



## *Bill Analysis*

*Michael J. O'Neill,  
Kathryn E. Likley, and  
Bob Bennett*

*Legislative Service Commission*

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

125th General Assembly  
(As Introduced)

**Sens. Wachtmann, Schuring, Austria, Amstutz, Stivers, Harris, Dann, Spada,  
Coughlin, Armbruster, Jordan, Randy Gardner, Jacobson**

---

## **BILL SUMMARY**

### **State retirement board membership and elections**

- Removes the Attorney General from, and adds the Director of Budget and Management to, the boards of each of the following state retirement systems: the Public Employees Retirement System (PERS), Ohio Police and Fire Pension Fund (OP&F), State Teachers Retirement System (STRS), and School Employees Retirement System (SERS).
- Adds the Director of Budget and Management to the board of the State Highway Patrol Retirement System (SHPRS).
- Requires each state retirement board to administer the election of board members in accordance with rules the Secretary of State is to adopt.
- Requires the Secretary of State to oversee the administration of elections of state retirement system board members.
- Provides for the Secretary of State to certify nominating petitions for state retirement system board elections and the results of the elections.
- 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 a contribution or in-kind contribution or makes an expenditure in connection with efforts to be elected to the board.
- Requires the Ohio Elections Commission, if it determines that a candidate has failed to file a complete and accurate campaign finance

disclosure statement, to impose a maximum \$100 fine or enter a finding that good cause not to impose the fine has been shown.

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

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

- Provides that a member of a state retirement board charged with committing a felony, a theft offense, or an ethics law violation is suspended from the board while the charges are pending and terminates the suspension if the charges are resolved in a manner not resulting in the member being convicted or pleading guilty to the offense.
- Deems vacant the position of a suspended member who pleads guilty to or is convicted of the offense.
- Makes ineligible for election to a state retirement board a person who has pleaded guilty to or been convicted of an offense for which a member would be suspended.
- Permits the Ohio Retirement Study Council (ORSC) to remove a suspended state retirement board member after a hearing and on the unanimous vote of ORSC's voting members.

#### **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 each state retirement board member and each employee whose position involves policy-making or investment authority to file an annual financial disclosure statement with the Ohio Ethics Commission.
- 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.

- Requires each state retirement board to review any existing policy regarding compensation and bonuses paid to employees of the board and adopt rules establishing a new or revised policy.
- Requires each state retirement board to provide copies of the above rules to each member of the Ohio Retirement Study Council (ORSC).
- Requires each state retirement board to periodically provide ethics training to members and employees of the board.
- Requires the Ohio Ethics Commission, if it finds by a preponderance of the evidence that a state retirement system board member has violated the ethics law, to report its findings to ORSC, as well as to a prosecuting authority.
- 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 the Ohio Ethics Commission has authority to investigate allegations of violations of the ethics law by state retirement board members and employees, states that this express statement of authority is an affirmation of the Commission's authority to conduct these investigations, and provides that this statement does not imply and may not be construed to mean that the Commission did not have authority to investigate these violations prior to the enactment of the bill.

**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 and appointed state retirement board members 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.

### *Licensing investment officers*

- Prohibits, effective 90 days after the effective date of this provision, 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.
- Prohibits a state retirement system investment officer from (1) employing any device, scheme, or artifice to defraud any person, (2) engaging in any act, practice, or course of business that operates or would operate as a fraud or deceit on any person, (3) engaging in any act, practice, or course of business that is fraudulent, deceptive, or manipulative, or (4) taking or having custody of any securities or funds of any person, except as provided in rules adopted by the Division of Securities.
- Authorizes the Division of Securities to prescribe, for the protection of the state retirement systems, reasonable rules defining fraudulent, evasive, deceptive, or grossly unfair practices or devices in the purchase or sale of securities.

### *Ohio Retirement Study Council*

- Adds as new ORSC members two former General Assembly members.
- Requires that one of the Governor's three appointees to ORSC have investment experience.
- Requires ORSC to review all rules proposed by each retirement system and make recommendations on those rules to the Joint Committee on Agency Rule Review.
- Authorizes ORSC to have a performance audit of each state retirement system conducted by an independent auditor at least once every five years.
- Authorizes ORSC to request that the Auditor of State perform a financial or special audit on 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 for any report that the state retirement boards are required to submit to ORSC and, if ORSC

establishes a uniform format for a report, requires each state retirement board to submit the report in that format.

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

---

## TABLE OF CONTENTS

State retirement board membership and elections.....	6
Attorney General replaced by OBM Director .....	6
Superintendent of Public Instruction replaced on STRS Board .....	6
State retirement board member elections .....	6
Campaign finance.....	9
Documents relating to filling board vacancy to be open to the public .....	11
Suspension and removal of state retirement board members.....	12
Civil action relating to fiduciary duty of state retirement board member .....	13
Ethics.....	14
Background .....	14
Ethics commission disclosure statements .....	14
Travel and compensation policies.....	15
Periodic ethics law training .....	15
Investigation of complaints by the appropriate ethics commission.....	16
Board member training .....	17
Licensing state retirement system investment officers.....	18
Initial license.....	19
License renewal .....	19
Refusing, suspending, or revoking license and other enforcement powers .....	19
Prohibitions specific to state retirement system investment officers.....	20
Protecting the state retirement systems .....	21
Ohio Retirement Study Council membership.....	22
ORSC to review state retirement systems' rules.....	22
Audits .....	22
Financial and special audits .....	22
Performance audits.....	23
Uniform reporting formats .....	23
Attorney General to be ORSC's legal adviser.....	23

---

## CONTENT AND OPERATION

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 bill makes a number of changes to existing provisions regarding governance and administration of the state retirement systems.

**State retirement board membership and elections**

**Attorney General replaced by OBM Director**

(R.C. 145.04, 742.03, 3307.05, 3309.05, and 5505.04)

Under current law, the board of each state retirement system, except for the SHPRS, includes the Attorney General as a member. The bill replaces the Attorney General on the boards with the Director of Budget and Management and adds the Director of Budget and Management to the SHPRS Board.

**Superintendent of Public Instruction replaced on STRS Board**

(R.C. 3307.05)

The STRS Board is composed of nine members: three ex officio members<sup>1</sup> (the Superintendent of Public Instruction, Auditor of State, and Attorney General); five STRS members; and one retired STRS member. The board members who are current STRS members are "teacher members," and the board member who is a retired member is the "retired teacher member," regardless of their actual positions.<sup>2</sup>

As noted above, the bill removes the Attorney General from the STRS Board and adds the Director of Budget and Management. The bill also removes the Superintendent of Public Instruction from the Board and adds a second retired teacher member. The bill does not change the total number of STRS Board members; there are still nine.

**State retirement board member elections**

(R.C. 111.30, 145.05, 145.051 (renumbered 145.052), 145.051 (new but language largely moved from R.C. 145.06(C)), 145.06, 742.04, 742.05, 3307.06, 3307.07, 3309.06, 3309.061 (renumbered 3309.071), 3309.07, 5505.04, 5505.041, 5505.042, and 5505.043)

---

<sup>1</sup> *The ex officio members are voting members.*

<sup>2</sup> *STRS membership includes certain school administrators and university faculty members, as well as public school teachers.*

**Background--elected members of state retirement system boards.** The boards of the state retirement systems include members elected by persons the members are to represent on the board. On the PERS Board, five employee members and one retirant member are elected.<sup>3</sup> The OP&F Board has two police officer employee members, two firefighter employee members, one police retirant member, and one firefighter retirant member. There are five teacher members and, as provided by the bill, two retired teacher members elected to the STRS Board.<sup>4</sup> Four employee members and one retirant member are elected to the SERS Board and four employee members and one retirant member are elected to the SHPRS Board.

**Secretary of State's oversight duties for regular elections.** Current 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 employee members and retirant member of the SHPRS Board are elected in a manner approved by that Board. The bill provides instead that all of the boards are to administer their elections in accordance with rules that the bill requires the Secretary of State to adopt.<sup>5</sup> The Secretary is given the duty of overseeing administration of the elections.

With the exception of law governing SHPRS, current law requires a person who wants his or her name on the ballot for an election to a state retirement system

---

<sup>3</sup> *The five employee member positions on the PERS Board are made up of the following PERS members: (1) one state employee, (2) one county employee, (3) one municipal employee, (4) one university or college employee, and (5) one employee of a park district, conservancy district, sanitary district, health district, public library, township, metropolitan housing authority, union cemetery, joint hospital, or institutional commissary. The retirant member is a former PERS member who resides in Ohio and receives age and service retirement, a disability benefit, or benefits paid under a PERS defined contributions plan.*

<sup>4</sup> *Currently, the STRS Board includes one retired teacher member. The bill adds a second retired teacher member. (See "**Superintendent of Public Instruction replaced on STRS Board**" above.)*

<sup>5</sup> *The rules must be adopted in accordance with the Administrative Procedure Act (Revised Code Chapter 119.), which requires public hearings. The Secretary of State's duty to adopt the rules also applies to 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.*

board to obtain a certain number of signatures on a nominating petition.<sup>6</sup> The signers must be eligible to vote in the election for the board position the petition is for. The bill provides that the nominating petition must be certified by the Secretary of State.<sup>7</sup>

The candidate who receives the highest number of votes in an election for a state retirement system board position wins the election. If two or more board member positions with concurrent terms are up for election, the candidates with the highest number of votes win. The bill provides that this is conditioned on the Secretary of State certifying the election results.<sup>8</sup>

**Secretary of State's oversight duties for filling Board vacancies.** If a vacancy occurs in the term of an elected member of the PERS, STRS, or SERS Board, the remaining members of the Board, elected and non-elected, are required to elect a successor member, or, in the case of SERS, fill the vacancy. If a vacancy occurs in the term of an elected member of the OP&F Board of Trustees, the remaining elected members fill the vacancy. A vacancy in the term of an elected member of the SHPRS Board is to be filled by election conducted in the same manner as regular elections to the Board.

The bill provides that elections to fill vacancies in a board are to be conducted under the Secretary of State's supervision.<sup>9</sup> In addition to overseeing an election to fill a vacancy, the Secretary is to certify the election results.

---

<sup>6</sup> Current law indicates that petitions are used in elections to the SHPRS Board, but does not specify the number of signatures needed. See **COMMENT** for a chart showing the minimum number of signatures needed to get a person on the ballot for an election to one of the other state retirement system boards.

<sup>7</sup> The bill eliminates law that requires the OP&F Board of Trustees to determine the sufficiency of nominating petitions and provides that the Board's decision is final.

<sup>8</sup> The Secretary of State is also to certify the results of 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.

<sup>9</sup> The bill requires the remaining members of the SERS Board to elect a successor member rather than fill a vacancy. The bill does not change the requirement that a vacancy in an elected member position of the SHPRS Board be filled by an election conducted in the same manner as a regular election, but does require the Secretary of State to oversee the election and certify the results.

### Campaign finance

(R.C. 111.30, 145.053, 145.054, 145.055, 145.99, 742.042, 742.043, 742.044, 742.99, 3307.072, 3307.073, 3307.074, 3307.99, 3309.072, 3309.073, 3309.074, 3309.99, 5505.044, 5505.045, 5505.046, and 5505.99)

**Disclosure statements.** The bill 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 a contribution or in-kind contribution or makes an expenditure in connection with the candidate's efforts to be elected to the board.<sup>10</sup> "Contribution," "in-kind contribution," and "expenditure" are defined very similarly to the way they are defined for the purpose of current state elections law governing campaign finance disclosure statements. "Contribution" is defined 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. "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>11</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 or is transferred to or used in support of or in opposition to a candidate and that 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

---

<sup>10</sup> *The bill 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. The statements also 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.*

<sup>11</sup> *The bill defines "personal expenses" as including ordinary expenses for accommodations, clothing, food, personal motor vehicle or airplane, and home telephone.*

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.

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>12</sup> The bill specifies that 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>13</sup> The first statement must reflect contributions and in-kind contributions received and expenditures made to the close of business on the twentieth day before the election. The second statement must reflect contributions and in-kind contributions received and expenditures made during the period beginning on the nineteenth day before the election and ending on the close of business on the seventh day after the election.<sup>14</sup>

**Complaints.** The bill prohibits any person from knowingly failing to file a complete and accurate campaign finance disclosure statement in accordance with the bill. The Secretary of State, and any person acting on personal knowledge and subject to the penalties of perjury, is authorized by the bill to file a complaint with the Ohio Elections Commission alleging a violation of the requirement to file the campaign finance disclosure statements. 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 bill 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

---

<sup>12</sup> *In addition to being required to prescribe the forms to be used for the campaign finance disclosure statements, the bill requires the Secretary of State to accept the forms. The bill does not provide for the Secretary to do anything with the forms.*

<sup>13</sup> *Current law specifies the election day for each system. The bill uses those dates in the campaign finance disclosure provisions.*

<sup>14</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 are to reflect are to be based on the date the election would have been held if more than one candidate had been nominated.*

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 proceedings in accordance with state law governing contempt of court.

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. If the Commission determines that the violation has occurred, it must either impose a fine or enter a finding that good cause has been shown not to impose the fine. The bill provides that the fine may not exceed \$100 for each day of the violation.<sup>15</sup>

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

(R.C 145.27, 742.41, 3307.20, 3309.22, and 5505.04)

Current 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 deems confidential.

The bill provides that the confidentiality of personal history records is not to stop a state retirement system from making available to the public copies of 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 written request of any person. The person who makes the request must pay the cost of compiling, copying, and mailing the documents.

---

<sup>15</sup> *Fines the Ohio Elections Commission imposes for a violation of the filing requirement are to be paid into the existing Ohio Elections Commission Fund. Law not changed by the bill 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.*

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

(R.C 145.057, 742.046, 3307.061, 3309.061, and 5505.048)

The bill provides that a member of a state retirement board who is charged with committing a felony, a theft offense,<sup>16</sup> or a violation of certain ethics law

---

<sup>16</sup> "Theft offense" means any of the following (R.C 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;

(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;

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, divulging disclosure statement information, 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.

(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).



prohibitions is suspended from participation on the board for the period during which the charges are pending.

If the charges are dismissed, the member is found not guilty, or the charges are otherwise resolved in a manner not resulting in the member being convicted of or pleading guilty to an offense, the suspension ends, and the member may participate on the board. If the member pleads guilty to or is convicted of the offense, the member's position on the board is deemed vacant. A person who has pleaded guilty to or been convicted of one of the offenses listed is ineligible for election to a state retirement board.

ORSC may hold a hearing to determine whether to remove a member of a state retirement board who has been suspended pursuant to these provisions. If it decides to hold a hearing, ORSC must provide the suspended board member at least seven days prior notice of the time, date, and place of the hearing. The suspended board member may be represented by an attorney. At the hearing the suspended board member, or the suspended board member's attorney, must have an opportunity to present evidence, call witnesses, and cross-examine witnesses. The hearing is open to the public. At the conclusion of the hearing, if the voting members of ORSC<sup>17</sup> unanimously vote to remove the suspended board member, the suspended board member is removed from the board, and the position of the member is deemed vacant.<sup>18</sup>

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

(R.C. 109.98, 145.114, 742.114, 3307.152, 3309.157, and 5505.065)

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

---

<sup>17</sup> Under the bill, the voting members of ORSC are the three Senate appointees, the three House of Representatives appointees, the two former General Assembly member appointees, and the three Governor appointees. The nonvoting members are the executive directors of the state retirement boards. (R.C. 171.01.)

<sup>18</sup> See "**Secretary of State's oversight duties for filling Board vacancies**" above for a discussion of how vacancies on state retirement boards are filled.

## Ethics

### Background

The Ohio ethics laws<sup>19</sup> designate various ethics commissions as the "appropriate ethics commission"<sup>20</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 is the "appropriate ethics commission" for members and employees of the state retirement system boards.

### Ethics commission disclosure statements

(R.C 102.02)

The bill requires the members of each of the state retirement boards to file an annual financial disclosure statement with the Ohio Ethics Commission.<sup>21</sup> The bill also requires each employee of a state retirement system "whose position

---

<sup>19</sup> *The ethics laws are contained in Chapter 102. and R.C. 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. R.C. 2921.42 is the offense of having an unlawful interest in a public contract, and R.C. 2921.43 is the offense of soliciting or receiving improper compensation.*

<sup>20</sup> *"Appropriate ethics commission" means (R.C 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.*

<sup>21</sup> *Pursuant to R.C. 102.02, the Ohio Ethics Commission has adopted a rule authorizing the Commission, by vote of the Commission, to require additional public officials and employees to file financial disclosure statements. (R.C. 102.02(B).) According to the Commission's website, state retirement board members must file; however, these filings are confidential. Under the bill, retirement board members' disclosure statements will no longer be confidential.*

involves substantial and material exercise of discretion in the formulation of policy or the expenditure or investment of retirement system funds" to file an annual disclosure statement. As under existing law for officials required by current law to file financial disclosure statements, including chief executive officers of the state retirement systems, the statements must reveal the names under which the filer and members of the filer's immediate family do business, the filer's sources of income, certain types of real property interests the filer has, and other information.

**Travel and compensation policies**

(R.C 145.092, 742.102, 3307.041, 3309.041, and 5505.062)

The bill requires each state retirement board to 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.

(2) Review any existing policy regarding compensation and bonuses paid to employees of the board and adopt rules establishing a new or revised policy regarding employee compensation and bonuses.

The rules must be adopted in accordance with each board's existing rule making authority, and each board must provide copies of the rules to each member of ORSC.<sup>22</sup>

**Periodic ethics law training**

(R.C 145.093, 742.103, 3307.042, 3309.042, and 5505.042)

The bill requires each state retirement board to 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.

---

<sup>22</sup> Existing law requires a copy of the full text of each rule to be submitted to ORSC proper (R.C 145.09, 742.10, 3307.04, 3309.04, and 5505.04(B)).

**Investigation of complaints by the appropriate ethics commission**

(R.C. 102.06(C)(1)(a), 145.093, 742.103, 3307.042, 3309.042, and 5505.063; Section 5)

**Current law.** Under current 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. The accused person is to be given reasonable notice of the date, time, and place of the hearing and a statement of the charges and the law directly involved. The person is to be given the opportunity to be represented by counsel, have counsel appointed for the person in indigency situations, examine the evidence against the person, produce evidence and call and subpoena witnesses in the person's defense, confront the person's accusers, and cross-examine witnesses. The hearing is closed to the public.

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 proceedings in 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 of them, the commission may publicly comment that no official action<sup>23</sup> has been taken on its findings.<sup>24</sup> 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

---

<sup>23</sup> "Official action" means prosecution, closure after investigation, or grand jury action resulting in a true bill of indictment or no true bill of indictment (R.C. 102.06(C)(1)(b)).

<sup>24</sup> But, the commission is prohibited from making comment in violation of the Rules of Criminal Procedure or about any indictment that has been sealed pursuant to any law or those rules (R.C. 102.06(C)(1)(b)).

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 bill.** The bill 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 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 bill requires the commission to report its findings to the Ohio Retirement Study Council (ORSC), as well as to the appropriate prosecuting authority.

(2) The bill requires each state retirement board to 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 Ohio Ethics Commission or the appropriate prosecuting attorney.

(3) The bill expressly states that the Ohio Ethics Commission has authority to investigate allegations of violations of the ethics law by members or employees of the state retirement boards. The bill states that this express statement of authority is an affirmation of the commission's authority to conduct these investigations. It does not imply and may not be construed to mean that the Ohio Ethics Commission did not have authority to investigate violations of this nature prior to the enactment of the bill.

### **Board member training**

(R.C 145.041, 171.50, 742.031, 3307.051, 3309.051, and 5505.064)

The bill requires the state retirement boards to jointly develop a retirement board member education program and submit the program to the Ohio Retirement Study Council. The bill specifies that the state retirement boards must jointly pay all costs associated with establishing and conducting the retirement board member 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 bill requires the

program to 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.

Under the bill, each newly elected or appointed member of a state retirement board must, prior to 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 retirement board member education program sessions, classes, and other events must be held in Ohio.

**Licensing state retirement system investment officers**

(R.C 145.09, 742.10, 1707.01, 1707.142, 1707.152, 1707.17, 1707.19, 1707.20, 1707.22, 1707.23, 1707.25, 1707.431, 1707.44, 1707.46, 3307.11, 3309.14, and 5505.07; Section 3)

The bill provides for the Division of Securities in the Department of Commerce to license state retirement system investment officers. Effective 90 days after the effective date of this provision of the bill, 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.

"State retirement system investment officer" is defined by the bill as an individual employed by a state retirement system in a position in which the individual has significant responsibility for investment decisions, investment strategies, or advising the state retirement system board with regard to the system's investments. "State retirement system investment officer" does not include the chief administrative officer of a state retirement system.<sup>25</sup>

---

<sup>25</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 bill 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.*

### **Initial license**

The bill 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.

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 effective date of this provision of the bill 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 bill provides that a state retirement system investment officer license is to expire on the last day of each December. The license may be renewed on the filing with the Division of Securities of a renewal application and payment of a \$50 renewal fee. The Division must give notice, without unreasonable delay, of its action on any renewal application.

### **Refusing, suspending, or revoking license and other enforcement powers**

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>26</sup> These actions may be taken under many of the same or similar circumstances for which the Division may take action under current law against a person seeking or holding a license the

---

<sup>26</sup> *Such actions may be appealed in accordance with the Administrative Procedure Act (R.C. Chapter 119).*

Division issues under current 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.<sup>27</sup> 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, 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 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 bill provides that the Division may take such actions against state retirement system investment officers.

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

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

- (1) Employing any device, scheme, or artifice to defraud any person;
- (2) Engaging in any act, practice, or course of business that operates or would operate as a fraud or deceit on any person;
- (3) Engaging in any act, practice, or course of business that is fraudulent, deceptive, or manipulative;<sup>28</sup>

---

<sup>27</sup> *In addition to authorizing the Division of Securities to take action against a person's state retirement system investment officer license for knowingly making a false statement or omission of material fact in a license application, the bill provides that the person may be subject to criminal penalties for knowingly making or causing to be made any false representation concerning a material and relevant fact in procuring the license.*

<sup>28</sup> *The bill permits the Division of Securities to adopt rules reasonably designed to prevent such acts, practices, or courses of business as are fraudulent, deceptive, or manipulative.*

(4) Taking or having custody of any securities or funds of any person, except as provided in rules adopted by the Division of Securities.

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 \$25,000 (R.C. 1707.99, not in the bill). (See the appendix for an overview of felony sentencing.)

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

Continuing law gives the Division of Securities authority to prescribe, for the protection of investors, reasonable rules defining fraudulent, evasive, deceptive, or grossly unfair practices or devices in the purchase or sale of securities. The bill provides that the Division may also prescribe such rules for the protection of the state retirement systems. The bill also permits the Division to prescribe, for the protection of the state retirement systems, reasonable rules regarding acts and practices of state retirement system investment officers just as current law permits the Division to prescribe such rules for the protection of investors, clients, or prospective clients, regarding the acts and practices of investment advisers.

Current 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 bill 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.

### **Ohio Retirement Study Council membership**

(R.C 171.01)

Currently, the Ohio Retirement Study Council (ORSC) is composed of fourteen 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>29</sup> The bill adds two new members to the Council, one appointed by the Speaker of the House, one appointed by the President of the Senate. The bill also specifies that, of the Governor's three appointees, one must have investment experience.<sup>30</sup>

Each of the new members must be a former General Assembly member who served at least one term on the Council while serving on the General Assembly. The new members must be appointed at the same time as the Council members who are General Assembly members. They are to serve until December 31 of the following year.

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

(R.C 171.04)

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

### **Audits**

#### **Financial and special audits**

(R.C 117.10 and 171.03)

The bill 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 of the state retirement systems. On completion of a financial or special audit, the Auditor must report the results to ORSC in a timely manner.

---

<sup>29</sup> *The executive directors are non-voting members. All others are voting members.*

<sup>30</sup> *The bill does not include an explanation of what is meant by "investment experience."*

**Performance audits**

(R.C 171.04)

The bill provides that, at least once every five years, ORSC must have an independent auditor conduct a fiduciary performance audit of each of the five state retirement systems. The bill specifies that all costs associated with a fiduciary performance audit must be paid by the retirement system that is the subject of the audit.

**Uniform reporting formats**

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

Under the bill, ORSC is authorized to establish a uniform format for any report that the state retirement boards are required to submit to ORSC. If ORSC establishes a uniform format for any report a state retirement board is required to submit to ORSC, the board must submit the report in that format.

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

(R.C 171.06)

Continuing law provides that the Attorney General is the chief law officer for the state and all its departments.<sup>31</sup> The bill specifically provides that the Attorney General is the legal adviser to ORSC.

---

**COMMENT**

Retirement system	Minimum number of signers needed
PERS employee members	500, with at less 20 from each of at least ten counties
PERS retirant member	250, with at least ten from each of at least five counties
OP&F police and firefighter employee members	100, with at least 20 from each of at least five counties
OP&F police and firefighter retirant members	50, with at least ten from each of at least five counties

---

<sup>31</sup> R.C. 109.02.

STRS teacher and retired teacher members	500, with at least 20 from each of at least ten counties
SERS employee members	500, with at least 20 from each of at least ten counties
SERS retirant member	100, with at least ten from each of at least five counties

---

## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	10-02-03	p. 1068

s0133-i-125.doc/kl

**APPENDIX**  
**CONTINUUM OF SANCTIONS FOR CERTAIN FELONIES\***

Degree of offense	Sentencing guidelines	Possible prison term and death penalty (Other possible prison terms described on next page)	Possible conventional or day fine	Community residential sanctions and nonresidential sanctions?	Financial sanctions?	Parole or post-release control (PRC)
F1	Presumption for a prison term	3, 4, 5, 6, 7, 8, 9, or 10 years	Not more than \$20,000	Yes, unless a mandatory prison term is imposed.  Community residential sanctions and nonresidential sanctions  appear to be unavailable if a prison term is imposed. Instead, PRC is used after  the prison term.	Yes	PRC required
F2		2, 3, 4, 5, 6, 7, or 8 years	Not more than \$15,000			
F3	No preference, except for certain drug offenses	1, 2, 3, 4, or 5 years	Not more than \$10,000			PRC required for sex offenses and certain violent F3 offenses.
F4	Preference against a prison term, except for certain	6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, or 18 months	Not more than \$5,000			PRC optional for other offenses.
F5	drug offenses	6, 7, 8, 9, 10, 11, or 12 months	Not more than \$2,500			

\* This chart gives only an overview of the standard continuum of sanctions available for felony offenses and provides a quick reference for available options. By its nature, it can not describe in detail the procedures and standards that determine particular aspects of felony sentencing.

- **No preference** means a sentencing procedure for third degree felonies or certain felony drug offenses. In order to determine whether to impose a prison term upon the offender, the court must comply with the purposes and principles of sentencing and must consider specified factors regarding the seriousness of the offense and factors indicating that the offender is likely to commit future crimes.
- **Preference against a prison term** means a sentencing procedure for fourth and fifth degree felonies. The sentencing court must determine whether any one of nine factors specified in the Sentencing Law applies. If none of the factors apply, the court, after considering general sentencing principles and purposes, may impose a community control sanction or combination of sanctions. If the court finds that one of the factors applies, and if the court finds that a prison term is consistent with the purposes and principles of sentencing as described in the Sentencing Law and that the offender is not amenable to an available community control sanction, the court must impose a prison term upon the offender.
- **Community control sanctions** are community residential sanctions, nonresidential sanctions, and financial sanctions. Community control sanctions may not last more than five years.
- **Community residential sanctions** include terms in community based correctional facilities, jails, halfway houses, and alternative residential facilities.
- **Nonresidential sanctions** include terms of day reporting, electronic monitoring, house arrest, community service, drug treatment, intensive probation supervision, basic probation supervision, monitored time, and drug and alcohol use monitoring, a curfew term, a requirement that the offender obtain employment, a requirement that the offender obtain education or training, a requirement that the offender participate in victim-offender mediation, and a license violation report.
- **Financial sanctions** include restitution, day fines, conventional fines, state fine or cost, and reimbursement of the costs of implementing other sanctions.
- **State fine or cost** means any cost imposed or forfeited bail collected by a court under R.C. 2743.70 for deposit into the Reparations Fund or under R.C. 2949.091 for deposit into the General Revenue Fund and all fines, penalties, and forfeited bail collected by the court and paid to a law library association.
- **Parole** for aggravated murder and murder, if permitted and granted, must last at least five years.
- **Post-release control** (PRC) is a period of supervision by the Adult Parole Authority after the offender is released from imprisonment and includes one or more community control sanctions. For first degree felonies and felony sex offenses, PRC is five years. For second degree felonies and certain violent third degree felonies, PRC is three years. For other felonies, PRC may be up to three years.