



# Ohio Legislative Service Commission

## Bill Analysis

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### **Sub. S.B. 42\***

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(As Reported by H. Ways and Means)

**Sens.** Manning and Gardner, Seitz, Eklund, Oelslager, Patton, Peterson, Schaffer, Uecker

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## **BILL SUMMARY**

### **Withdrawal of contributions**

- Permits a member of the Public Employees Retirement System (PERS), State Teachers Retirement System (STRS), or School Employees Retirement System (SERS) who has contributions on deposit with more than one of those systems to withdraw contributions from one without also withdrawing contributions from the others.
- Provides that the withdrawal can be made only from a system in which the member is no longer a contributing member and is not permitted if the current employer was the employer when service under the system from which the withdrawal would be made was terminated.
- Specifies that withdrawal of contributions from one of the three systems by a member who has contributions in more than one system does not affect the member's membership in the other retirement systems or any right the member may have to a benefit or return of contributions under those systems.
- Requires a member who seeks to restore service credit cancelled as a result of withdrawal of contributions under the above provisions to have at least 18 months of service credit in one of the systems after withdrawal of the contributions.

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

## **Coordination of benefits**

- Modifies PERS, SERS, and STRS "coordination of benefits" provisions under which a member who has service credit in more than one of those systems can have the credit and contributions combined and used in determining retirement and disability benefit eligibility and benefit amounts.
- Identifies the system that determines eligibility for benefits under coordination of benefit provisions as the "paying system" and the system that transfers service credit and contributions as the "transferring system."
- Reduces the amount of employer contributions the transferring system must transfer by a "retention percentage" established by the bill.
- Specifies that the retention percentage is 5% of the employee's compensation unless the percentage is changed by agreement of the systems, and requires the systems to review the percentage at least once every five years.
- Requires the transferring system to certify certain information, including the transferring system's determination of the member's eligibility for a retirement or disability benefit and the employee's service credit.
- Permits the paying system to reduce the member's service credit if the credit certified by the transferring system is concurrent with any period of service credit earned from the paying system or the amount certified exceeds one year when added to the member's service credit in the paying system.

## **Purchase or transfer of credit from OP&F or SHPRS**

- Permits a PERS member to purchase or transfer credit from the Ohio Police and Fire Pension Fund (OP&F) or State Highway Patrol Retirement System (SHPRS) only if the member's service credit in PERS is greater than the amount of credit to be transferred.

## **Actuarial reviews**

- Requires all costs associated with required decennial actuarial reviews to be paid by the retirement system for which the review is prepared.

## **Long-term care insurance**

- Provides that the PERS, OP&F, SERS, and SHPRS are permitted, rather than required, to offer coverage for long-term care insurance.



## **OP&F Board of Trustees**

- Staggers the terms of the members of the OP&F Board who are firefighters.

## **Public Employees Retirement System (PERS)**

- Increases to \$600 (from \$500), per year the amount an election worker must receive to become a member of PERS.
- Authorizes PERS to reimburse a benefit recipient who is over 65 and is not eligible for Medicare Part A without paying premiums for payment by the recipient of those premiums.

### **Service credit**

- Includes payments made for certain types of service credit as accumulated contributions of a PERS member.
- Limits eligibility to purchase service credit for periods during which the member was receiving workers' compensation and limits to three years the total workers' compensation credit, combined with STRS or SERS workers' compensation credit, that may be used to determine retirement eligibility or benefits.

### **Disability**

- Modifies the standard for an initial disability determination by requiring a member to be mentally or physically incapable of performing the duties of the member's most recent public position (rather than the member's duties at the time the disabling condition began or a position with similar duties).

### **Disability determination**

- Requires the medical consultant, as defined in the bill, to concur with the examining physician's determination that a member qualifies for a disability benefit and also requires the Board to concur with the determination.
- Permits a disability benefit to commence prior to the Board's concurrence if the medical consultant concurs with the examining physician and the member agrees to obtain any recommended medical treatment.

### **Social Security disability insurance offset**

- Revises the date by which a disability benefit recipient must apply for Social Security Disability Insurance (SSDI) payments.



- Requires a disability benefit to be terminated if a disability benefit recipient fails to file within one year a copy or other evidence of application for SSDI with PERS.

### **Qualified excess benefit arrangements**

- Requires that if the PERS Board establishes a qualified excess benefit arrangement (QEBA), the amounts required to fund the QEBA are included in the employer contribution rate.

### **Reduced retirement allowance**

- Modifies the calculation of the reduction in a retirement allowance for early retirement for certain PERS members.

### **PERS additional annuity program**

- Permits a PERS member receiving a disability retirement allowance to withdraw payments made under the PERS additional annuity program on the effective date of disability retirement if the member is not eligible for an age and service retirement allowance on that date.

### **Plan selection**

- For a retirant receiving a retirement allowance under a single-life plan and marries or remarries, limits the retirant to electing only the joint-life plan as a new plan of payment.

### **Penalties**

- Authorizes the PERS Board to adopt rules to include a penalty or interest on the amount of an erroneous benefit or payment that is to be repaid to PERS.

### **Defined contribution plans**

- Authorizes the PERS Board to withhold a fixed dollar amount for withholding employee and employer contributions under a PERS defined contribution plan.

### **Technical changes**

- Makes other changes, including technical and conforming changes.

## **State Teachers Retirement System (STRS)**

- Under certain circumstances, allows a superannuate or other system retirant to be re-employed as a volunteer teacher without penalty.
- Provides that STRS "qualifying service credit," the credit used to determine benefit eligibility, includes credit purchased or granted for military service that interrupted public service.
- Requires that an STRS member who applies for service retirement after termination of disability retirement or benefits have at least five years of total service credit, which does not include credit for a period while on disability.
- Includes credit for a period on disability and credit transferred from OP&F or SHPRS in credit used to determine whether certain members have 30 or more years of specified types of service credit and qualify for an enhanced retirement benefit.
- Includes certain service credit purchased for leaves of absence in determining the amount of additional payments to certain members who withdraw their STRS contributions.
- Under provisions for coordination of benefits with PERS and SERS, provides that credit in one of those systems can be used only to determine the amount of an STRS benefit, not eligibility for the benefit.
- Provides that the determination of whether an STRS member qualifies for disability coverage with one and a half years of service credit depends on whether the credit was "on account" on June 30, 2013.
- Bases the effective date of a disability benefit on the date the application was received by the STRS Board instead of attainment of eligibility for the benefit, except in cases in which compensation continues beyond those dates.
- Eliminates a provision specifying that actions taken pursuant to STRS Board policies by administrators and committees of the Board are subject to subsequent approval by the Board.

## **School Employees Retirement System (SERS)**

- Requires employers of SERS members to transmit employer contributions at times specified by the SERS Board, rather than monthly or at less frequent intervals.



- Eliminates requirements that employers notify SERS of new employees and changes in employee compensation and annually send SERS a list of employees not contributing to SERS.
- Requires employers to give notices and transmit employer and employee contributions to SERS directly rather than through the employer's treasurer.
- Clarifies the calculation of a retirement benefit for an SERS member who qualifies for service retirement after termination of a disability benefit.
- Eliminates a provision permitting the SERS executive director to be a member of the SERS Board.
- Makes other changes to the law governing SERS, including technical changes.

## **State Highway Patrol Retirement System (SHPRS)**

### **Service credit**

- Clarifies the types of service credit that can be used to determine eligibility for an SHPRS retirement pension.

### **Recovery of overpayments**

- Expands the authority of SHPRS to collect overpayments made to certain individuals.

### **SHPRS Board**

- Provides that an appointed SHPRS Board member holds office until the later of the end of the term for which the member is appointed or if later, the date the member's successor takes office.

### **Records**

- Includes the email address of an SHPRS member in the member's personal history record, which is excluded from public inspection.
- Authorizes the SHPRS Board to maintain records of the retirement system in printed or electronic format and to make the records available for public inspection in either format.
- Permits the Board to share data with the state's other public retirement systems and with the Ohio Public Employees Deferred Compensation Program, U.S. Social

Security Administration, and U.S. Centers for Medicare and Medicaid Services, and the Cincinnati Retirement System.

**Legal action**

- Requires that any legal action commenced against SHPRS be filed in Franklin County.

**Actuarial report**

- Changes to September 1 (from July 1) the date by which SHPRS's annual actuarial valuation must be submitted to ORSC, the OBM Director, and the House and Senate committees hearing retirement legislation.

**Technical changes**

- Makes nonsubstantive technical, corrective, and conforming changes.

**Miscellaneous changes**

- Allows a private sector employer to automatically deduct amounts from an employee's compensation as contributions to an employee retirement plan.
- Modifies the qualifications for county sheriff candidates.

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## CONTENT AND OPERATION

### Withdrawal of contributions

The bill permits a member of the Public Employees Retirement System (PERS), School Employees Retirement System (SERS), or State Teachers Retirement System (STRS) who has contributions in two or more of those retirement systems to withdraw



the member's accumulated contributions from one of the systems without withdrawing them from the others.<sup>1</sup>

Current law requires a member of PERS, SERS, or STRS who wishes to withdraw the member's contributions from one of the systems to withdraw them from the others. This cancels the member's service credit in all of the systems and makes the member ineligible for retirement or disability benefits from any of those systems.<sup>2</sup> The withdrawal permitted by the bill does not affect the member's membership in the other retirement systems or any right the member may have to a benefit or return of contributions under those systems.

A member may not withdraw contributions under the bill if the member's current employer was the employer when service under the system from which the withdrawal would be made was terminated.<sup>3</sup>

### **Restored service credit**

Continuing law permits a member or former member of PERS, STRS, or SERS with at least 18 months of contributing service credit in a public retirement system, after withdrawal of accumulated contributions and cancellation of service credit, to have the service credit restored by re-depositing the amount withdrawn, plus interest.<sup>4</sup>

The bill requires an employee who seeks to restore service credit cancelled as a result of the bill's provision permitting withdrawal of contributions (see "**Withdrawal of contributions**," above) to have at least 18 months of service credit *after* withdrawal of the contributions.<sup>5</sup>

### **Coordination of benefits**

Current law governing PERS, STRS, and SERS provides for coordination of benefits. The benefits are considered coordinated because service credit earned in two or all three of these retirement systems can be combined to determine eligibility for a retirement or disability benefit and the amount of the benefit.

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<sup>1</sup> R.C. 145.402, 3307.561, and 3309.43, re-enacted.

<sup>2</sup> R.C. 145.402, 3307.561, and 3309.43, repealed.

<sup>3</sup> R.C. 145.402(C), 3307.561(C), and 3309.43(C).

<sup>4</sup> R.C. 145.31(A), 3307.71(A)(1), and 3309.26(C)(1).

<sup>5</sup> R.C. 145.31(A)(3), 3307.71(A)(2), and 3309.26(C)(2).



## "Paying system" and "transferring system"

The bill continues the current provision that the retirement system in which the member has the greatest service credit (or, if a member has equal service credit in two or more retirement systems, the retirement system in which the member has the greatest total contributions) determines eligibility for a retirement or disability benefit and calculates benefits.<sup>6</sup> The bill identifies this retirement system as the "paying system."<sup>7</sup> It identifies the "transferring system" as the retirement system transferring a member's contributions and service credit in that system to the paying system.<sup>8</sup>

### Retention percentage

When a public employee retires or receives a disability benefit under the coordination of benefits provisions, the paying system receives a payment from the transferring system or systems. For each year of service, the payment under current law is:

(1) The amount contributed by the employee or, in the case of purchased service credit, the amount paid by the employee that is attributable to the year of service;

(2) An amount equal to the lesser of the employer's contributions on behalf of the employee to the transferring system for that year of service or the amount that would have been contributed by the employer had the employee been a member of the paying system at that time;

(3) Interest, compounded annually, on the amounts specified in (1) and (2) at the lesser of the actuarial assumption rate of the paying system or transferring system.<sup>9</sup>

The bill establishes a retention percentage that reduces the amount of employer contributions that the transferring system must transfer to the paying system. It provides that the "retention percentage" is 5% of an employee's earnable salary (in PERS) or compensation (in STRS and SERS).<sup>10</sup> PERS, STRS, and SERS must review the percentage at least once every five years or on request of the systems. The percentage may be modified by agreement of the systems if any system's employer contribution

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<sup>6</sup> R.C. 145.37(B)(3), 3307.57(B)(2), and 3309.35(B)(2).

<sup>7</sup> R.C. 145.37(A)(4), 3307.57(A)(5), and 3309.35(A)(4).

<sup>8</sup> R.C. 145.37(A)(5), 3307.57(A)(6), and 3309.35(A)(5).

<sup>9</sup> R.C. 145.37(B)(6)(a), 3307.57(B)(5)(a), and 3309.35(B)(5)(a).

<sup>10</sup> R.C. 145.37(A)(6), 3307.56(A)(7), and 3309.35(A)(6).



rate increases or decreases or the systems agree that a change is in the interest of one or more of the systems.<sup>11</sup>

### **Reduction in certified credit**

The bill restores, with some exceptions, a provision previously eliminated for PERS that generally prohibits service credit from being reduced below the amount certified by the transferring system.<sup>12</sup> The STRS and SERS benefit coordination laws currently contain this provision.<sup>13</sup>

Under continuing law not more than one year of credit may be certified by the transferring system for any one "year." The bill authorizes the paying system to reduce credit if: (1) the credit certified by the transferring system is concurrent with any period of service credit earned from the paying system or (2) the amount of credit certified exceeds one year, as defined by the paying system, when added to the member's service credit in the paying system.<sup>14</sup>

### **Information certified to paying system**

The bill requires each transferring system in which a member has service credit to certify to the paying system all of the following: (1) the member's service credit in the transferring system, (2) the beginning and ending dates of the service credit period covered by the transferring system, (3) any breaks in service, excluding school breaks, and (4) if available, a statement listing the member's monthly contributions and service credit in the transferring system. The certification may be reviewed by both the transferring system and the paying system.<sup>15</sup>

### **Payments for restored service credit**

The bill changes when PERS, STRS, or SERS must transmit payments made to it by one of its members to restore service credit that was cancelled by withdrawal of service credit in one of the other retirement systems. The bill requires the retirement system to which the member is currently contributing to at least annually transmit to the other system notice and any payments made by the member to restore credit in the

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<sup>11</sup> R.C. 145.37(A)(6), (B)(6)(a)(ii), and (D); 3307.57(B)(7), (B)(5)(a)(ii) and (D); and 3309.35(A)(6), (B)(5)(a)(ii), and (E).

<sup>12</sup> Sub. S.B. 343 of the 129th General Assembly.

<sup>13</sup> R.C. 145.37(B)(5), 3307.57(B)(4), and 3309.35(B)(4).

<sup>14</sup> R.C. 145.37(B)(5), 3307.57(B)(4), and 3309.35(B)(4).

<sup>15</sup> R.C. 145.37(B)(4), 3307.57(B)(3), and 3309.35(B)(3).



other system. Current law requires the payments to be transferred at the time the member applies for a return of accumulated contributions or an age and service retirement allowance, disability benefit, or survivor benefit from one of those systems.<sup>16</sup>

### **Purchase or transfer of credit from OP&F or SHPRS**

Under continuing law, a PERS member who has contributed to the Ohio Police and Fire Pension Fund (OP&F) or State Highway Patrol Retirement System (SHPRS) may have contributions and service credit transferred to PERS or, if the member received a refund of contributions to one of those systems, may purchase PERS service credit for service under that system.

To be eligible to purchase the credit or have the contributions and service credit transferred, the bill adds a requirement that the amount of the member's service credit in PERS be greater than the amount of credit to be transferred. As under current law, to purchase or transfer the credit (1) the member must be eligible, or be eligible with the credit, for a retirement or disability benefit and (2) the member must agree to retire or accept a disability benefit not later than 90 days after receiving notice from PERS that the credit has been obtained.<sup>17</sup>

### **Actuarial reviews**

Continuing law requires the Ohio Retirement Study Council to have an actuarial review of the actuarial valuations and quinquennial actuarial investigations prepared regarding each state retirement system conducted every ten years by an independent actuary. The bill specifies that the costs of each of these actuarial reviews must be paid by the retirement system for which the review is prepared.<sup>18</sup>

### **Long-term care insurance**

Under the bill, PERS, OP&F, SERS, and SHPRS are permitted, instead of required, to offer coverage for long-term care insurance.

Long-term care insurance generally covers care that is not covered by health insurance or Medicare. Depending on the policy, it may cover home care, assisted living, adult daycare, hospice care, and nursing home care.<sup>19</sup>

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<sup>16</sup> R.C. 145.311, 3307.711, and 3309.261.

<sup>17</sup> R.C. 145.295(B) and (C).

<sup>18</sup> R.C. 171.04 (E).

<sup>19</sup> R.C. 145.581, 742.53, 3309.691, and 5505.33.

## **OP&F Board of Trustees**

The OP&F Board of Trustees consists of nine members, two of whom are active firefighters elected by firefighters. They serve four-year terms, and the terms of both of the current firefighters serving on the Board expire in 2015.<sup>20</sup> The bill staggers the firefighter members' terms by requiring the individual who receives the second highest number of votes in the 2015 election to serve a term of three years.<sup>21</sup>

## **Public Employees Retirement System (PERS)**

### **Election worker eligibility**

The bill increases the amount to \$600 (from \$500) that a person must earn in a calendar year in employment as an election worker for that person to be a PERS member or earn PERS service credit for that employment.<sup>22</sup>

### **Medicare**

The bill authorizes PERS to provide an amount to reimburse a retirant or disability benefit recipient over 65 who is not eligible for Medicare Part A without paying premiums for payment of those premiums. Under continuing law, the PERS Board may instead provide benefit recipients 65 or older who are not eligible for Medicare Part A without paying premiums with hospital insurance coverage substantially equivalent to Medicare Part A. The Board also must provide this coverage or reimbursement (as added by the bill) to a person who is a spouse, widow, or widower of the retirant or recipient if that person is over 65, not eligible for Medicare Part A without paying premiums, and is receiving a monthly allowance or benefit from PERS.

Under the bill, if the Board chooses to reimbursement premiums instead of providing substantially equivalent coverage, the amount paid to a benefit recipient cannot exceed the Medicare Part A premium paid by the benefit recipient. The bill requires the recipient of a reimbursement amount to certify to PERS the premium paid for Medicare Part A on the Board's request. Payment of the reimbursement under the bill begins for the first month that the recipient is participating in both Medicare Part A and a health care arrangement offered by the system.

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<sup>20</sup> R.C. 742.03 (not in the bill) and Ohio Police & Fire Pension Fund, "Our Board Members," <http://www.op-f.org/BoardOfTrustees/BoardMembers.aspx> (accessed December 7, 2014).

<sup>21</sup> Section 3.

<sup>22</sup> R.C. 145.012(A)(5).



Similar to the coverage provided under continuing law, the reimbursement amount is included in the employer's contribution rate. The bill permits, rather than requires as under current law, the Board to contract for this coverage along with any health insurance provided under continuing law.<sup>23</sup>

## **Service credit**

### **Accumulated contributions**

The bill includes payments made for the following types of service credit as accumulated contributions of a PERS member who dies or withdraws from service: (1) service for periods in which a member was exempt from PERS membership, (2) service rendered in another state, with the U.S. government, or with an Ohio municipal retirement system, (3) a period of absence due to pregnancy or adoption of a child, (4) a period during which a member was out of service due to illness, injury, or other employer-approved reason, and (5) service as a school board member.<sup>24</sup>

### **Workers' compensation**

Continuing law permits a PERS member to purchase up to three years of service credit for periods during which the member is out of service and receiving benefits from the Bureau of Workers' Compensation. Under the bill, a member is eligible to purchase the service only if the member was out of service with a public employer and returned to PERS-covered employment.<sup>25</sup>

The bill allows the credit to be combined with workers' compensation credit purchased or obtained from STRS or SERS, but limits to three years the total workers' compensation credit that may be used to determine retirement eligibility or benefits under provisions that allow a member to combine service credit in PERS, SERS, and STRS.<sup>26</sup>

## **Disability**

PERS members in the defined benefit plan who have five years of service credit have coverage for long-term disability. Coverage is also provided, regardless of length of service, for on-duty illness or injury of members who are law enforcement or public safety officers.

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<sup>23</sup> R.C. 145.584.

<sup>24</sup> R.C. 145.28 and 145.29.

<sup>25</sup> R.C. 145.2915(B).

<sup>26</sup> R.C. 145.2915(F).

For purposes of the PERS disability provisions, the bill defines "examining physician" and "medical consultant." An "examining physician" is a physician appointed by the PERS Board to conduct a medical examination of a disability benefit applicant or recipient. A "medical consultant" is a physician appointed by the Board to review the member's application or an appeal of a denial or termination of a disability benefit.<sup>27</sup>

The bill enumerates the duties of the examining physician and medical consultant. Under the bill, the examining physician, rather than a physician or physicians selected by the Board as under current law, is responsible for the following:

--Conducting the examination of a member who has applied for a disability benefit;<sup>28</sup>

--Conducting required annual medical examinations of disability benefit recipients and certifying whether recipients meet the standard for termination of disability benefits.<sup>29</sup>

--Determining whether any rehabilitative services received by a disability benefit recipient are "acceptable." Under continuing law, the PERS Board may permit a disability benefit recipient whose application for disability benefits is received after January 6, 2013, to retain membership status for up to five years, rather than three years, if the recipient is receiving acceptable rehabilitative services.<sup>30</sup>

Under the bill the medical consultant, rather than physicians selected by the Board, as under current law, must do all of the following:

--Recommend any medical treatment a disability benefit recipient must obtain as a condition of continuing to receive a disability benefit.<sup>31</sup>

--In the case of an employer filing an application on a member's behalf, report to the Board whether the member is physically and mentally capable of performing service similar to that from which the member was separated.<sup>32</sup>

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<sup>27</sup> R.C. 145.35(A)(1) and (2).

<sup>28</sup> R.C. 145.35(E).

<sup>29</sup> R.C. 145.362.

<sup>30</sup> R.C. 145.362.

<sup>31</sup> R.C. 145.35(F).

<sup>32</sup> R.C. 145.35(H).

--Certify that a disability benefit recipient's disability is ongoing. Under continuing law, the Board may waive the required annual medical examination, current medical information, and an annual earnings statement for a disability benefit recipient on such a certification.<sup>33</sup>

The bill also gives the medical consultant, rather than the PERS Board, authority to determine that at the time of the benefit application deadline an applicant was physically or mentally incapacitated and unable to file the application.<sup>34</sup>

### **Disability standards**

The bill modifies the existing standard for an initial disability determination. Under continuing law, to be granted a disability benefit a member must be mentally or physically incapacitated for the performance of duty. The bill's standard is that the member "is mentally or physically incapable of performing the duties of the most recent public position held by the member." Current law provides that the standard is that the member "is mentally or physically incapable of performing the duties of the position held at the time the disabling condition began or a position with similar duties."<sup>35</sup>

Under current law, there are two standards for termination of a disability benefit. One of the standards applies to PERS law enforcement officers. The standard is that the recipient is no longer physically and mentally incapable of resuming the service from which the recipient was found disabled. The bill provides that the standard applies if the member was a PERS law enforcement officer when contributing service terminated (rather than when the disability occurred).<sup>36</sup>

### **Disability determination**

The bill revises the procedures used to determine whether a member is eligible for a disability benefit. The bill requires the medical consultant to concur with the examining physician's determination that a member qualifies for a disability benefit. The PERS Board must then concur with the determination. Current law only requires that the Board concur with the determination of the physician or physicians who conducted the member's medical examination.<sup>37</sup>

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<sup>33</sup> R.C. 145.362.

<sup>34</sup> R.C. 145.35(C).

<sup>35</sup> R.C. 145.35(E).

<sup>36</sup> R.C. 145.362(A).

<sup>37</sup> R.C. 145.35(E).

The bill permits a disability benefit to commence prior to the Board's concurrence if the medical consultant concurs with the examining physician and the member agrees to obtain any medical treatment recommended by the consultant.<sup>38</sup>

### **Termination**

As discussed above, a disability benefit recipient is generally subject to annual medical examination. On completion of an examination, the examining physician must report to the medical consultant and certify whether the recipient meets the standard for termination of a benefit. If the examining physician certifies that the recipient meets the standard for termination and the medical consultant concurs, the bill requires the medical consultant to certify to the Board that the recipient meets the applicable standard for termination.<sup>39</sup>

The bill requires the medical consultant to determine that a disability benefit recipient is no longer disabled before the PERS Board may terminate a disability benefit at the request of a recipient. Under current law, the Board may terminate a disability benefit at the request of the recipient without such a determination.<sup>40</sup>

### **Social Security disability insurance offset**

Continuing law generally requires a PERS disability benefit recipient whose application is received on or after January 7, 2013, to apply for Social Security Disability Insurance (SSDI) payments if the recipient is eligible for them.

The bill revises when a disability benefit recipient must apply for SSDI payments to before the later of (1) the 91st day after the recipient is granted a PERS disability benefit or (2) the 91st day after the recipient attains eligibility to apply for SSDI. Currently, application must be made not later than 90 days after the recipient is granted a PERS disability benefit. The bill retains in part the requirement that application must be filed during the periods specified above unless the medical consultant (rather than the PERS Board) determines from the member's medical records that the member is physically or mentally unable to make the application.<sup>41</sup>

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<sup>38</sup> R.C. 145.35(E).

<sup>39</sup> R.C. 145.362.

<sup>40</sup> R.C. 145.362.

<sup>41</sup> R.C. 145.363(A).

Under continuing law a disability benefit recipient must file with PERS a copy of the completed SSDI application, but the bill permits a recipient to file other evidence of application satisfactory to the PERS Board.<sup>42</sup>

Continuing law requires, if a recipient fails without just cause to apply for SSDI or to file a copy or other evidence of application with PERS, the PERS disability benefit must be suspended until application is made and a copy or evidence of application is filed. The bill adds that a disability benefit must be terminated if the recipient fails to file within one year a copy or other evidence of application with PERS.

### **Survivor benefits**

The surviving spouse or beneficiary of a PERS member who dies before service retirement may elect to receive a monthly benefit instead of payment of the member's accumulated contributions. The bill modifies and corrects references to the monthly benefit payable to the surviving spouse or other sole beneficiary of a PERS member who, at the time of death, was eligible to retire. It eliminates an incorrect reference to plan A and provides instead for the benefit to be computed as a joint-life plan under which the spouse or beneficiary receives 100% of the actuarial equivalent of the deceased member's lesser retirement allowance. Sub. Senate Bill 343 of the 129th General Assembly (S.B. 343) eliminated plan A. Under that plan, a surviving spouse received one-half of the actuarial equivalent of the member's retirement allowance.<sup>43</sup>

### **Qualified excess benefit arrangements**

A qualified excess benefit arrangement (QEBA) provides an additional benefit to a retiree whose retirement benefit is limited by section 415(b) of the Internal Revenue Code to an amount indexed by a member's salary and age at retirement. The benefit is equal to the difference between the allowance under the PERS benefit formula and the 415(b) benefit limit.

The bill requires if the PERS Board establishes a QEBA, the amounts required to fund the QEBA are to be included in the employer contribution rate.<sup>44</sup>

### **Retirement incentive plans**

The bill provides that a PERS law enforcement or public safety officer may not participate in a retirement incentive plan. Current law permits a public employer to

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<sup>42</sup> R.C. 145.363(A).

<sup>43</sup> R.C. 145.45(A).

<sup>44</sup> R.C. 145.391.

establish a retirement incentive plan for its employees who are PERS members. Under a plan, an employer purchases service credit for eligible members in return for an agreement to retire within 90 days of receiving the credit.<sup>45</sup>

### **Reduced retirement allowance**

The bill modifies the calculation of the reduction in a retirement allowance for early retirement for PERS members other than PERS law enforcement or public safety officers and members who will be eligible to retire under the requirements in effect prior to the enactment of S.B. 343 (Group A). The allowance will be reduced by a percentage determined by the PERS Board's actuary based on the number of years the commencement of the allowance precedes the member's eligibility for an unreduced allowance.

Under current law, the allowance is reduced by a percentage determined by the PERS Board's actuary for each year the member retires before attaining full retirement age and accruing sufficient service credit.<sup>46</sup>

### **PERS additional annuity program**

Under the PERS additional annuity program, a member can deposit additional amounts with PERS prior to retirement or while employed as a re-employed retiree. After retirement or termination of re-employment, the amounts deposited may be refunded or paid to the member as an additional annuity.

The bill provides that a PERS member receiving a disability retirement allowance may withdraw payments made under the PERS additional annuity program on the effective date of disability retirement if the member is not eligible for an age and service retirement allowance on that date.<sup>47</sup>

### **Plan selection**

At retirement, a PERS member must choose from one of three plans of payment: (1) the full allowance for the member's life (called "single life"), (2) a reduced allowance for life continuing in whole or part to a beneficiary after the member's death (called "joint life"), or (3) a reduced allowance for life continuing in whole or part to two, three, or four beneficiaries after the member's death (called "multiple life").

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<sup>45</sup> R.C. 145.297.

<sup>46</sup> R.C. 145.33(A)(2).

<sup>47</sup> R.C. 145.63(A)(8).



The bill eliminates the ability of a retirant who is receiving a retirement allowance under a single-life plan and marries or remarries from electing a multiple-life plan as a new plan of payment. This change limits the retirant to electing only the joint-life plan as a new plan of payment.<sup>48</sup>

### **Penalties**

Continuing law requires a person to repay PERS any erroneously paid benefit or payment. The bill authorizes the PERS Board to adopt rules to include a penalty or interest on the amount of the benefit or payment that is to be repaid to the retirement system. The rules must specify the method for calculating a penalty or interest and the conditions under which a penalty or interest must be assessed.<sup>49</sup>

### **Defined contribution plans**

The bill authorizes the PERS Board to withhold a fixed dollar amount (or a percentage of an employee's earnable salary, as under continuing law) for purposes of withholding the employee and employer contributions under a PERS defined contribution plan.<sup>50</sup>

The bill clarifies that the PERS vesting provisions do not apply to cost-of-living allowances (COLAs) granted to members participating in a PERS defined contribution plan whose benefit effective date is on or after January 7, 2013 (rather than members who retire on or after that date).<sup>51</sup>

Under current law, a benefit under the PERS contribution plan generally vests on the granting of the benefit, which means that the member has earned a nonforfeitable right to the portion of the benefit funded by employer contributions. Contributions made by the member are nonforfeitable at all times.<sup>52</sup>

### **Civil service**

The bill specifies that the executive director, actuary, and other employees of the PERS Board are not employees of the state or subject to the state's civil service laws.<sup>53</sup>

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<sup>48</sup> R.C. 145.46(H)(1)(a).

<sup>49</sup> R.C. 145.563.

<sup>50</sup> R.C. 145.88.

<sup>51</sup> R.C. 145.95(B).

<sup>52</sup> R.C. 145.95(A).

<sup>53</sup> R.C. 145.09.

Though not in statutory law, courts have held that employees of Ohio's public retirement systems are not employees of the state or subject to the state's civil service laws.<sup>54</sup>

### **Technical changes**

The bill makes various technical and conforming changes.<sup>55</sup>

## **State Teachers Retirement System (STRS)**

### **Penalty for early re-employment of retirant as a teacher**

The bill allows a retirant<sup>56</sup> to be re-employed as a teacher without penalty if the employment is in an uncompensated volunteer capacity and the re-employed retirant's job duties are the same or substantially similar to the retirant's job duties immediately prior to retirement.

Current law permits a member of STRS or another retirement system to retire and be re-employed as a teacher. Generally, a retirant may be re-employed as a teacher with no penalty. However, a retirant who has received a retirement allowance for less than two months when the re-employment as a teacher begins forfeits the retirement allowance for any month of re-employment during the two-month period.<sup>57</sup>

### **Qualifying service credit**

STRS bases eligibility for retirement, disability, and survivor benefits on a member's "qualifying service credit." The bill provides that "qualifying service credit" includes service credit purchased under PERS, SERS, STRS, or SHPRS or granted by OP&F for a period during which a retirement system member's service as a public employee was interrupted by military service.<sup>58</sup>

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<sup>54</sup> *In re Appeal of Ford*, 3 Ohio App.3d 416, 420 (10th Dist. 1982).

<sup>55</sup> R.C. 145.191, 145.194, 145.2914, 145.2915, 145.384, 145.43, 145.431, 145.58, 145.63, 145.64, 145.82, and 145.92.

<sup>56</sup> "Retirant" is the term generally used in the Revised Code for a retirement system member who has retired. In the STRS law, a retirant is referred to as a "superannuate," which includes (1) a former teacher receiving a retirement allowance under the STRS defined benefit plan, (2) a former teacher receiving a benefit under the STRS defined contribution plan unless the benefit is based on disability, and (3) a former teacher receiving a combined benefit with STRS and another state retirement system or the Cincinnati Retirement System (R.C. 3307.01(M)).

<sup>57</sup> R.C. 3307.35.

<sup>58</sup> R.C. 3307.58(A), 3307.62, and 3307.66(A).



## **Service retirement after disability benefit**

The bill requires an STRS member applying for service retirement after termination of disability retirement or benefits to have at least five years of total service credit.<sup>59</sup> Depending on circumstances, an STRS member may receive disability retirement or disability benefits. Disability benefits terminate based on age (usually retirement age). Disability benefits and disability retirement can also be terminated for a number of other reasons. Under continuing law, a member whose disability retirement or benefit is terminated can apply for service retirement. The bill provides that to qualify for service retirement the member must have at least five years of total service credit. "Total service credit" is defined in continuing law as credit for which the member contributed, credit for military service, and certain purchased credit.<sup>60</sup> "Total service credit" does not include service credit for a period during which the member was a disability benefit recipient.

## **Amount of service credit**

Under the bill, service credit used in determining whether an STRS member has more than 30 years of certain service credit includes credit for a period during which the member was a disability benefit recipient and credit transferred from OP&F or SHPRS for service covered by one of those systems.<sup>61</sup> An STRS member with a retirement effective date after July 31, 2013, but not later than July 31, 2015, receives an enhanced benefit for service credit in excess of 30 years if the credit is of a type specified in statute. In addition, the member receives 2.5% of the member's final average salary (instead of 2.1%) for each of the first 30 years of service if the member retires with at least 35 years of those types of service credit.

## **Additional payment on withdrawal of contributions**

The bill adds to the contributions for which certain STRS members can receive an additional payment on withdrawal of employee contributions the amount contributed to purchase service credit for an approved absence of leave that was not contributed in the year in which the leave or absence took place. Continuing law provides that an STRS member withdrawing contributions on termination of employment who has at least five years of STRS service credit receives an additional amount equal to 50% of the amount contributed by the member for certain service credit, including credit purchased in the year of an approved leave or absence for that leave or absence. The bill

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<sup>59</sup> R.C. 3307.58(B).

<sup>60</sup> R.C. 3307.50, not in the bill.

<sup>61</sup> R.C. 3307.58(D).



adds contributions to purchase credit at a time other than the year of the leave or absence to those used in the determination of the additional payment.<sup>62</sup>

### **Coordination with PERS and SERS**

The bill provides that service credit earned in PERS or SERS can be used only to determine the amount of an STRS retirement or disability benefit, not eligibility for the benefit.<sup>63</sup> Continuing law permits a member of STRS, PERS, or SERS who has earned service credit in more than one of those systems to have the credit combined and used in determining eligibility for the benefit.<sup>64</sup> Under the bill, STRS is to use PERS and SERS credit to determine the amount of the STRS benefit but not whether the member qualifies for the benefit.

### **Disability benefit**

The bill provides that whether an STRS member qualifies for disability coverage with a year and a half of service credit depends on whether the member had the credit "on account" on June 30, 2013.<sup>65</sup> Under current law, a member who earned at least one and a half years of service credit before July 1, 2013, receives disability coverage. Otherwise, the member has to have five years of service credit to be covered. The bill requires that the member have the credit "on account" on June 30, 2013, to receive the coverage with one and a half years of service credit.

The bill changes the date on which an STRS disability benefit begins to the later of (1) that last day for which compensation was paid or (2) the first day of the month next following the date on which the member's most recent application for a disability benefit was received by the STRS Board.<sup>66</sup> Currently, the date is the later of the last day of compensation or the first day of the month next following attainment of eligibility for the benefit.

### **Two-month forfeiture**

The bill specifies that the amount an STRS retiree forfeits for returning to public employment less than two months after retiring is an amount equal to the member's

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<sup>62</sup> R.C. 3307.563.

<sup>63</sup> R.C. 3307.57.

<sup>64</sup> R.C. 145.37, 3307.57, and 3309.35.

<sup>65</sup> R.C. 3307.62(A).

<sup>66</sup> R.C. 3307.62(B).

single lifetime allowance calculated without reductions.<sup>67</sup> Continuing law permits a retiree to have a retirement allowance partly as a lump sum and partly as a reduced allowance. The bill clarifies that the forfeiture is of an amount equal to the unreduced single lifetime allowance.

### **Administrators and Board committees**

The bill eliminates a provision specifying that actions taken pursuant to STRS Board policies by administrators and committees of the Board are subject to subsequent approval by the Board.<sup>68</sup>

### **Other changes**

The bill makes other technical and conforming changes.<sup>69</sup>

## **School Employees Retirement System (SERS)**

### **Contributions**

The bill requires employer contributions to be paid to SERS at such time as the SERS Board requires. Under current law, an employer is required to pay into the employer's trust fund in monthly or, if the Board requires, less frequent installments.<sup>70</sup>

The bill eliminates a requirement that each employer notify the Board of the employment of new employees and changes in compensation of employees. It maintains the current requirement that at monthly or less frequent intervals as required by the Board the employer notify the Board of removals and withdrawals of employees, but specifies that the employer is to give the notice at intervals approved by the Board.

The bill also eliminates a requirement that at least once a year each SERS employer submit to the Board a list of all employees not contributing to SERS.<sup>71</sup>

The bill replaces a requirement that each employer certify to the employer's treasurer on each payroll a statement as voucher for the amount deducted from employee compensation and the amount of the employer contribution and send a copy of the statement to the Board's secretary with a requirement that each employer send a

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<sup>67</sup> R.C. 3307.35(F).

<sup>68</sup> R.C. 3307.04.

<sup>69</sup> R.C. 3307.39, 3307.41, 3307.563, 3307.58(D)(3), and 3307.70.

<sup>70</sup> R.C. 3309.51 and 3309.57.

<sup>71</sup> R.C. 3309.55.

report listing contributions deducted from contributors to SERS at the time and in the manner required by the Board.<sup>72</sup>

The bill modifies a provision establishing a penalty of \$100 per day, not to exceed \$1,500, for each day an employer fails to complete or correct payroll information by specifying that the penalty is for failure to submit a payroll report.<sup>73</sup>

### **Service retirement following disability**

The bill clarifies that the calculation of a service retirement allowance that follows a disability benefit terminated because of the recipient's age (usually retirement age) is to be based on the member group to which the member belongs for purposes of retirement eligibility. Under current law, one group consists of members who have at least 25 years of service credit on August 1, 2017, or meet other qualifications. The other consists of members who do not have 25 years of service credit on that date. Members in the first group can retire with no reduction in the retirement allowance at 65 or with 30 years of service credit. Those in the other group must be 67 or have 30 years of service credit for an unreduced allowance. The calculation of a reduced retirement allowance varies depending on the member's group. Under the bill, this variation applies to calculation of the reduced allowance of a member applying for service retirement on termination of a disability benefit if the member does not meet the age or service requirement for an unreduced allowance.<sup>74</sup>

### **Executive director**

The bill eliminates a provision permitting the SERS executive director to be a member of the Board.<sup>75</sup>

### **Other changes**

The bill also makes technical and conforming changes.<sup>76</sup>

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<sup>72</sup> R.C. 3309.56 and 3309.57.

<sup>73</sup> R.C. 3309.571(C).

<sup>74</sup> R.C. 3309.381.

<sup>75</sup> R.C. 3309.11.

<sup>76</sup> R.C. 3309.01(O)(1), 3309.28, 3309.45(C)(2), 3309.49, and 3309.82.



## State Highway Patrol Retirement System (SHPRS)

### Service credit

The bill clarifies the types of service credit that can be used to determine eligibility for an SHPRS retirement pension. Under current law, eligibility to retire is based on the member's age and the number of years of "active service" with the State Highway Patrol. The bill instead provides that "service credit" can be used to determine eligibility for a pension, which includes a member's prior SHPRS service credit, credit for which contributions were made to Ohio's other public retirement systems, and credit purchased, obtained, or restored.<sup>77</sup>

### Recovery of overpayments

The bill expands the authority of SHPRS to recover overpayments made to certain individuals. Under the bill, if a person is paid any benefit or payment by SHPRS to which the person is not entitled, the benefit is to be repaid to the system by that person. If the person fails to repay, SHPRS is to withhold the amount due from any benefit the person or person's beneficiary is eligible to receive from SHPRS. Current law limits the recovery of overpayments made to a disability benefit recipient or an alternate payee (former spouse) under a division of property order.<sup>78</sup>

### SHPRS Board

Under continuing law, the SHPRS Board consists of the following members:

- (1) The Superintendent of the State Highway Patrol;
- (2) One investment designee, appointed by the Treasurer of State;
- (3) Two retirant members, elected by former SHPRS members receiving an SHPRS retirement or disability pension;
- (4) Five employee members, elected by SHPRS members;
- (5) Two investment expert members, one appointed by the Governor and one appointed jointly by the House Speaker and Senate President.

The bill requires appointed members of the Board (the Treasurer's designee and the investment expert members) to hold office until the later of the end of the member's term or if later, the date the member's successor takes office. Current law requires an

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<sup>77</sup> R.C. 5505.16(A) to (C).

<sup>78</sup> R.C. 5505.34.



investment expert member appointed to fill a vacancy prior to the end of a term to hold office until the earlier of the date the member's successor takes office or until 60 days have elapsed.<sup>79</sup>

## **Records**

The bill authorizes the SHPRS Board to maintain records in printed or electronic format and to make the records available for public inspection in either format.<sup>80</sup>

The bill permits SHPRS to share information requested by any of the following: (1) U.S. Social Security Administration, (2) U.S. Centers for Medicare and Medicaid, (3) Ohio's other public retirement systems (PERS, OP&F, STRS, SERS), (4) Ohio Public Employees Deferred Compensation Program, and (5) the Cincinnati Retirement System.<sup>81</sup>

It includes email addresses in personal history records, which are generally exempt from public inspection under the public records law. "Personal history record" under current law includes the following information related to a member, former member, retirant, or beneficiary: address, telephone number, Social Security number, record of contributions, correspondence with SHPRS, and any other information deemed confidential by SHPRS.<sup>82</sup>

## **Legal action**

The bill requires that any legal action brought against SHPRS or the SHPRS Board or its officers, employees, or board members be brought in the appropriate court in Franklin County, Ohio.<sup>83</sup>

## **Actuarial report**

Continuing law requires the SHPRS Board to prepare an annual actuarial valuation of the retirement system's pension assets, liabilities, and funding requirements. The Board must annually submit a report on the valuation to the ORSC, the OBM Director, and the House and Senate committees with primary responsibility for retirement legislation. The bill changes the date by which the report must be

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<sup>79</sup> R.C. 5505.04(A).

<sup>80</sup> R.C. 5505.04(C)(2) and (G).

<sup>81</sup> R.C. 5505.04(E)(8).

<sup>82</sup> R.C. 5505.04(C)(1).

<sup>83</sup> R.C. 5505.112.



submitted to September 1 (from July 1) following the year for which the valuation is made.<sup>84</sup>

### **Technical and corrective changes**

- Under the disability retirement provisions, corrects terminology by replacing "disability pension recipient" with "disability retirant."<sup>85</sup>
- Removes various obsolete provisions.<sup>86</sup>
- Makes technical, corrective, and conforming changes.<sup>87</sup>

### **Private sector – automatic enrollment**

#### **The program**

The bill allows for a private sector employer to create a program that automatically withholds employee wages for contribution to a retirement program. Under such a program, a percentage of employee wages is automatically withheld and contributed to a 401(k) plan, a tax-sheltered annuity plan, a Roth IRA, or a traditional IRA on behalf of the employees.<sup>88</sup>

#### **Notice requirements**

Under the bill, an employer that uses an automatic retirement plan must provide each participating employee with all of the following information:<sup>89</sup>

- The percentage of the employee's wages that will be withheld and contributed to a retirement plan unless the employee opts out of the program (see "**Opt out**," below);
- At least one opportunity each calendar quarter to select investments for employee contributions between investment alternatives available under the plan;

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<sup>84</sup> R.C. 5505.12(A).

<sup>85</sup> R.C. 5505.18.

<sup>86</sup> R.C. 5505.03, 5505.12(B) and (E), 5505.14, 5505.15(A), and 5505.17(A)(6).

<sup>87</sup> R.C. 742.63(J)(1), 5505.14, 5505.16(C) and (D), 5505.17, 5505.174, and 5505.59(C).

<sup>88</sup> R.C. 4113.75(A) and (B)(1).

<sup>89</sup> R.C. 4133.75(B)(2).



- A description of every investment alternative that the employee may choose under the plan;
- The default investment decisions that will be made if the employee does not make a choice under the plan;
- A brief description of the procedures an employee may use to change investments;
- An annual report of the actual default investments made of contributions attributable to the employee.<sup>90</sup>

### **Opt out**

An employer that creates an automatic enrollment retirement program under the bill must provide its participating employees with reasonable opportunities to opt out of the program and prevent automatic withholding. An employee's affirmative election to not participate in the program is effective as soon after the employer receives the election as is administratively feasible.<sup>91</sup>

### **County sheriff qualifications**

The bill modifies the qualifications necessary for one to serve as a county sheriff. Continuing law provides several mandatory qualifications a person must meet to be eligible to run for or hold the office of sheriff. In addition to seven mandatory requirements, continuing law requires one to meet two other qualifications in one of two distinct ways.

Under current law, one such qualification requires the person to hold a valid basic peace officer certificate issued by the Ohio Peace Officer Training Commission ("police officer training certificate") either (1) within the four preceding years, provided the person was employed at some point during those years as a State Highway Patrol officer or a full-time peace officer or (2) within the three preceding years, provided the person was employed for the entirety of those years as a full-time law enforcement officer. The bill alters these options, instead requiring a person to either (1) hold any valid peace officer training certificate (presumably with or without work experience) or (2) have been employed full-time by a law enforcement agency for at least 13 consecutive pay periods within the preceding four years (presumably with or without a

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<sup>90</sup> R.C. 4113.75(B)(2).

<sup>91</sup> R.C. 4113.75(B)(3).

police officer training certificate). The bill defines "full-time" as at least 80 hours of work in a 14-day period.<sup>92</sup>

Under current law, the other two-option qualification requires an individual to either (1) have at least two years of experience as a supervisory peace officer at or above the rank of corporal or a Highway Patrol officer at or above the rank of sergeant within the five preceding years or (2) have completed at least the equivalent of a two-year course load at a college or university or career college. The bill alters these options, instead requiring that the individual either (1) have two consecutive years of supervisory experience as a peace officer at or above the rank of sergeant, without designating when that experience had to be obtained, or (2) have a bachelor's degree in any field or an associate degree in law enforcement or criminal justice, in either case obtained from a college or university.<sup>93</sup>

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## HISTORY

| ACTION                    | DATE     |
|---------------------------|----------|
| Introduced                | 02-14-13 |
| Reported, S. Ways & Means | 03-19-13 |
| Passed Senate (31-2)      | 04-10-13 |
| Reported, H. Ways & Means | ---      |

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<sup>92</sup> R.C. 311.01(B)(8).

<sup>93</sup> R.C. 311.01(B)(9).

