



## *Final Analysis*

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*Legislative Service Commission*

### **Sub. S.B. 3**

127th General Assembly  
(As Passed by the General Assembly)

- Sens. Faber, Schaffer, Stivers, Jacobson, Carey, Grendell, Schuring, Cafaro, Cates, Clancy, Fedor, Goodman, Harris, Mason, Morano, Niehaus, Padgett, Roberts, Sawyer, Wilson, Gardner, Mumper**
- Reps. Daniels, Flowers, Reinhard, Schneider, Bacon, Batchelder, Coley, Collier, Dolan, Evans, Fessler, Gibbs, Goodwin, J. Hagan, Hottinger, Hughes, Jones, R. McGregor, Patton, Schindel, Setzer, Stebelton, Uecker, Wachtmann, Widowfield**

**Effective date: Emergency, May 13, 2008**

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### **ACT SUMMARY**

- Provides that the restoration of the rights and privileges to a person convicted of a crime who has completed the penalty for the crime does not extend to the privilege of holding an office of honor, trust, or profit if the person was convicted of or pleaded guilty to any of a number of specified felonies.
- Provides that a person granted an administrative release by the Adult Parole Authority may apply for a commutation of sentence for the purpose of regaining the rights and privilege forfeited by conviction, except that the privilege of holding an office of honor, trust, or profit may not be restored to a person who was convicted of or pleaded guilty to committing on or after the effective date of the act, any of a number of specified felonies.
- Requires the prosecutor of a case in which a person is charged with committing any of a number of specified felonies who has knowledge that the person committed the offense while serving in a position of honor, trust, or profit to notify the public retirement system or alternate retirement plan of which the person is a member.
- Prohibits a person from registering as a legislative agent, retirement system lobbyist, or executive agency lobbyist if the person is convicted

of or pleads guilty on or after the effective date of the act to any of a number of specified felonies; provides that the ban is lifetime; and requires the Joint Legislative Ethics Committee to terminate the registration of a registered agent or lobbyist who is convicted of or pleads guilty to any such felony.

- Requires a sentencing court to order forfeiture to the applicable public retirement system or alternative retirement plan of the right to a retirement or disability benefit, or other right or benefit, other than payment of accumulated contributions, if a person being sentenced for any of a number of felonies committed on or after the act's effective date committed the offense while serving in a position of honor, trust, or profit, and, at the time of the offense, was a member of the retirement system or alternative retirement plan.
- Requires the Inspector General to investigate the management and operation of the office of the Attorney General to determine whether misconduct or wrongful acts or omissions have been or are being committed by the Attorney General or by present or former employees of or contractors with that Office.
- Makes an appropriation to the office of Inspector General.

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## CONTENT AND OPERATION

### *Lifetime ban*

The act prohibits a person from registering as a legislative agent, a retirement system lobbyist, or an executive agency lobbyist if the person is convicted of or pleads guilty on or after the effective date of the act to any of the following offenses that is a felony:

(1) Bribery (R.C. 2921.02), intimidation (R.C. 2921.03), retaliation (R.C. 2921.05), theft in office (R.C. 2921.41), unlawful interest in a public contract (R.C. 2921.42), or engaging in a pattern of corrupt activity (R.C. 2923.32);

(2) Tampering with records (R.C. 2913.42), intimidation of an attorney, victim, or witness in a criminal case (R.C. 2921.04), perjury (R.C. 2921.11), tampering with evidence (R.C. 2921.12), obstructing official business (R.C. 2921.31), or obstructing justice (R.C. 2921.32) if the person committed the offense while in a public office and the offense was related to the duties of the public office or to the person's actions as a public official;

(3) A violation of an existing or former municipal ordinance or law of Ohio, any other state, or the United States that is substantially equivalent to any violation listed in item (1) above;

(4) A violation of an existing or former municipal ordinance or law of Ohio, any other state, or the United States that is substantially equivalent to any violation listed in item (2) above if the person committed the violation while serving in a public office and the conduct was related to the duties of the public office or to actions as a public official;

(5) A conspiracy to commit, attempt to commit, or complicity to commit any offense listed in item (1) or described in item (3) above; or

(6) A conspiracy to commit, attempt to commit, or complicity in committing any offense listed in item (2) or described in item (4) above, if the person committed the violation while serving in a public office and the conduct constituting the offense that was the subject of the conspiracy would have constituted the offense attempted, or the conduct constituting the violation in which the person was complicit was or would have been related to the duties of the person's public office or to the person's actions as a public official holding that public office.

The ban is a lifetime ban, and the offender is forever disqualified from registering as a legislative agent, a retirement system lobbyist, or an executive agency lobbyist.

If a legislative agent, retirement system lobbyist, or executive agency lobbyist has registered with the Joint Legislative Ethics Committee and is convicted of or pleads guilty to any of the above-mentioned offenses, the act requires the Joint Legislative Ethics Committee immediately on becoming aware of the conviction or guilty plea to terminate the person's registration as an agent or lobbyist; thereafter, the ban applies to the person.

An offense that includes as an element a course of conduct or the occurrence of multiple acts is "committed on or after the effective date of the act" if the course of conduct continues, one or more of the multiple acts occurs, or the person's accountability for the course of conduct or for one or more of the multiple acts continues, on or after the effective date of the act. (R.C. 101.721, 101.921, and 121.621.)

### **Restoration of rights and privileges to certain prisoners and persons**

#### **Background**

Continuing law contains provisions that require forfeiture of certain rights and privileges if the person has been convicted of specified criminal offenses. Among these are:

(1) Generally, a person who is convicted of a felony in Ohio, any other state, or the United States is incompetent to be an elector or juror or to hold an office of honor, trust, or profit. When a person is granted parole, judicial release, or a conditional pardon or is released under a non-jail community control sanction or a post-release control sanction, the person is competent to be an elector during the period of community control, parole, post-release control, or release or until the conditions of the pardon have been performed or have transpired and is competent to be an elector following final discharge.

A person who is convicted of a felony under the laws of Ohio, any other state, or the United States is incompetent to circulate or serve as a witness for the signing of a declaration of candidacy and petition, voter registration application, or nominating, initiative, referendum, or recall petition. (R.C. 2961.01, not in the act.)

(2) A person who is convicted of a "disqualifying offense"<sup>1</sup> is incompetent to hold a public office or position of public employment or to serve as a volunteer, if holding the office or position or serving as a volunteer involves substantial management or control over the property of a state agency, political subdivision, or private entity. This forfeiture does not apply if a conviction of a disqualifying offense is reversed, expunged, or annulled. (R.C. 2961.02, not in the act.)

(3) A public official or party official who is convicted of or pleads guilty to theft in office is forever disqualified from holding any public office, employment, or position of trust in Ohio. (R.C. 2921.41, not in the act.)

### **Restoration--prisoners and certain other persons**

**Continuing law.** The following prisoners or persons are restored to the rights and privileges forfeited by a conviction: (1) a prisoner who has served the entire prison term that comprises or is part of the prisoner's sentence and has not been placed under any post-release control sanctions, (2) a prisoner who has been granted a final release by the Adult Parole Authority (APA) of the Department of Rehabilitation and Correction as described in the next paragraph, and (3) a person who has completed a community control sanction or combination of community control sanctions imposed by the sentencing court.

Generally, when a paroled prisoner has performed the conditions and obligations of parole and obeyed the applicable rules and regulations adopted by the APA, the APA, on the recommendation of the Superintendent of Parole Supervision, may enter a final release and then must issue a certificate of final release, but the APA cannot grant a final release earlier than one year after release from an institution on parole, and, in the case of a paroled prisoner whose minimum sentence is life imprisonment, the APA cannot grant a final release earlier than five years after the paroled prisoner is released from an institution on parole.

When a prisoner who has been released under a period of post-release control has performed the conditions and obligations of the post-release control sanctions and obeyed the applicable rules and regulations adopted by the APA or has the period of post-release control terminated by a court, the APA, on the

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<sup>1</sup> "Disqualifying offense" means an offense that (1) is a felony theft offense or a felony under the laws of Ohio, another state, or the United States that is not a felony theft offense but involves fraud, deceit, or theft and (2) is an offense for which the laws of Ohio, another state, or the United States do not otherwise contain a provision specifying permanent disqualification, or disqualification for a specified period, from holding a public office or position of public employment, or from serving as an unpaid volunteer, as a result of conviction of the offense. (R.C. 2961.02(A)(1).)

recommendation of the Superintendent of Parole Supervision, may enter a final release and then must issue to the prisoner a certificate of final release.

In the case of a prisoner who has been released under a period of post-release control, the APA cannot grant a final release earlier than one year after the prisoner is released from an institution under a period of post-release control. In the case of a released prisoner whose sentence is life imprisonment, the APA cannot grant a final release earlier than five years after the prisoner is released from an institution under a period of post-release control. (R.C. 2967.16.)

**Operation of the act.** The act limits the provisions that provide for the restoration to a prisoner or person of the rights and privileges forfeited by the prisoner's conviction. Under the act, the restoration does not extend to holding an office of honor, trust, or profit if the prisoner was convicted of or pleaded guilty to any of the offenses described above under "**Lifetime ban**" that is a felony.<sup>2</sup> (R.C. 2967.16(C).)

#### **Restoration--parole violators**

**Continuing law.** Under continuing law the APA may grant an administrative release to any of the following: (1) a parole violator or release violator who is serving another felony sentence in a correctional institution in or outside Ohio for the purpose of consolidation of the records or if justice would best be served, (2) a parole or release violator at large whose case has been inactive for at least ten years following the date of declaration of the parole violation or the violation of a post-release control sanction, or (3) a parolee taken into custody by the Immigration and Naturalization Service and deported from the United States.

An administrative release does not restore the rights and privileges forfeited by conviction. A person granted an administrative release may apply for a commutation of sentence, except that the privilege of circulating or serving as a witness for the signing of any declaration of candidacy and petition, voter registration application, or nominating, initiative, referendum, or recall petition may not be restored. (R.C. 2967.17.)

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<sup>2</sup> "Position of honor, trust, or profit" means any of the following: (a) an elective office of the state or of any political subdivision of the state, (b) a position on any board or commission of the state that is appointed by the Governor or the Attorney General, (c) a position as a public official or employee who is required to file a disclosure statement under the ethics law (R.C. 102.02), (d) a position as a prosecutor, or (e) a position as a peace officer or as the superintendent or a trooper of the State Highway Patrol. (R.C. 2929.192(F).)

**Operation of the act.** The act places an additional limitation upon restoration, in specified circumstances, of the rights and privileges forfeited by a prisoner's conviction. Under the act, a person granted an administrative release may subsequently apply for a commutation of sentence, except that the privileges mentioned in the preceding paragraph and the privilege of holding a position of honor, trust, or profit may not be restored to a person who, on or after the effective date of the act, was convicted of or pleaded guilty to any of the offenses described above under "**Lifetime ban**" that is a felony. (R.C. 2967.17(B).)

### **Forfeiture of retirement benefits**

#### **Background**

With limited exceptions, each of Ohio's state and local government employees participates in one of the state's five retirement systems or in an alternative retirement plan offered by a state institution of higher education. The state retirement systems are the Public Employees Retirement System (PERS), Ohio Police & Fire Pension Fund (OP&F), State Teachers Retirement System (STRS), School Employees Retirement System (SERS), or State Highway Patrol Retirement System (SHPRS).<sup>3</sup>

A state retirement system member or alternative plan participant makes employee contributions to the system or plan and, after meeting eligibility requirements, may receive a number of different benefits, including disability or retirement benefits.

#### **The act**

The act prohibits payment of a retirement benefit, other than a return of contributions, to a person who is convicted of or pleads guilty to bribery, a pattern of corrupt behavior, or theft in office that is a felony offense<sup>4</sup> if the offense occurred while the person was a member of a state retirement system or alternative retirement plan and held one of the following positions of "honor, trust, or profit":

- (1) An elective office of the state or any political subdivision;
- (2) A position on any board or commission of the state that is appointed by the Governor or Attorney General;

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<sup>3</sup> There is one local government system, the Cincinnati Retirement System.

<sup>4</sup> The act also applies to a conspiracy to commit, an attempt to commit, or complicity in committing any of these offenses.

(3) A position as a public official or employee who is required to file a disclosure statement under the ethics law;

(4) A position as a prosecutor;

(5) A position as a peace officer or State Highway Patrol superintendent or trooper.

**Temporary suspension of retirement account activity.** The act requires a prosecutor to notify the system or plan that a charge of one of the offenses specified in the act has been filed against a person who is a state retirement system member or alternative retirement plan participant.

The act provides that, notwithstanding any other provision of retirement law, the retirement system or alternative retirement plan provider that receives the notice is to suspend certain retirement account activity.

The system or plan is prohibited from paying any accumulated contributions or of any other amount prior to either one of the following:<sup>5</sup>

(1) If the person is convicted of or pleads guilty to bribery, a pattern of corrupt behavior, or theft in office that is a felony offense, the day on which the system receives from the court a copy of the journal entry of the offender's sentence;

(2) If the charge against the person is dismissed, the person is found not guilty of the charge, or the person is found not guilty by reason of insanity of the charge, the day on which the system receives notice of the final disposition of the charge.

The act provides that the retirement system is not to process any application for payment from the person prior to the final disposition of the charge. (R.C. 145.572, 742.463, 2901.43, 3307.372, 3309.672, and 5505.562.)

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<sup>5</sup> The act provides that "notwithstanding any other provision," no payment of accumulated contributions can occur until a number of events occur. The act does not specify what is notwithstood and conflicts with an already existing notwithstanding. An existing provision of law regarding restitution for theft offenses likewise "notwithstands" any other provision of retirement law and establishes its own schedule in which accumulated contributions may be paid (R.C. 145.57, 742.461, 3307.37, 3309.67, and 5505.26). It is possible that these payment periods will be in conflict with the act's payment period. Because both sections notwithstanding the other, it is possible that the time in which a person may withdraw the member's accumulated contributions may be disputed.

**Notice of sentencing.** The act requires a court to notify the retirement system or alternative retirement plan provider of the final sentencing of a person who is a member of the retirement system or participant in the alternative retirement plan who is sentenced for any of the offenses specified in the act that occurred while the member served in a position of honor, trust, or profit. The court is required to notify the system or provider by sending a copy of the journal entry imposing the sentence. The system or plan is required to comply with the order and take certain actions at the time the member applies for payment of the member's accumulated contributions (see "**Forfeiture of benefits,**" below).

The act provides that in any case in which the court is to issue an order described in the act, prior to sentencing, the person subject to the order may request a hearing. If a hearing request is made, the court must notify the person, the prosecutor, and the appropriate retirement system or alternative retirement plan provider of the hearing. The hearing must be limited to consideration of whether there is good cause based on evidence presented by the person for the order not to be issued. The act provides that the court is to determine whether there is good cause to not issue the order but does not specify what constitutes good cause. If the person does not request a hearing prior to sentencing, or if the court conducts a hearing and fails to find a good cause for the order not to be issued, the court must order the forfeiture. (R.C. 2929.192.)

**Forfeiture of benefits.** Continuing law permits a person who is a member but no longer employed in a position covered by the retirement system to withdraw the accumulated contributions<sup>6</sup> credited to the person's retirement account and cease membership in the system. Withdrawal of the accumulated contributions makes the person ineligible to receive any benefit from the retirement system.

In addition to any other punishment ordered by a court under continuing law, and notwithstanding any other provision of law governing the retirement systems,<sup>7</sup> the act provides that a person who is a member in a state retirement

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<sup>6</sup> "Accumulated contributions" generally means the contributions deducted from the person's salary, plus interest on those contributions. Accumulated contributions also include any voluntary contributions made by the member, including any amounts made for the purchase of service credit. Accumulated contributions do not include any contributions made by the employer (R.C. 145.01, 742.37, 3307.50, 3309.01, and 5505.01, not changed by the act).

Whether or not contributions may be returned under an alternative retirement plan depends on the plan.

<sup>7</sup> The act does not specify what in current law is notwithstanding.

system or participant in an alternative retirement plan and is subject to a forfeiture order under the act is to forfeit the right to receive any payment under a pension, annuity, allowance, or other type of benefit from the retirement system or plan, except a return of accumulated contributions<sup>8</sup> or contributions made as a re-employed retirant.<sup>9</sup> The system is to comply with the court order at the time the person applies for payment of the person's accumulated contributions.<sup>10</sup> By limiting the rights of a member to a return of accumulated contributions, the act provides that a member subject to the order is ineligible for disability or pension benefits. A member's survivors or beneficiaries may still be eligible for benefits under certain conditions (see "Spousal consent," below).

The act provides that, once a return of contributions and cancellation of corresponding credit occurs, the person subject to the order may not restore credit in any retirement system. (R.C. 145.572, 742.463, 2929.192, 3307.372, 3309.672, and 5505.562.)

**Spousal consent.** As discussed previously, a person who is a member of a state retirement system but ceases to be employed in a position covered by the system may elect to withdraw the contributions credited to the person's account and cancel an equivalent amount of service credit. If the person is married at the time of withdrawal and is eligible for age and service retirement benefits,

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<sup>8</sup> The act broadens "accumulated contributions" for each system with a defined contribution plan with definitely determinable benefits (PERS and STRS have established defined contributions plans and SERS is required to establish such a plan) to include any contributions made by a member under a defined contribution plan, earnings on those contributions, and amounts paid to purchase service credit; it does not include any employer contributions.

The act also provides that a member of PERS or SERS participating in a defined contribution plan that does not include definitely determinable benefits is subject to the act's provisions. STRS defined contribution plans are not included and, as stated previously, SERS does not offer a defined contribution plan. It is unclear how a participant in these plans would be affected by the act, as these plans are administered through plan documents (R.C. 145.82 and 3309.82).

<sup>9</sup> Except for SHPRS, continuing law permits a member receiving a retirement benefit from one of the state's retirement systems to be employed in a position subject to that system after retirement. The re-employed retirant does not receive additional service credit for the re-employment, but instead receives an annuity based on contribution during re-employment. Certain penalties may apply to the re-employment.

<sup>10</sup> The act does not require the member to withdraw the member's accumulated contributions. The member could therefore continue to receive interest on those contributions prior to withdrawing those amounts.

continuing law requires that the person submit a written statement of spousal consent to the withdrawal.

The act requires that a married person subject to an order under the act submit written spousal consent to the withdraw of contributions if the person would be eligible for retirement benefits but for the order. According to the Ohio Retirement Study Council, this will provide "protection to an innocent spouse or dependent" as the spouse or dependent will remain eligible for survivor benefits as long as the member subject to the order does not withdraw the member's accumulated contributions and would otherwise be eligible for retirement benefits if not subject to the order.<sup>11</sup>

Continuing law provides that the retirement system's board may waive the consent in certain instances (R.C. 145.40, 742.37, 3307.56, 3309.22, and 5505.19).

**Other changes.** The act makes a number of changes to the law governing the retirement systems to permit the forfeiture of retirement benefits, which is not permitted except in the following circumstances:

- (1) Restitution for theft in public office;
- (2) Restitution for certain sex offenses;
- (3) Payment of spousal and child support;
- (4) Payment to a former spouse pursuant to a division of property order.

The act permits the boards of PERS, OP&F, STRS, and SERS to furnish to a prosecutor information requested from a personal history record if the person is a member, former member, contributor, former contributor, or retirant subject to an order under the act. (R.C. 145.27, 145.56, 742.41, 742.47, 2329.66, 3307.20, 3307.41, 3309.22, 3309.66, and 5505.22.)

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<sup>11</sup> ORSC, "Analysis: Sub. S.B. 3," May 14, 2008. Available online at: [http://www.orsc.org/uploadpdf/SubSB3\\_Enacted.pdf](http://www.orsc.org/uploadpdf/SubSB3_Enacted.pdf).

The report states:

"Under the provisions of the bill, the forfeiture is triggered when the member withdraws his or her contributions. Therefore, if a member who otherwise would have been eligible to receive a benefit dies prior to applying for a refund, the member's spouse and dependents would still be eligible for survivor benefits" (ORSC, "Analysis," 4).

**Requirement that the Inspector General investigate the office of Attorney General**

Continuing law does not give the Inspector General authority to investigate the offices of Auditor of State, Secretary of State, Treasurer of State, or Attorney General (R.C. 121.41(D)(3), not in the act). The act makes an exception to this provision by requiring the Inspector General to investigate the management and operation of the office of the Attorney General to determine whether misconduct or wrongful acts or omissions have been or are being committed by the Attorney General or by present or former employees of or contractors with that Office. The act defines "wrongful act or omission" in the same manner as does the continuing Inspector General Law. (Section 3(A).)

The Inspector General and each deputy inspector general may administer oaths, examine witnesses under oath, and issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of all kinds of books, records, papers, and tangible things. Upon refusal of a witness to be sworn or answer any question put to the witness, or if a person disobeys the subpoena, the Inspector General must apply to the court of common pleas for a contempt order, as in the case of disobedience to the requirements of a subpoena issued from the court of common pleas, or a refusal to testify in the court. (Section 3(A)(1).)

The Inspector General must identify other state officers and agencies that also are conducting contemporaneous investigations, audits, reviews, or evaluations of the office of the Attorney General. The Inspector General is entitled to coordinate and manage these investigations, audits, reviews, and evaluations. A state officer or agency that is conducting such an investigation, audit, review, or evaluation must cooperate with the Inspector General in this regard. The Inspector General and each state officer or agency that is conducting such an investigation, audit, review, or evaluation must share information and avoid duplication of effort. (Section 3(A)(2).)

The Inspector General may enter into any contracts necessary to complete the investigation. The contracts may include contracts for the services of persons who are experts in a particular field and whose expertise is necessary to successful completion of the investigation. (Section 3(C).) The act appropriates \$250,000 to the Inspector General to pay for conducting the investigation (Section 4).

At the conclusion of the investigation, the Inspector General is required to prepare a detailed final report of the results of the investigation. The Inspector General must submit the final report to the Governor, House Speaker, and Senate President. The authority vested in the Inspector General terminates when the final report has been submitted. (Section 3(B).)

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## HISTORY

ACTION	DATE
Introduced	02-20-07
Reported, S. Judiciary - Criminal Justice	05-16-07
Passed Senate (32-0)	05-16-07
Reported, H. State Gov't & Elections	05-13-08
Passed House (83-13)	05-13-08
Senate concurred in House amendments (32-0)	05-13-08

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