

As Reported by the House Retirement and Aging Committee

124th General Assembly

Regular Session

2001-2002

Sub. H. B. No. 84

REPRESENTATIVES Schmidt, Schuring, Schneider, Ogg, Barrett, Flowers

A BILL

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. 21 22

(2) "Other system retirant" means both of the following: 23

(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; 24 25 26 27 28 29 30

(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. 31 32 33 34 35

(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. 36 37 38 39 40 41 42

(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. 43 44 45 46 47 48 49 50

(3) On receipt of notice from a public employer that a person 51

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.

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(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.

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(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.

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(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.

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(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.

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(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) 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. 114

(ii) The retirant was elected or appointed to the same office 115
for the remainder of the term or the term immediately following 116
the term during which the retirement occurred. 117

(2) A PERS retirant who is subject to this division is a 118
member of the public employees retirement system with all the 119
rights, privileges, and obligations of membership, except that the 120
membership does not include survivor benefits provided pursuant to 121
section 145.45 of the Revised Code or, beginning on the ninetieth 122
day after September 14, 2000, any amount calculated under section 123
145.401 of the Revised Code. The pension portion of the PERS 124
retirant's retirement allowance shall be forfeited until the first 125
day of the first month following termination of the employment. 126
The annuity portion of the retirement allowance shall accumulate 127
to the credit of the PERS retirant to be paid in a single payment 128
after termination of the employment. The retirement allowance 129
shall resume on the first day of the first month following 130
termination of the employment. On termination of the employment, 131
the PERS retirant shall elect to receive either a refund of the 132
retirant's contributions to the retirement system during the 133
period of employment subject to this section or a supplemental 134
retirement allowance based on the retirant's contributions and 135
service credit for that period of employment. 136

(D)(1) Except as provided in division (C) of this section, a 137
PERS retirant or other system retirant subject to this section is 138
not a member of the public employees retirement system, and, 139
except as specified in this section does not have any of the 140
rights, privileges, or obligations of membership. Except as 141
specified in division (D)(2) of this section, the retirant is not 142
eligible to receive health, medical, hospital, or surgical 143
benefits under section 145.58 of the Revised Code for employment 144
subject to this section. 145

(2) A PERS retirant subject to this section shall receive 146
primary health, medical, hospital, or surgical insurance coverage 147
from the retirant's employer, if the employer provides coverage to 148
other employees performing comparable work. Neither the employer 149
nor the PERS retirant may waive the employer's coverage, except 150
that the PERS retirant may waive the employer's coverage if the 151
retirant has coverage comparable to that provided by the employer 152
from a source other than the employer or the public employees 153
retirement system. If a claim is made, the employer's coverage 154
shall be the primary coverage and shall pay first. The benefits 155
provided under section 145.58 of the Revised Code shall pay only 156
those medical expenses not paid through the employer's coverage or 157
coverage the PERS retirant receives through a source other than 158
the retirement system. 159

(E) If the disability benefit of an other system retirant 160
employed under this section is terminated, the retirant shall 161
become a member of the public employees retirement system, 162
effective on the first day of the month next following the 163
termination with all the rights, privileges, and obligations of 164
membership. If such person, after the termination of the 165
disability benefit, earns two years of service credit under this 166
system or under the Ohio police and fire pension fund, state 167
teachers retirement system, school employees retirement system, or 168
state highway patrol retirement system, the person's prior 169
contributions as an other system retirant under this section shall 170
be included in the person's total service credit as a public 171
employees retirement system member, and the person shall forfeit 172
all rights and benefits of this section. Not more than one year of 173
credit may be given for any period of twelve months. 174

(F) This section does not affect the receipt of benefits by 175
or eligibility for benefits of any person who on August 20, 1976, 176
was receiving a disability benefit or service retirement pension 177

or allowance from a state or municipal retirement system in Ohio 178
and was a member of any other state or municipal retirement system 179
of this state. 180

(G) The public employees retirement board may adopt rules to 181
carry out this section. 182

Sec. 3305.08. Any payment, benefit, or other right accruing 183
to any electing employee under a contract entered into for 184
purposes of an alternative retirement plan, ~~any contributions to a~~ 185
~~provider pursuant to section 3305.06 of the Revised Code,~~ and all 186
moneys, investments, and income of those contracts are exempt from 187
any state tax, except the tax imposed by section 5747.02 of the 188
Revised Code, are exempt from any county, municipal, or other 189
local tax, except taxes imposed pursuant to section 5748.02 or 190
5748.08 of the Revised Code, and except as provided in sections 191
3105.171, 3105.65, ~~3111.23, 3113.21,~~ 3115.32, 3119.80, 3119.81, 192
3121.02, 3121.03, 3123.06, and 3305.09 of the Revised Code, shall 193
not be subject to execution, garnishment, attachment, the 194
operation of bankruptcy or the insolvency law, or other process of 195
law, and shall be unassignable except as specifically provided in 196
this section and sections 3105.171, 3105.65, 3119.80, 3119.81, 197
3121.02, 3121.03, ~~and~~ 3115.32, and 3123.06 of the Revised Code 198
or in any contract the electing employee has entered into for 199
purposes of an alternative retirement plan. 200

Section 2. That existing sections 145.38 and 3305.08 of the 201
Revised Code are hereby repealed. 202

Section 3. That Section 6 of Am. Sub. S.B. 144 of the 123rd 203
General Assembly, as amended by Sub. H.B. 535 of the 123rd General 204
Assembly, is hereby repealed. 205

The intent of the repeal by this act of Section 6 of Am. Sub. 206

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.