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Bill Analysis
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Reps. Cates, Van Vyven, Austria, Boyd, Britton, Buehrer, Callender, Evans, Goodman, Hartnett, Kilbane, Olman, Peterson, Schuler, Terwilleger, Trakas, Widener, Young

BILL SUMMARY

- Establishes, as an alternative to participation in the Public Employees Retirement System (PERS), a defined contribution retirement plan for certain exempt, unclassified public employees and for elected officials of the state or a political subdivision of the state.
- Requires the Department of Insurance to designate three or more entities to offer options under the retirement plan.
- Requires the Department of Administrative Services (DAS) to serve as sponsor of the retirement plan and as collector and transmitter of amounts contributed by employers and employees covered by the plan.
- Requires DAS to enter into contracts with the entities designated by the Department of Insurance for the purpose of providing the options to be offered under the plan.
- Requires the Public Employees Retirement Board, public employers covered by the retirement plan, and DAS to identify and notify current public employees and elected officials who are eligible to participate in the retirement plan.
- Specifies the procedure under which an eligible public employee or elected official may elect to participate in the retirement plan and allows, under certain circumstances, electing employees to transfer amounts on deposit with PERS to the retirement plan.

TABLE OF CONTENTS

Overview.....	2
Establishment; options under the retirement plan; plan requirements.....	3
Designation of entities to provide plan options; review.....	4
Duties of the Department of Administrative Services.....	5
Plan sponsor.....	5
Contracts with entities designated by the Department of Insurance.....	5
Rulemaking authority.....	6
Employees eligible to participate in the plan.....	7
Identifying and notifying current employees eligible who are to participate.....	8
Duties of the Public Employees Retirement Board.....	8
Duties of public employers.....	8
Duties of DAS.....	9
Notice to new employees who are eligible to participate.....	9
Elections to participate in the retirement plan.....	10
Election procedure.....	10
Selection of options offered under the plan.....	10
Transfer of amounts on deposit with PERS.....	11
Contributions to the retirement plan.....	12
Employer contributions to PERS.....	13
Rights of electing employees under the retirement plan.....	13
Spousal consent.....	14
Vesting.....	14
Taxes, garnishment, and assignment.....	15
Exceptions.....	15
Reemployment of an individual who retires under the retirement plan.....	18
Penalty for returning to public employment before certain date after retirement.....	18
Benefits earned for reemployment.....	19
Participation by electing employees in Ohio's deferred compensation program....	21

CONTENT AND OPERATION

Overview

Under current law, public employees who are not covered by another state retirement system are required to become members of the Public Employees Retirement System (PERS).¹ State and local elected officials may choose to

¹ *Ohio's state retirement systems are PERS; the Ohio Police and Fire Pension Fund (Revised Code Chapter 742.), which covers full-time police officers and firefighters; the*

participate in PERS. PERS administers a retirement plan, sometimes referred to as a "defined benefit plan," under which benefits are generally not tied to contributions but are determined by a formula, established in statute, that is based on a member's years of public service and the average of the member's three highest years of salary.

The bill establishes, as an alternative to membership in PERS, a new retirement plan for certain public employees and elected officials. The bill's retirement plan is a "defined contribution plan," under which an employee or official has an individual account and benefits under the plan are based solely on the amounts that have accumulated in the account.

Establishment; options under the retirement plan; plan requirements

(sec. 143.02)

The retirement plan established by the bill is to consist of options under which each public employee and elected official electing to participate (an "electing employee") has an individual account and benefits under the plan are based solely on the amounts that accumulate in the account. The options are to be offered to electing employees pursuant to individual or group contracts, and certificates issued under group contracts, and may include life insurance, annuities, variable annuities, regulated investment trusts, pooled investment funds, or other forms of investment. Subject to certain time limits, each option offered under the plan must permit an electing employee to transfer, at no cost to the employee, the employee's individual account from an option offered by an entity designated by the Department of Insurance (see "**Designation of entities to provide plan options; review**," below) to another option offered by the same entity and from an option offered by an entity to an option offered by a different entity.²

School Employees Retirement System (R.C. Chapter 3309.), which covers school employees; the State Teachers Retirement System (R.C. Chapter 3307.), which covers teachers and university faculty; and the State Highway Patrol Retirement System (R.C. Chapter 5505.), which covers State Highway Patrol troopers.

² *The bill specifies, however, that transfers of fixed annuities may be subject to a charge and that an entity is not prohibited from adjusting an electing employee's individual account to reflect increases or decreases in the market value of the employee's account due to a transfer.*

The retirement plan must meet the bill's requirements and be a qualified retirement plan under the section 401(a) of the Internal Revenue Code.³ In addition, the plan must meet the requirements necessary to qualify as a retirement system maintained by a state or local government entity under the federal law that exempts participants in state or local government retirement plans from making contributions to Social Security.⁴ Each participant in the retirement plan must qualify as a member of that system.

Designation of entities to provide plan options; review

(secs. 143.06 and 143.07)

Not later than 90 days after the bill's effective date, the Department of Insurance is to designate three or more entities to offer options under the retirement plan established by the bill. If, after the initial designation, the Department determines that an entity not initially designated meets the requirements, the Department may designate the entity. Designation of an entity is not subject to competitive bidding.

To be designated under the bill, an entity must be authorized to conduct business in Ohio with regard to the options to be offered under the plan and must provide, in at least ten other states, the type of options to be offered. The Department must consider all of the following in making a designation:

- (1) The experience of the entity in providing the options in other states;
- (2) The potential effectiveness of the options offered by the entity in the recruitment and retention of employees;
- (3) The nature and extent of the rights and benefits to be provided under the options;
- (4) The relationship between the rights and benefits under the options and the amount of the contributions made under the plan;
- (5) The suitability of the rights and benefits under the options to meet the needs and interests of electing employees;

³ A qualified retirement plan is a retirement plan that meets certain requirements specified in federal law and, if the requirements are met, contributions to and amounts earned under the plan are not subject to federal and state income tax until distributed to the employee. (100 Stat. 2085, 26 U.S.C.A. 401(a), as amended.)

⁴ 100 Stat. 2085, 26 U.S.C.A. 3121(b)(7)(F), as amended.

(6) The capability of the entity to provide the rights and benefits under the plan;

(7) Any other matter the Department considers relevant.

At least once every three years, the Department is required to review each designated entity and the options offered by the entity to ensure that the bill's requirements are being met. To conduct the review, the Department is authorized to require the entity to submit evidence satisfactory to the Superintendent of Insurance that the entity is in compliance with the bill. If the Department finds that an entity or an option offered by the entity is not in compliance, the Department may rescind the designation.

Duties of the Department of Administrative Services

(secs. 143.03, 143.04, 143.10, and 143.11)

Plan sponsor

The bill requires the Department of Administrative Services (DAS) to serve as sponsor of the retirement plan and specifies that DAS is a separate legal entity for the purpose of performing its duties under the bill. As plan sponsor, DAS is required to do all things necessary to avoid the payment of federal or state income taxes on contributions to or amounts earned under the plan. DAS is required to receive from employers the amounts contributed to the plan and distribute those amounts to the entities designated by the Department of Insurance; however, DAS may enter into a contract with a third party for the purpose of receiving and distributing those amounts. DAS is permitted to use its employees and property in the performance of its duties and is required to establish reasonable fees, which are to be paid by the designated entities, in consideration of the services DAS provides.

Contracts with entities designated by the Department of Insurance

Not later than 60 days after the initial designation by the Department of Insurance, DAS is required to enter into a contract with each entity designated prior to that date for the purpose of providing to electing employees options under the retirement plan established by the bill. DAS must enter into a contract with each entity designated after that date as soon as practicable after the designation.⁵

⁵ A corrective amendment is needed to make this provision of the bill consistent with the requirement that DAS enter into a contract with each designated entity not later than 60 days after the Department of Insurance makes an initial designation.

The duties and obligations of DAS under each contract must be limited to those necessary for DAS to perform its duties under the bill.

Each contract must provide for all of the following:

(1) Except for contracts entered into later than 60 days after the initial designation, the entity implementing the options it provides beginning one year after the bill's effective date;

(2) Incorporation of the relevant provisions of the bill into the contract;

(3) Termination of the contract if the entity ceases to be designated;

(4) Agreement by the entity to do all of the following:

(a) Provide its options under the plan to electing employees;

(b) Educate employees about the options provided by the entity under the plan, which must include providing educational materials to employers for distribution to employees;

(c) Enroll employees in the options provided by the entity;

(d) Provide to the United States Internal Revenue Service, at intervals specified by DAS, information on the individual accounts of electing employees;

(e) Maintain records of the individual accounts of electing employees that evidence contributions by an electing employee or employer and any earnings or losses on those contributions;

(f) Be available to employees for consultation on all aspects of the options offered by the entity.

Rulemaking authority

DAS is authorized to adopt rules necessary to perform its duties under the bill. The rules must be adopted in accordance with the provisions of the Administrative Procedure Act that do not require a public hearing.

Employees eligible to participate in the plan

(secs. 143.01, 143.15, 145.012, 145.016, and 145.20)

The retirement plan established by the bill is available to certain public employees and state and local elected officials.

For a public employee to be eligible to participate, the employee must (1) be appointed by, employed by, or under contract with the state or an instrumentality of the state in a position covered by PERS, other than a position as a law enforcement officer, (2) be exempt from public employees' collective bargaining law, (3) be in the unclassified civil service or, if the employee's employer does not classify its employees, in a position in which the employee serves at the pleasure of the appointing authority or is employed under a written contract between the employee and employer, and (4) if the employee commenced employment prior to the date that is one year after the bill's effective date, elect to participate not later than the date on which the employee will attain five years of total service credit under PERS.⁶

For a state or local elected official to be eligible to participate, the official must (1) have the option of participating in PERS but choose not to participate in PERS and (2) make an election to participate in the bill's retirement plan not later than five years after the date employment as an elected official commences. For purposes of the bill, an elective official is considered an employee of the state or political subdivision the official serves.

The bill refers to both employees and officials who elect to participate in a plan as electing employees.

The bill amends the law governing PERS to recognize the creation of the retirement plan established by the bill. Electing employees are exempted from membership in PERS.

Identifying and notifying current employees eligible who are to participate

(sec. 145.015)

Duties of the Public Employees Retirement Board

Not later than 180 days after the bill's effective date, the Public Employees Retirement Board is required to do both of the following:

(1) Develop from PERS records one or more lists of members who, as of the last day of the last month ending prior to one year after the bill's effective date, have less than five years of total service credit. In developing a list, the Board is

⁶ *In cases of doubt concerning whether an employer is an instrumentality of the state for purposes of the bill, the Director of Administrative Services must make the determination and the Director's decision is final. In cases of doubt concerning whether an individual is an employee for purposes of the bill, the employer must make the determination and the employer's decision is final.*

required to assume that each member will continue employment covered by PERS until the last day of that month. The Board is required to exclude from any list members who are employed by a public employer that is not subject to the retirement plan established under the bill. The Board must categorize members on the list by the member's public employer and include a statement of whether the member became a member under the provisions of PERS law that allow elective officials to elect to join PERS.

(2) Transmit to each public employer a copy of the list developed by the Board that includes members employed by the employer.

Duties of public employers

Not later than 60 days after receiving a copy of the list from PERS, each public employer is required to determine both of the following:

(1) Whether any of the members on the list who are employed by the employer are employees eligible to participate in the retirement plan established by the bill;

(2) Whether the employer employs a state or local elected official who will be eligible to make an election to participate in the retirement plan established by the bill.

Not later than 90 days after determining that it employs an employee eligible to participate in the bill's retirement plan, a public employer is required to notify each such employee of the employee's eligibility to make an election to participate in the retirement plan and that, if the employee elects to participate, the employee is required to select one of the options offered under the plan. The employer is required to transmit to DAS a list of all employees so notified.

A public employer is also required to provide the notice described above to an employee who is initially employed after the employer transmits the list to DAS but before the date that is one year after the bill's effective date. Not later than three days after the date employment commences, the employer is required to notify DAS of the employee's name.

Duties of DAS

Not later than 30 days after receiving the list from an employer, DAS is required to transmit a copy of each list to each entity designated by the Department of Insurance to offer options under the bill's retirement plan. On receipt of notice that an employee has been initially employed after the employer transmitted the list but before the date that is one year after the bill's effective date,

DAS is required to notify each designated entity of the employee's name and employer.

Notice to new employees who are eligible to participate

(sec. 143.14)

Not later than three days after employment commences, an employer is required to notify a new employee who is eligible to participate in the retirement plan of both of the following:

(1) That the employee is required to elect either to participate in PERS or the retirement plan established under the bill or, if the employee is an elective official, that the employee may elect either to participate in PERS or the plan;

(2) That if the employee elects to participate in the plan, the employee is required, at the time of filing an election to participate in the plan, to select one of the options offered under the plan.

Notice is required to include a description of the procedures for making an election (see "**Elections to participate in the retirement plan**," below) that apply to the employee and be accompanied by (1) the educational materials provided to employers by the entities designated by the Department of Insurance, (2) any information provided to the employer by PERS for distribution to employees, and (3) a copy of the form on which the employee is to make an election.

Not later than ten days after employment commences, the employer of a new employee must provide the employee's name to DAS, PERS, and each entity designated by the Department of Insurance.

Elections to participate in the retirement plan

Election procedure

(secs. 143.15, 143.17(A), 143.18, 145.016(A) and (B), and 145.20)

A public employee whose employment commenced prior to one year after the bill's effective date has until the date on which the employee will attain five years of total service credit to decide whether to participate in the bill's retirement plan. A public employee whose employment begins on or after one year after the bill's effective date has until five years after the date the employment commences to make the decision. An elected official eligible to participate in the plan must make the decision not later than five years after employment as an elected official commences. If an election is not on file with the employer at the end of the five-year period, the employee or elected official is deemed to have elected to

participate, or continue to participate, in PERS or, in the case of an elected official, not to participate in the bill's retirement plan.

An election must be made in writing on a form provided by DAS and filed with the employer's personnel officer. The election is irrevocable on receipt by the employer. At the time of making an election, an electing employee is required to notify the employer of the employee's selection of one of options offered under the plan.

At the time an election is made, the employer is required to forward to DAS, PERS, and the entity selected by the electing employee a certified copy of the form on which the election was made.

Selection of options offered under the plan

(sec. 143.17(B) to (D))

On receipt of the form on which an election is made, the entity that will provide the selected option must cause the electing employee to complete all forms necessary to enroll in that option. The entity is required to forward certified copies of the completed forms to the employer, DAS, and PERS.

Subject to the requirements of the entity providing the selected option, the electing employee may, at any time, select a different option offered by the entity. An electing employee may change the selection to an option offered by another designated entity during the 30-day period beginning on the date that is two years after the bill's effective date and for the 30-day period beginning on the same day each year thereafter. The change of selection must be in writing on a form provided by DAS and filed with DAS.

Transfer of amounts on deposit with PERS

(secs. 143.21 and 145.40)

--Amounts on deposit for employment occurring after the date the electing employee became eligible to make an election. On receipt of a copy of the enrollment forms, the PERS Board is required to transmit to the entity that will provide the option selected by the electing employee the amounts contributed to PERS by the electing employee and the employer, and interest on those amounts, for the period beginning on the date the electing employee became eligible to make an election to participate and ending on the date for which the last contribution was made to PERS, less the percentage sent to PERS (see "**Employer contribution to PERS**," below). This requirement does not apply in the case of an electing employee who files an election to participate in the plan later than 18 months after

the date of becoming eligible to make an election, unless the electing employee makes a request to the PERS Board, that the Board make the transfer.

--Amounts on deposit for employment occurring prior to the date the electing employee became eligible to make an election. An electing employee who is a PERS member, at the time of making an election to participate in the bill's retirement plan, has total PERS service credit of less than five years, and has on deposit with PERS contributions for any period of employment that occurred prior to becoming eligible to make the election may have the amounts on deposit with PERS transferred to the entity providing the option selected.⁷ The amount that may be transferred is the sum of the following:

(1) The accumulated contributions standing to the credit of the member's electing employee's individual account in PERS' Employees' Savings Fund;

(2) An amount from PERS' Employers' Accumulation Fund equal to the amount contributed to PERS by the employer;

(3) Interest on the amounts described in (1) and (2);

(4) Any principle payment and interest on it the electing employee may have made to purchase additional service credit under PERS law.

In the case of an electing employee who, as of the date of becoming eligible to make an election, has less than 18 months of total service credit, the PERS Board is required to make the transfer on receipt of the election form. In the case of an electing employee member who, as of the date of becoming eligible, has at least 18 months of service credit, the PERS Board is required to make the transfer, on application by the electing employee. The transfer cancels service credit in PERS.

Contributions to the retirement plan

(secs. 143.23, 143.24, 143.26, 143.28, and 143.29)

Each electing employee must contribute to the option he or she selects a percentage of the employee's compensation.⁸ The percentage must equal the percentage the electing employee would contribute to PERS had the employee not

⁷ *This provision does not apply if the amounts are subject to withholding to make restitutions for theft in office or other crimes specified in statute.*

⁸ *"Compensation" is defined as "earnable salary" under the law governing PERS (R.C. 145.01, not in bill).*

elected to participate in the retirement plan. The bill specifies that the employer may pay the electing employee's contributions in accordance with the provisions of federal law that permit an employer to pay (or "pick up") employee contributions and treat the contributions as employer contributions. This allows deferral of the payment of federal and state taxes on the contributions.⁹

Each employer must contribute to the selected option a percentage of the electing employee's compensation that equals the percentage the employer would have had to contribute to PERS had the electing employee not elected to participate in the retirement plan, less the percentage sent to PERS (see "**Employer contribution to PERS**," below).

For each payroll period after receiving the election form, the employer is required to deduct from the electing employee's compensation the employee contribution. The employer is required to transmit to DAS the amounts deducted and the employer contribution. Not later than 30 days after receiving those amounts from an employer, DAS is required to transmit to the entity providing the option selected the amounts received from the employer and inform the entity what portion of the amount was contributed by the electing employee.*

Employer contributions to PERS

(sec. 143.31)

Each employer is required to transmit to the secretary of the PERS Board, in the same manner as required in the law governing PERS, a portion of the employer contribution required under the bill. The portion must equal an amount equal to the percentage of compensation of electing employees for whom contributions are being made that is determined by the PERS Board's actuary to be necessary to mitigate any negative financial impact on PERS of the participation of electing employees in the retirement plan established by the bill.

On or before the date that is two years after the bill's effective date, and the same day of each year thereafter, the PERS Board is required to have prepared an actuarial study to determine whether the percentage should be changed to reflect a change in the level of negative financial impact resulting from participation of electing employees in the retirement plan. The percentage must be increased or decreased to reflect the amount needed to mitigate the negative financial impact, if

⁹ 100 Stat. 2085, 26 U.S.C.A. 414(h), as amended.

* A corrective amendment is needed to clarify that it is DAS that is to inform the entity what portion of the amount was contributed by the employee or official.

any, on PERS, as determined by the actuarial study. An increase or decrease is to take effect on the first day of the month following the date the conclusions of the actuarial study are reported to employers by the PERS Board.

Each employer must transmit to the PERS Board a portion of the employer contribution until the unfunded actuarial accrued liability for all benefits, except PERS health care benefits and PERS benefit increases provided after the bill's effective date, is fully amortized, as determined by the annual actuarial valuation prepared under current law governing PERS.

Rights of electing employees under the retirement plan

(secs. 143.34, 143.35, and 143.36)

The bill specifies that participation by an electing employee in the retirement plan established by the bill creates a contractual relationship between the electing employee and the entity providing the option selected with respect to the investment of the electing employee's individual account. An electing employee agrees that no retirement, disability, survivor, death, or other benefit is payable from the state, DAS, PERS, or the employer with respect to the electing employee's participation in the retirement plan. An electing employee is forever barred from claiming or purchasing service credit with PERS, the Ohio Police and Fire Pension Fund, School Employees Retirement System, State Teachers Retirement System, or State Highway Patrol Retirement System for service covered by an election to participate.

The bill specifies that the right of each electing employee to a retirement, disability, survivor, or death benefit or to a withdrawal of contributions is governed exclusively by the option selected by the electing employee and the individual or group contract, including any certificate issued under a group contract, entered into under that option.

Participation in the retirement plan ceases on death or termination of eligible employment. No payment may be made under an option selected by an electing employee prior to termination of the employment covered by the plan unless the payment is necessary to maintain the status of the plan as a "qualified plan" under the Internal Revenue Code.

Spousal consent

(sec. 143.39)

If an electing employee is married at the time one or more payments are to commence under the retirement plan established by the bill, the entity that will

make the payment is required to obtain the consent of the electing employee's spouse to the form of payment selected by the electing employee before making any payment. If an electing employee is married at the time the electing employee dies, the entity that will make a payment of any amounts that are payable to the employee must obtain the consent of the employee's spouse to the payment of the amounts before making the payment.

Each entity designated by the Department of Insurance is required to establish requirements for consent that are the same as the requirements specified for spousal consent under the Internal Revenue Code for private pension plans.¹⁰ Consent may be waived if the spouse cannot be located or for any other reason specified in the regulations adopted under the federal law. Consent or waiver is effective only with regard to the spouse who is the subject of the consent or waiver.

Vesting

(sec. 143.41)

The bill specifies that, with certain exceptions, the right of an electing employee to any payment or benefit accruing from contributions made by or on behalf of the employee vests as follows:

(1) An electing employee's right to any payment or benefit that is based on the employee's contributions is nonforfeitable.

(2) An electing employee's right to any benefit that is based on contributions by the employer becomes nonforfeitable on the earlier of (a) after attaining age 18, completion of one year, without regard to absences from employment due to illness or disease, of continuous service with the same employer or (b) attaining normal retirement age, as determined under the retirement plan established by the bill.

For the purpose of determining whether an electing employee has completed one year of continuous service, service as a PERS member with the same employer is to be used in the determination for former PERS members who elected to participate in the retirement plan established by the bill.

The bill specifies that any amounts forfeited by an electing employee for failure to meet the vesting requirements must be returned to DAS to be used by DAS to reduce future contributions by the employer.

¹⁰ 100 Stat. 2085, 26 U.S.C.A. 417(a)(2), as amended.

Taxes, garnishment, and assignment

(secs. 143.43, 143.44, 2907.15, and 2921.41)

Any payment, benefit, or other right accruing to an electing employee under an option selected by the employee, any contributions to the employee's option, 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 unassignable except as provided in the option selected by the employee, with limited exceptions.

Exceptions

Under current law, the money payable from a state retirement system or deferred compensation program is subject to withholding orders to satisfy child-support obligations and to pay restitution for theft in office and for certain sex offenses. The bill subjects any payment under an option selected by an electing employee to withholding orders for child-support obligations and permits restitution for theft in office and to the victim of certain felony sex offenses to be paid from the money payable to the offender under the option.*

--Restitution order for theft in office and for certain sex offenses. The bill requires a prosecutor, in a case of a conviction for theft in office or in which the court orders restitution to the victim of rape, sexual battery, corruption of a minor, or gross sexual imposition, to file a motion requesting an order for withholding of specified amounts from money payable to the offender from the entity providing the electing employee's option under the retirement plan. Restitution to the victim of the sex offense may be ordered 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 money subject to withholding by a restitution order will be from one or more of the following:

* *The bill amends the law governing restitution to victims of sex offenses to clarify that it applies to retirants of the State Teachers Retirement System and School Employees Retirement System.*

(1) Any benefit payable under the 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 the retirement plan.

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

The order must require the entity providing the option under the 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 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 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. In the case of a hearing regarding a withholding for restitution to a sex offense victim, 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 retirement plan when charges are filed for theft in office or one of the specified sex offenses against a person who may be subject to a withholding order

under the bill upon conviction or pleading guilty. The notice must specifically identify the person charged.

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

(1) If the electing employee 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 electing employee 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 electing employee is found not guilty or not guilty by reason of insanity, the date on which final disposition of the charge is made.

Reemployment of an individual who retires under the retirement plan

(secs. 143.51, 143.52, 143.53, 143.54, 143.55, 143.56, 145.38, 145.381, 742.26, 3307.381, and 3309.341)

Under current law, a member of an Ohio state retirement system may retire and subsequently be reemployed in a position covered by one of the systems, with one exception.¹¹ Employer and employee contributions to the retirement system that covers the position in which the member is reemployed must be made during reemployment and, if the reemployment begins within a certain time period after the date the member retired, the retired member forfeits retirement benefits during that period. New benefits are earned during the period of reemployment.

The bill modifies these provisions to permit an individual who retires from the retirement plan established by the bill (a "plan retirant") to be reemployed in a position covered by the plan, by PERS, or by one of the other state retirement systems. If eligible to do so, a retirant who is reemployed in a position covered by

¹¹ *Maximum age requirements for training new State Highway Patrol troopers prevent reemployment by the Patrol of individuals over age 35 (R.C. section 5503.01, not in bill).*

PERS is required to elect to participate in the retirement plan or PERS.* A public employer that employs a plan retirant, PERS retirant, or other system retirant or enters into a contract with a retirant who was employed by the employer at the time of retirement for services as an independent contractor is required to notify DAS, PERS, or the other state retirement system, as applicable, of the employment or contract not later than the end of the month in which the employment or contract commences. On receipt of the notice, DAS is required to notify the entity that is paying the retirant's benefit. In some cases, any overpayment of benefits to a plan retirant, PERS retirant, or other system retirant resulting from delay or failure of the employer to give notice must be repaid by the employer.

Penalty for returning to public employment before certain date after retirement

A retirant who returns to public employment before a specific date forfeits retirement benefits for a certain amount of time. A plan retirant or PERS retirant who returns to employment in a position covered by the retirement plan or PERS earlier than six months after retiring suffers forfeiture. In all other cases, with one exception, forfeiture applies when the retirant returns to public employment earlier than two months after retiring.¹² The benefit is forfeited for the time the retirant is reemployed during the penalty period. Contributions made during the forfeiture period are not included in calculating any benefit that is payable to the retirant and must be refunded on the retirant's death or termination of employment.¹³

In addition to forfeiting benefits for returning to public employment within six months of retirement, a plan retirant or PERS retirant who holds public elective office in this state at the time of retirement is subject to a further penalty if elected or appointed to the same office for the remainder of the term or the term immediately following the term during which the retirement occurred. The further penalty is that the portion of the retirement benefit that is attributable to contributions made by the retirant's former employer is forfeited for the duration of

* *A plan retirant who performs services for a public employer as an independent contractor pursuant to a contract with the employer is not eligible to participate in the retirement plan.*

¹² *A retired member of the State Teachers Retirement System (STRS) who returns to teaching full-time in a position covered by STRS earlier than 18 months after retiring is subject to forfeiture.*

¹³ *"Employment" includes service for which the retirant or the retirant's employer, or both, have waived any compensation for the service.*

reemployment. The remaining portion is suspended and paid in a lump sum after termination.

A plan retirant who enters into a contract to provide services as an independent contractor to a public employer by which the retirant was employed at the time of retirement or, less than two months after beginning to receive a benefit under the retirement plan, begins providing services as an independent contractor pursuant to a contract with another public employer, forfeits the portion of the benefit that is attributable to the employer's contributions. The plan retirant forfeits that portion of the benefit for the period beginning the first day of the month following the month in which the services begin and ending on the first day of the month following the month in which the services end. The remaining portion of the benefit is suspended on the date services under the contract begin and accumulate to the retirant's credit to be paid in a single payment after services provided under the contract terminate.

Benefits earned for reemployment

A reemployed retirant earns a benefit from the retirement plan or state retirement system that covers the position in which the retirant is reemployed for service performed after the forfeiture period. With the exception of a retirant reemployed in a position covered by the retirement plan established by the bill or by PERS, a retirant, on termination of reemployment, gets an annuity equal to the sum of (1) twice the amount of his or her contributions to the plan or system made during reemployment and (2) interest on that amount. The retirant must elect to collect the benefit in the form of a monthly annuity or single lump-sum payment. The retirant must elect the lump-sum payment if the monthly annuity would be less than \$25.

In the case of a retirant reemployed in a position covered by PERS, the retirant, on termination of employment, gets an annuity equal to twice the retirant's contributions to the plan or PERS, unless the retirant chose or was required to forfeit the portion of the retirant's benefit that is attributable to contributions made by the retirant's former employer and to suspend the remaining portion.¹⁴ In the

¹⁴ *As discussed above, a plan retirant or PERS retirant who holds a public elective office at the time of retirement must forfeit the portion of the benefit that is attributable to contributions made by the retirant's former employer and suspend the remaining portion if the retirant is elected or appointed to the same office for the remainder of the term or the term immediately following the term during which retirement occurred. Other plan retirants or PERS retirants who are reemployed in a position covered by the plan or by PERS may choose forfeiture and suspension during reemployment. Unlike all other reemployed retirants, these plan retirants or PERS retirants begin participating in the plan or become new members of PERS, whichever is applicable, with all rights,*

case of a retirant reemployed in a position covered by the retirement plan established by the bill, the retirant, on termination of employment, gets an annuity having a reserve equal to the amount accumulated on behalf of the retirant for the period of employment, unless the retirant chose or was required to forfeit the portion of the retirant's benefit that is attributable to contributions made by the retirant's former employer and to suspend the remaining portion. As discussed above for other retirants, the annuity is paid either as a monthly annuity or a single lump-sum payment. A plan retirant or PERS retirant who chose or was required to forfeit the portion of the retirant's benefit that is attributable to contributions made by the retirant's former employer and to suspend the remaining portion must elect, on termination of employment, to receive either a refund of his or her contributions to the plan or to PERS during reemployment or a supplemental benefit based on the retirant's contributions during reemployment.

If a retirant dies while reemployed, a lump-sum payment calculated as described above is paid to the retirant's beneficiary. If, at the time of death, a retirant receiving a monthly annuity has received less than the retirant would have received as a lump-sum payment, the difference between the amount received and the amount that would have been received as a lump-sum payment is paid to the retirant's beneficiary.

Participation by electing employees in Ohio's deferred compensation program

(sec. 145.71)

Current law allows public employees who are covered by Ohio's state retirement systems to participate in a deferred compensation program established by the Ohio Public Employees Deferred Compensation Board. A "deferred compensation program" is an employee benefit program under which an employee's compensation is deferred and paid at a later date, usually at retirement. The employee pays federal and state income tax on the deferred compensation when the compensation is received rather than when it is earned.

The bill permits public employees and elected officials who elect to participate in the retirement plan established by the bill to elect to participate in a deferred compensation program established by the Board.

HISTORY

ACTION	DATE	JOURNAL ENTRY
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privileges, and obligations of membership (other than survivor benefits, in the case of a PERS retirant).



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