer contributions made during the 90-day period in which the employee may elect to participate, less an amount equal to 6% of the employee's compensation. The 6% is the amount that must be contributed to the state retirement system.

**Contributions to alternative retirement plans**

(secs. 143.01(F) and 143.11(A) to (D))

Each electing employee must contribute a percentage of his or her compensation to the alternative retirement plan. For each electing employee, "compensation" is defined in terms of the state retirement system that would have

covered the employee's employment had the employee not made an election to participate in the alternative retirement plan.<sup>2</sup> The percentage is that percentage the electing employee otherwise would have contributed to the applicable state retirement system, but not less than 3%. Under the plan, employee contributions may be treated as employer contributions in accordance with provisions of the Internal Revenue Code that defer until retirement federal and state income tax on the contributions in the same manner taxes may be deferred on contributions to the state retirement systems.

Each employer must contribute an amount, set as a certain percentage of the employee's compensation, to the alternative retirement plan elected by the employee. The percentage is determined by the employer.

The full amount of the employee and employer contribution must be paid to the entity providing the alternative retirement plan and be applied to that plan in accordance with the contract entered into by the employee. No benefits may be paid under the plan before the employee ceases to be continuously employed. An individual is considered to be continuously employed until one year after leaving a position covered by the alternative retirement program, and, thus, no retirement or death benefits is paid for at least a year after termination of service.

Current law requires that the employee and employer contributions be sufficient to qualify the plan as a state retirement system under the Internal Revenue Code. This exempts alternative program participants from paying Social Security taxes, as if they are covered by a state retirement system.

An electing employee may make voluntary deposits to the employee's alternative retirement plan in addition to the required employee contribution.

**Employer contributions to state retirement systems**

(sec. 143.11(E))

Each employer must continue contributing to the state retirement system that would otherwise apply to the employee's position an amount equal to 6% of the employee's compensation. This contribution is "to mitigate any negative financial impact of the alternative retirement plan on the state retirement system." The Ohio Retirement Study Council, on July 1 following the first year after the

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<sup>2</sup> Under the law governing the state retirement systems, "salary," "earnable salary," and "compensation" are defined in substantial detail, generally referring to all salary, wages, and other amounts paid by reason of employment (secs. 742.01, 3307.01, and 5505.01; 145.01 and 3309.01--not in the bill).

Department of Insurance designates an alternative retirement plan and every third year thereafter, must cause an independent actuarial study to be completed. The study is to determine any necessary adjustments in contributions to reflect any change in the negative financial impact resulting from establishment of the alternative retirement plan. The amount contributed to state retirement systems must be increased or decreased to mitigate the negative financial impact, if any, on the systems, as determined by the actuarial study. The increase or decrease in contributions takes effect on the first day of July in the year in which the study is completed. Under current law, the report is submitted to the Ohio Board of Regents. Under the bill, it is submitted to the Director of Administrative Services and the chairpersons of the standing committees and subcommittees of the House of Representatives and Senate that deal with retirement issues.

The employer must continue contributing to a state retirement system on behalf of an electing employee until the unfunded actuarial accrued liability for all of the employee's benefits is fully amortized, as determined by an actuarial valuation prepared by the appropriate state retirement system. The benefits to be amortized, however, do not include group health care benefits provided by a state retirement system.

**State or employer not a party to contract between employee and plan**

(sec. 143.15)

Neither the state nor an employer can be a party to any contract purchased in whole or in part with contributions made to an alternative retirement plan. No retirement, death, or other benefit is payable by the state or any employer under any alternative retirement plan. With certain exceptions (see "**Taxes, garnishment, and assignment**" below), all retirement, death, or other benefits are to be paid to an electing employee or the employee's beneficiaries in accordance with any contract entered into by the employee.

**Taxes, garnishment, and assignment**

(secs. 143.20, 143.21, and 2907.15)

Any payment, benefit, or other right accruing to an electing employee under an alternative retirement plan, any contributions to the employee's alternative retirement plan, and all money, investments, and income of the plan:

- (1) Are exempt from all Ohio taxes except the income tax;
- (2) Are not subject to execution, garnishment, attachment, the operation of bankruptcy or the insolvency law, or other process of law, with limited exceptions;

(3) Are generally unassignable except as provided in the contract entered into by the employee.

### **Exceptions**

Under current law, the money payable under an alternative retirement plan is subject to withholding orders to satisfy child-support obligations and to pay restitution for theft in office. Similar to the process for theft in office, the bill permits restitution to the victim of certain felony sex offenses to be paid from the money payable to the offender from an alternative retirement program.

**--Restitution order for certain sex offenses.** The bill requires the prosecutor, in a case in which the court orders restitution to the victim of one of several felony sex offenses, to file a motion requesting an order for withholding of specified amounts from money payable to the offender from an alternative retirement plan, if the victim (1) is a child, student, patient, or other person with whom the offender had contact in the course of the offender's public employment and (2) requests the prosecutor to seek the order. The felonies for which the prosecutor may seek the order are: rape, sexual battery, corruption of a minor, and gross sexual imposition.

The money subject to withholding by a restitution order will be from one or more of the following:

(1) Any benefit payable under an alternative retirement plan, other than a survivorship benefit, that has been or is in the future granted to the offender; and

(2) Any payment of accumulated employee contributions standing to the offender's credit with an alternative retirement plan.

The order cannot, however, apply to any payments made by an alternative retirement plan to a person other than the offender pursuant to a previously issued domestic court order.

The order must require the alternative retirement plan to continue the withholding, in accordance with the order, out of each payment due the offender, and immediately forward the amount withheld to the clerk of the court for payment to the victim.

A motion requesting withholding for restitution may be filed at *any time after* conviction of the offender or entry of a guilty plea. On the filing of the motion, the clerk of the court must notify the offender and the alternative retirement plan in writing of a number of things, including that the motion was filed and that the offender has a right to a hearing on the question of whether there

is good cause for the order not to be issued. Notice must be provided in the manner provided in the Ohio Rules of Civil Procedure for service of process.

**--Hearing.** An offender may request a hearing on a motion for a withholding order by delivering a written request to the court not later than 30 days after receiving notice that the motion was filed. If the offender makes a timely request, the court must schedule a hearing as soon as possible after the request is made and notify the offender and alternative retirement plan of the date, time, and place of the hearing.

The hearing must be limited to considering whether, based on evidence presented by the offender, there is good cause for the order not to be issued. If it determines that there is good cause not to issue the order, the court must deny the motion. If the offender does not make a timely request for a hearing, or a hearing is held but the court does not find good cause to deny the order, the court must order the withholdings. Current law specifies that good cause for denying an order includes a determination by the court that the order would severely impact the offender's ability to support dependents.

**--Notice of charges.** The prosecutor must send written notice to the appropriate alternative retirement plan when charges are filed for one of the specified sex offenses against a person who may be subject to a withholding order under the act upon conviction or pleading guilty.

**--Plan's compliance.** The entity providing the alternative retirement plan must comply with the withholding order. Upon receiving a notice that the electing employee is charged with one of the specified sex offenses, the entity cannot make payment prior to whichever of the following circumstances applies:

(1) If the person is convicted of or pleads guilty to the charge and no motion for a withholding order for restitution is filed, 30 days after final disposition of the charge;

(2) If the person is convicted of or pleads guilty to the charge and a motion for a withholding order for restitution is filed, the date on which the court decides the motion;

(3) If the charge is dismissed or the person is found not guilty or not guilty by reason of insanity, the date on which final disposition is made.

### **Retirement system roll-overs**

(secs. 145.40, 742.01, 742.37, 3307.01, 3307.46, 3309.42, 5501.01, and 5505.19)

The bill amends the laws governing the Public Employees Retirement System, Police and Firemen's Disability and Pension Fund, School Employees Retirement System, State Teachers Retirement System, and State Highway Patrol Retirement System to recognize the establishment of alternative retirement plans. Employees electing to participate in alternative plans are exempted from the state retirement systems to which they otherwise would be subject.

Upon the application of a member of any of these state systems who has elected an alternative plan, the employee's state retirement system must pay the employee's accumulated contributions to the entity providing the alternative plan, for use in accordance with the employee's contract with that entity.

**Technical changes**

(secs. 145.012, 2921.41, and 3309.011)

The bill changes cross-references to Chapter 3305. of the Revised Code to reflect the renumbering of the chapter.

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**COMMENT**

Amended Sub. H.B. 673 of the 122nd General Assembly, which became effective December 8, 1998, specified how the Public Employees Retirement System, School Employees Retirement System, and State Teachers Retirement System are to determine the eligibility of a person to elect to participate in an alternative retirement program if the person is an employee of a public institution of higher education at the time a program is established:

(1) If a program is established by the institution not later than 12 months after the Department of Insurance designates a plan, a member of the Public Employees Retirement System (PERS) or SERS who is an academic or administrative employee is eligible to participate if the member has less than five years of service credit in the retirement system on the last day of the month in which the designation is made. If a program is established more than 12 months after the Department designates a plan, a PERS or SERS member is eligible to participate if the member has less than five years of service credit in the retirement system on the first day of the month in which the program is established.

(2) A member of STRS is eligible to participate if the member has less than five years of STRS service credit on the 30th day of June immediately preceding the date the program is established.

An amendment is needed to reflect the changes made by H.B. 673 and to add provisions for the Police and Firemen's Disability and Pension Fund and State Highway Patrol Retirement System.

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>	<b>JOURNAL ENTRY</b>
Introduced	02-17-99	p. 215

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