



## *Bill Analysis*

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

125th General Assembly

(As Reported by H. Banking, Pensions, and Securities)

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

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## **BILL SUMMARY**

### **State retirement board membership**

- Establishes the membership of the state retirement system<sup>1</sup> boards as follows:

**PERS Board:** A Treasurer of State's investment designee (new member), who is to be appointed by the State Treasurer and must meet certain statutorily specified qualifications; the Director of Administrative Services; five employee members; two retirant members (one new retirant member); and two investment expert members (new members) who must meet certain statutorily specified qualifications, one to be appointed by the Governor and one to be appointed jointly by the Speaker of the House and the President of the Senate. (The Attorney General and State Auditor are removed.)

**OP&F Board:** A Treasurer of State's investment designee (new member), who is to be appointed by the State Treasurer and must meet certain statutorily specified qualifications; four employee members; two retirant members; and two investment expert members (new members) who must meet certain statutorily specified qualifications, one to be appointed by

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*\* This analysis was prepared before the report of the House Banking, Pensions, and Securities Committee appeared in the House Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

<sup>1</sup> *The state retirement systems are the Public Employees Retirement System (PERS), Ohio Police and Fire Pension Fund (OP&F), School Employees Retirement System (SERS), State Teachers Retirement System (STRS), and State Highway Patrol Retirement System (SHPRS).*

the Governor and one to be appointed jointly by the Speaker of the House and the President of the Senate. (The Attorney General, State Auditor, and the municipal fiscal officer member are removed.)

STRS Board: A Treasurer of State's investment designee (new member), who is to be appointed by the State Treasurer and must meet certain statutorily specified qualifications; the Superintendent of Public Instruction or an investment expert designee (new alternative to the Superintendent) appointed by the Superintendent who must meet certain statutorily specified qualifications; five "contributing" members (formerly "teacher" members); two retired teacher members (an addition of one retired teacher member); and two investment expert members (new members) who must meet certain statutorily specified qualifications, one to be appointed by the Governor and one to be appointed jointly by the Speaker of the House and the President of the Senate. (The Attorney General and State Auditor are removed.)

SERS Board: A Treasurer of State's investment designee (new member), who is to be appointed by the State Treasurer and must meet certain statutorily specified qualifications; four employee members; two retirant members (an addition of one retirant member); and two investment expert members (new members) who must meet certain statutorily specified qualifications, one to be appointed by the Governor and one to be appointed jointly by the Speaker of the House and the President of the Senate. (The Attorney General and the State Auditor are removed.)

SHPRS Board: A Treasurer of State's investment designee (new member), who is to be appointed by the State Treasurer and must meet certain statutorily specified qualifications; the Superintendent of the State Highway Patrol; five contributing members (an addition of one employee member); two retirant members (an addition of one retirant member); and two investment expert members (new members) who meet certain statutorily specified qualifications, one to be appointed by the Governor and one to be appointed jointly by the Speaker of the House and the President of the Senate. (The State Auditor is removed.)

- Changes the term used to refer to the active teacher members of the STRS Board to "contributing" members.

- 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 elected or appointed.
- 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 each state retirement board, following consultation with the Secretary of State, to adopt rules governing: (1) the administration of elections of board members and elections to fill board vacancies, (2) nominating petitions, (3) certification of the validity of nominating petitions, and (4) certification of election results.
- Permits each state retirement board to contract with the Secretary of State or an independent firm to administer the elections, certify the validity of nominating petitions, and certify election results, and requires the Secretary of State or the independent firm to perform these services in accordance with the rules adopted.
- Authorizes each state retirement board to provide information necessary for the Secretary of State or the independent firm to certify the election.
- Permits the Secretary of State to audit the election if a state retirement board contracts with an independent firm to administer an election.
- Specifies that 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 board paid travel-related expenses of the person or reimbursed the person for travel-related expenses that averaged more than \$10,000 annually 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 contributions or in-kind contributions totaling \$1,000 or more or makes expenditures totaling \$1,000 or more in connection with efforts to be elected to the board.

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

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

- Provides that the position of a member of a state retirement board who is convicted of or pleads guilty to a felony, a theft offense, or an ethics law violation is to be deemed vacant on the member's conviction or plea.
- Authorizes a court of appeals to remove a state retirement board member who commits misconduct in office by willfully and flagrantly exercising authority or power not authorized by law, refusing or willfully neglecting to enforce the law or to perform any official duty imposed by law, or being guilty of gross neglect of duty, gross immorality, drunkenness, misfeasance, malfeasance, or nonfeasance.

- 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 Ohio Retirement Study Council (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 the Commission for approval; adopt the policy, once approved by the Ethics Commission; and, within 60 days of adopting the policy, send a copy to ORSC.
- Requires each state retirement board to periodically provide ethics training to members and employees of the board.
- Permits the Ohio Ethics Commission, at its discretion, to share information gathered in the course of an investigation with, or disclose

the information to, the Attorney General and the State Auditor if the accused person is a state retirement board member.

- Requires 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 QRSC, 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.
- Requires each retirement system lobbyist and the lobbyist's employer to register with the Joint Legislative Ethics Commission and to disclose to the Commission in regularly submitted statements the amount the lobbyist expended in retirement system lobbying.

#### **Board member training**

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

### **Internal audit committee**

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

### **Chief investment officer**

- Requires each state retirement board to designate a licensed state retirement system investment officer to be the chief investment officer for the system.
- Requires the chief investment officer to reasonably supervise the licensed state retirement system investment officers and other persons employed by the state retirement system with a view toward preventing 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 establish and maintain a policy to monitor and evaluate the effectiveness of securities transactions executed on behalf of the board.
- Creates a "safe harbor" in which no chief investment officer is considered to have failed to satisfy the officer's duty to establish and monitor the policy 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.

### Investments

- Requires each retirement board to designate securities dealers ("agents") and investment managers who meet certain statutorily specified qualifications as Ohio-approved agents and Ohio-approved investment managers.

- Requires each board to annually establish a goal to increase utilization of Ohio-approved agents and investment managers, and to submit to ORSC, at least annually, a report detailing the board's progress in meeting the goal and additional information regarding agents and investment managers and their activities on behalf of the board.
- Requires each retirement board to adopt and implement procedures and criteria to select agents to execute securities transactions on the board's behalf and investment managers. The criteria include consideration of whether an agent or investment manager is an Ohio-approved agent or investment manager.
- Requires each retirement system to annually disclose certain information regarding agents that execute securities transactions on the system's behalf to the Ohio Ethics Commission.

**Ohio Retirement Study Council**

- Requires that one of the Governor's three appointees to ORSC have investment experience.
- Permits ORSC to review all rules proposed by each retirement system and make recommendations on those rules to the Joint Committee on Agency Rule Review.
- Requires 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.

#### Alternative retirement plans

- Extends eligibility for participation in alternative retirement plans (ARP) for employees of public institutions of higher education to employees who have not had a prior opportunity to participate in an ARP and, on August 1, 2005, have less than five years of service credit in a state retirement system.
- Requires a public institution of higher education, on behalf of an employee participating in an ARP, to contribute to the ARP an amount equal to the amount the institution would have contributed to a state retirement system for that employee, minus a percentage paid to that state retirement system.

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