

AN ACT

To amend sections 145.38 and 3305.08 of the Revised Code and to repeal Section 6 of Am. Sub. S.B. 144 of the 123rd General Assembly, as subsequently amended, to prohibit an elected official from receiving a Public Employees Retirement System pension while earning a salary for the same public office, to subject employee contributions to a higher education alternative retirement plan to certain local taxes, and to declare an emergency.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 145.38 and 3305.08 of the Revised Code be amended to read as follows:

Sec. 145.38. (A) As used in this section and section 145.384 of the Revised Code:

(1) "PERS retirant" means a former member of the public employees retirement system who is receiving one of the following:

(a) Age and service retirement benefits under section 145.32, 145.33, 145.331, 145.34, or 145.46 of the Revised Code;

(b) Age and service retirement benefits paid by the public employees retirement system under section 145.37 of the Revised Code;

(c) Any benefit paid by the system under a plan established under section 145.81 of the Revised Code.

(2) "Other system retirant" means both of the following:

(a) A member or former member of the Ohio police and fire pension fund, state teachers retirement system, school employees retirement system, state highway patrol retirement system, or Cincinnati retirement system who is receiving age and service or commuted age and service retirement benefits or a disability benefit from a system of which the person is a member or former member;

(b) A member or former member of the public employees retirement system who is receiving age and service retirement benefits or a disability benefit under section 145.37 of the Revised Code paid by the school

employees retirement system or the state teachers retirement system.

(B)(1) Subject to this section, a PERS retirant or other system retirant may be employed by a public employer. If so employed, the PERS retirant or other system retirant shall contribute to the public employees retirement system in accordance with section 145.47 of the Revised Code, and the employer shall make contributions in accordance with section 145.48 of the Revised Code.

(2) A public employer that employs a PERS retirant or other system retirant, or enters into a contract for services as an independent contractor with a PERS retirant shall notify the retirement board of the employment or contract not later than the end of the month in which the employment or contract commences. Any overpayment of benefits to a PERS retirant by the retirement system resulting from delay or failure of the employer to give the notice shall be repaid to the retirement system by the employer.

(3) On receipt of notice from a public employer that a person who is an other system retirant has been employed, the retirement system shall notify the retirement system of which the other system retirant was a member of such employment.

(4)(a) A PERS retirant who has received a retirement allowance for less than two months when employment subject to this section commences shall forfeit the retirement allowance for any month the PERS retirant is employed prior to the expiration of the two-month period. Service and contributions for that period shall not be included in calculation of any benefits payable to the PERS retirant and those contributions shall be refunded on the retirant's death or termination of the employment.

(b) An other system retirant who has received a retirement allowance or disability benefit for less than two months when employment subject to this section commences shall forfeit the retirement allowance or disability benefit for any month the other system retirant is employed prior to the expiration of the two-month period. Service and contributions for that period shall not be included in the calculation of any benefits payable to the other system retirant and those contributions shall be refunded on the retirant's death or termination of the employment.

(c) Contributions made on compensation earned after the expiration of the two-month period shall be used in the calculation of the benefit or payment due under section 145.384 of the Revised Code.

(5) On receipt of notice from the Ohio police and fire pension fund, school employees retirement system, or state teachers retirement system of the re-employment of a PERS retirant, the public employees retirement system shall not pay, or if paid, shall recover, the amount to be forfeited by

the PERS retirant in accordance with section 742.26, 3307.35, or 3309.341 of the Revised Code.

(6) A PERS retirant who enters into a contract to provide services as an independent contractor to the employer by which the retirant was employed at the time of retirement or, less than two months after the retirement allowance commences, begins providing services as an independent contractor pursuant to a contract with another public employer, shall forfeit the pension portion of the retirement benefit for the period beginning the first day of the month following the month in which the services begin and ending on the first day of the month following the month in which the services end. The annuity portion of the retirement allowance shall be suspended on the day services under the contract begin and shall accumulate to the credit of the retirant to be paid in a single payment after services provided under the contract terminate. A PERS retirant subject to division (B)(6) of this section shall not contribute to the retirement system and shall not become a member of the system.

(7) As used in this division, "employment" includes service for which a PERS retirant or other system retirant, the retirant's employer, or both, have waived any earnable salary for the service.

(C)(1) Except as provided in division (C)(3) of this section, this division applies to both of the following:

(a) A PERS retirant who, prior to September 14, 2000, ~~made an election under~~ was subject to division (C)(1)(b) of this section as that division existed immediately prior to September 14, 2000, and ~~a PERS retirant who elects under Section 6 of Am. Sub. S.B. No. 144 of the 123rd General Assembly~~ has not elected pursuant to Am. Sub. S.B. 144 of the 123rd general assembly to cease to be subject to ~~this section that division~~:

(b) A PERS retirant to whom both of the following apply:

(i) The retirant held elective office in this state, or in any municipal corporation, county, or other political subdivision of this state at the time of retirement under this chapter.

(ii) The retirant was elected or appointed to the same office for the remainder of the term or the term immediately following the term during which the retirement occurred.

(2) A PERS retirant who is subject to this division is a member of the public employees retirement system with all the rights, privileges, and obligations of membership, except that the membership does not include survivor benefits provided pursuant to section 145.45 of the Revised Code or, beginning on the ninetieth day after September 14, 2000, any amount calculated under section 145.401 of the Revised Code. The pension portion

of the PERS retirant's retirement allowance shall be forfeited until the first day of the first month following termination of the employment. The annuity portion of the retirement allowance shall accumulate to the credit of the PERS retirant to be paid in a single payment after termination of the employment. The retirement allowance shall resume on the first day of the first month following termination of the employment. On termination of the employment, the PERS retirant shall elect to receive either a refund of the retirant's contributions to the retirement system during the period of employment subject to this section or a supplemental retirement allowance based on the retirant's contributions and service credit for that period of employment.

(3) This division does not apply to any of the following:

(a) A PERS retirant elected to office who, at the time of the election for the retirant's current term, was not retired but, not less than ninety days prior to the election for the term, filed a written declaration of intent to retire before the end of the term with the board of elections of the county in which petitions for nomination or election to the office were filed;

(b) A PERS retirant elected to office who, at the time of the election for the retirant's current term, was a retirant and had been retired for not less than ninety days;

(c) A PERS retirant appointed to office who, at the time of appointment to the retirant's current term, notified the person or entity making the appointment that the retirant was already retired or intended to retire before the end of the term.

(D)(1) Except as provided in division (C) of this section, a PERS retirant or other system retirant subject to this section is not a member of the public employees retirement system, and, except as specified in this section does not have any of the rights, privileges, or obligations of membership. Except as specified in division (D)(2) of this section, the retirant is not eligible to receive health, medical, hospital, or surgical benefits under section 145.58 of the Revised Code for employment subject to this section.

(2) A PERS retirant subject to this section shall receive primary health, medical, hospital, or surgical insurance coverage from the retirant's employer, if the employer provides coverage to other employees performing comparable work. Neither the employer nor the PERS retirant may waive the employer's coverage, except that the PERS retirant may waive the employer's coverage if the retirant has coverage comparable to that provided by the employer from a source other than the employer or the public employees retirement system. If a claim is made, the employer's coverage shall be the primary coverage and shall pay first. The benefits provided

under section 145.58 of the Revised Code shall pay only those medical expenses not paid through the employer's coverage or coverage the PERS retirant receives through a source other than the retirement system.

(E) If the disability benefit of an other system retirant employed under this section is terminated, the retirant shall become a member of the public employees retirement system, effective on the first day of the month next following the termination with all the rights, privileges, and obligations of membership. If such person, after the termination of the disability benefit, earns two years of service credit under this system or under the Ohio police and fire pension fund, state teachers retirement system, school employees retirement system, or state highway patrol retirement system, the person's prior contributions as an other system retirant under this section shall be included in the person's total service credit as a public employees retirement system member, and the person shall forfeit all rights and benefits of this section. Not more than one year of credit may be given for any period of twelve months.

(F) This section does not affect the receipt of benefits by or eligibility for benefits of any person who on August 20, 1976, was receiving a disability benefit or service retirement pension or allowance from a state or municipal retirement system in Ohio and was a member of any other state or municipal retirement system of this state.

(G) The public employees retirement board may adopt rules to carry out this section.

Sec. 3305.08. Any payment, benefit, or other right accruing to any electing employee under a contract entered into for purposes of an alternative retirement plan, ~~any contributions to a provider pursuant to section 3305.06 of the Revised Code,~~ and all moneys, investments, and income of those contracts are exempt from any state tax, except the tax imposed by section 5747.02 of the Revised Code, are exempt from any county, municipal, or other local tax, except taxes imposed pursuant to section 5748.02 or 5748.08 of the Revised Code, and except as provided in sections 3105.171, 3105.65, ~~3111.23, 3113.21,~~ 3115.32, 3119.80, 3119.81, 3121.02, 3121.03, 3123.06, and 3305.09 of the Revised Code, shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or the insolvency law, or other process of law, and shall be unassignable except as specifically provided in this section and sections 3105.171, 3105.65, 3119.80, 3119.81, 3121.02, 3121.03, ~~and~~ 3115.32, and 3123.06 of the Revised Code or in any contract the electing employee has entered into for purposes of an alternative retirement plan.

SECTION 2. That existing sections 145.38 and 3305.08 of the Revised Code are hereby repealed.

SECTION 3. That Section 6 of Am. Sub. S.B. 144 of the 123rd General Assembly, as amended by Sub. H.B. 535 of the 123rd General Assembly, is hereby repealed.

The intent of the repeal by this act of Section 6 of Am. Sub. S.B. 144 of the 123rd General Assembly, as amended, is to eliminate the authority to make the election described in that section. The repeal does not affect any election made pursuant to that section prior to the effective date of this act.

SECTION 4. Section 3305.08 of the Revised Code is presented in this act as a composite of the section as amended by both Sub. H.B. 535 and Am. Sub. S.B. 180 of the 123rd General Assembly. The General Assembly, applying the principle stated in division (B) of section 1.52 of the Revised Code that amendments are to be harmonized if reasonably capable of simultaneous operation, finds that the composite is the resulting version of the section in effect prior to the effective date of the section as presented in this act.

SECTION 5. This act is hereby declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety. The reason for such necessity is that this act is needed to prevent certain elected officials from collecting at the same time both a public pension and compensation for service in the same office. Therefore, this act shall go into immediate effect.

Speaker _____ of the House of Representatives.

President _____ of the Senate.

Passed _____, 20____

Approved _____, 20____

Governor.

Am. Sub. H. B. No. 84

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The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the
____ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____