



S.B. 289

124th General Assembly
(As Introduced)

Sen. Blessing

BILL SUMMARY

- Requires the Treasurer of State to deposit in Ohio banks money held by the Treasurer as custodian of investment funds for Ohio's public retirement systems.
- Establishes criteria for approved investment agents and requires that each public retirement system board use approved agents for at least 60% of its equity trades and minority owned approved agents for trades equal to at least 10% of equity trades executed on behalf of the board.
- Requires filing of financial disclosure statements by members of public retirement system boards and employees of public retirement systems who have authority to make investment decisions.
- Requires disclosure of financial transactions between public retirement systems and agents and disclosure of the names of retirement system board members who have investment authority and of retirement system employees who have financial dealings with agents on behalf of the board.

CONTENT AND OPERATION

Depositories of custodial funds of retirement systems

(sec. 113.052)

The Treasurer of State is the custodian of investment funds of Ohio's public retirement systems.¹ Current law does not specify where the Treasurer must

¹ Ohio has five retirement systems for public employees. They are the Public Employees Retirement System, Ohio Police and Fire Pension Fund, State Teachers Retirement

deposit this money. The bill directs the Treasurer to deposit the money in a bank that is eligible to become a depository of public funds and is subject to Ohio's tax on corporations. In effect, the bill requires that the money be placed with banks located in Ohio.

Investment agents for retirement systems

(secs. 145.11, 145.114, 742.11, 742.114, 3307.15, 3307.152, 3309.15, 3309.157, 5505.06, and 5505.062)

The bill requires that the retirement system boards comply with new requirements concerning the use of agents for their investments. Under these requirements, each board must designate an approved agent (a licensed dealer in securities) to execute some of the equity trades made on behalf of the board.² The bill provides that a dealer may apply for approved agent status by submitting to the board information about the dealer's history, employees, clients, fees, and related matters specified by the board. The board must keep a list of approved agents and make it available on request.

To be an approved agent under the bill, a dealer must meet all of the following criteria:

- (1) Be domiciled in Ohio for at least three years and be subject to taxation here (see **COMMENT 1**).
- (2) Employ at least five Ohio residents.
- (3) Have a net capitalization of at least \$50 million excluding clearinghouses or clearinghouse relationships.
- (4) Have "demonstrated professional and administrative ability."
- (5) Have no outstanding or past legal judgments that "reflect negatively" on either the agent or the retirement system.

System, School Employees Retirement System, and State Highway Patrol Retirement System.

² "Equity trade" usually refers to the purchase or sale of stock, but it could refer to the acquisition or disposal of any equity interest. Section 4701.01 of the Revised Code, which deals with the Accountancy Board, defines "equity interest" as "any capital interest or profit interest in a sole proprietorship, partnership, professional association, corporation-for-profit, limited liability company, or other business organization."

The bill requires that at least 60% of the equity trades executed for each board every year be executed by approved agents. Of the trades executed for the board, at least 10% must be executed by approved agents that are minority owned and controlled. (See **COMMENT 2**.) The bill specifies that these percentages are to be measured by the dollar value of the commissions paid for the trades.

Ethics commission disclosures

(secs. 102.02, 145.115, 742.115, 1707.49, 3307.153, 3309.158, and 5505.063)

Financial disclosure statements

Current law requires that specified public officers and employees file financial disclosure statements with the appropriate ethics commission (Joint Legislative Ethics Committee, Board of Commissioners on Grievances and Discipline of the Supreme Court, or Ohio Ethics Commission). The statements must reveal the names under which the filer and members of the filer's immediate family do business, the filer's sources of income, certain types of real property interests the filer has, and other information. The chief executive officers of the public retirement systems must file their statements with the Ohio Ethics Commission. The bill adds the board members of the retirement systems and employees of the retirement systems who have authority to make investment decisions to the persons who must file disclosure statements with the Ohio Ethics Commission.³

Retirement system and dealer disclosures

The bill requires that each public retirement system disclose the following in an annual report to the Department of Commerce's Division of Securities and to the Ohio Ethics Commission:

(1) Money received by the system from an agent and money spent by the agent for an expense of the system (see **COMMENT 3**).

(2) The names of system employees who have authority over the investment of system funds and of system board members who deal with an agent regarding money received by the system from an agent or spent by an agent for expenses of the system.

³ *The Ohio Ethics Commission has adopted a rule (OAC 102-5-05) allowing it, by vote of the Commission, to require additional public officials and employees to file financial disclosure statements. The Commission web site lists members of the public retirement system boards as persons who must file.*

Each securities dealer who receives a commission from one of the public retirement systems is required by the bill to disclose the following in an annual report to the Division of Securities and the Ohio Ethics Commission:

(1) Any amount of money paid by the dealer to the retirement system or spent by the dealer for any expense of the system.

(2) The retirement system employee with investment authority who the dealer dealt with.

COMMENT

1. The bill requires that approved agents be domiciled in Ohio, but it does not define "domicile." Under Ohio judicial decisions, a corporation's domicile is usually the place designated as the corporation's principal place of business in the corporate charter. See, for example, *Western Express Co. v. Wallace* (1945), 144 Ohio St. 612.

2. The bill appears to require that at least 10% of the equity trades executed for the retirement systems be executed by minority owned and controlled agents. However, the language setting forth the requirement could be interpreted to require that 10% of the trades made by approved agents, as opposed to 10% of all equity trades, be executed by minority agents. Neither the bill nor other provisions of law governing the retirement systems that use the terms define "minority" or "control."

The reservation of 10% of equity trades for minority agents may be unconstitutional in the absence of proof of discrimination and a showing that the reservation is a narrowly tailored remedial action necessary to remedy past discrimination. See *Associated General Contractors of Ohio, Inc. v. Drabik* (6th Cir., 2000), 214 F.3d 730, *cert. denied*, (2001), 531 U.S. 1148).

3. The bill requires that a retirement system disclose any amount of money received by the system from an agent and a dealer to disclose any amount of money paid to a retirement system. It is not clear what money the bill is referring to.

HISTORY

ACTION	DATE	JOURNAL ENTRY
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