# Ohio Legislative Service Commission

**Bill Analysis**

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## H.B. 285

130th General Assembly
(As Introduced)

**Reps.** Becker and Lynch, Damschroder, Thompson, Milkovich, Hood

## BILL SUMMARY

- Creates a new re-employment penalty for a public retirement system member who retires on or after the bill's effective date and becomes employed in a position covered by the Public Employees Retirement System (PERS), Ohio Police and Fire Pension Fund (OP&F), State Teachers Retirement System (STRS), or School Employees Retirement System (SERS).

- During the period of employment causes a retirant who is subject to the new penalty to forfeit the pension portion of the retirement allowance and have the annuity portion suspended.

- Provides for the retirement allowance to resume the month following termination of employment and for the suspended portion of the allowance to be used to recalculate the retirement allowance after employment ends.

- Eliminates the current re-employment penalty for a PERS retirant who was an elective official and returned to the same office and, depending on the date of retirement, subjects the retirant to the bill's re-employment penalty or the existing two-month benefit forfeiture.

- For members retiring before the bill's effective date, retains current law's re-employment penalties that apply to (1) a retirant who has received a retirement allowance for less than two months when re-employment commences or (2) a PERS retirant who is employed as an independent contractor.

## CONTENT AND OPERATION

### New re-employment penalty

The bill creates a new re-employment penalty for public employees who retire under a state retirement system and are subsequently employed by a public employer. The new penalty applies to public employees who retire on or after the bill's effective date. It causes a retirant to forfeit the pension portion of the retirement allowance and have the annuity portion suspended. The penalty applies as long as re-employment continues. The retirement allowance generally consists of a pension funded by employer contributions and earnings from the retirement system's investment of employee and employer contributions and an annuity funded by the retirant's contributions while a public employee.[1]

Current law permits a public retirement system member to retire and subsequently be employed in a position covered by one of four of the state's public retirement systems: the Public Employees Retirement System (PERS), Ohio Police and Fire Pension Fund (OP&F), State Teachers Retirement System (STRS), or School Employees Retirement System (SERS). (The fifth system, the State Highway Patrol Retirement System, does not allow employment of retired public employees in positions subject to that system.) Currently, re-employment penalties apply when one of the following occurs: (1) a retirant who has received a retirement allowance for less than two months commences employment with a public employer, (2) unless certain conditions are met, a PERS retirant who retired from elective office is elected or appointed to the same office for the remainder of the existing term of office or the next term, or (3) a PERS retirant is employed as an independent contractor with a public employer.[2]

The new penalty applies to elected officials, as well as other retirement system members. For all member's retiring on or after the bill's effective date, forfeiture of the pension portion of a retirement allowance and pension of the annuity portion begins on the first day of the month following the month employment commences and extends to the first day of the month following the month in which employment ends. The annuity portion is to be used to recalculate the retirement allowance after the employment ends.[3]

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[1] R.C 145.38(D), 742.26(D), 3307.35(C), and 3309.341(C).

[2] R.C. 145.38(B) and (C), 742.26(D), 3307.35(F), and 3309.341(C).

[3] R.C 145.38(D), 742.26(D), 3307.35(C), and 3309.341(C).

The bill provides that neither the retirant subject to the new penalty nor the retirant's employer is to contribute to the retirement system on the retirant's behalf. In contrast, current law requires the retirant and the retirant's employer to contribute to the retirement system for the period of re-employment. The retirant later receives a separate annuity or a lump sum payment based on those contributions.[4]

The bill specifies that for purposes of the re-employment provisions (new and existing), "employ" and "employment" include providing personal services pursuant to a contract or as a consultant, as well as direct employment.[5]

### Penalty for PERS retirants who hold elective office

The bill eliminates the current penalty that applies to PERS retirants who hold elective office.[6] The result is that for elective officials retiring before the bill's effective date, the current two-month forfeiture applies (see "**Two-month forfeiture**," below). Officials retiring on or after the bill's effective date are subject to the bill's new penalty.

Currently, unless certain conditions are met, a PERS member who retired while holding a state or local elective office and is elected or appointed to the same office for the remainder of the term or the subsequent term is subject to forfeiture of the pension portion of the retirement allowance and suspension of the annuity portion. The suspended annuity accumulates to the member's credit to be paid in a single payment after the re-employment terminates. The full retirement allowance resumes on the first day of the first month following termination of the re-employment.

The penalty does not apply in any of the following circumstances:

(1) The official retires at least 90 days before the election;

(2) The official files with the county board of elections not less than 90 days before the primary election or, if no primary is scheduled, 90 days before the date on which the primary would have been held, a written declaration of intent to retire before the end of the term;

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[4] R.C. 145.38(B), 145.384, 742.26(D) and (G), 3307.35(B) and (C), 3307.352, 3309.341(B) and (C), and 3309.344.

[5] R.C. 145.38(A)(3), 742.26(A)(4), 3307.35(A)(2), and 3309.341(A)(3).

[6] R.C. 145.38(C) in current law, with conforming changes in R.C. 145.01 and 3501.13.

(3) In the case of a person appointed to an elective office, the person notifies the appointing authority that the person is already retired or intends to retire before the end of the term for which the appointment is made.[7]

## Other re-employment penalties

The bill retains current law's re-employment penalties for retirants who return to public employment less than two months after retirement and PERS retirants who act as independent contractors for public employers, but specifies that the penalties apply only to members retiring before the bill's effective date. The penalties are explained below.

It also retains in part a provision under which retirants whose employment commenced before the bill's effective date contribute to a retirement system and receive a separate benefit based on those contributions, except that this provision does not apply to PERS retirants employed as independent contractors with public employers.[8]

### Two-month forfeiture

Current law provides that a retirant who has received a retirement allowance for less than two months when public employment begins forfeits the retirement allowance for any month of employment during the two-month period. On termination of the employment or on the retirant's death, the contributions during that period are refunded. The retirant's service and contributions during the two-month period cannot be used in calculating a benefit for employment with that employer.[9]

### PERS retirants employed as independent contractors

A PERS retirant who enters into a contract as an independent contractor with a public employer covered by PERS is subject to a penalty under current law if one of the following applies:

(1) At the time of retirement, the retirant was employed by the contracting public employer;

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[7] R.C. 145.38(C) in current law.

[8] R.C. 145.38(B), 742.26(C), 3307.35(B), and 3309.341(B).

[9] R.C. 145.38(B)(2), 742.26(C)(2), 3307.35(B)(2), and 3309.341(B)(2).

(2) Less than two months after retirement, the retirant enters into a contract with a public employer other than the retirant's employer at the time of retirement.[10]

If either of the above applies, the retirant is subject to a penalty during the entire period of service under the contract. For the period beginning on the first day of the month following the month in which services under the contract begin until the first day of the month following the month in which the services end, the retirant forfeits the pension portion of the retirement allowance and payment of the annuity portion of the allowance is suspended. The suspended annuity payments accumulate to the retirant's credit and are paid in a single payment after service under the contract terminates.

A retirant subject to this penalty is ineligible to contribute to PERS and is therefore ineligible to receive a benefit for the period of employment under the contract.

## HISTORY

| ACTION | DATE |
|---|---|
| Introduced | 10-02-13 |

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[10] R.C. 145.38(C).