Kathryn E. Likley *Legislative Service Commission*

Sub. S.B. 133

125th General Assembly
(As Passed by the Senate)

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

BILL SUMMARY

State retirement board membership

- Requires the Secretary of State to oversee the administration of elections of state retirement system board members.

- Replaces the Attorney General (AG) on the Public Employees Retirement System (PERS) Board with the Treasurer of State; adds an additional employee member, a PERS member who is a county commissioner, prosecutor, auditor, sheriff, treasurer, recorder, engineer, or coroner, to be appointed by the Governor; and adds an additional member, known as the investment expert member, who is to be appointed by the Governor and meet certain statutorily specified qualifications.

- Replaces the AG on the board of trustees of the Ohio Police and Fire Pension Fund with the Treasurer of State and adds two additional members, known as the investment expert members, who are to be appointed by the Governor and have certain statutorily specified qualifications.

- Replaces the AG on the State Teachers Retirement Board with the Treasurer of State; permits the Superintendent of Public Instruction to appoint a designee who has the same statutory qualifications as an investment expert member; adds an additional retired teacher member; and adds an additional member, known as the school board member, who is to be appointed by the Governor.

- Replaces the AG on the School Employees Retirement Board with the Treasurer of State; adds an additional member known as the investment

expert member, who is to be appointed by the Governor and have certain statutorily specified qualifications; and adds an additional member, known as the school board member, who is appointed by the Governor and must be a member of a city, local, exempted village, or joint vocational school board district board of education or an educational service center governing board, but need not be a member of the retirement system.

- Adds to the State Highway Patrol Retirement Board the Director of Public Safety and the Treasurer of State and adds two investment expert members, who must be appointed by the Governor and have certain statutorily specified qualifications.

- Provides that a member of a state retirement board who, pursuant to the bill, is replaced on that board by an elected or appointed member remains in office until the replacement member is appointed or elected.

- Provides that when a person is elected to be a successor employee member of a state retirement board to fill a vacancy the successor employee member holds office only until the next board election that occurs not less than 90 days after the successor employee member's election.

State retirement board member elections

- Requires that the election of board members be held under the board's direction in accordance with rules the Secretary of State is to adopt.

- Provides for the Secretary of State to certify nominating petitions for state retirement system board elections and the results of the elections.

- Specifies that a person who served as an elected or appointed member of a state retirement board one or more entire fiscal years in fiscal years 2000, 2001, or 2002 is ineligible for reelection or reappointment to the board if the person has accepted reimbursements for travel and travel-related expenses from the board that have an annual average of more than $10,000 for 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 a contribution or in-kind contribution or makes an expenditure in connection with efforts to be elected to the board.

- Requires each candidate for a state retirement system board to file with the Secretary of State a complete, accurate, and itemized financial disclosure statement 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 fill a vacancy on a state retirement board

- 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 requirements specified in the three preceding dotpoints.

- 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 take specified fraud-related actions by means of campaign materials, an advertisement on 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.

- Requires each system also to furnish to the Secretary of State for the purpose of certifying an election any necessary personal history records kept by the system.

<u>Suspension and removal of board members</u>

- 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.

Civil action

- Authorizes the AG 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 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 former legislator members of the Ohio Retirement Study Council (ORSC) and ORSC members appointed by the Governor, and (4) ORSC employees other than employees who perform purely administrative or clerical functions.

- Prohibits 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 from soliciting or accepting payment of actual travel expenses, including expenses incurred with the travel for lodging, meals, food, and beverages; and 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 ORSC for approval; authorizes ORSC to approve the policy on the advice of the Ohio Ethics Commission.

- 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 nothing in the bill 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 bill'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 bill are in addition to any authority, power, or responsibilities of the Commission in effect immediately prior to the bill's effective date.

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 persons appointed to fill a vacancy on the 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.

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 specified types of violations, which 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.

- Creates a "safe harbor" in which no chief investment officer is considered to have failed to satisfy the officer's duty of reasonable supervision if the officer has performed specified activities.

- Requires the chief investment officer to ensure that securities transactions are executed in such a manner that the state retirement system's total costs or proceeds in each transaction are the most favorable under the circumstances.

- Creates a "safe harbor" in which no chief investment officer is considered to have failed to satisfy the officer's duty of best execution if the officer has followed certain practices.

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 in accordance with the bill.

- Prohibits 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.

- Prohibits a state retirement system investment officer from (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, or (4) if the person is a chief investment officer, knowingly failing to comply with any policy adopted regarding the duty of reasonable supervision or the duty to execute favorable transactions.

- Eliminates provisions establishing the fee for the examination of applicant dealers and applicant salespersons, when administered by the Division of Securities.

- Expands specified provisions dealing with the Division of Securities' enforcement powers to also apply 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.

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.

- 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.

- If a state retirement board intends to award a bonus to any employee of the board, requires the board to adopt rules establishing a policy regarding employee bonuses.

- Requires each state retirement board to provide copies of the above rules to each member of ORSC.

- 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.

- 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 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 regular reporting requirements 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 AG is ORSC's legal adviser.

OP&F

- Provides that if an OP&F board member fails to attend three consecutive meetings without valid excuse is considered as having resigned from the board.

- Requires the OP&F board to notify the chief of the police or fire department that employs a member applying for disability that the application has been filed.

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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

The bill makes the following changes to the composition of the five state retirement boards:

PERS Board

(R.C. 145.04(A) and (D))

Under existing law, the PERS Board has three ex officio members (the Attorney General (AG), the Auditor of State, and the Director of Administrative Services), five employee members, and one retirant member.[1] Of the employee members, one must be a state employee, one a county employee, one a municipal employee, one a university or college employee, and one a park district, conservancy district, sanitary district, health district, public library, township, metropolitan housing authority, union cemetery, joint hospital, or institutional commissary employee.

The bill revises the PERS Board membership as follows:

[1] *The ex officio members of each retirement board are voting members.*

(1) Replaces the Attorney General with the Treasurer of State;

(2) Adds an additional employee member who must be a member of PERS and either a county commissioner, prosecutor, auditor, sheriff, treasurer, recorder, engineer, or coroner, appointed by the Governor for a term of four years;

(3) Adds an additional member, known as the investment expert member, who must possess certain statutorily specified qualifications.[2] The investment expert member must be appointed by the Governor for a four-year term. The initial investment expert member must be appointed and take office not less than 90 days after the bill's effective date. 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 such term. The member must continue 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.

OP&F

(R.C. 742.03(B) and (D))

Under existing law, the board of trustees of the OP&F Fund has two ex officio members (the AG and the Auditor of State), the fiscal officer of a municipal corporation appointed by the Governor, four employee members (two police officers and two firefighters), one firefighter retirant member, and one police retirant member.

The bill revises the board of trustees of the OP&F Fund as follows:

(1) Replaces the Attorney General with the Treasurer of State;

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[2] *For all of the state retirement systems, an investment expert member must have the following qualifications:*

(1) The member is an Ohio resident;

(2) Within the three years immediately preceding the appointment, the member has not been employed by a retirement system or by any person, partnership, or corporation that has provided to a state retirement system services of a financial or investment nature, including the management, analysis, supervision, or investment of assets;

(3) The member has direct experience in the management, analysis, supervision, or investment of assets.

(2) Adds two additional members, known as the investment expert members, and who must possess certain statutorily specified qualifications. The investment expert members must be appointed by the Governor for four-year terms. The initial investment expert member must be appointed and take office not less than 90 days after the bill's effective date. 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 such term. The member must continue 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.

STRS

(R.C. 3307.05 and 3307.06; Section 4)

Under existing law, the STRS Board has three ex officio members (the Superintendent of Public Instruction, the Auditor of State, and the AG), five teacher members, and one retired teacher.

The bill revises the STRS Board membership as follows:

(1) Permits the Superintendent of Public Instruction to appoint a designee who has the same statutory qualifications as an investment expert member;

(2) Replaces the Attorney General with the Treasurer of State;

(3) Adds an additional retired teacher member. The initial additional retired teacher member on the board must be appointed by the Governor within 90 days after the effective date of the bill; this appointee will hold office until the next board election that occurs not less than 90 days after the appointment.

(4) Adds an additional member, known as the school board member, who must be appointed by the Governor.[3] The school board member must be a member of a city, local, exempted village, or joint vocational school board district board of education or an educational service center governing board, but need not be a member of the retirement system.

[3] *The bill does not state the length of the school board member's term*.

SERS

(R.C. 3309.05)

Under existing law, the SERS Board has two ex officio members (the Auditor of State and the Attorney General), four employee members, and one retirant member.

The bill revises the SERS Board membership as follows:

(1) Replaces the Attorney General with the Treasurer of State;

(2) Adds a member known as the investment expert member, who must possess certain statutorily specified qualifications.[4] The initial investment expert member must be appointed and take office not less than 90 days after the bill's effective date. 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 such term. The member must continue 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.

(3) Adds an additional member, known as the school board member, appointed by the Governor.[5] The school board must be a member of a city, local, exempted village, or joint vocational school board district board of education or an educational service center governing board, but need not be a member of the retirement system.

SHPRS

(R.C. 5505.04)

Under existing law, the SHPRS Board consists of two ex officio members (the Auditor of State and the Superintendent of the State Highway Patrol), a retirant member who is a resident of Ohio, and four employee members.

The bill revises the SHPRS Board as follows:

(1) Adds the Director of Public Safety and the Treasurer of State;

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[4] *The bill does not state the length of this member's term.*

[5] *The bill does not state the length of this member's term.*

(2) Adds two investment expert members, who must be appointed by the Governor and who have certain statutorily specified qualifications.[6] The initial investment expert member must be appointed and take office not less than 90 days after the bill's effective date. 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 such term. The 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.

Terms of employee members of state retirement boards

(R.C. 145.06(A), 742.05, 3307.06(C), 3309.06(B), and 5505.042 (relocated and revised from R.C. 5505.04(C)(3)))

Under existing law, when a person is elected to be a successor employee member of a state retirement board to fill a vacancy, the successor employee member holds office for the unexpired term. Under the bill, the successor holds office only until the next board election that occurs not less than 90 days after the successor employee member's election.

Quorums, number of votes needed to take action

(R.C. 3309.09 and 5505.04)

The bill revises provisions in existing SERS law and SHPRS law to reflect the larger size of the boards. Currently, each board requires a majority of its members to constitute a quorum to take action, but existing law specifies the exact number of members required. The bill instead describes the number as "a majority of the members of the board."

Continuation provision

(Section 6)

The bill provides that a member of a state retirement board who, pursuant to the bill, is replaced on that board by an elected or appointed member remains in office until the replacement member is appointed or elected.

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[6] *The bill does not state the length of these members' terms.*

State retirement board member elections

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.[7] 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.[8] 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

(R.C. 111.30(B)(1) to (4), 145.05(C) and (D), 742.04, 3307.07, 3309.07, 5505.04(C), 5505.041, and 5505.043 (relocated from R.C. 5505.04(C)(4)))

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 that elections be held under the board's direction in accordance with rules that the bill requires the Secretary of State to adopt.[9] The Secretary of State must

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[7] *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.*

[8] *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.)*

[9] *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.*

include rules governing nominating petitions for elections. The Secretary is also 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 board to obtain a certain number of signatures on a nominating petition.[10] 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.[11]

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.[12]

Secretary of State's oversight duties for filling Board vacancies

(R.C. 111.30(B)(6) and (7), 145.051 (renumbered 145.052), 145.06, 742.05, 3707.06(C), 3309.06, and 5505.042 (relocated and revised from R.C. 5505.04(C)(3)))

Under the existing law, 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.

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[10] *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.*

[11] *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.*

[12] *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.*

The bill provides that elections to fill vacancies in a board are to be conducted under the Secretary of State's supervision.[13] In addition to overseeing an election to fill a vacancy, the Secretary is to certify the election results.

Campaign finance

Candidate disclosure statements (R.C. 111.30(B)(5), 145.053(A) and (B), 742.042, 3307.072, 3309.072, and 5505.044). 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.[14] As used in the bill's campaign finance provisions, "candidate" includes a person who is seeking to be elected to fill a vacancy on the board. "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 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

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[13] *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.*

[14] *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.*

paid for by that volunteer campaign worker.[15] "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 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 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.[16] 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 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.[17] 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.[18]

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[15] *The bill defines "personal expenses" as including ordinary expenses for accommodations, clothing, food, personal motor vehicle or airplane, and home telephone.*

[16] *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.*

[17] *Current law specifies the election day for each system. The bill uses those dates in the campaign finance disclosure provisions.*

[18] *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*

Candidate disclosure statements--vacancy

(R.C. 101.30(B)(5), 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))

Under the bill, 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. 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.

Independent expenditure disclosure statements

(R.C. 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))

Under the bill, 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 bill. "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

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to be based on the date the election would have been held if more than one candidate had been nominated.

contribution.[19] 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 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

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[19] *As used in the definition of "independent expenditure" (R.C. 145.053(A)(6), 742.042(A)(6), 3307.072(A)(6), 3309.072(A)(6), and 5505.044(A)(6)):*

(1) "Advocating" means any communication containing a message advocating election or defeat.

(2) "Identified candidate" means that the name of the candidate appears, a photograph or drawing of the candidate appears, or the identity of the candidate is otherwise apparent by unambiguous reference.

(3) "Made in coordination, cooperation, or consultation with, or at the request or suggestion of, any candidate or the campaign committee or agent of the candidate" means made pursuant to any arrangement, coordination, or direction by the candidate, the candidate's campaign committee, or the candidate's agent prior to the publication, distribution, display, or broadcast of the communication. An expenditure is presumed to be so made when it is any of the following:

(a) Based on information about the candidate's plans, projects, or needs provided to the person making the expenditure by the candidate, or by the candidate's campaign committee or agent, with a view toward having an expenditure made;

(b) Made by or through any person who is, or has been, authorized to raise or expend funds, who is, or has been, an officer of the candidate's campaign committee, or who is, or has been, receiving any form of compensation or reimbursement from the candidate or the candidate's campaign committee or agent;

(c) Made by a political party in support of a candidate, unless the expenditure is made by a political party to conduct voter registration or voter education efforts.

(4) "Agent" means any person who has actual oral or written authority, either express or implied, to make or to authorize the making of expenditures on behalf of a candidate, or means any person who has been placed in a position with the candidate's campaign committee or organization such that it would reasonably appear that in the ordinary course of campaign-related activities the person may authorize expenditures.

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

(R.C. 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 bill 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 bill. If the 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 bill provides that the fine may not exceed $100 for each day of the violation.[20]

The bill 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 do 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, identify the candidate in a manner that implies that the candidate is a member of the board or use the term "re-elect" when the candidate is not currently a member of the board;

(2) Make 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) Make 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;

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[20] *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.*

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

(7) Make 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 identify the source of a statement, issue statements under the name of another person without authorization, or falsely state the endorsement of or opposition to a candidate by a person or publication;

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

(10) Post, publish, circulate, distribute, or otherwise disseminate 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.

Procedure

(R.C. 145.055, 742.044, 3307.074, 3309.074, and 5505.046)

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 or independent expenditure 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 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

(R.C. 145.27(D)(6) and (7), 742.41(E)(6) and (7), 3307.20(E)(6) and (7), 3309.22(D)(6) and (7), and 5505.04(D)(6) and (7))

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 determines to be 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 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.

The system also is required to furnish those personal history records kept by the board to the Secretary of State necessary for the purposes of certifying an election. These records remain confidential while in the possession of the Secretary of State.

Elections--technical changes

(R.C. 145.051, 3307.06(B) and (E), and 5505.04(C))

The bill also makes changes of a technical nature.

Ineligibility for re-election--travel expenses

(R.C. 145.042, 742.032, 3307.052, 3309.052, and 5505.049)

Under the bill, a person who served as an elected or appointed member of a state retirement board for one or more entire fiscal years in fiscal years 2000, 2001, or 2002 is ineligible for re-election or reappointment to the board if the person has accepted reimbursements for travel and travel-related expenses from the board that have an annual average of more than $10,000 for those fiscal years.

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 an employee member or a retirant member of a state retirement board who is charged with committing a felony, a theft offense,[21] or a

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[21] *"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

violation of certain ethics law 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 the office of employee member or retirant member of a state retirement board.

Civil action relating to fiduciary duty of state retirement board member

(R.C. 109.98)

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 enjoinment 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.

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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.

(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).

Ethics

Background

The Ohio ethics laws[22] designate various ethics commissions as the "appropriate ethics commission"[23] 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 following persons to file an annual financial disclosure statement with the appropriate Ohio ethics commission:[24]

(1) The members of each state retirement board;

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[22] *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.*

[23] *"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.*

[24] *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.*

(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 ORSC who are former members of the General Assembly who served on the ORSC while a member of the General Assembly (added by the bill) or who are appointed by the Governor;

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

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.

Prohibition against payment of travel expenses

(R.C. 102.03(H)(2) and R.C. 102.99(B), not in the bill)

Existing prohibition. Existing law prohibits public officials and employees who are required to file financial disclosure statements from soliciting or accepting an honorarium.[25] Similarly, existing law prohibits any person from 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.

Existing exceptions. This prohibition does not prohibit a public official or employee who is required to file a financial disclosure statement from accepting and do not prohibit a person from giving to that public official or employee the payment of actual travel expenses, meals, food, and beverages 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 provided to the public official or employee at a meeting or convention of a national organization to

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[25] *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 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 his office or position of employment. (R.C. 102.01(H).)*

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 do 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 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 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 bill creates a new prohibition regarding the payment of the travel expenses relating to the state retirement systems. The bill prohibits 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 from soliciting or accepting payment of actual travel expenses, including expenses incurred with the travel for lodging, meals, food, and beverages. In addition, the bill 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 existing exceptions do not apply to this new prohibition.

Ethics policy and periodic ethics law training

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

Under the bill, each state retirement board must, in consultation with the Ohio Ethics Commission, develop an ethics policy and submit this policy to ORSC for approval. ORSC must review the policy and, if ORSC determines, upon the advice of the Ohio Ethics Commission, that the policy is adequate, approve the policy. If ORSC determines that the policy is inadequate, ORSC must specify the revisions to be made and the board is required to submit a revised policy. If ORSC approves the revised policy, the board must adopt that policy. If not, the board must make any further required revisions and adopt the policy.

Each board 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 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[26] has been taken on its findings.[27] 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

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[26] *"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)).*

[27] *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 nothing in the bill may be construed to be a limitation of the Ohio Ethics Commission's authority, responsibility, and powers under Chapter 102. of the Revised Code as it existed immediately prior to the bill'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 bill are in addition to any authority, power, or responsibilities of the Commission in effect immediately prior to the bill's effective date.

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 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 retirement board member education program sessions, classes, and other events must be held in Ohio.

Chief investment officer

(R.C. 145.094, 742.104, 3307.043, 3309.043, and 5505.066)

Designation

The bill 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 is required to 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 securities law, the "Commodity Exchange Act," 42 Stat. 998, 7 U.S.C. and following, the "Securities Act of 1933," 48 Stat. 74, 15 U.S.C. and following, and the "Securities Exchange Act of 1934," 48 Stat. 881, 15 U.S.C. 78a, and following, and the rules and regulations 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 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 section and the effectiveness of their implementation.

Duty to execute favorable transactions

The chief investment officer also is required to ensure that securities transactions are executed in such a manner that the state retirement system's total costs or proceeds in each transaction are the most favorable under the circumstances.

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

(1) Adopted and implemented a written policy that outlines the criteria used to select broker-dealers that execute securities transactions on behalf of the retirement system, which criteria shall include all of the following: (a) commissions charged by the broker-dealer, both in the aggregate and on a per share basis, (b) the execution speed and trade settlement capabilities of the broker-dealer, (c) the responsiveness, reliability, and integrity of the broker-dealer, (d) the nature and value of research provided by the broker-dealer, and (e) any special capabilities of the broker-dealer.

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

Licensing state retirement system investment officers

(R.C. 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 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. Conversely, the bill prohibits a state retirement system investment officer from acting as a dealer, salesperson, investment advisor, or investment advisor representative.[28] It is unclear whether there is a criminal penalty for violating either prohibition.

"State retirement system investment officer" is defined by the bill 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.[29]

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[28] *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 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. (R.C. 1707.01(E), (F), (X), and (CC).)*

[29] *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 (R.C. 1707.01(X)(2)(i) and O.A.C. 1301:6-3-01(K)(1)).*

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 June. 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.[30] 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 Division issues under current law such as an investment adviser license. For

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[30] *Such actions may be appealed in accordance with the Administrative Procedure Act (R.C. Chapter 119.).*

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.[31] 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.

Parallel to current law, 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 request 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 bill prohibits a state retirement system investment officer from doing any of the following:

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[31] *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.*

(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;[32]

(4) Knowingly failing to comply with any policy adopted regarding the officer established pursuant to the provisions described above under "***Chief investment officer***."

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

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.

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[32] *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.*

Other securities law changes

Examination fees

(R.C. 1707.17(B)(1) and (2))

Under current law, the fee for the examination of applicant dealers, when administered by the Division of Securities, is $75. The fee for the examination of applicant salespersons, when administered by the Division, is $50. The bill eliminates these provisions.

Division enforcement powers

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

Under current 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 bill expands this provision to also apply as to the person's acts or practices *as a dealer or a salesperson*.

Current 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 bill expands this provision to also 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 bill repeals a provision that authorizes 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, if the Division determines, revoke the license under that other provision. The provision repealed is probably redundant of the other provision, R.C. 1707.19.

Ohio Retirement Study Council

ORSC membership

(R.C. 171.01 and 171.02)

Currently, the Ohio Retirement Study Council (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.[33]

The bill specifies that, of the Governor's three appointees, one must have investment experience.[34] Under current law, 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 bill revises this provision to provide that each gubernatorial appointee continues in office until the member's successor is appointed and qualified, notwithstanding the expiration of the member's term of office.

The bill adds two new members to the Council, each of whom must be a former General Assembly member who served at least one term on the Council or served as a member of a standing committee or subcommittee with primary responsibility for health or retirement legislation while serving on the General Assembly. One member must be jointly appointed by the Speaker of the House of Representatives and the leader in the Senate who is of the political party of which the Speaker is a member. The other member must be jointly appointed by the leaders of the House of Representatives and the Senate of the major political party of which the Speaker is not a member. The members may not be members of the same political party. 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, but they are required to continue to serve until their successors are appointed and qualified, notwithstanding the adjournment of the General Assembly during which they were appointed or the expiration of their terms as members of the Council.

As a result of the Council's larger size, the number of votes required for Council action is increased to six, continuing the requirement that a majority of the voting Council members is needed for action.

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[33] *The executive directors are non-voting members. All others are voting members.*

[34] *The bill does not include an explanation of what is meant by "investment experience."*

ORSC to review state retirement systems' rules

(R.C. 171.04(G))

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.

Travel and bonus policies

(R.C. 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))

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) 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 existing rule making authority, and each board must provide copies of the rules to each member of ORSC.[35]

Proposed operating budgets

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

Under the bill, each state retirement board is required 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.

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[35] *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)).*

Plan for dissemination of public information

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

The bill also 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.

Financial and special audits

(R.C. 117.10 and 171.03(G))

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.

Performance audits

(R.C. 171.04(F))

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 and regular reporting requirements. 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.[36] The bill specifically provides that the Attorney General is the legal adviser to ORSC.

OP&F

Failure to attend board meetings--OP&F

(R.C. 742.05)

Under current law, an employee or retirant member of the board of trustees of the police and fire pension fund or a member of the board who is the fiscal officer or a municipal corporation who fails to attend three consecutive board meetings without valid excuse is considered as having resigned from the board. In such a case, the board must declare the member's office vacated.

Under the bill, this provision applies to any elected or appointed member of the board.

Disability benefits under OP&F

(R.C. 742.38(B))

Under existing law, an application for a disability benefit under OP&F may be made by a member of the fund or, if the member is incapacitated, by a person acting on the member's behalf. Not later than 14 days after receiving the application for a disability benefit, the OP&F board must notify the member's employer that an application has been filed. The notice must state the member's position or rank. Not later than 28 days after receiving the notice, the employer must forward to the board a statement certifying the member's job description and any other information required by the board to process the application.

The bill requires that the board also notify the chief of police of the police department employing the member or the chief of the fire department employing the member, as applicable, that an application has been filed. The notice still must state the member's position and rank, but also must state the name of the member who filed the application or on whose behalf the application was filed. The bill

[36] *R.C. 109.02.*

specifies that the notice and the fact that the application has been filed remain confidential.

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
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
Reported, S. Health, Human Services, & Aging	11-13-03	p.	1166
Passed Senate (27-6)	11-13-03	pp.	1183-1189

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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			
						PRC required for sex offenses and certain violent F3 offenses.
F3	No preference, except for certain drug offenses	1, 2, 3, 4, or 5 years	Not more than $10,000			
F4	Preference against a prison term, except for certain drug offenses	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		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.