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Bill Analysis
Legislative Service Commission

S.B. 3

127th General Assembly
(As Introduced)

Sens. Faber, Schaffer, Stivers, Jacobson, Carey, Grendell, Schuring

BILL SUMMARY

- Provides that, when a person convicted of an offense is restored the rights and privileges forfeited by the conviction upon the person's service of the entire prison term that comprises his or her sentence, upon the person's receipt of a final release by the Adult Parole Authority, or the person's completion of the period of a community control sanction or combination of community control sanctions imposed by the sentencing court, the restoration of the rights and privileges does not extend to the privilege of holding an office of honor, trust, or profit ("position of honor, trust, or profit" means an elective office of the state or any political subdivision thereof).
- Provides that, when a person is granted an administrative release by the Adult Parole Authority, the person may subsequently apply for a commutation of sentence for the purpose of regaining the rights and privileges forfeited by conviction, except that the privileges of holding an office of honor, trust, or profit may not be restored.
- Requires the prosecutor of a felony case who has knowledge that the person charged holds a position of honor, trust, or profit to notify the board of any public retirement system of which the person is a member.
- Provides that a member of the Public Employees Retirement System, the Ohio Police and Fire Pension Fund, the State Teachers Retirement System, the School Employees Retirement System, or the State Highway Patrol Retirement System who pleads guilty to or is convicted of a felony under the laws of any jurisdiction committed while serving in a position of honor, trust, or profit forfeits to the retirement system the right to a retirement allowance (or pension) or disability benefit or any other right or benefit under the law governing the retirement system earned by

reason of being a member of the retirement system other than the member's accumulated contributions.

- Provides that, if the board of the Public Employees Retirement System, the Ohio Police and Fire Pension Fund, the State Teachers Retirement System, the School Employees Retirement System, or the State Highway Patrol Retirement System receives notice from a prosecutor pursuant to the bill's provision described in the second preceding dot point or has knowledge that a member is charged with a felony committed while serving in a position of honor, trust, or profit, the board is prohibited from making any payment of any allowance (or pension), benefit, or accumulated contributions under the law governing the particular retirement system prior to the final disposition of the felony charge (payments suspended under this provision cannot resume unless the charge is dismissed or the member is found not guilty or not guilty by reason of insanity).

CONTENT AND OPERATION

Background

Existing law contains a number of provisions pursuant to which a person convicted of certain criminal offenses forfeits certain rights and privileges. Among the existing provisions that pertain to such a forfeiture are:

(1) Existing R.C. 2961.01, not in the bill, which specifies that a person convicted of a felony under the laws of Ohio or any other state or the United States, unless the conviction is reversed or annulled, is incompetent to be an elector or juror or to hold an office of honor, trust, or profit. When any person convicted of a felony under any law of that type 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 thereafter following final discharge. The full pardon of a person convicted of a felony restores the rights and privileges so forfeited under this provision, but a pardon does not release the person convicted of a felony from the costs of a conviction in this state, unless so specified. The section also provides that a person convicted of a felony under laws of Ohio or any other state or the United States is incompetent to circulate or serve as a witness for the signing of any declaration of candidacy and petition, voter registration application, or nominating, initiative, referendum, or recall petition.

(2) Existing R.C. 2961.02, not in the bill, which specifies that a person who is convicted of a "disqualifying offense" (see below) is incompetent to hold a public office or position of public employment or to serve as a volunteer, if holding the public office or position of public employment or serving as the volunteer involves substantial management or control over the property of a state agency, political subdivision, or private entity. This provision does not apply if a conviction of a disqualifying offense is reversed, expunged, or annulled. The full pardon of a person convicted of a disqualifying offense restores the privileges forfeited under this provision, but the pardon does not release the person from the costs of the person's conviction in this state, unless so specified. As used in this provision: (1) "disqualifying offense" means an offense that is a felony theft offense or is a felony under the laws of Ohio state, another state, or the United States, is not a felony theft offense, and involves fraud, deceit, or theft, and that is an offense for which the laws of Ohio state, 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, including, but not limited to, a provision such as that in R.C. 2921.41(C)(1), (2) "private entity" includes an individual, corporation, limited liability company, business trust, estate, trust, partnership, or association that receives any funds from a state agency or political subdivision to perform an activity on behalf of the state agency or political subdivision, and (3) "volunteer" means a person who serves as a volunteer without compensation with a state agency or political subdivision or who serves as a volunteer without compensation with a private entity, including, but not limited to, an uncompensated auxiliary police officer, auxiliary deputy sheriff, or volunteer firefighter.

(3) Existing R.C. 2921.41, not in the bill, which sets forth the offense of "theft in office" and specifies that a public official or party official who is convicted of or pleads guilty to the offense is forever disqualified from holding any public office, employment, or position of trust in Ohio.

Restoration of rights and privileges to certain prisoners and persons

Restoration under R.C. 2967.16

Existing law. Existing law provides that 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 of the Department of Rehabilitation and Correction (the APA) pursuant to the provisions described in the next paragraph, and (3) a person who has completed the period of a community control sanction or combination of community control sanctions that was imposed by the sentencing court.

Except for prisoners in the shock incarceration program under R.C. 5120.031, when a paroled prisoner has faithfully performed the conditions and obligations of the paroled prisoner's parole and has obeyed the rules and regulations adopted by the APA that apply to the paroled prisoner, the APA upon the recommendation of the Superintendent of Parole Supervision may enter upon its minutes a final release and thereupon must issue to the paroled prisoner a certificate of final release, but the APA cannot grant a final release earlier than one year after the paroled prisoner is released from the 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 the institution on parole. Also, when a prisoner who has been released under a period of post-release control pursuant to R.C. 2967.28 has faithfully performed the conditions and obligations of the released prisoner's post-release control sanctions and has obeyed the rules and regulations adopted by the APA that apply to the released prisoner or has the period of post-release control terminated by a court, the APA, upon the recommendation of the Superintendent of Parole Supervision, may enter upon its minutes a final release and, upon the entry of the final release, must issue to the released prisoner a certificate of final release. In the case of a prisoner who has been released under a period of post-release control pursuant to R.C. 2967.28(B), the APA cannot grant a final release earlier than one year after the released prisoner is released from the institution under a period of post-release control. The APA must classify the termination of post-release control as favorable or unfavorable depending on the offender's conduct and compliance with the conditions of supervision. 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 released prisoner is released from the institution under a period of post-release control. (R.C. 2967.16.)

Operation of the bill. The bill enacts a limitation upon the existing provision that provides for the restoration to a prisoner or person, in the specified circumstances, of the rights and privileges forfeited by the prisoner's conviction. Under the bill, the restoration of the rights and privileges does not extend to the privilege of holding an *office of honor, trust, or profit*. The bill defines "position of honor, trust, or profit," for purposes of this provision, as an elective office of the state or any political subdivision thereof (it is likely that the phrase "office of honor, trust, or profit" used in the bill is intended to be the phrase "position of honor, trust, or profit"). (R.C. 2967.16(C).)

Restoration under R.C. 2967.17

Existing law. Existing law provides that the APA, in its discretion, may grant an administrative release to any of the following: (1) a parole violator or release violator serving another felony sentence in a correctional institution within or without Ohio for the purpose of consolidation of the records or if justice would

best be served, (2) a parole violator at large 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 of the U.S. Department of Justice and deported from the United States. The APA cannot grant an administrative release except upon the concurrence of a majority of the Parole Board and approval of the APA's Chief.

An administrative release does not restore for the person to whom it is granted the rights and privileges forfeited by conviction as provided in R.C. 2961.01, as described above in "**Background.**" Any person granted an administrative release under the provision described in the preceding paragraph may subsequently apply for a commutation of sentence for the purpose of regaining the rights and privileges forfeited by conviction, 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 forfeited under section 2961.01 of the Revised Code may not be restored under the provision described in this paragraph. (R.C. 2967.17.)

Operation of the bill. The bill enacts an additional limitation upon the existing provision that addresses the potential reinstatement, in the specified circumstances, the rights and privileges forfeited by the prisoner's conviction. Under the bill, any person granted an administrative release under the existing provision described in the second preceding paragraph may subsequently apply for a commutation of sentence for the purpose of regaining the rights and privileges forfeited by conviction, except that the privileges of holding an *office of honor, trust, or profit* (added by the bill) and 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 forfeited under section 2961.01 of the Revised Code may not be restored under the provision described in the preceding paragraph. The bill defines "position of honor, trust, or profit," for purposes of this provision, as an elective office of the state or any political subdivision thereof (it is likely that the phrase "office of honor, trust, or profit" used in the bill is intended to be the phrase "position of honor, trust, or profit"). (R.C. 2967.17(B).)

Prosecutor notice to public retirement system, if person charged with a felony holds a position of honor, trust, or profit

The bill requires the prosecutor of a felony case who has knowledge that the person charged holds a *position of honor, trust, or profit* to notify the board of any public retirement system of which the person is a member. The notice must be made on a form prescribed and provided by the applicable public retirement system board. The report must include the name and address of the person

charged, the charge, and the certified court documents recording the action. (R.C. 2907.151.)

The following terms are defined in R.C. 2907.151:

(1) "Public retirement system" means the Public Employees Retirement System, State Teachers Retirement System, School Employees Retirement System, Ohio Police and Fire Pension Fund, State Highway Patrol Retirement System, or a municipal retirement system of a municipal corporation of Ohio (R.C. 2907.151, by reference to existing R.C. 2907.15--not in the bill);

(2) "Prosecutor" includes the county prosecuting attorney and any assistant prosecutor designated to assist the county prosecuting attorney, and, in the case of courts inferior to courts of common pleas, includes the village solicitor, city director of law, or similar chief legal officer of a municipal corporation, any such officer's assistants, or any attorney designated by the prosecuting attorney of the county to appear for the prosecution of a given case (R.C. 2907.151, by reference to existing R.C. 2907.15 and 2935.01--not in the bill);

(3) "Position of honor, trust, or profit" means an elective office of the state or any political subdivision thereof (R.C. 2907.151, by reference to R.C. 2967.16).

Forfeiture of portion of state retirement benefits, if conviction of a felony while serving in a position of honor, trust, or profit

Forfeiture provision

The bill provides that a member of any of the following state retirement systems who pleads guilty to or is convicted of a felony under the laws of any jurisdiction committed while serving in a *position of honor, trust, or profit* (see below) forfeits to the retirement system the right to a retirement allowance (or pension) or disability benefit or any other right or benefit under the law governing the retirement system earned by reason of being a member of the retirement system other than the member's *accumulated contributions* (see below): (1) the Public Employees Retirement System, (2) the Ohio Police and Fire Pension Fund, (3) the State Teachers Retirement System, (4) the School Employees Retirement System, or (5) the State Highway Patrol Retirement System (R.C. 145.572(B), 742.463(B), 3307.372(B), 3309.672, and 5505.262).

In the case of a member subject to withholding under a specified provision in the law governing the particular retirement system for the purpose of restitution (i.e., R.C. 145.57, 742.461, 3307.37, 3309.67, or 5505.26), forfeiture commences immediately following the completion of restitution (R.C. 145.572(B), 742.463(B), 3307.372(B), 3309.672(B), and 5505.262(B)).

If the board of any state retirement system listed in the second preceding paragraph receives notice pursuant to the bill's provision described above in "Prosecutor notice to public retirement system, if person charged with a felony holds a position of honor, trust, or profit" or has knowledge that a member is charged with a felony committed while serving in a position of honor, trust, or profit, the board is prohibited from making any payment of any allowance (or pension), benefit, or accumulated contributions under the law governing the particular retirement system prior to the final disposition of the felony charge. Payments suspended under this provision cannot resume unless the charge is dismissed or the member is found not guilty or not guilty by reason of insanity. (R.C. 145.572(C), 742.463(C), 3307.372(C), 3309.672(C), and 5505.262(C).)

As used in these provisions:

(1) "Position of honor, trust, or profit" means an elective office of the state or any political subdivision thereof (R.C. 145.572(A), 742.463(A), 3307.372(A), 3309.672(A), and 5505.262(A), by reference to R.C. 2967.16).

(2) "Accumulated contributions" means:

(a) Regarding the Public Employees Retirement System, the sum of all amounts credited to a contributor's individual account in the employees' savings fund together with any interest credited to the contributor's account under R.C. 145.471 or 145.472, and also includes employee contributions made under R.C. 145.85 and any earnings on those contributions (R.C. 145.572(A), by reference to existing R.C. 145.01--not in the bill);

(b) Regarding the Ohio Police and Fire Pension Fund, the amount payable to a member under division (G) of R.C. 742.37 (apparently, an amount equal to the sums deducted from the member's salary and credited to the member's account in the Fund; R.C. 742.463(A), by reference to existing R.C. 742.37(G)--not in the bill);

(c) Regarding the State Teachers Retirement System, the sum of all amounts credited to a contributor's individual account in the teachers' savings fund together with any interest credited to the contributor's account at the rates approved by the State Teachers Retirement Board prior to retirement, and also includes employee contributions made under R.C. 3307.26 to participate in a plan established under R.C. 3307.81 and any earnings on those contributions (R.C. 3307.372(A), by reference to existing R.C. 3307.50--not in the bill);

(d) Regarding the School Employees Retirement System, the sum of all amounts credited to a contributor's individual account in the employees' savings fund together with any regular interest credited thereon at the rates approved by the Retirement Board prior to retirement, and also includes employee

contributions made under R.C. 3309.85 and any earnings on those contributions (R.C. 3309.672(A), by reference to existing R.C. 3309.85--not in the bill);

(e) Regarding the State Highway Patrol Retirement System, the bill does not define "accumulated contributions," but existing R.C. 5505.01 provides that, as used in R.C. Chapter 5505., the term means the sum of the following credited to a member's individual account in the employees' savings fund: (i) all amounts deductible from the salary of the member, and (ii) all amounts paid by the member to purchase State Highway Patrol Retirement System service credit pursuant to R.C. Chapter 5505. or state law (existing R.C. 5505.01--not in the bill).

Reference in other laws

The bill modifies a number of existing laws that generally protect the right of a member of the Public Employees Retirement System, the Ohio Police and Fire Pension Fund, the State Teachers Retirement System, the School Employees Retirement System, or the State Highway Patrol Retirement System to receive a pension, allowance, or benefit free from execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other legal process, subject to specified exceptions, to include the provisions described above in "**Forfeiture provision**" within the list of specified exceptions (R.C. 145.56, 742.47, 3307.41, 3309.66, and 5505.22).

It modifies two provisions that address the vesting, subject to specified exceptions, of the right of a member of the Public Employees Retirement System or the School Employees Retirement System to payments or benefits to include the provisions above in "**Forfeiture provision**" within the list of specified exceptions (R.C. 145.95 and 3309.95).

HISTORY

ACTION	DATE
Introduced	02-20-07

S0003-I-127.doc/jc

