

AN ACT

To amend sections 145.06, 742.05, 2743.02, 3307.06, 3309.06, and 5505.042 of the Revised Code and to amend Section 5 of Sub. S.B. 133 of the 125th General Assembly to allow a state officer or employee who in a civil action is alleged to lack immunity from personal liability to participate in proceedings to determine whether the officer or employee is entitled to personal immunity, and to revise the law governing the filling of a vacancy on a state retirement system board.

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

SECTION 1. That sections 145.06, 742.05, 2743.02, 3307.06, 3309.06, and 5505.042 of the Revised Code be amended to read as follows:

Sec. 145.06. (A) If a vacancy occurs in the term of any employee member of the public employees retirement board, the remaining members of the board shall elect a successor employee member from the employee group lacking representation because of the vacancy. On certification of the election results in accordance with rules adopted under section 145.058 of the Revised Code, the successor employee member shall hold office until the first day of the new term that follows the next board election that occurs not less than ninety days after the successor employee member's election.

Any employee member of the board who fails to attend the meetings of the board for three months or longer, without valid excuse, shall be considered as having resigned, and the board shall declare the employee member's office vacated as of the date of the adoption of a proper resolution.

(B) If a vacancy occurs during the term of office of a retirant member of the board, the remaining members of the board shall elect a successor retirant member who shall be a former member of the public employees retirement system who is eligible for election under section 145.04 of the Revised Code as a retirant member of the board. On certification of the election results in accordance with rules adopted under section 145.058 of the Revised Code, the successor retirant member shall hold office until the

first day of the new term that follows the next board election that occurs not less than ninety days after the successor retirant member's election.

If a retirant member of the board fails to attend the meetings of the board for three months or longer, without valid excuse, the retirant member shall be considered as having resigned, and the board shall declare the member's office vacated as of the date of the adoption of a proper resolution.

If as a result of changed circumstances a retirant member would no longer qualify for membership on the board as the retirant member, the retirant member's office shall be considered vacant, and a successor retirant member shall be chosen in the manner specified in this division.

(C) Elections under this section to fill a vacancy on the board shall be conducted in accordance with rules adopted under section 145.058 of the Revised Code.

Sec. 742.05. Any vacancy occurring in the term of a member of the board of trustees of the Ohio police and fire pension fund who is the fiscal officer of a municipal corporation shall be filled by appointment by the governor for the unexpired term of such member.

If a vacancy occurs in the term of an employee or retirant member of the board, all the remaining members of the board shall elect a successor employee or retirant member. On certification of the election results in accordance with rules adopted under section 742.045 of the Revised Code, the successor member shall hold office until the first day of the new term that follows the next board election that occurs not less than ninety days after the successor member's election.

Elections under this section to fill a vacancy on the board shall be conducted in accordance with rules adopted under section 742.045 of the Revised Code.

If a member of the board who is the fiscal officer of a municipal corporation ceases to be a fiscal officer of a municipal corporation, a vacancy shall exist.

If an employee member of the board ceases to be a member of the fund, a vacancy shall exist.

If as a result of changed circumstances a retirant member no longer qualifies for membership on the board as a retirant member, a vacancy shall exist.

Any elected or appointed member of the board who fails to attend three consecutive meetings of the board, without valid excuse, shall be considered as having resigned from the board and the board shall declare the member's office vacated and as of the date of the adoption of a proper resolution a vacancy shall exist.

Sec. 2743.02. (A)(1) The state hereby waives its immunity from liability, except as provided for the office of the state fire marshal in division (G)(1) of section 9.60 and division (B) of section 3737.221 of the Revised Code and subject to division (H) of this section, and consents to be sued, and have its liability determined, in the court of claims created in this chapter in accordance with the same rules of law applicable to suits between private parties, except that the determination of liability is subject to the limitations set forth in this chapter and, in the case of state universities or colleges, in section 3345.40 of the Revised Code, and except as provided in division (A)(2) or (3) of this section. To the extent that the state has previously consented to be sued, this chapter has no applicability.

Except in the case of a civil action filed by the state, filing a civil action in the court of claims results in a complete waiver of any cause of action, based on the same act or omission, which the filing party has against any officer or employee, as defined in section 109.36 of the Revised Code. The waiver shall be void if the court determines that the act or omission was manifestly outside the scope of the officer's or employee's office or employment or that the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner.

(2) If a claimant proves in the court of claims that an officer or employee, as defined in section 109.36 of the Revised Code, would have personal liability for the officer's or employee's acts or omissions but for the fact that the officer or employee has personal immunity under section 9.86 of the Revised Code, the state shall be held liable in the court of claims in any action that is timely filed pursuant to section 2743.16 of the Revised Code and that is based upon the acts or omissions.

(3)(a) Except as provided in division (A)(3)(b) of this section, the state is immune from liability in any civil action or proceeding involving the performance or nonperformance of a public duty, including the performance or nonperformance of a public duty that is owed by the state in relation to any action of an individual who is committed to the custody of the state.

(b) The state immunity provided in division (A)(3)(a) of this section does not apply to any action of the state under circumstances in which a special relationship can be established between the state and an injured party. A special relationship under this division is demonstrated if all of the following elements exist:

(i) An assumption by the state, by means of promises or actions, of an affirmative duty to act on behalf of the party who was allegedly injured;

(ii) Knowledge on the part of the state's agents that inaction of the state could lead to harm;

(iii) Some form of direct contact between the state's agents and the injured party;

(iv) The injured party's justifiable reliance on the state's affirmative undertaking.

(B) The state hereby waives the immunity from liability of all hospitals owned or operated by one or more political subdivisions and consents for them to be sued, and to have their liability determined, in the court of common pleas, in accordance with the same rules of law applicable to suits between private parties, subject to the limitations set forth in this chapter. This division is also applicable to hospitals owned or operated by political subdivisions which have been determined by the supreme court to be subject to suit prior to July 28, 1975.

(C) Any hospital, as defined in section 2305.113 of the Revised Code, may purchase liability insurance covering its operations and activities and its agents, employees, nurses, interns, residents, staff, and members of the governing board and committees, and, whether or not such insurance is purchased, may, to such extent as its governing board considers appropriate, indemnify or agree to indemnify and hold harmless any such person against expense, including attorney's fees, damage, loss, or other liability arising out of, or claimed to have arisen out of, the death, disease, or injury of any person as a result of the negligence, malpractice, or other action or inaction of the indemnified person while acting within the scope of the indemnified person's duties or engaged in activities at the request or direction, or for the benefit, of the hospital. Any hospital electing to indemnify such persons, or to agree to so indemnify, shall reserve such funds as are necessary, in the exercise of sound and prudent actuarial judgment, to cover the potential expense, fees, damage, loss, or other liability. The superintendent of insurance may recommend, or, if such hospital requests the superintendent to do so, the superintendent shall recommend, a specific amount for any period that, in the superintendent's opinion, represents such a judgment. This authority is in addition to any authorization otherwise provided or permitted by law.

(D) Recoveries against the state shall be reduced by the aggregate of insurance proceeds, disability award, or other collateral recovery received by the claimant. This division does not apply to civil actions in the court of claims against a state university or college under the circumstances described in section 3345.40 of the Revised Code. The collateral benefits provisions of division (B)(2) of that section apply under those circumstances.

(E) The only defendant in original actions in the court of claims is the

state. The state may file a third-party complaint or counterclaim in any civil action, except a civil action for two thousand five hundred dollars or less, that is filed in the court of claims.

(F) A civil action against an officer or employee, as defined in section 109.36 of the Revised Code, that alleges that the officer's or employee's conduct was manifestly outside the scope of the officer's or employee's employment or official responsibilities, or that the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner shall first be filed against the state in the court of claims, which has exclusive, original jurisdiction to determine, initially, whether the officer or employee is entitled to personal immunity under section 9.86 of the Revised Code and whether the courts of common pleas have jurisdiction over the civil action. The officer or employee may participate in the immunity determination proceeding before the court of claims to determine whether the officer or employee is entitled to personal immunity under section 9.86 of the Revised Code.

The filing of a claim against an officer or employee under this division tolls the running of the applicable statute of limitations until the court of claims determines whether the officer or employee is entitled to personal immunity under section 9.86 of the Revised Code.

(G) Whenever a claim lies against an officer or employee who is a member of the Ohio national guard, and the officer or employee was, at the time of the act or omission complained of, subject to the "Federal Tort Claims Act," 60 Stat. 842 (1946), 28 U.S.C. 2671, et seq., then the Federal Tort Claims Act is the exclusive remedy of the claimant and the state has no liability under this section.

(H) If an inmate of a state correctional institution has a claim against the state for the loss of or damage to property and the amount claimed does not exceed three hundred dollars, before commencing an action against the state in the court of claims, the inmate shall file a claim for the loss or damage under the rules adopted by the director of rehabilitation and correction pursuant to this division. The inmate shall file the claim within the time allowed for commencement of a civil action under section 2743.16 of the Revised Code. If the state admits or compromises the claim, the director shall make payment from a fund designated by the director for that purpose. If the state denies the claim or does not compromise the claim at least sixty days prior to expiration of the time allowed for commencement of a civil action based upon the loss or damage under section 2743.16 of the Revised Code, the inmate may commence an action in the court of claims under this chapter to recover damages for the loss or damage.

The director of rehabilitation and correction shall adopt rules pursuant to Chapter 119. of the Revised Code to implement this division.

Sec. 3307.06. (A) Annually on the first Monday of May, one contributing member, as defined in division (D) of section 3307.05 of the Revised Code, shall be elected by ballot to the state teachers retirement board, except that, beginning with the annual election for contributing members in May, 1978, and in the annual election of each fourth year thereafter, two contributing members shall be elected to the board. Elected contributing members shall begin their respective terms of office on the first day of September following their election and shall serve for a term of four years.

(B) The retired teacher members of the board, as defined in division (E) of section 3307.05 of the Revised Code, shall be elected for a term of four years. The retired teacher members shall be elected to the board at the annual election for contributing members of the board, as provided in division (A) of this section, in the year in which the term of the current retired teacher members would expire. The retired teacher members shall begin their respective terms of office on the first day of September following their election.

No contributing member of the board who retires while a member of the board shall be eligible to become a retired teacher member of the board for three years after the date of the member's retirement.

(C) If a vacancy occurs during the term of office of any elected member of the board, the remaining members of the board shall elect a successor member. On certification of the election results in accordance with rules adopted under section 3307.075 of the Revised Code the successor member shall hold office until the first day of the new term that follows the next board election that occurs not less than ninety days after the successor member's election. The successor member shall qualify for board membership under the same division of section 3307.05 of the Revised Code as the member's predecessor in office. Elections under this division shall be conducted in accordance with rules adopted under section 3307.075 of the Revised Code.

(D) If as a result of changed circumstances an elected member of the board would no longer qualify for board membership under that division of section 3307.05 of the Revised Code on the basis of which the member was elected, or if such a member fails to attend the meetings of the board for four months or longer, without being excused, the member's position on the board shall be considered vacant, and a successor member shall be elected, under division (C) of this section, for the remainder of the unexpired term.

Sec. 3309.06. (A) Elections for employee and retirant members of the school employees retirement board shall be held on the first Monday of March. Terms of office of the employee and retirant members of the board shall be for four years each, commencing on the first day of July following the election and ending on the thirtieth day of June. The initial terms of the first retirant member and the new employee member shall commence on July 1, 1984, and end on June 30, 1988.

(B) The initial election of the second retirant member shall be held at the first election that occurs later than ninety days after ~~the effective date of this amendment~~ September 15, 2004. Subsequent elections shall be held each fourth year thereafter.

(C) If a vacancy occurs during the term of an elected member of the board, the remaining members of the board shall elect a successor member. On certification of the election results in accordance with rules adopted under section 3309.075 of the Revised Code, the successor member shall hold office until the first day of the new term that follows the next board election that occurs not less than ninety days after the successor member's election. The successor member shall qualify for board membership under the same division of section 3309.05 of the Revised Code as the member's predecessor in office. Elections under this division shall be conducted in accordance with rules adopted under section 3309.075 of the Revised Code.

(D) Employee members or retirant members of the board who fail to attend the meetings of the board for four months or longer, without being excused, shall be considered as having resigned and successors shall be elected for their unexpired terms pursuant to division (C) of this section. If as a result of changed circumstances the retirant member would no longer qualify for membership on the board as a retirant member, the office shall be considered vacant, and a successor retirant member shall be elected pursuant to division (C) of this section.

Sec. 5505.042. Except as provided in section 5505.043 of the Revised Code, any vacancy occurring in the term of a retirant member of the state highway patrol retirement board or an employee member of the board shall be filled by an election conducted in the same manner as other retirant member and employee member elections under section 5505.041 of the Revised Code. On certification of the election results in accordance with rules adopted under section 5505.047 of the Revised Code, the retirant member or employee member elected shall hold office until the first day of the new term that follows the next board election that occurs not less than ninety days after the member's election.

SECTION 2. That existing sections 145.06, 742.05, 2743.02, 3307.06, 3309.06, and 5505.042 of the Revised Code are hereby repealed.

SECTION 3. That Section 5 of Sub. S.B. 133 of the 125th General Assembly be amended to read as follows:

Sec. 5. Nothing in ~~this act~~ Sub. S.B. 133 of the 125th General Assembly shall affect the term of any elected member of a state retirement board serving on the effective date of ~~this act~~ Sub. S.B. 133 of the 125th General Assembly.

The additional members of the state retirement systems to be appointed pursuant to ~~this act~~ Sub. S.B. 133 of the 125th General Assembly shall be appointed and take office not later than ninety days after the effective date of ~~this act~~ Sub. S.B. 133 of the 125th General Assembly, except that an investment expert member appointed jointly by the Speaker of the House of Representatives and the President of the Senate shall not immediately take office if taking office would result in an even number of members on that state retirement board. The member shall take office at the earliest time that taking office will result in an odd number of members on that board.

Not later than ninety days after the effective date of ~~this act~~ Sub. S.B. 133 of the 125th General Assembly, the Governor shall appoint the initial additional retirant member of the public employees retirement board created by ~~this act~~ Sub. S.B. 133 of the 125th General Assembly. The retirant member shall hold office until the first day of the new term that follows the next board election that occurs not less than ninety days after the appointment.

Not later than ninety days after the effective date of ~~this act~~ Sub. S.B. 133 of the 125th General Assembly, the Governor shall appoint the initial additional retired teacher member position created by ~~this act~~ Sub. S.B. 133 of the 125th General Assembly. The retired teacher member shall hold office until the first day of the new term that follows the next board election that occurs not less than ninety days after the appointment.

Not later than ninety days after the effective date of ~~this act~~ Sub. S.B. 133 of the 125th General Assembly, the Governor shall appoint the initial additional retirant member of the school employees retirement board created by ~~this act~~ Sub. S.B. 133 of the 125th General Assembly. The retirant member shall hold office ~~until the next board election that occurs not less than ninety days after the appointment~~ through June 30, 2005, as directed in Section 6 of Am. H.B. 10 of the 126th General Assembly.

Not later than ninety days after the effective date of ~~this act~~ Sub. S.B. 133 of the 125th General Assembly, the Governor shall appoint the initial additional retirant member of the state highway patrol retirement board created by ~~this act~~ Sub. S.B. 133 of the 125th General Assembly. The retirant member shall hold office until the first day of the new term that follows the next board election that occurs not less than ninety days after the appointment.

SECTION 4. That existing Section 5 of Sub. S.B. 133 of the 125th General Assembly is hereby repealed.

SECTION 5. Section 2743.02 of the Revised Code as amended by this act shall take effect on the ninety-first day after the effective date of this act.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Approved _____, 20____

Governor.

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 _____