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*Final Analysis*  
Legislative Service Commission

## **Sub. S.B. 133**

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(As Passed by the General Assembly)

**Sens.** Wachtmann, Schuring, Austria, Amstutz, Stivers, Harris, Spada, Coughlin, Armbruster, Jordan, Randy Gardner, Jacobson, Carnes, Robert Gardner, Mumper, Nein, White, Schuler

**Reps.** Schmidt, Reidelbach, White, G. Smith, Schneider, Brinkman, Buehrer, Cates, Clancy, Collier, Flowers, Hagan, Martin, Peterson, Setzer, Trakas, Webster, Willamowski

**Effective date:** September 15, 2004; certain provisions effective December 14, 2004, and August 1, 2005

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### **ACT SUMMARY**

#### **State retirement board membership**

- Alters the composition of each state retirement system board.<sup>1</sup>
- Requires each retirement board position created by the act to be filled by not later than 90 days after the act's effective date.

#### **State retirement board member elections**

- Requires each state retirement board, after consultation with the Secretary of State, to adopt rules to govern the administration of board member elections and elections to fill board vacancies, the nomination process for board member candidates, certification of board member election results, and certification of nominating petitions.
- Permits a state retirement system to contract with the Secretary of State or an independent firm to administer board member elections and to certify election results and nominating petitions, and requires the

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<sup>1</sup> The state retirement systems are the Public Employees Retirement System, Ohio Police and Fire Pension Fund, State Teachers Retirement System, School Employees Retirement System, and State Highway Patrol Retirement System.

Secretary or independent firm to perform these services in accordance with rules adopted by the retirement system.

- Permits the Secretary of State to audit the election if a state retirement board contracts with an independent firm to administer an election.
- Specifies that any person who served as an elected or appointed member of a state retirement board for one or more entire fiscal years in fiscal year 2000, 2001, or 2002 is ineligible for reelection or reappointment to the retirement board if the board paid travel-related expenses for the person or reimbursed the person for travel-related expenses that averaged more than \$10,000 annually for any of those fiscal years.

### *Campaign finance*

- Requires each candidate for a state retirement system board to file with the Secretary of State two complete, accurate, and itemized campaign finance disclosure statements if the candidate, or the candidate's campaign committee, receives contributions or in-kind contributions totaling \$1,000 or more or makes expenditures totaling \$1,000 or more in connection with efforts to be elected to the board.
- Requires each candidate seeking to fill a vacancy on a state retirement board to file with the Secretary of State two complete, accurate, and itemized campaign finance disclosure statements.
- Requires each individual, partnership, or other entity that makes an independent expenditure in connection with a candidate's efforts to be elected to a state retirement board to file with the Secretary of State two complete, accurate, and itemized statements setting forth in detail the independent expenditures.
- Prohibits specified persons from failing to comply with the above filing requirements.
- Prohibits any person, during the course of a person seeking nomination for, or during any campaign for, election to a state retirement board, from knowingly and with intent to affect the person's nomination or the outcome of the campaign taking specified fraud-related actions by means of campaign materials, an advertisement of radio or television or in a newspaper or periodical, a public speech, or press release.

- Requires each state retirement system to make documents regarding filling a vacancy of an elected member of the system's board available at the request of any person.

#### *Suspension and removal of board members*

- Provides that the office of a member of a state retirement board who is convicted of or pleads guilty to a felony, a theft offense, or an ethics law violation is to be deemed vacant on the member's conviction or plea.
- Authorizes a court of appeals to remove a state retirement board member who commits misconduct in office.
- Makes ineligible for election to a state retirement board a person who has pleaded guilty to or been convicted of misconduct in office or an offense of the type described in the second preceding doptpoint.

#### *Civil action*

- Authorizes the Attorney General to maintain a civil action against a state retirement board member who breaches the member's fiduciary duty to the retirement system for harm resulting from that breach.

#### *Ethics*

- Requires the following persons to file an annual financial disclosure statement with the Ohio Ethics Commission: (1) the members of each state retirement board, (2) each employee of a state retirement system who is a licensed state retirement system investment officer, (3) the Ohio Retirement Study Council members appointed by the Governor, and (4) Ohio Retirement Study Council (ORSC) employees, other than employees who perform purely administrative or clerical functions.
- Prohibits a person who is a member of a state retirement board, a state retirement system investment officer, or an employee of a state retirement system whose position involves substantial and material exercise of discretion in the investment of retirement system funds from soliciting or accepting payment of actual travel expenses, including expenses incurred with the travel for lodging, meals, food, and beverages; prohibits any person from giving payment of actual travel expenses to such a board member, officer, or employee.

- Requires each state retirement board, in consultation with the Ohio Ethics Commission, to develop an ethics policy and submit this policy to the Commission for approval; adopt the policy, once approved by the Ethics Commission; and, within 60 days of adopting the policy, send a copy to ORSC.
- Requires each state retirement board to periodically provide ethics training to members and employees of the board.
- Authorizes the Ohio Ethics Commission to investigate complaints regarding an alleged ethics violation by a state retirement board member or employee.
- Permits the Ohio Ethics Commission, at its discretion, to share information gathered in the course of an investigation with, or disclose the information to, the Attorney General and the State Auditor if the accused person is a state retirement board member.
- Requires each state retirement board to establish a procedure to ensure that each board employee is informed of the procedure for filing a complaint with the Ohio Ethics Commission or the appropriate prosecuting attorney.
- Expressly states that nothing in the act may be construed to be a limitation of the Ohio Ethics Commission's authority, responsibility, and powers under the ethics law as it existed immediately prior to the act's effective date as applied to members and employees of the state retirement boards; any authority, power, or responsibilities of the Ohio Ethics Commission expressly created by the act are in addition to any authority, power, or responsibilities of the Commission in effect immediately prior to the act's effective date.
- Requires each retirement system lobbyist and the lobbyist's employer to register with the Joint Legislative Ethics Commission and to disclose both the amount the lobbyist expended in retirement system lobbying and the details of certain financial transactions with a state retirement system or certain state retirement system officials or employees.

### **Board member training**

- Requires the state retirement boards to jointly develop a retirement board member training program that includes an orientation component and a continued training component.
- Requires newly elected state retirement board members, and any person appointed to fill a vacancy on a board, to attend the orientation component of the retirement board member training program, and requires board members with at least one year of experience to attend, not less than twice a year, one or more programs of the continued training component.

### **Internal audit committee**

- Requires each retirement board to (1) appoint a committee (consisting of an employee member, a retirant member, and another member) to select an internal auditor and (2) to employ as an internal auditor the person or persons the committee selects.

### **Chief investment officer**

- Requires each state retirement board to designate a licensed state retirement system investment officer to be the chief investment officer for the system.
- Requires the chief investment officer to reasonably supervise the licensed state retirement system investment officers and other persons employed by the state retirement system with a view toward preventing certain securities and investment violations.
- Requires the chief investment officer to establish and maintain a policy to monitor and evaluate the effectiveness of securities transactions executed on the board's behalf.
- Establishes criteria to evaluate whether a chief investment officer has satisfied the officer's duty of reasonable supervision and duty to establish and monitor the effectiveness of securities transactions.

### Licensing investment officers

- Prohibits, effective 90 days after the act's effective date, any person from acting as a state retirement system investment officer unless the person is so licensed by the Division of Securities in the Department of Commerce in accordance with the act.
- Prohibits, effective 90 days after the act's effective date, a state retirement system investment officer from acting as a dealer, salesperson, investment advisor, or investment advisor representative.
- Grants the Division of Securities regulatory authority over state retirement system investment officers, including the authority to issue and revoke state retirement system investment officer licenses.
- Prohibits a state retirement system investment officer from engaging in fraudulent or deceptive practices or acts.

### Investments

- Requires each retirement board to designate as "Ohio-approved agents" and "Ohio-approved investment managers" securities dealers (agents) and investment managers who meet certain statutorily specified qualifications.
- Requires each board to annually establish a goal to increase utilization of Ohio-approved agents and investment managers, and to submit to ORSC, at least annually, a report detailing the board's progress in meeting the goals and other information regarding agents and investment managers and their activities on behalf of the board.
- Requires each retirement board to adopt and implement procedures and criteria to select agents to execute securities transactions on the board's behalf and to select investment managers.
- Requires each retirement system to annually disclose to the Ohio Ethics Commission certain information regarding agents that execute securities transactions on the board's behalf.

### Ohio Retirement Study Council

- Requires that one of the Governor's three appointees to ORSC have investment experience.
- Permits ORSC to review all rules proposed by each retirement system and make recommendations on those rules to the Joint Committee on Agency Rule Review.
- Requires ORSC to provide each member of ORSC copies of any rules a state retirement board adopts.
- Requires each state retirement board, in consultation with the Ohio Ethics Commission, to review any existing policy regarding travel and travel expenses of members and employees of that board and adopt rules establishing a new or revised policy not earlier than 60 days after submitting the new or revised policy to ORSC for review.
- Requires a state retirement board that intends to award a bonus to any board employee to adopt rules establishing a policy regarding employee bonuses.
- Requires each state retirement board to submit to ORSC a proposed operating budget, including an administrative budget for the board, for the next immediate fiscal year and to adopt that budget not earlier than 60 days after submitting it to ORSC.
- Requires each state retirement board to submit to ORSC a plan describing how the board will improve the dissemination of public information pertaining to the board.
- Authorizes ORSC to have a performance audit of each state retirement system conducted by an independent auditor at least once every ten years.
- Authorizes ORSC to request the Auditor of State to perform or contract for the performance of a financial or special audit of a state retirement system and requires the Auditor to report the results of the audit to ORSC in a timely manner.
- Authorizes ORSC to establish a uniform format and regular reporting requirements for any report that the state retirement boards must submit

to ORSC and, if ORSC establishes a uniform format, requires the retirement boards to submit reports in that format.

- Provides that the Attorney General is ORSC's legal adviser.

#### *OP&F*

- Provides that any elected or appointed member of the Board of Trustees of the Ohio Police and Fire Pension Fund who fails to attend three consecutive board meetings without valid excuse is considered to have resigned from the board.

#### *Alternative retirement program*

- Extends eligibility for participation in an alternative retirement plan (ARP) to employees of public institutions of higher education who have not had prior opportunity to participate in an ARP and, on August 1, 2005, have less than five years of service credit in a state retirement system.
- Permits an employee who changes providers to transfer to the new provider all or only part of the employee's account balance.
- Requires a public institution of higher education, on behalf of an employee participating in an ARP, to contribute to the ARP an amount equal to the amount the institution would have contributed to a state retirement system for that employee, minus a percentage paid to that state retirement system.

#### *Securities law changes*

- Eliminates provisions establishing the fee for the examination of applicant dealers and applicant salespersons, when administered by the Division of Securities.
- Expands the application of certain provisions regarding the Division of Securities' enforcement authority to persons acting as dealers and salespersons.
- Authorizes the Division of Securities to produce, as well as examine, records, books, documents, accounts, and papers as the Division deems necessary or relevant to an inquiry.

- Repeals an arguably redundant provision that authorizes the Division of Securities to proceed under another provision of the securities law to refuse a license applied for by a dealer, salesperson, investment advisor, or investment advisor representative or to suspend the license of any such person and ultimately revoke the license under that other provision.

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CONTENT AND OPERATION

RETIREMENT SYSTEMS

Ohio has five state retirement systems for state and local government employees: the Public Employees Retirement System (PERS), Ohio Police and Fire Pension Fund (OP&F), State Teachers Retirement System (STRS), School Employees Retirement System (SERS), and State Highway Patrol Retirement System (SHPRS). The act makes a number of changes regarding governance and administration of the state retirement systems.

State retirement board membership

(secs. 145.04, 145.05(B) and (D), 742.03, 3307.05, 3307.06, 3307.07, 3307.071, 3307.10, 3309.05, 3309.06, and 5505.04; Section 5)

Attorney General and Auditor of State replaced

Under prior law, each state retirement system board included the Attorney General and the Auditor of State as members, except for the SHPRS Board, which included only the Auditor as a member. The act removes the Attorney General and the Auditor of State from the retirement boards and adds to each board three new members: a Treasurer of State's investment designee, appointed by the Treasurer of State for a four-year term, and two investment expert members, one appointed by the Governor and the other appointed jointly by the Speaker of the House and the President of the Senate, each to a four year term.

The Treasurer's designee member and the investment expert members must possess certain qualifications: each must be an Ohio resident and have direct experience in the management, analysis, supervision, or investment of assets. Also, within the three years immediately preceding appointment, the members must not have been employed by any of the five state retirement systems or by any person, partnership, or corporation that has provided to one of those retirement systems services of a financial or investment nature, including management, analysis, supervision, or investment of assets. In addition, the Treasurer's designee must not, at the time of appointment, be employed by the state or by a political subdivision of the state.

The initial Treasurer's designee members and investment members of each board must be appointed within 90 days of the act's effective date. Also, any

investment expert member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed holds office until the end of that term. The investment expert member continues in office subsequent to the expiration date of the member's term until the member's successor takes office, or until a period of 60 days has elapsed, whichever occurs first.

### **PERS Board**

Formerly, the PERS Board was composed of nine members: three ex officio members<sup>2</sup> (the Attorney General, Auditor of State, and Director of Administrative Services), five employee members,<sup>3</sup> and one retired employee member, known as the "retirant member." As noted above, the act removes the Attorney General and the Auditor from the Board and adds a Treasurer's designee and two investment expert members. The act also adds a second retirant member to the Board, increasing the total number of Board members to 11. The initial additional retirant member must be appointed by the Governor within 90 days after the act's effective date; this appointee will hold office until the next board election that occurs not less than 90 days after the appointment.

### **OP&F Board**

The OP&F Board formerly had the following members: three ex officio members (the Attorney General, Auditor, and the fiscal officer of a municipal corporation appointed by the Governor), four employee members, and two retirant members. As noted above, the act removes the Attorney General and the Auditor from the Board and adds a Treasurer's designee and two investment expert members. The act also removes the fiscal officer member. The act does not change the total number of OP&F Board members; there are still nine.

### **STRS Board**

Formerly, the STRS Board had the following members: three ex officio members (the Attorney General, Auditor, and Superintendent of Public Instruction), five current STRS members and one retired STRS member. The board members who were current STRS members were "teacher members" and the

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<sup>2</sup> *The ex officio members are voting members.*

<sup>3</sup> *One employee member must be a state employee, one a county employee, one a municipal employee, one a university or college employee, and one an employee of a park district, conservancy district, sanitary district, health district, public library, township, metropolitan housing authority, union cemetery, joint hospital, or institutional commissary.*

board member who was a retired member was the "retired teacher member," regardless of their actual positions.<sup>4</sup> The act changes the term used to refer to the Board members who are current STRS members from "teacher members" to "contributing members."

As noted above, the act removes the Attorney General and Auditor from the STRS Board, and adds a Treasurer's designee and two investment expert members. The act permits the Superintendent of Public Instruction to designate an individual to serve in the Superintendent's stead. The Superintendent's designee must be an Ohio resident with direct experience in the management, analysis, supervision, or investment of assets, and, within the three years immediately preceding the appointment, must not have been employed by any of the five state retirement systems or by any person, partnership, or corporation that has provided to one of those retirement systems services of a financial or investment nature, including management, analysis, supervision, or investment of assets. The act also adds a second retired teacher member to the Board, increasing the total number of STRS Board members from 9 to 11. The additional retired teacher member must be appointed by the Governor within 90 days after the act's effective date; this appointee will hold office until the next board election that occurs not less than 90 days after the appointment.

### **SERS Board**

Under prior law, the SERS Board had seven members: two ex officio members (the Attorney General and Auditor), four employee members, and one retirant member. As noted above, the act removes the Attorney General and the Auditor from the Board and adds a Treasurer's designee and two investment expert members. The act also adds an additional retirant member, bringing the total number of SERS Board members to nine. The initial additional retirant member must be appointed by the Governor within 90 days after the act's effective date; this appointee will hold office until the next board election that occurs not less than 90 days after the appointment.

### **SHPRS Board**

Under prior law, the SHPRS Board had the following members: two ex officio members (the Auditor and Superintendent of the State Highway Patrol), four employee members, and one retirant member. As noted above, the act removes the Auditor from the Board and adds a Treasurer's designee and two investment expert members. The act also adds an additional employee member

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<sup>4</sup> *STRS membership includes certain school administrators and university faculty members, as well as public school teachers.*

and an additional retirant member, bringing the total number of SHPRS members from 7 to 11. The initial additional employee member and the initial additional retirant member must be appointed by the Governor within 90 days after the act's effective date; these appointees will hold office until the next board election that occurs not less than 90 days after the appointment.

**Replacement of elected members of state retirement boards--vacancy successors**

(secs. 145.06, 742.05, 3307.06, 3309.06, and 5505.042 [relocated and revised from sec. 5505.04(C)]; Section 5)

Under prior law, when a person was elected to fill the vacated office of an active or retired employee member of a state retirement board, the successor member held office for the remainder of the unexpired term. Under the act, the successor member holds office only until the next board election that occurs not less than 90 days after the successor member's election.

**Quorums, number of votes needed to take action**

(secs. 3309.09 and 5505.04)

The act revises provisions in SERS law and SHPRS law to reflect the larger size of the boards. Under prior law, each board required a majority of its members to constitute a quorum to take action by specifying the exact number of members required. Instead, the act describes the number as "a majority of the members of the board."

**Transition of board membership**

(Sections 5 and 7)

The act provides that each member of a state retirement board who, pursuant to the act, is replaced on that board by an elected or appointed member will remain in office until the replacement member is appointed or elected. The replacement members must be appointed, and the appointees must take office, not later than 90 days after the act's effective date, except that an investment expert member appointed jointly by the Speaker of the House of Representatives and the President of the Senate cannot immediately take office if doing so would result in an even number of members on that retirement board. The investment expert member must take office at the earliest time that taking office would result in an odd number of members on that board.

### State retirement board elections

(secs. 145.05(C) and (D), 145.058, 145.06, 742.04, 742.045, 742.05, 3307.06, 3307.07, 3307.075, 3309.06, 3309.07, 3309.075, 5505.041, 5505.043, and 5505.047)

Continuing law provides that elections for members of the PERS Board, OP&F Board of Trustees, STRS Board, and SERS Board are to be held under the direction of the system's board. The act requires elections to be held in accordance with rules adopted by each retirement board, in accordance with the Administrative Procedures Act (Revised Code Chapter 119.), following consultation with the Secretary of State. The rules are to govern the following:

- (1) The administration of regular board member elections and elections to fill board vacancies;<sup>5</sup>
- (2) Nominating petitions for the elections;
- (3) Certification of the validity of nominating petitions for the elections;<sup>6</sup>
- (4) Certification of the results of the elections.

The retirement boards may contract with the Secretary of State or an independent firm to administer the elections, certify the validity of nominating petitions, and certify the results of elections. The act provides that, if the board contracts with the Secretary of State or an independent firm, the board must provide to the Secretary of State or firm any information necessary for the certification of the election. The act requires the Secretary of State and the independent firms to perform these services in accordance with the rules described above, as adopted by the retirement system. Also, if a retirement board contracts with an independent firm to administer an election, the Secretary of State may audit the election.

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<sup>5</sup> Under prior law, a vacancy in the term of a retirant member of the OP&F Board of Trustees was filled by the employee members and remaining retirant member of the board for the unexpired term.

<sup>6</sup> The act eliminates a provision that required the OP&F Board of Trustees to determine the sufficiency of nominating petitions.

**Technical changes**

(secs. 145.051, 145.052, 145.06(C), 3307.06(B), 3309.071, and 5505.04(C))

The act also makes changes of a technical nature to the law governing elections for PERS, STRS, SERS, and SHPRS.

**Ineligible for reelection or reappointment--travel expenses**

(secs. 145.042, 742.032, 3307.052, 3309.052, and 5505.049)

Under the act, any person who served as an elected or appointed member of a state retirement board for one or more entire fiscal years in fiscal year 2000, 2001, or 2002 is ineligible for re-election or reappointment to the board if the board either directly paid on the person's behalf, or reimbursed the person for, travel-related expenses that averaged more than \$10,000 annually for those fiscal years.

**Campaign finance**

**Candidate finance disclosures**

(secs. 111.30, 145.053(A) and (B), 742.042(A) and (B), 3307.072(A) and (B), 3309.072(A) and (B), and 5505.044(A) and (B))

The act requires each candidate nominated for election to a state retirement system board to file with the Secretary of State two complete, accurate, and itemized campaign finance disclosure statements if the candidate, or the candidate's campaign committee, receives contributions or in-kind contributions totaling \$1,000 or more or makes expenditures totaling \$1,000 or more in connection with the candidate's efforts to be elected to the board.<sup>7</sup>

As used in the act's campaign finance provisions, "candidate" includes a person who is seeking to be elected to fill a vacancy on the board. The definitions of "contribution," "in-kind contribution," and "expenditure" are very similar to

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<sup>7</sup> *The act defines "campaign committee" as a candidate or a combination of two or more persons authorized by a candidate to receive contributions and in-kind contributions and make expenditures on behalf of the candidate. The campaign finance disclosure statements must be filed even if no election is held because only one candidate is nominated for the board member position. Under the PERS law, the statements must be filed regardless of whether the election is a regular election or a special election held when a person elected to serve on the PERS Board is unable to assume office at the January meeting of the Board following the person's election.*

those in continuing state elections law governing campaign finance disclosure statements. "Contribution" is defined in the act as a loan, gift, deposit, forgiveness of indebtedness, donation, advance, payment, transfer of funds or transfer of anything of value, including a transfer of funds from an inter vivos or testamentary trust or decedent's estate, and the payment by any person other than the person to whom the services are rendered for the personal services of another person, which contribution is made, received, or used for the purpose of influencing the results of an election to a state retirement system board or the results of an election to fill a vacancy in the board. "Contribution" does not include services provided without compensation by individuals volunteering a portion or all of their time on behalf of a person, ordinary home hospitality, or the personal expenses of a volunteer paid for by that volunteer campaign worker.<sup>8</sup>

"In-kind contribution" is defined as anything of value other than money that is used to influence the results of an election to a state retirement system board (including a special election) or the results of an election to fill a vacancy in the board or is transferred to or used in support of or in opposition to a candidate and is made with the consent of, in coordination, cooperation, or consultation with, or at the request or suggestion of the benefited candidate. The financing of the dissemination, distribution, or republication, in whole or in part, of any broadcast or of any written, graphic, or other form of campaign materials prepared by the candidate, the candidate's campaign committee, or their authorized agent is an in-kind contribution to the candidate and an expenditure by the candidate. "Expenditure" is defined as the disbursement or use of a contribution for the purpose of influencing the results of an election to a state retirement system board or the results of an election to fill a vacancy on a board.

The campaign finance disclosure statements must set forth in detail the contributions, in-kind contributions, and expenditures and be made on a form the Secretary of State is required to prescribe.<sup>9</sup> Every expenditure must be vouched for by a receipted bill, stating the purpose of the expenditure, that must be filed with the statement; a canceled check with a notation of the purpose of the expenditure is a receipted bill for purposes of this provision.

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<sup>8</sup> *The act defines "personal expenses" as including ordinary expenses for accommodations, clothing, food, personal motor vehicle or airplane, and home telephone.*

<sup>9</sup> *In addition to being required to prescribe the forms to be used for the campaign finance disclosure statements, the act requires the Secretary of State to accept the forms. The act does not provide for the Secretary to do anything with the forms.*

The first statement is due not later than 4 p.m. on the day that is 12 days before the election, and the second statement must be filed not sooner than the day that is eight days after the election and not later than 38 days after the election.<sup>10</sup> The first statement must reflect contributions and in-kind contributions received and expenditures made to the close of business on the 20th day before the election. The second statement must reflect contributions and in-kind contributions received and expenditures made during the period beginning on the 19th day before the election and ending on the close of business on the seventh day after the election.<sup>11</sup>

**Candidate disclosure statements--vacancy**

(secs. 111.30, 145.053(A) and (D), 742.042(A) and (D), 3307.072(A) and (D), 3309.072(A) and (D), and 5505.044(A) and (D))

Each candidate who, or whose campaign committee, receives a contribution or in-kind contribution or makes an expenditure in connection with the candidate's efforts to be elected to fill a vacancy on a state retirement board is required to file with the Secretary of State a complete, accurate, and itemized statement setting forth in detail the contributions, in-kind contributions, and expenditures. The statement shall be made on a form prescribed by the Secretary of State.<sup>12</sup> Every expenditure must be vouched for by a receipted bill, stating the purpose of the expenditure, that must be filed with the statement; a canceled check with a notation of the purpose of the expenditure is a receipted bill for purposes of this provision.

The statement must be filed within 38 days after the day the candidate takes office and must reflect contributions and in-kind contributions received and expenditures made to the close of business on the seventh day after the day the candidate takes office.

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<sup>10</sup> *Continuing law specifies the election day for each system. The act uses those dates in the campaign finance disclosure provisions.*

<sup>11</sup> *If no election is to be held because only one candidate is nominated for a board position, the time for filing the statements and the period the statements must reflect are to be based on the date the election would have been held if more than one candidate had been nominated.*

<sup>12</sup> *The act also requires the Secretary of State to accept the forms. But the act does not provide for the Secretary to do anything with the forms.*

### **Independent expenditure disclosure statements**

(secs. 111.30, 145.053(A) and (C), 742.042(A) and (C), 3307.072(A) and (C), 3309.072(A) and (C), and 5505.044(A) and (C))

Each individual, partnership, or other entity that makes an independent expenditure in connection with a candidate's efforts to be elected to a state retirement board must file with the Secretary of State two complete, accurate, and itemized statements setting forth in detail the independent expenditures. The statements must be filed regardless of whether the election is a regular election, a special election if one is held, or no election is held. The statements must be made on a form prescribed by the Secretary of State under the act. "Independent expenditure," as used in this provision, means an expenditure by an individual, partnership, or other entity advocating the election or defeat of an identified candidate or candidates, that is not made with the consent of, in coordination, cooperation, or consultation with, or at the request or suggestion of any candidate or candidates or of the campaign committee or agent of the candidate or candidates. An independent expenditure is not to be construed as being a contribution.

The first statement must be filed not later than 4 p.m. on the day that is 12 days before election day and must reflect independent expenditures made to the close of business on the 20th day before election day. The second statement must be filed not sooner than the day that is eight days after election day and not later than 38 days after election day and must reflect independent expenditures made during the period beginning on the 19th day before election day and ending on the close of business on the seventh day after election day.

### **Prohibitions; penalties**

(secs. 145.054, 145.055, 145.99, 742.043, 742.044, 742.99, 3307.073, 3307.074, 3307.99, 3309.073, 3309.074, 3309.99, 5505.045, 5505.046, and 5505.99)

The act prohibits any person from knowingly failing to file a complete and accurate campaign finance disclosure statement or independent expenditure disclosure statement in accordance with the act. If the Ohio Elections Commission determines, pursuant to a hearing described below, that a violation of this prohibition has occurred, it must either impose a fine or enter a finding that good cause has been shown not to impose the fine. The act provides that the fine may not exceed \$100 for each day of the violation.

The act also prohibits a person, during the course of a person seeking nomination for, or during any campaign for, election to a state retirement board,

from knowingly and with intent to affect the person's nomination or the outcome of the campaign doing any of the following by means of campaign materials, an advertisement on radio or television or in a newspaper or periodical, a public speech, press release, or otherwise:

(1) With regard to a candidate, identifying the candidate in a manner that implies that the candidate is a member of the board or using the term "re-elect" when the candidate is not currently a member of the board;

(2) Making a false statement concerning the formal schooling or training completed or attempted by a candidate; a degree, diploma, certificate, scholarship, grant, award, prize, or honor received, earned, or held by a candidate; or the period of time during which a candidate attended any school, college, community technical school, or institution;

(3) Making a false statement concerning the professional, occupational, or vocational licenses held by a candidate, or concerning any position the candidate held for which the candidate received a salary or wages;

(4) Making a false statement that a candidate or public official has been indicted or convicted of a theft offense, extortion, or other crime involving financial corruption or moral turpitude;

(5) Making a statement that a candidate has been indicted for any crime or has been the subject of a finding by the Ohio Elections Commission without disclosing the outcome of any legal proceedings resulting from the indictment or finding;

(6) Making a false statement that a candidate or official has a record of treatment or confinement for mental disorder;

(7) Making a false statement that a candidate or official has been subjected to military discipline for criminal misconduct or dishonorably discharged from the armed services;

(8) Falsely identifying the source of a statement, issue statements under the name of another person without authorization, or falsely stating the endorsement of or opposition to a candidate by a person or publication;

(9) Making a false statement concerning the voting record of a candidate or public official;

(10) Posting, publishing, circulating, distributing, or otherwise disseminating a false statement concerning a candidate, either knowing the same to be false or with reckless disregard of whether it was false or not, if the

statement is designed to promote the election, nomination, or defeat of the candidate.

If the Ohio Elections Commission determines, pursuant to a hearing described below, that a violation of this prohibition has occurred, the Commission must impose a fine of up to \$5,000, refer the matter to the appropriate prosecutor, or enter a finding that good cause has been shown to not impose a fine or refer the matter to a prosecutor. If the person pleads guilty to or is convicted of a violation of this prohibition, the sentencing court must imprison the offender for not more than six months, fine the offender not more than \$5,000, or both.

Fines the Ohio Elections Commission imposes for a violation of either prohibition are to be paid into the Ohio Elections Commission Fund. Law not changed by the act provides that all moneys credited to that fund must be used solely for the purpose of paying expenses related to the operation of the Ohio Elections Commission.

### **Procedure**

(secs. 145.055, 742.044, 3307.074, 3309.074, and 5505.046)

The act authorizes the Secretary of State or any person acting on personal knowledge and subject to the penalties of perjury to file a complaint with the Ohio Elections Commission alleging a violation of the act's requirements on campaign finance disclosure statements and independent expenditure disclosure statements or the prohibition against fraudulent campaigning. The complaint must be made on a form prescribed and provided by the Commission.

On receipt of a complaint, the Commission is required to hold a hearing open to the public to determine whether the alleged violation occurred. The act authorizes the Commission to administer oaths and issue subpoenas to any person in the state compelling the attendance of witnesses and the production of relevant papers, books, accounts, and reports. On the refusal of any person to obey a subpoena or to be sworn or to answer as a witness, the Commission may apply to the Franklin County Court of Common Pleas, which is required to hold contempt proceedings in accordance with state law.

The Commission is required to provide the person accused of the violation at least seven days prior notice of the time, date, and place of the hearing. The accused is permitted to be represented by an attorney and must be given an opportunity to present evidence, call witnesses, and cross-examine witnesses. At the hearing, the Commission must determine whether the alleged violation has occurred.

**Documents relating to filling board vacancy to be open to the public**

(secs. 145.27(D)(6), 742.41(E)(6), 3307.20(E)(6), 3309.22(D)(6), and 5505.04(D)(6))

Continuing law provides, with certain exceptions, that the records of the state retirement systems are open to public inspection. An exception is that an individual's personal history record is not open to public inspection without the individual's written authorization. A personal history record includes a member or former member's address, telephone number, social security number, record of contributions, correspondence with the system, or other information the system's board determines to be confidential.

The act provides that the confidentiality of personal history records is not to stop a state retirement system from making available to the public copies of all documents the system possesses regarding filling a vacancy of an elected member of the system's board. A state retirement system is required to make such documents, including resumes, available at the request of any person. The person who makes the request must pay the cost of compiling, copying, and mailing the documents. This information is a public record.

**Suspension and removal of state retirement board members**

(secs. 145.057, 742.046, 3307.061, 3309.061, and 5505.048)

**Automatic vacancy on certain convictions**

The act provides that the office of an employee member or a retirant member of a state retirement board who is convicted of or pleads guilty to committing a felony, a theft offense,<sup>13</sup> or a violation of certain ethics law

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<sup>13</sup> "Theft offense" means any of the following (sec. 2913.01(K)):

*(1) Aggravated robbery, robbery, aggravated burglary, burglary, breaking and entering, safecracking, tampering with coin machines, petty theft, theft, grand theft, grand theft of a motor vehicle, aggravated theft, and theft of drugs, unauthorized use of a vehicle, unauthorized use of property and unauthorized use of computer property, possession of an unauthorized device and sale of an unauthorized device, telecommunications fraud, unlawful use of a telecommunications device, passing bad checks, misuse of credit cards, forgery and forging identification cards or selling or distributing forged identification cards, criminal simulation, making or using slugs, trademark counterfeiting, Medicaid fraud, tampering with records, securing writings by deception, personating an officer, defrauding creditors, insurance fraud, receiving stolen property, cheating, corrupting sports, theft in office, the former offense of insurance fraud, or the former offense of workers' compensation fraud;*

prohibitions is deemed vacant. A person who has pleaded guilty to or been convicted of one of these offenses is ineligible for election to the office of employee member or retirant member of a state retirement board.

**Removal for misconduct in office**

Under the act, a state retirement system board member<sup>14</sup> may be found guilty of misconduct in office for willfully and flagrantly exercising authority or power not authorized by law, refusing or willfully neglecting to enforce the law or to perform any official duty imposed by law, or being guilty of gross neglect of duty, gross immorality, drunkenness, misfeasance, malfeasance, or nonfeasance. On complaint and hearing, judgment of forfeiture of the office may be entered against the board member, creating in the office a vacancy to be filled as provided by law. The person removed is ineligible to fill an elective or appointed position on the board.

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*(2) A violation of an existing or former municipal ordinance or law of Ohio, any other state, or the United States, substantially equivalent to any offense listed in (1) or the offenses of defrauding a livery or hostelry, denying access to a computer, or corrupting sports as those offenses existed prior to July 1, 1996;*

*(3) An offense under an existing or former municipal ordinance or law of Ohio, any other state, or the United States, involving robbery, burglary, breaking and entering, theft, embezzlement, wrongful conversion, forgery, counterfeiting, deceit, or fraud;*

*(4) A conspiracy to commit, attempt to commit, or complicity in committing any offense identified in (1), (2), or (3).*

*The acts prohibited by the ethics law are failing to file a required disclosure statement, filing a false disclosure statement, violating "revolving door" restrictions, improperly disclosing or using confidential information, improper participation in license and rate-making proceedings, improper use of the authority or influence of the person's office, improper solicitation of things of value, improper practices regarding honorariums, accepting improper compensation, selling goods or services to the state without using competitive bidding requirements, failing to disqualify oneself on specified matters, bribery, perjury, falsification, falsification in a theft offense, falsification to purchase a firearm, obstructing official business, theft in office, having an unlawful interest in a public contract, soliciting or receiving improper compensation, and dereliction of duty.*

<sup>14</sup> As used in this portion of the analysis, "state retirement system board member" means a person elected or appointed to fill an elective position as a member of the board of PERS, OP&F, SERS, STRS, and SHPRS.

Proceedings for removal of a state retirement system board member on any of the grounds described above are to be commenced by filing with the Ohio court of appeals of the district in which the board member resides a written complaint specifically setting forth the charge. The complaint must be accepted if signed by either (1) the Governor or (2) a number of persons qualified to vote for the board member's position that equals 10% of the number of persons who voted in the last election under the standard election procedure for that board position and must include signatures of at least 20 members of the system or retirants residing in at least five different counties.

The court of appeals in which the complaint is filed must hold a public hearing on the complaint not later than 30 days after the filing. The clerk of the court of appeals must verify the signatures' validity by submitting them to the board and cause a copy of the complaint to be served on the board member at least ten days before the hearing. The court may subpoena witnesses and compel their attendance in the same manner as in civil cases, and the sheriff of the county in which the witness resides must serve the process. Witness fees and other fees in connection with the proceedings are the same as in civil cases. The court may suspend the board member pending the hearing.

If the court finds that one or more of the charges in the complaint are true, it must make a finding for removal of the board member. The finding must include a full detailed statement of the reasons for the removal, be filed with the clerk of the court, and be made a matter of public record.

The board member has the right of review or appeal to the Supreme Court on leave first obtained. The Supreme Court must hear the case in not more than 30 court days after granting leave.<sup>15</sup> In other respects, the hearing must follow the regular procedure in appealable cases that originate in the court of appeals.<sup>16</sup>

**Civil action relating to fiduciary duty of state retirement board member**

(sec. 109.98)

If a member of a state retirement board breaches the member's fiduciary duty to the retirement system, the act authorizes the Attorney General to maintain

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<sup>15</sup> Although not specifically referenced, "court day" probably has the same meaning as in sec. 5122.01(L): Monday, Tuesday, Wednesday, Thursday, and Friday, except when the day is a holiday.

<sup>16</sup> These provisions are based on and roughly analogous to the Revised Code's general misconduct in office provisions concerning state officers, which are contained in secs. 3.07 to 3.10 (not in the act).

a civil action against the board member for harm resulting from that breach. The Attorney General may recover damages or be granted injunctive relief, which includes the enjoinder of specified activities and the removal of the member from the board. Any damages awarded must be paid to the state retirement system. This authority is in addition to any authority the Attorney General possesses under any other Revised Code provision.

## **Ethics**

### **Background**

Continuing Ohio ethics laws<sup>17</sup> designate various ethics commissions as the "appropriate ethics commission"<sup>18</sup> for specified types of state government employees and officials, impose reporting requirements on certain types of state officials and state employees, and prohibit certain types of behavior. The Ohio Ethics Commission (OEC) is the "appropriate ethics commission" for members and employees of the state retirement system boards.

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<sup>17</sup> *The ethics laws are contained in Chapter 102. and sections 2921.42 and 2921.43 of the Revised Code. Chapter 102. provides for the filing of financial disclosure statements and specifies prohibited conduct, procedures for receiving and investigating complaints of ethical misconduct, and procedures for giving advisory opinions. The prohibitions include prohibitions against improper use of the influence of a person's position in government, disclosure of confidential information, accepting anything of value that is of such a character as to manifest a substantial and improper influence on the public official or employee with respect to that person's duties, and "revolving door" provisions. Section 2921.42 is the offense of having an unlawful interest in a public contract, and section 2921.43 is the offense of soliciting or receiving improper compensation.*

<sup>18</sup> *"Appropriate ethics commission" means (sec. 102.01(F)): (1) for matters relating to members of the General Assembly, employees of the General Assembly, employees of the Legislative Service Commission, and candidates for the office of member of the General Assembly, the Joint Legislative Ethics Committee, (2) for matters relating to judicial officers and employees, and candidates for judicial office, the Board of Commissioners on Grievances and Discipline of the Supreme Court, and (3) for matters relating to all other persons, the Ohio Ethics Commission.*

**Ethics commission disclosure statements**

(sec. 102.02)

The act requires the following persons to file an annual financial disclosure statement with the OEC:<sup>19</sup>

(1) The members of each state retirement board;

(2) Each employee of a state retirement system who is a licensed state retirement system investment officer (see "**Licensing state retirement system investment officers**," below);

(3) The members of the Ohio Retirement Study Council (ORSC) who are appointed by the Governor;

(4) ORSC employees, other than employees who perform purely administrative or clerical functions.

As provided under continuing law requiring public officials to file financial disclosure statements, these statements must likewise 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 possesses, and other information.

**Prohibition against payment of travel expenses**

(sec. 102.03(H)(2) and sec. 102.99(B), not in the act)

**Continuing prohibition.** Continuing law prohibits public officials and employees who are required to file financial disclosure statements from soliciting or accepting an honorarium.<sup>20</sup> Similarly, continuing law prohibits any person from

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<sup>19</sup> Pursuant to sec. 102.02, the Ohio Ethics Commission had adopted a rule authorizing the Commission, by vote of the Commission, to require additional public officials and employees to file financial disclosure statements. (Sec. 102.02(B).) According to the Commission's website, state retirement board members were required to file; however, these filings were confidential. Under the act, retirement board members' disclosure statements will no longer be confidential.

<sup>20</sup> As used in the ethics law, "honorarium" means any payment made in consideration for any speech given, article published, or attendance at any public or private conference, convention, meeting, social event, meal, or similar gathering. "Honorarium" does not include ceremonial gifts or awards that have insignificant monetary value; unsolicited gifts of nominal value or trivial items of informational value; or earned income from any person, other than a legislative agent, for personal services that are customarily provided

giving an honorarium to a public official or employee of that nature. A person who violates this prohibition is guilty of a misdemeanor of the first degree.

**Continuing exceptions.** This prohibition does not prohibit a public official or employee who is required to file a financial disclosure statement from accepting, and does not prohibit a person from giving to that public official or employee, the payment of actual travel expenses, meals, food, and beverages (1) provided to the public official or employee at a meeting at which the public official or employee participates in a panel, seminar, or speaking engagement or (2) provided to the public official or employee at a meeting or convention of a national organization to which any state agency pays membership dues. This prohibition also does not prohibit a public official or employee who is *not* required to file a financial disclosure statement from accepting, and does not prohibit a person from promising or giving to that public official or employee, the payment of travel, meal, and lodging expenses if the expenses (1) were paid in recognition of demonstrable business, professional, or esthetic interests of the public official or employee that exist apart from public office or employment and (2) were not paid by any person or other entity, or by any representative or association of those persons or entities, that is regulated by, doing business with, or seeking to do business with the governmental entity with which the public official or employee serves.

**New prohibition.** The act creates a new prohibition regarding the payment of the travel expenses relating to the state retirement systems. A person who is a member of the board of a state retirement system, a state retirement system investment officer, or an employee of a state retirement system whose position involves substantial and material exercise of discretion in the investment of retirement system funds may not solicit or accept payment of actual travel expenses, including expenses incurred with the travel for lodging, meals, food, and beverages. In addition, the act prohibits any person from giving payment of actual travel expenses to such a board member, officer, or employee. A person who violates this prohibition is guilty of a misdemeanor of the first degree. The exceptions do not apply to this new prohibition.

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*in connection with the practice of a bona fide business, if that business initially began before the public official or employee conducting that business was elected or appointed to the office or position of employment. (Sec. 102.01(H).)*

### **Ethics policy and periodic ethics law training**

(secs. 145.093, 742.103, 3307.042, 3309.042, and 5505.063)

Each state retirement board must, in consultation with the OEC, develop an ethics policy and submit this policy to the OEC for approval. The OEC must review the policy and, if the OEC determines that the policy is adequate, approve the policy. If the OEC determines that the policy is inadequate, it must specify the revisions to be made and the board is required to submit a revised policy. If the OEC approves the revised policy, the board must adopt that policy. If not, the board must make any further required revisions and adopt the policy. Not less than 60 days before adopting the policy, the board must submit it to ORSC for review.

Each board must periodically provide ethics training to members and employees of the board. The training must include training regarding the requirements and prohibitions of the ethics law and any other training the board considers appropriate.

### **Investigation of ethics complaints**

(secs. 102.06(B) and (C)(1)(a), 145.093, 742.103, 3307.042, 3309.042, and 5505.063; Section 6)

**Continuing law.** Under continuing law, the appropriate ethics commission is authorized to receive and initiate complaints regarding persons subject to the ethics law concerning conduct alleged to be in violation of that law. The commission is required to investigate complaints, may investigate charges presented to it, and may request further information from any person filing with the commission a financial disclosure statement, if the information sought is directly relevant to a complaint or charges received by the commission. This information generally is confidential. If the commission finds that a complaint is not frivolous and there is reasonable cause to believe that the facts alleged constitute a violation of the ethics law, it must hold a hearing. If the commission does not so find, it is required to dismiss the complaint and notify the accused person in writing of the dismissal.

If, on the basis of the hearing, the commission finds by a preponderance of the evidence that the facts alleged in the complaint are true and constitute a violation of the ethics law, it must report its findings to the appropriate prosecuting authority for prosecution of the violation and to the appointing or employing authority of the accused. If the prosecuting authority has not initiated any official action on those findings within 90 days after receiving the commission's report, the commission may publicly comment that no official action has been taken on its

findings. The commission is prohibited from making comment regarding the merits of its findings.

If the appropriate ethics commission does not find by a preponderance of the evidence that the facts alleged in the complaint are true and constitute a violation of the ethics law or if the commission has not scheduled a hearing within 90 days after the complaint is filed or has not finally disposed of the complaint within six months after it has been heard, it is required to dismiss the complaint and notify the accused person in writing of the dismissal. The commission may make a report of its finding only if the accused person requests a report. On such a request, the commission must make a public report of the finding.

**The act.** The act makes three changes related to these provisions:

(1) If the accused person is a state retirement board member and, on the basis of the hearing, the appropriate ethics commission (the OEC) finds by a preponderance of the evidence that the facts alleged in the complaint are true and constitute a violation of the ethics law, the commission must report its findings to ORSC, as well as to the appropriate prosecuting authority.

(2) Each state retirement board must establish a procedure to ensure that each employee of that board is informed of the procedure for filing a complaint alleging violation of the ethics law with the OEC or the appropriate prosecuting attorney.

(3) The act expressly states that nothing in it may be construed to be a limitation of the OEC's authority, responsibility, and powers under Revised Code Chapter 102, as it existed immediately prior to the act's effective date as applied to members and employees of the state retirement boards. Any authority, power, or responsibilities of the OEC expressly created by the act are in addition to any authority, power, or responsibilities of the OEC in effect immediately prior to the act's effective date.

(4) The act permits the OEC, at its discretion, to share information gathered in the course of an investigation with, or disclose the information to, the Attorney General and the State Auditor if the accused person is a state retirement board member.

### **Retirement system lobbying activity**

The act regulates lobbyists who attempt to influence retirement system decisions or conduct retirement system lobbying activity.

## Definitions

(sec. 101.90(A), (D), (G), (H), and (I))

The act defines "retirement system lobbyist" as any person engaged by an employer to, "on a regular or substantial basis," conduct retirement system lobbying activities or influence retirement system decisions.<sup>21</sup> (The definition excludes an elected or appointed officer or employee of a federal or state agency or political subdivision who attempts to influence or affect retirement system decisions in a fiduciary capacity as a representative of the officer's or employee's agency or political subdivision.) "Engage" means to make any arrangement whereby an individual is employed or retained for compensation to act for or on behalf of an employer to influence retirement system decisions or to conduct any retirement system lobbying activity.

"Retirement system decision" means a decision of a state retirement system regarding the investment of retirement funds, including the awarding of a contract to an agent or an investment manager. "Retirement system lobbying activity" means contacts made to promote, oppose, or otherwise influence the outcome of a retirement system decision by direct communication with a member of a board of a state retirement system, a retirement system investment official, or an employee of a retirement system whose position involves substantial and material exercise of discretion in the investment of retirement system funds. "Lobbying activity" does not include (1) the action of a person having a direct interest in retirement system decisions who, under the Ohio Constitution, assembles together with other persons to consult for their common good, instructs a person listed in the preceding sentence, or petitions such a person for redress of grievances, (2) contacts made for the sole purpose of gathering information contained in a public record, or (3) appearances before a retirement system to give testimony.

The act defines "retirement system official" as an officer or employee of a retirement system whose principal duties are to formulate policy or to participate directly or indirectly in the preparation, review, or award of financial arrangements with a retirement system.

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<sup>21</sup> *The act defines "person" as any individual, partnership, trust, estate, business trust, association, or corporation; any labor organization or manufacturer association; any department, commission, board, publicly supported college or university, division, institution, bureau, or other instrumentality of the state; or any county, township, municipal corporation, school district, or other political subdivision of this state.*

### **Registration of retirement system lobbyists**

(secs. 101.90(K) and 101.92)

Each retirement system lobbyist and each employer must pay a \$25 registration fee and file with the Joint Legislative Ethics Commission (JLEC), within ten days after the engagement of a retirement system lobbyist, an initial registration statement showing all of the following: (1) the name, business address, and occupation of the retirement system lobbyist, (2) the name and business address of the employer or real party in interest on whose behalf the retirement system lobbyist is acting, if it is different from the employer,<sup>22</sup> (3) a brief description of the retirement system decision to which the engagement relates, and (4) the name of the retirement system or systems to which the engagement relates.

The act requires each retirement system lobbyist and each employer to file with JLEC not later than the last day of January, May, and September of each year, in addition to the initial registration statement, an updated registration statement and with it any required expenditure statement and any statement of the details of financial transactions. The updated registration statement must confirm the continuing existence of each engagement described in an initial registration statement and list the specific retirement system decisions that the lobbyist sought to influence under the engagement during the period covered by the updated statement. If a retirement system lobbyist is engaged by more than one employer, the lobbyist must file a separate initial and updated registration statement for each engagement. However, if an employer engages more than one retirement system lobbyist, the employer need only file one updated registration statement, which must contain the required information regarding all of the retirement system lobbyists engaged by the employer. A change in any information described in (1) or (2) above or in an updated registration statement must be reflected in the next updated registration statement. Within 30 days after the termination of an engagement, the retirement system lobbyist who was employed under the engagement must send written notification of the termination to JLEC. The act prohibits the charging of a fee for filing a registration statement. The registration card that JLEC must issue to each retirement system lobbyist on initial registration is valid from the date of its issuance until January 31 of the year following the year in which the initial registration was filed.

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<sup>22</sup> *If a trade association or other charitable or fraternal organization that is exempt from federal income taxation under subsection 501(c) of the federal Internal Revenue Code is the employer, the statement need not list each member of the association or organization, so long as the association or organization itself is listed.*

The executive director of JLEC is responsible for reviewing each registration statement filed with JLEC and for determining whether the statement contains all of the required information. If it determines that the registration statement does not contain all the required information or that a retirement system lobbyist or employer has failed to file a registration statement, JLEC must send written notice by certified mail to the person who filed the statement regarding the deficiency in the statement or to the person who failed to file the registration statement regarding the failure. Any person so notified must, not later than 15 days after receiving the notice, file a registration statement or an amended registration statement that does contain all the required information. If any person receiving such a notice fails to file a registration statement within this 15-day period, JLEC must assess a late filing fee equal to \$12.50 per day, up to a maximum fee of \$100, on that person, but may waive the late filing fee for good cause shown.

On or before each March 15, JLEC must, in the manner and form that it determines, publish a report containing statistical information on the registration statements filed with it during the preceding year. If an employer who engages with a retirement system lobbyist is the recipient of a contract, grant, lease, or other financial arrangements pursuant to which state or retirement system funds are distributed or allocated, the retirement system or any aggrieved party (a party entitled to resort to a remedy) may consider the failure of the employer or retirement system lobbyist to comply with the act's registration requirements as a breach of material condition of the contract, grant, lease, or other financial arrangement. Retirement system officials may require certification from any person seeking the award of a contract, grant, lease, or financial arrangement that the person and the employer are in compliance with the act's registration requirements.

### **Expenditure statements**

(secs. 101.90(B) and 101.93)

The act defines "expenditure" for the purposes of the retirement system lobbying provisions as any of the following that is made to, at the request of, for the benefit of, or on behalf of a retirement system, a member of the board of a retirement system, a retirement board investment official, or an employee of a retirement system whose position involves substantial and material exercise of discretion in the investment of retirement system funds (a retirement board investment employee):

(1) A payment, distribution, loan, advance, deposit, reimbursement, or gift of money, real estate, or anything of value, including, but not limited to, food and beverages and entertainment;

(2) A contract, promise, or agreement to make an expenditure, whether or not legally enforceable;

(3) The purchase, sale, or gift of services or any other thing of value.

"Expenditure" does not include the purchase, sale, or gift of services or any other thing of value that is available to the general public on the same terms as it is available to retirement system officials and employees, or the offer or sale of securities to any of these officers or employees that is governed by Regulation D adopted under the authority of the federal Securities Act of 1933 or that is governed by a comparable provision of state law. "Expenditure" also does not include a contribution, gift, or grant to certain foundations or other charitable organizations that are exempt from federal taxation.

Retirement system lobbyists and employers are required by the act to file with JLEC expenditure statements at the same time as updated registration statements, as described above under "Registration of retirement system lobbyists." A retirement system lobbyist must also file a separate statement of expenditures for each employer that engages the lobbyist. A statement filed by a retirement system lobbyist must show the total amount of expenditures made by the lobbyist during the period covered by the statement. If, during a reporting period, an employer or any retirement system lobbyist engaged by the employer made expenditures, either separately or in combination with each other, to, at the request of, for the benefit of, or on behalf of a member of a retirement board, a retirement board investment official, or a retirement board investment employee, then the corresponding expenditure statement must include the name of the member, official, or employee for whom the expenditures were made, the total amount of the expenditures made, a brief description of the expenditures made, the approximate date the expenditures were made, the retirement system decision, if any, sought to be influenced, and the identity of the client on whose behalf the expenditures were made.<sup>23</sup>

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<sup>23</sup> *If, during a reporting period covered by an expenditure statement, the employer or retirement system lobbyist made expenditures for food and beverages purchased for consumption on the premises in which the food and beverages were sold to, at the request of, for the benefit of, or on behalf of any of the members, officials, or employees, the employer or retirement system lobbyist must deliver to the member, official, or employee a statement that contains all of the nondisputed information with respect to the expenditures. The statement must be delivered on the same day in which a copy of the expenditure statement or of a portion showing the expenditure is delivered to the member, official, or employee. An employer is not required to show any expenditure on this statement if the expenditure is shown on a statement delivered by a retirement system lobbyist engaged by the employer.*

In addition to the information described in the previous paragraph, an expenditure statement filed by an employer must show the total amount of expenditures made by the employer filing the statement during the period covered by the statement. However, "expenditure" for this part of the employer statement does not include the expenses of maintaining office facilities or the compensation paid to retirement system lobbyists engaged to influence retirement system decisions or conduct retirement system lobbying activity. Also, an employer is not required to show any expenditure if the expenditure is reported on an expenditure statement by a retirement system lobbyist engaged by the employer.

Each expenditure statement filed by a retirement system lobbyist or employer must cover expenditures made during the four-calendar-month period that ended on the last day of the month preceding the month in which the statement must be filed. If it is impracticable or impossible for a retirement system lobbyist or employer to determine exact dollar amounts or values of expenditures, reporting of good faith estimates, based on reasonable accounting procedures, constitutes compliance. Retirement system lobbyists and employers must retain receipts or maintain records for all expenditures required to be reported, for a period ending on December 31 of the second calendar year after the year in which the expenditure was made. At least ten days before the date on which the statement is filed, each employer or retirement system lobbyist must deliver a copy of the statement, or the portion showing the expenditure, to the public officer or employee listed in the statement as having received the expenditure or on whose behalf it was made.

### **Financial transaction statements**

(secs. 101.90(E) and 101.94)

The act defines "financial transaction" as a transaction or activity conducted or undertaken for profit that arises from the joint ownership or ownership or part ownership in common of any real or personal property or any commercial or business enterprise of whatever form or nature between (1) a retirement system lobbyist, a retirement system lobbyist's employer, or a member of the immediate family of either, and (2) any retirement system, member of a retirement board, or retirement system investment official or a retirement system employee whose position involves substantial and material exercise of discretion in the investment of retirement system funds. "Financial transaction" does not include any transaction or activity described above if it is available to the public on the same terms or if it is the offer or sale of securities to any person listed in (2) above that is governed by Regulation D adopted under the authority of the federal Securities Act of 1933 or is governed by a comparable provision under state law.

The act requires each retirement system lobbyist or employer who has had a financial transaction with or for the benefit of a retirement system board member, a retirement system investment official, or a retirement system employee whose position involves substantial and material exercise of discretion in the investment of retirement system funds to describe the details of the financial transaction in a statement that must be filed with JLEC at the same time as the lobbyist's or employer's updated registration statement. The statement must describe the details of each financial transaction that occurred during the four-calendar-month period that ended on the last day of the month immediately preceding the month in which the statement must be filed and must include the name of the member, official, or employee, the purpose and nature of the transaction, and the date it was made or entered into.

At least ten days before the date on which the statement is filed, the lobbyist and the employer must each file a statement describing a financial transaction and deliver a copy of the statement to the member, official, or employee with whom or for whose benefit the transaction was made. An employer need not file a statement or deliver a copy of the statement to anyone if the financial transaction is reported by a retirement system lobbyist engaged by the employer.

### **Resolution of disputes**

(sec. 101.95)

The act provides that if a dispute arises between a member of a retirement board, a retirement system investment official, or a retirement system employee whose position involves substantial and material exercise of discretion in the investment of retirement system funds and an employer or a retirement system lobbyist with respect to an expenditure or financial transaction alleged in a statement, the member, official, or employee, employer, or lobbyist may file a complaint with the Ohio Ethics Commission (OEC). OEC must investigate as though the complaint were filed under the ethics law. The complaint must be filed at least three days before the date the statement regarding the disputed expenditure or transaction must be filed with JLEC. The time for reporting a disputed expenditure or transaction in any statement if expenditures or in the details of a financial transaction is extended pending the Commission's final decision. This extension does not extend the time for filing the undisputed portions of either type of statement. The Commission must notify the parties of its final decision by certified mail. If the Commission decides that the disputed expenditure or transaction should be reported, the employer or lobbyist must include the matter in an amended statement and file the amended statement not later than ten days after receiving the mailed notice of the Commission's decision. The act makes an employer or lobbyist who files a false statement of expenditures or details of a

transaction liable to any retirement board, retirement system investment official, or retirement system employee who sustains damage as a result of the filing or publication of the statement.

**Exempt activities**

(sec. 101.96)

The act's registration and expenditures statement requirements do not apply to efforts to influence retirement system decisions or conduct retirement system lobbying activity by any of the following means:

(1) Appearances at public hearings of a retirement system or at other public meetings;

(2) News, editorial, and advertising statements published in bona fide newspapers, journals, or magazines, or broadcast over radio or television;

(3) The gathering and furnishing of information and news by bona fide reporters, correspondents, or news bureaus to news media described in (2) above;

(4) Publications primarily designed for and distributed to members of bona fide associations or charitable or fraternal nonprofit corporations.

The act provides that nothing in the retirement system lobbyist provisions requires the reporting of, or prohibits a retirement system board member from soliciting or accepting, a contribution from or an expenditure by any person if the contribution or expenditure is reported in accordance with the elections laws.

**Prohibitions and penalties**

(secs. 101.90(A), 101.91, and 101.99)

The act generally prohibits engaging any person to influence retirement system decisions or conduct retirement system lobbying activity for compensation that is contingent in any way on the outcome of a retirement system decision, and prohibits any person from accepting any such engagement.<sup>24</sup> However, these provisions do not prohibit, nor may they be construed as prohibiting, any person from compensating sales employees under an incentive compensation plan, such

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<sup>24</sup> *The act defines "compensation" as a salary, gift, payment, benefit, subscription, loan, advance, reimbursement, or deposit of money or anything of value; or a contract, promise, or agreement, whether or not legally enforceable, for compensation.*

as commission sales, if this plan is used to compensate similarly situated sales employees who are not retirement system lobbyists.

The act also prohibits any retirement system lobbyist or employer from knowingly failing to register, file an expenditure or financial transaction statement, or keep a receipt or maintain a record regarding an expenditure that the expenditure provisions require.

A violation of any of these prohibitions is a fourth degree misdemeanor.

The act makes it a first degree misdemeanor for a person required to file an expenditure or financial transaction statement to knowingly file a false statement.

### **Duties of JLEC**

(secs. 101.34 and 101.98)

The act requires JLEC to keep on file registration, expenditure, and financial transaction statements filed by retirement system lobbyists and employers. It declares that these statements are public records and open to public inspection. JLEC must provide copies of statements to the general public on request and may charge a reasonable fee not exceeding the cost of copying and delivering the statement. Not later than the last day of February and October of each year, JLEC must compile a list of registered retirement system lobbyists and their employers and distribute the list to each member of the General Assembly; each elected executive official; and the director of each retirement system, who must distribute the list to the appropriate personnel under the director's jurisdiction. JLEC must provide copies of the list to the general public on request and may charge a reasonable fee not to exceed the cost of copying and delivering the list.

The act requires JLEC to (1) computerize the registration, expenditure, and financial transaction statements and the information contained in them so that the information is readily accessible to the general public, (2) prescribe and make available forms for filing registrations, expenditure statements, and financial transaction statements, (3) publish a handbook that explains the retirement system lobbying law in clear and concise language, and (4) make the handbook available free of charge to retirement system lobbyists, employers, and any other interested persons.

Under the act, JLEC may adopt rules to implement the retirement system lobbying law as internal management rules under sec. 111.15, which does not require public hearings.

### **Enforcement**

(sec. 101.981)

The act permits the Attorney General and any assistant or special counsel designated by the Attorney General to investment compliance with the act in connection with the statements filed by retirement system lobbyists and employers. In the event of an apparent violation, the Attorney General must report the findings to the Franklin County Prosecuting Attorney, who must institute appropriate proceedings.

### **Board member training**

(secs. 145.041, 171.50, 742.031, 3307.051, 3309.051, and 5505.064)

The state retirement boards must jointly develop a retirement board member education program and submit the program to ORSC. The act requires the state retirement boards to jointly pay all costs associated with establishing and conducting the education program.

The education program curriculum must include the following topics: board member duties and responsibilities, retirement system member benefits and health care management, ethics, governance processes and procedures, actuarial soundness, investments, and any other subject matter the retirement boards believe to be reasonably related to the duties of a board member. The program must include two components: an orientation component for newly elected and appointed board members and a continuing education component for board members who have served for at least one year.

Each newly elected member of a state retirement board and each person appointed to fill a vacancy on the board must, not later than 90 days after commencing service on the board, complete the orientation component of the education program. Each member of a state retirement board who has served on the board for at least one year must, not less than twice a year, attend one or more programs that are part of the continuing education component of the education program. All education program sessions, classes, and other events must be held in Ohio.

### **Internal audit committee**

(secs. 145.095, 742.105, 3307.044, 3309.044, and 5505.111)

Each retirement board must appoint a committee of its own members to oversee the selection of an internal auditor, including one employee member, one

retired member, and one other board member.<sup>25</sup> The committee must select one or more persons for employment as an internal auditor, and the board must employ the person or persons selected by the committee. The committee must annually prepare and submit to the ORSC a report of its actions during the preceding year.

### **Chief investment officer**

(secs. 145.094, 742.104, 3307.043, 3309.043, and 5505.065)

#### **Designation**

The act requires the board of each state retirement system to designate a person who is a licensed state retirement system investment officer to be the chief investment officer for the system. The board must notify the Division of Securities of the Department of Commerce in writing of its designation and of any change in its designation within ten calendar days of the designation or change.

#### **Duty of reasonable supervision**

The chief investment officer must reasonably supervise the licensed state retirement system investment officers and other persons employed by the state retirement system with a view toward preventing violations of the Ohio securities law, the federal "Commodity Exchange Act" (42 Stat. 998, 7 U.S.C.), "Securities Act of 1933" (48 Stat. 74, 15 U.S.C.), and "Securities Exchange Act of 1934" (48 Stat. 881, 15 U.S.C. 78a) and the rules promulgated under those statutes. This duty of reasonable supervision includes the adoption, implementation, and enforcement of written policies and procedures reasonably designed to prevent persons employed by the retirement system from misusing material, nonpublic information in violation of those laws, rules, and regulations.

For purposes of this provision, no chief investment officer is considered to have failed to satisfy the officer's duty of reasonable supervision if the officer has done all of the following:

(1) Adopted and implemented written procedures, and a system for applying the procedures, that would reasonably be expected to prevent and detect, insofar as practicable, any violation by its licensed investment officers and other persons employed by the retirement system;

(2) Reasonably discharged the duties and obligations incumbent on the chief investment officer by reason of the established procedures and the system for

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<sup>25</sup> *The other board member is the Director of Administrative Services for PERS, an ex officio member for STRS, and an ex officio member for SHPRS.*

applying the procedures when the officer had no reasonable cause to believe that there was a failure to comply with the procedures and systems;

(3) Reviewed, at least annually, the adequacy of the policies and procedures established pursuant to this provision and the effectiveness of their implementation.

**Duty to execute favorable transactions**

The chief investment officer is required to establish and maintain a policy to monitor and evaluate the effectiveness of securities transactions on the board's behalf. No chief investment officer is considered to have failed to satisfy this duty of best execution if the officer has done both of the following:

(1) Implemented the policy adopted by the retirement board that outlines the criteria used to select agents that execute securities transactions on behalf of retirement system.<sup>26</sup>

(2) Reviewed, at least annually, the performance of agents that execute securities transactions on behalf of the retirement system.

**Licensing state retirement system investment officers**

(secs. 145.09, 742.10, 1707.01, 1707.03, 1707.162, 1707.163, 1707.17, 1707.19, 1707.20, 1707.22, 1707.23, 1707.25, 1707.261, 1707.39, 1707.431, 1707.44, 1707.46, 3307.11, 3309.14, and 5505.07; Section 3)

The act provides for the Division of Securities in the Department of Commerce to license state retirement system investment officers. Effective 90 days after the act's effective date, no person may act as a state retirement system investment officer unless the person is licensed and no state retirement system board may employ a state retirement system investment officer unless the officer holds a valid license. Conversely, effective 90 days after the act's effective date, the act prohibits a state retirement system investment officer from acting as a dealer, salesperson, investment advisor, or investment advisor representative.<sup>27</sup> It is unclear whether there is a criminal penalty for violating either prohibition.

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<sup>26</sup> See "**Investments**" below.

<sup>27</sup> As used in the securities law, "dealer," generally means every person, other than a salesperson, who engages or professes to engage, in Ohio, for either all or part of the person's time, directly or indirectly, either in the business of the sale of securities for the person's own account, or in the business of the purchase or sale of securities for the account of others in the reasonable expectation of receiving a commission, fee, or other

"State retirement system investment officer" is defined by the act as an individual employed by a state retirement system as a chief investment officer, assistant investment officer, or the person in charge of a class of assets or in a position that is substantially equivalent to chief investment officer, assistance investment officer, or person in charge of a class of assets.<sup>28</sup>

### **Initial license**

The act requires that application for a state retirement system investment officer license be made by filing with the Division of Securities the information, materials, and forms specified in rules adopted by the Division. The Division is permitted to investigate any applicant for a license and may require any additional information as it considers necessary to determine the applicant's business repute and qualifications to act as a state retirement system investment officer. If the application involves investigation outside of Ohio, the Division may require the applicant to advance sufficient funds to pay any of the actual expenses of the investigation. The Division is required to furnish the applicant with an itemized statement of the expenses the applicant is required to pay.

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*remuneration as a result of engaging in the purchase and sale of securities. "Salesperson" generally means every natural person, other than a dealer, who is employed, authorized, or appointed by a dealer to sell securities within Ohio. "Investment adviser" generally means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser representative" generally means a supervised person of an investment adviser, provided that the supervised person has more than five clients who are natural persons other than certain excepted persons, and that more than 10% of the supervised person's clients are natural persons other than the excepted persons. (Sec. 1707.01(E), (F), (X), and (CC).)*

<sup>28</sup> *The Division of Securities currently licenses other professionals including investment advisers. With certain exceptions, an investment officer is any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as part of regular business, issues or promulgates analyses or reports concerning securities. The act adds persons who act solely as a state retirement system investment officer to the persons not considered to be investment advisers and therefore not subject to licensure as an investment adviser. According to an official from the Division of Securities, the Division currently has a rule that has the effect of exempting state retirement system investment officers from licensure as investment advisers (sec. 1707.01(X)(2)(i) and O.A.C. 1301:6-3-01(K)(1)).*

The Division is required by rule to require an applicant to pass an examination designated by the Division or achieve a specified professional designation unless the applicant acts as a state retirement system investment officer on the act's effective date and has experience or equivalent education acceptable to the Division.

If the Division finds that the applicant is of good business repute, appears to be qualified to act as a state retirement system investment officer, has complied with state law and rules governing the licensure of state retirement system investment officers, and pays a \$50 licensing fee, the Division must issue a state retirement system investment officer license.

### **License renewal**

The act provides that a state retirement system investment officer license expires on the last day of each June. The license may be renewed by filing with the Division of Securities a renewal application and paying a \$50 renewal fee. The Division must give notice, without unreasonable delay, of its action on any renewal application.

### **Refusing, suspending, or revoking a license**

The Division of Securities is permitted, under certain circumstances, to refuse to issue an initial state retirement system investment officer license and to suspend, revoke, or refuse to renew an existing license.<sup>29</sup> These actions may be taken under many of the same or similar circumstances for which the Division may take action under continuing law against a person seeking or holding a license the Division issues under continuing law such as an investment adviser license. For example, these circumstances include knowingly making a false statement or omission of material fact in a license application and knowingly violating any provision of state law or rules governing the Division's licensing of securities professionals. If the Division suspends a state retirement system investment officer's license, it must notify the state retirement system by which the officer is employed.

In addition to having the authority to refuse, suspend, or revoke a license under certain circumstances, under continuing law the Division is permitted to take certain actions whenever it appears to the Division that a person has engaged in, is engaged in, or is about to engage in an illegal practice or deceptive scheme in connection with the sale of securities or acting as an investment adviser. The

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<sup>29</sup> *These actions may be appealed in accordance with the Administrative Procedure Act (R.C. Chapter 119).*

Division may also take action when it believes it to be in the best interests of the public and necessary for the protection of investors. These actions include requiring a person to report to it as to any facts or circumstances concerning the person's acts as an investment adviser and issuing cease and desist orders. The act provides that the Division may take such actions against state retirement system investment officers.

Parallel to continuing law regarding investment advisors, if a court of common pleas grants an injunction against any state retirement system investment officer, after consultation with the Attorney General, the Director of Commerce may ask the court to order the officer or officers that are subject to the injunction to make restitution to the state retirement system damaged by the officer's or officers' securities law violation. The court may order the restitution if it is satisfied with the sufficiency of the Director's request and with the sufficiency of the proof of a substantial violation of that law, or of the use of any act, practice, or transaction declared to be illegal or prohibited or defined as fraudulent by that law or Division rules adopted under that law, to the material prejudice of a state retirement system. A request for restitution may concern the same acts, practices, or transactions that were, or may later be, the subject of a Division action for a violation of the securities law.

**Prohibitions specific to state retirement system investment officers**

The act prohibits a state retirement system investment officer from doing any of the following:

- (1) Employing any device, scheme, or artifice to defraud any state retirement system;
- (2) Engaging in any act, practice, or course of business that operates or would operate as a fraud or deceit on any state retirement system;
- (3) Engaging in any act, practice, or course of business that is fraudulent, deceptive, or manipulative;<sup>30</sup>
- (4) Knowingly failing to comply with any policy adopted regarding the officer established pursuant to the provisions described above under "**Chief investment officer.**"

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<sup>30</sup> The act permits the Division of Securities to adopt rules reasonably designed to prevent acts, practices, or courses of business that are fraudulent, deceptive, or manipulative.

The penalty for violating any of these prohibitions depends on the value of the funds or securities involved in the offense or the loss to the victim. If the value is less than \$500, the offender is guilty of a felony of the fifth degree, and the court may impose an additional fine of not more than \$2,500. If the value is \$500 or more but less than \$5,000, the offender is guilty of a felony of the fourth degree, and the court may impose an additional fine of not more than \$5,000. If the value is \$5,000 or more but less than \$25,000, the offender is guilty of a felony of the third degree, and the court may impose an additional fine of not more than \$10,000. If the value is \$25,000 or more but less than \$100,000, the offender is guilty of a felony of the second degree, and the court may impose an additional fine of not more than \$15,000. If the value is \$100,000 or more, the offender is guilty of a felony of the first degree, and the court may impose an additional fine of not more than \$20,000 (sec. 1707.99, not in the act).

### **Protecting the state retirement systems**

Continuing law provides that no rule, form, or order may be made, amended, or rescinded unless the Division finds that the action is necessary or appropriate in the public interest or for the protection of investors, clients, or prospective clients and consistent with the purposes fairly intended by the policy and provisions of state law governing the Division's licensure of securities professionals. The act provides that a rule, form, or order also may be made, amended, or rescinded if the Division finds the action necessary or appropriate for the protection of the state retirement systems.

### **Investments**

#### **Securities dealers**

(secs. 145.11, 145.114, 742.11, 742.114, 3307.15, 3307.152, 3309.15, 3309.157, 5505.06, and 5505.068)

The act requires each retirement system to adopt and implement a written policy to establish criteria and procedures used to select agents to execute securities transactions on behalf of the retirement system. This policy is to address each of the following:

- (1) Commissions charged by the agent, both in the aggregate and on a per share basis;
- (2) The execution speed and trade settlement capabilities of the agent;
- (3) The responsiveness, reliability, and integrity of the agent;
- (4) The nature and value of research provided by the agent;

(5) Any special capabilities of the agent.

In addition, each retirement system must designate as an Ohio-qualified agent each securities dealer, licensed in Ohio or under comparable laws of another state, that meets each of the following requirements:

(1) The agent is subject to taxation in Ohio;

(2) The agent is authorized to conduct business in Ohio;

(3) The agent maintains a principal place of business in Ohio and employs at least five Ohio residents. ("Principal place of business" means an office in which the agent regularly provides securities or investment advisory services and solicits, meets with, or otherwise communicates with clients.)

At least annually, the board must establish a policy with the goal to increase utilization by the board of Ohio-qualified agents for the execution of domestic equity and fixed income trades on behalf of the retirement system, when an Ohio-qualified agent offers quality, services, and safety comparable to other agents otherwise available to the board and meets the criteria described above. The board must determine whether an agent is an Ohio-qualified agent, meets the criteria described above, and offers quality, services, and safety comparable to other agents otherwise available to the board. The board's decision is final.

The board must review, at least annually, the performance of the agents that execute securities transactions on behalf of the board. Also, at least annually, each board must submit to ORSC a report containing the following information:

(1) The name of each agent designated by the board as an Ohio-qualified agent;

(2) The name of each agent that executes securities transactions on behalf of the board;

(3) The amount of equity and fixed-income trades executed by Ohio-qualified agents, expressed as a percentage of all equity and fixed-income trades executed by agents on behalf of the board;

(4) The compensation paid to Ohio-qualified agents, expressed as a percentage of total compensation paid to all agents that execute securities transactions on behalf of the board;

(5) The amount of equity and fixed-income trades that are executed by agents that are minority business enterprises, expressed as percentage of all equity and fixed-income trades that are executed by agents on behalf of the board;

(6) Any other information requested by ORSC regarding the board's use of agents.

**Ethics disclosures relating to agents**

(secs. 145.115, 742.115, 3307.153, 3309.158, and 5505.069)

Each retirement board must annually submit to the Ohio Ethics Commission, on a date specified by the Commission, a report disclosing the following information:

(1) Anything of value received by the retirement system from an agent and anything of value given on behalf of the system by an agent;

(2) The name of any employee of the system with authority over the investment of retirement system funds or any board member of the system who deals with an agent regarding the amounts described in (1) above.

**Investment managers**

(secs. 145.11, 145.116, 742.11, 742.116, 3307.15, 3307.154, 3309.15, 3309.159, 5505.06, and 5505.0610)

Each retirement board must designate as an Ohio-qualified investment manager each investment manager that is subject to taxation in Ohio and meets one of the following requirements:

(1) The investment manager has its corporate headquarters or principal place of business in Ohio;

(2) The investment manager employs at least 500 individuals in Ohio;

(3) The investment manager has a principal place of business in Ohio and employs at least 20 Ohio residents.

The board must determine whether an investment manager is an Ohio-qualified investment manager and whether the investment manager offers quality, services, and safety comparable to other investment managers otherwise available to the board. The board's decision is final.

At least annually, each retirement board must establish a policy with the goal to increase utilization by the board of Ohio-qualified investment managers, when an Ohio-qualified manager offers quality, services, and safety comparable to other investment managers otherwise available to the board. The policy must also provide for the following:

(1) A process whereby the board can develop a list of Ohio-qualified investment managers and their investment products;

(2) A process whereby the board can give public notice to Ohio-qualified investment managers of the board's search for an investment manager that includes the board's search criteria.

In addition, each board must also, at least annually, submit to ORSC a report containing the following information:

(1) The name of each investment manager designated by the board as an Ohio-qualified investment manager;

(2) The name of each investment manager with which the board contracts;

(3) The amount of assets managed by Ohio-qualified investment managers, expressed as a percentage of the total assets held by the retirement system and as a percentage of assets managed by investment managers with which the board has contracted;

(4) The compensation paid to Ohio-qualified investment managers, expressed as a percentage of total compensation paid to all investment managers with which the board has contracted;

(5) Any other information requested by ORSC regarding the board's use of investment managers.

### **Ohio Retirement Study Council**

#### **ORSC membership**

(sec. 171.01)

Under continuing law, ORSC is composed of 14 members: the executive directors of each of the five state retirement systems, three Senators, three members of the House of Representatives, and three individuals appointed by the Governor.<sup>31</sup>

Any member appointed by the Governor continues in office subsequent to the expiration date of the member's term until the member's successor takes office, or until a period of 60 days has elapsed, whichever occurs first. The act revises this provision to provide that each gubernatorial appointee continues in office until

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<sup>31</sup> *The executive directors are non-voting members. All others are voting members.*

the member's successor is appointed and qualified, notwithstanding the expiration of the member's term of office. In addition, the act requires that one of the Governor's three appointees have investment experience.<sup>32</sup>

**ORSC to review state retirement systems' rules**

(secs. 171.03(H) and 171.04(G))

Continuing law requires each state retirement system to submit copies of proposed administrative rules to ORSC when it files them with the Joint Committee on Agency Rule Review (JCARR). The act requires ORSC to provide copies of rules to each member of the council and permits ORSC to review all administrative rules proposed by the state retirement systems and to submit any recommendations to JCARR.

**Travel and bonus policies**

(secs. 145.092(A) to (C), 742.102(A) to (C), 3307.041(A) to (C), 3309.041(A) to (C), and 5505.062(A) to (C))

Each state retirement board must do both of the following:

(1) In consultation with the Ohio Ethics Commission, review any existing policy regarding the travel and payment of travel expenses of members and employees of that board and adopt rules establishing a new or revised policy regarding travel and payment of travel expenses. Not less than 60 days before adopting the new or revised policy, the board must submit the policy to ORSC for review.

(2) If the board intends to award a bonus to any employee of the board, adopt rules establishing a policy regarding employee bonuses.

The rules must be adopted in accordance with each board's rule-making authority, and each retirement board must provide copies of the rules to each member of ORSC.<sup>33</sup>

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<sup>32</sup> *The act does not define "investment experience."*

<sup>33</sup> *Continuing law requires a copy of the full text of each rule to be submitted to ORSC proper (secs. 145.09, 742.10, 3307.04, 3309.04, and 5505.04(B)).*

**Proposed operating budgets**

(secs. 145.092(D), 742.102(D), 3307.041(D), 3309.041(D), and 5505.062(D))

The act requires each state retirement board to submit to ORSC a proposed operating budget, including an administrative budget for the board, for the next immediate fiscal year and adopt that budget not earlier than 60 days after it is submitted to ORSC.

**Plan for dissemination of public information**

(secs. 145.092(E), 742.102(E), 3307.041(E), 3309.041(E), and 5505.062(E))

Each state retirement board must submit to ORSC a plan describing how the board will improve the dissemination of public information pertaining to the board.

**Financial and special audits**

(secs. 117.10 and 171.03(G))

The act authorizes ORSC to request that the Auditor of State perform or contract for the performance of a financial audit or a special audit of any state retirement system. On completion of a financial or special audit, the Auditor must report the results to ORSC in a timely manner.

**Performance audits**

(sec. 171.04(F))

At least once every ten years, ORSC must have an independent auditor conduct a fiduciary performance audit of each state retirement system. All costs associated with a fiduciary performance audit must be paid by the retirement system audited.

**Uniform reporting formats**

(secs. 145.09, 171.03(F), 742.10, 3307.03, 3309.03, and 5505.122)

The act authorizes ORSC to establish a uniform format for any report that the state retirement boards are required to submit to ORSC and regular reporting requirements. If ORSC establishes such a format, each retirement board must submit reports in that format.

**Attorney General to be ORSC's legal adviser**

(sec. 171.06)

Continuing law provides that the Attorney General is the chief law officer for the state and all its departments.<sup>34</sup> The act specifically provides that the Attorney General is the legal adviser to ORSC.

**Failure to attend board meetings--OP&F**

(sec. 742.05)

Continuing law provides that if an employee or retirant member of the OP&F Board fails to attend three consecutive board meetings without valid excuse, that member is considered as having resigned from the board. In that case, the board must declare the member's office vacated.

The act extends this provision to include any elected or appointed member of the OP&F Board.

**Alternative retirement program**

**Background**

Prior to the enactment of Amended Substitute House Bill 586 of the 121st General Assembly in 1997, all employees of Ohio's public institutions of higher education were included in one of three state retirement systems: PERS, STRS, or SERS. H.B. 586 provided for establishment of an alternative retirement program for full-time academic and administrative employees of these institutions and required each institution to contract with providers designated by the Superintendent of Insurance to offer alternative retirement plans to eligible academic and administrative employees. Continuing law requires each alternative retirement plan to qualify as a defined contribution plan that meets certain Internal Revenue Code standards.<sup>35</sup>

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<sup>34</sup> *Sec. 109.02.*

<sup>35</sup> *A defined contribution plan is a type of retirement plan in which the amount of the annual contributions are specified. Individual accounts are set up for participants and benefits are based on the amounts credited to these accounts (through employer contributions and, if applicable, employee contributions), plus any investment earnings on the money in the account. (U.S. Department of Labor, Bureau of Labor Statistics Glossary, <http://www.bls.gov/bls/glossary.htm>, visited 12-8-03.)*

Under H.B. 586, to be eligible to participate in an alternative retirement plan, an employee had to be a full-time academic or administrative employee and have less than five years of retirement service credit at the time the alternative retirement plan was established. When the act was enacted, eligible employees had a limited period of time during which they could elect to participate in an alternative retirement plan. Employees who did not make an election or who elected not to participate remained or became members of PERS, STRS, or SERS.

Under prior law, eligibility for participation in an alternative retirement plan was restricted to newly hired full-time academic and administrative employees of a public institution of higher education.

### **Elections**

(secs. 145.19, 145.193, 145.40, 3105.80, 3305.01, 3305.02, 3305.03, 3305.05, 3307.01, 3307.25, 3307.56, 3307.71, 3309.251, and 3309.42; Section 4)

Previously, eligibility for participation in an alternative retirement plan (ARP) was restricted to full-time academic and administrative employees of a public institution of higher education, who were required to make the election to participate when commencing employment. The act extends eligibility to participate in an ARP to certain other full-time employees of a public institution of higher education. The act also reorganizes these provisions and includes technical changes to reflect this expansion.

An individual eligible under the act to elect to participate in an ARP must be a full-time employee of a public institution of higher education, must not have had a prior opportunity to participate in an alternative retirement plan and, as of August 1, 2005, must not have accrued more than five years of service credit in a state retirement system. Eligible employees have up to 120 days after the act's effective date to make an election. The election is effective as of the date on which the employee's election becomes irrevocable (the date on which the employee submits the election in writing to the designated officer of the employing institution).

Each person, whose employment with a public institution of higher education commences on or after the act's effective date may, within 120 days of starting employment, elect to participate in an alternative retirement plan available at the employing institution. The election is effective as of the employee's starting date of employment.

Each employee of a public institution of higher education who elects to participate in an alternative retirement plan must submit the election in writing to the designated officer of the employee's employing institution. Once submitted,

the election is irrevocable while the employee remains employed by that public institution of higher education. Not later than ten days after the election becomes irrevocable, the officer must file a certified copy of the election with the state retirement system to which, apart from the election, the employee's employment would be subject.

The act requires each public institution of higher education that, on or after the act's effective date, employs a person eligible to make an election to participate in an alternative retirement plan to notify the state retirement system that applies to that employment. The notification must be submitted in writing within ten days of the person's employment, in the format specified by the retirement system and must include the person's name and address.

The election applies to the employee's employment in all positions at that institution, unless the employee terminates employment at that institution and does not return to employment there in any position prior to one year after the date of termination. An employee who makes an election to participate in an alternative retirement plan is forever barred from claiming or purchasing service credit under any state retirement system for the period of employment while the election is in effect.

An eligible employee who, on or after August 1, 2005, terminates employment at an institution and subsequently is employed by another public institution of higher education in a position for which an alternative retirement plan is available, may elect to participate in the alternative retirement plan, but must make the election within 120 days of commencing employment. The employee's election is effective as of the date on the employee's employment starting date.

Any eligible employee who fails to make an election within the 120-day election period is deemed to have elected to participate in the state retirement system that applies to the employee's employment. Under the act, an employee who fails to make an election is not permitted to make an election for employment in any other position at the public institution of higher education while employed at that institution, unless the employee terminates employment at that institution and does not return to employment there prior to one year after the date of termination.

### **Providers**

(secs. 3305.051(F) and (G), 3305.053, and 3305.07)

Continuing law, relocated by the act, requires the board of trustees of a public institution of higher education to permit any employee who makes an election to participate in an alternative retirement plan to do all of the following:

(1) Select, from among the providers that have entered into a contract with the public institution of higher education, the provider of an investment option for that employee;

(2) Except as specified in (3) below, contract with only one provider in any plan year;

(3) Change the provider selected under (1) at the following times:

(a) Once during the first payroll period in any plan year;

(b) Any time the provider selected by the employee ceases to be designated by the Department of Insurance to provide investment options under alternative retirement plans.

Under prior law, if an employee changed providers under (3) above, the provider was required to transfer to the new provider the employee's account balance.

Under the act, if an employee changes providers under (3) above, the provider must transfer to the new provider the employee's account balance, *either in whole or in part, as directed by the employee*. But, under the act, the provider is not required to immediately transfer any part of the account invested at the employee's request in a fixed annuity account if the contract under which the investment was made permits the provider to make such a transfer over a period of time not exceeding ten years and the contract is a life insurance contract filed with and approved by the Department of Insurance.

### **Contributions**

(sec. 3305.06)

Under continuing law, an employee of a public institution of higher education who is a participant in an alternative retirement plan contributes the percentage of compensation the employee would contribute to the state retirement system that would otherwise cover the employee. Each public institution of higher education employing an employee who has elected to participate in an alternative

retirement plan must contribute an amount equal to a percentage of the employee's compensation to the employee's alternative retirement plan. Under prior law, the percentage was determined by the public institution's board of trustees. Continuing law also requires the public institution to contribute a certain percentage to the state retirement system to which the employee would otherwise belong to mitigate any negative financial impact of the alternative retirement plan on the state retirement system; this percentage is determined by ORSC.

The act does not change the employees' contribution but does change the amount that a public institution of higher education must contribute to its employees' alternative retirement plans. Under the act, each public institution must contribute to an employee's alternative retirement plan a percentage of the employee's compensation equal to the percentage the institution would otherwise contribute to a state retirement system on the employee's behalf, minus the "negative financial impact" percentage that the public institution contributes to the state retirement system.

**Transfer of Defined Contribution Plan accounts**

(sec. 3305.052)

Under continuing law, if an employee who elects to participate in an ARP is, at the time of the election, participating in a defined benefit plan under PERS, STRS, or SERS, the appropriate retirement system must transfer to the ARP provider any employee and employer contributions made to the retirement system by or on behalf of the employee for time period beginning the day that the employee's employment with that employer started until the day before contributions to the ARP provider begin. The act provides that, if an employee who elects to participate in an ARP is, at the time of the election, participating in a defined contribution plan under PERS, STRS, or SERS, the appropriate retirement system must transfer to the ARP provider the amount on deposit in the employee's individual account.<sup>36</sup>

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<sup>36</sup> *PERS, STRS, and SERS generally provide their members a retirement benefit under a plan that is often called a "defined benefit plan." The plan provides, to those who meet the age and service requirements, a retirement benefit based on a formula: a percentage of final average salary multiplied by the member's years of service credit. In a "defined contribution plan," the member and employer contribute to the plan a specified percentage of the member's compensation. These contributions are held in account and invested, usually at the direction of the member. At retirement or on withdrawal of contributions, the benefit payable to the member is determined by the amount, including investment earnings, in the member's account.*

**Delayed effective date**

(Section 4)

The act's provisions regarding alternative retirement programs take effect on August 1, 2005.

**SECURITIES LAW**

**Examination fees**

(sec. 1707.17(B)(1) and (2))

Under prior law, the fee for examination of applicant dealers, when administered by the Division of Securities, was \$75. The fee for the examination of applicant salespersons, when administered by the Division, was \$50. The act eliminates these fees.

**Division enforcement powers**

(sec. 1707.23(A), (B), and (D), with cross reference changes in secs. 1707.03(A) and 1707.39)

Under continuing law, the Division is authorized to require any person to file with it an original or additional statement or report in writing, under oath or otherwise, as to any facts or circumstances concerning the issuance, sale, or offer for sale of securities within Ohio by the person, as to the person's acts or practices *as an investment adviser or investment adviser representative* within Ohio, and as to other material or relevant information. The act expands this provision to also apply as to the person's acts or practices *as a dealer or a salesperson*.

Continuing law also permits the Division to examine any investment adviser, investment adviser representative, or any seller, dealer, salesperson, or issuer of any securities, and any of their agents, employees, partners, officers, directors, members, or shareholders, wherever located, under oath; and *examine* records, books, documents, accounts, and papers as the Division deems material or relevant to the inquiry. The act expands this provision to permit the Division to *produce*, as well as examine records, books, documents, accounts, and papers as the Division deems material or relevant to the inquiry.

The act repeals a provision authorizing the Division to proceed under another provision of the securities law to refuse a license applied for by a dealer, salesperson, investment adviser, or investment adviser representative or to suspend the license of any licensed dealer, licensed salesperson, licensed investment adviser, or licensed investment adviser representative and ultimately revoke the

license under that other provision. (The provision repealed may have been redundant (see sec. 1707.19).)

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	10-02-03	p. 1068
Reported, S. Health, Human Services, & Aging	11-13-03	p. 1166
Passed Senate (27-6)	11-13-03	pp. 1183-1189
Reported, H. Banking, Pensions, & Securities	05-25-04	pp. 1971-1972
Passed House (57-42)	05-25-04	pp. 1980-1982
Senate concurred in House amendments (22-11)	05-26-04	pp. 2009-2010

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